

1 ENGROSSED HOUSE
2 BILL NO. 1468

By: Jackson, Williams and
Dorman of the House

3 and

4 Myers of the Senate
5
6

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2001, Section 3603, as last amended by Section
9 3, Chapter 406, O.S.L. 2008 (68 O.S. Supp. 2008,
10 Section 3603), which relates to the Oklahoma Quality
11 Jobs Program Act; modifying definitions; authorizing
incentive payments for qualified federal contractors;
prescribing procedures for payment of incentive;
providing for codification; providing an effective
date; and declaring an emergency.

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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SECTION 1. AMENDATORY 68 O.S. 2001, Section 3603, as

16

last amended by Section 3, Chapter 406, O.S.L. 2008 (68 O.S. Supp.

17

2008, Section 3603), is amended to read as follows:

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Section 3603. A. As used in Section 3601 et seq. of this

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title:

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1. a. "Basic industry" means:

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(1) those manufacturing activities defined or

22

classified in the NAICS Manual under Industry

23

Sector Nos. 31, 32 and 33, Industry Group No.

24

5111 or Industry No. 11331,

1 (2) those electric power generation, transmission and
2 distribution activities defined or classified in
3 the NAICS Manual under U.S. Industry Nos. 221111
4 through 221122, if:

5 (a) an establishment engaged therein qualifies
6 as an exempt wholesale generator as defined
7 by 15 U.S.C., Section 79z-5a,

8 (b) the exempt wholesale generator facility
9 consumes from sources located within the
10 state at least ninety percent (90%) of the
11 total energy used to produce the electrical
12 output which qualifies for the specialized
13 treatment provided by the Energy Policy Act
14 of 1992, P.L. 102-486, 106 Stat. 2776, as
15 amended, and federal regulations adopted
16 pursuant thereto,

17 (c) the exempt wholesale generator facility
18 sells to purchasers located outside the
19 state for consumption in activities located
20 outside the state at least ninety percent
21 (90%) of the total electrical energy output
22 which qualifies for the specialized
23 treatment provided by the Energy Policy Act
24 of 1992, P.L. 102-486, 106 Stat. 2776, as

1 amended, and federal regulations adopted
2 pursuant thereto, and

3 (d) the facility is constructed on or after July
4 1, 1996,

5 (3) those administrative and facilities support
6 service activities defined or classified in the
7 NAICS Manual under Industry Group Nos. 5611 and
8 5612, Industry Nos. 51821, 519130, 52232, 56142
9 and 54191 or U.S. Industry Nos. 524291 and
10 551114, and those other support activities for
11 air transportation defined or classified in the
12 NAICS Manual under Industry Group No. 488190,

13 (4) those professional, scientific and technical
14 service activities defined or classified in the
15 NAICS Manual under U.S. Industry Nos. 541710 and
16 541380,

17 (5) distribution centers for retail or wholesale
18 businesses defined or classified in the NAICS
19 Manual under Sector No. 42, if forty percent
20 (40%) or more of the inventory processed through
21 such warehouse is shipped out-of-state,

22 (6) those adjustment and collection service
23 activities defined or classified in the NAICS
24 Manual under U.S. Industry No. 561440, if

1 seventy-five percent (75%) of the loans to be
2 serviced were made by out-of-state debtors,

3 (7) (a) those air transportation activities defined
4 or classified in the NAICS Manual under
5 Industry Group No. 4811, if the following
6 facilities are located in this state:

7 (i) the corporate headquarters of an
8 establishment classified therein, and

9 (ii) a facility or facilities at which
10 reservations for transportation
11 provided by such an establishment are
12 processed, whether such services are
13 performed by employees of the
14 establishment, by employees of a
15 subsidiary of or other entity
16 affiliated with the establishment or by
17 employees of an entity with whom the
18 establishment has contracted for the
19 performance of such services; provided,
20 this provision shall not disqualify an
21 establishment which uses an out-of-
22 state entity or employees for some
23 reservations services, or

24

1 (b) those air transportation activities defined
2 or classified in the NAICS Manual under
3 Industry Group No. 4811, if an establishment
4 classified therein has or will have within
5 one (1) year sales of at least seventy-five
6 percent (75%) of its total sales, as
7 determined by the Incentive Approval
8 Committee pursuant to the provisions of
9 subsection B of this section, to out-of-
10 state customers or buyers, to in-state
11 customers or buyers if the product or
12 service is resold by the purchaser to an
13 out-of-state customer or buyer for ultimate
14 use, or to the federal government,

15 (8) flight training services activities defined or
16 classified in the NAICS Manual under U.S.
17 Industry Group No. 611512, which for purposes of
18 Section 3601 et seq. of this title shall include
19 new direct jobs for which gross payroll existed
20 on or after January 1, 2003, as identified in the
21 NAICS Manual,

22 (9) the following, if an establishment classified
23 therein has or will have within one (1) year
24 sales of at least seventy-five percent (75%) of

1 its total sales, as determined by the Incentive
2 Approval Committee pursuant to the provisions of
3 subsection B of this section, to out-of-state
4 customers or buyers, to in-state customers or
5 buyers if the product or service is resold by the
6 purchaser to an out-of-state customer or buyer
7 for ultimate use, or to the federal government:

- 8 (a) those transportation and warehousing
9 activities defined or classified in the
10 NAICS Manual under Industry Subsector No.
11 493, if not otherwise listed in this
12 paragraph, Industry Subsector No. 484 and
13 Industry Group Nos. 4884 through 4889,
14 (b) those passenger transportation activities
15 defined or classified in the NAICS Manual
16 under Industry Nos. 561510, 561520 and
17 561599,
18 (c) those freight or cargo transportation
19 activities defined or classified in the
20 NAICS Manual under Industry No. 541614,
21 (d) those insurance activities defined or
22 classified in the NAICS Manual under
23 Industry Group No. 5241,
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- 1 (e) those mailing, reproduction, commercial art
2 and photography and stenographic service
3 activities defined or classified in the
4 NAICS Manual under U.S. Industry Nos.
5 541430, 541860, 541922, 561439 and 561492,
- 6 (f) those services to dwellings and other
7 buildings, as defined or classified in the
8 NAICS Manual under Industry Group No. 5617,
9 excluding U.S. Industry No. 561730,
- 10 (g) those equipment rental and leasing
11 activities defined or classified in the
12 NAICS Manual under Industry Group Nos. 5323
13 and 5324,
- 14 (h) those employment services defined or
15 classified in the NAICS Manual under
16 Industry Group No. 5613,
- 17 (i) those information technology and other
18 computer-related service activities defined
19 or classified in the NAICS Manual under
20 Industry Group Nos. 5112, 5182, 5191 and
21 5415,
- 22 (j) those business support service activities
23 defined or classified in the NAICS Manual
24 under U.S. Industry Nos. 561410 through

1 561439, Industry Group No. 5616 and Industry
2 No. 51911,

3 (k) those medical and diagnostic laboratory
4 activities defined or classified in the
5 NAICS Manual under Industry Group No. 6215,

6 (l) those professional, scientific and technical
7 service activities defined or classified in
8 the NAICS Manual under Industry Group Nos.
9 5412, 5414, 5415, 5416 and 5417, Industry
10 Nos. 54131, 54133, 54136, 54137 and 54182,
11 and U.S. Industry No. 541990, if not
12 otherwise listed in this paragraph,

13 (m) those communication service activities
14 defined or classified in the NAICS Manual
15 under Industry Nos. 51741 and 51791,

16 (n) those refuse systems activities defined or
17 classified in the NAICS Manual under
18 Industry Group No. 5622, provided that the
19 establishment is primarily engaged in the
20 capture and distribution of methane gas
21 produced within a landfill,

22 (o) general wholesale distribution of groceries,
23 defined or classified in the NAICS Manual
24 under Industry Group Nos. 4244 and 4245,

1 (p) those activities relating to processing of
2 insurance claims, defined or classified in
3 the NAICS Manual under U.S. Industry Nos.
4 524210 and 524292; provided, activities
5 described in U.S. Industry Nos. 524210 and
6 524292 in the NAICS Manual other than
7 processing of insurance claims shall not be
8 included for purposes of this subdivision,

9 (q) those agricultural activities classified in
10 the NAICS Manual under U.S. Industry Nos.
11 112120 and 112310, and

12 (r) those professional organization activities
13 classified in the NAICS Manual under U.S.
14 Industry No. 813920;

15 (10) those activities related to extraction of crude
16 petroleum and natural gas defined or classified
17 in the NAICS Manual under Industry Group No.
18 2111, subject to the limitations provided in
19 paragraph 3 of this subsection and paragraph 3 of
20 subsection B of this section,

21 (11) those activities performed by the federal
22 civilian workforce at a facility of the Federal
23 Aviation Administration located in this state if
24 the Director of the Department of Commerce

1 determines or is notified that the federal
2 government is soliciting proposals or otherwise
3 inviting states to compete for additional federal
4 civilian employment or expansion of federal
5 civilian employment at such facilities,

6 (12) those activities defined or classified in the
7 NAICS Manual under U.S. Industry No. 711211 (2007
8 version), or

9 (13) those real estate or brokerage activities
10 classified in the NAICS Manual under U.S.
11 Industry No. 53120 for which at least seventy-
12 five percent (75%) of the establishment's
13 revenues are attributed to out-of-state sales and
14 at least seventy-five percent (75%) of the real
15 estate transactions generating those revenues are
16 attributed to real property located outside the
17 State of Oklahoma.

18 b. An establishment described in subparagraph a of this
19 paragraph shall not be considered to be engaged in a
20 basic industry unless it offers, or will offer within
21 one hundred eighty (180) days of employment, a basic
22 health benefits plan to the individuals it employs in
23 new direct jobs in this state which is determined by
24 the Oklahoma Department of Commerce to consist of the

1 following elements or elements substantially
2 equivalent thereto:

- 3 (1) not more than fifty percent (50%) of the premium
4 shall be paid by the employee,
- 5 (2) coverage for basic hospital care,
- 6 (3) coverage for physician care,
- 7 (4) coverage for mental health care,
- 8 (5) coverage for substance abuse treatment,
- 9 (6) coverage for prescription drugs, and
- 10 (7) coverage for prenatal care;

11 2. "Change in control event" means the transfer to one or more
12 unrelated establishments or unrelated persons, of either:

- 13 a. beneficial ownership of more than fifty percent (50%)
14 in value and more than fifty percent (50%) in voting
15 power of the outstanding equity securities of the
16 transferred establishment, or
- 17 b. more than fifty percent (50%) in value of the assets
18 of an establishment.

19 A transferor shall be treated as related to a transferee if more
20 than fifty percent (50%) of the voting interests of the transferor
21 and transferee are owned, directly or indirectly, by the other or
22 are owned, directly or indirectly, by the same person or persons,
23 unless such transferred establishment has an outstanding class of
24 equity securities registered under Sections 12(b) or 15(d) of the

1 Securities Exchange Act of 1934, as amended, in which event the
2 transferor and transferee will be treated as unrelated; provided, an
3 establishment applying for the Oklahoma Quality Jobs Program Act as
4 a result of a change of control event is required to apply within
5 one hundred eighty (180) days of the change in control event to
6 qualify for consideration. An establishment entering the Oklahoma
7 Quality Jobs Program Act as the result of a change of control event
8 shall be required to maintain a level of new direct jobs as agreed
9 to in its contract with the Department of Commerce and to pay new
10 direct jobs an average annualized wage which equals or exceeds one
11 hundred twenty-five percent (125%) of the average county wage as
12 that percentage is determined by the Oklahoma State Data Center
13 based upon the most recent U.S. Department of Commerce data for the
14 county in which the new jobs are located. For purposes of this
15 paragraph, healthcare premiums paid by the applicant for individuals
16 in new direct jobs shall not be included in the annualized wage.
17 Such establishment entering the Quality Jobs Program Act as the
18 result of a change of control event shall be required to retain the
19 contracted average annualized wage and maintain the contracted
20 maintenance level of new direct jobs numbers as certified by the
21 Oklahoma Tax Commission. If the required average annualized wage or
22 the required new direct jobs numbers do not equal or exceed such
23 contracted level during any quarter, the quarterly incentive
24 payments shall not be made and shall not be resumed until such time

1 as such requirements are met. An establishment described in this
2 paragraph shall be required to repay all incentive payments received
3 under the Quality Jobs Program Act if the establishment is
4 determined by the Oklahoma Tax Commission to no longer have business
5 operations in the state within three (3) years from the beginning of
6 the calendar quarter for which the first incentive payment claim is
7 filed.

8 3. "New direct job":

9 a. means full-time-equivalent employment in this state in
10 an establishment which has qualified to receive an
11 incentive payment pursuant to the provisions of
12 Section 3601 et seq. of this title which employment
13 did not exist in this state prior to the date of
14 approval by the Department of the application of the
15 establishment pursuant to the provisions of Section
16 3604 of this title and with respect to an
17 establishment qualifying for incentive payments
18 pursuant to division (12) of subparagraph a of
19 paragraph 1 of this subsection shall not include
20 compensation paid to an employee or independent
21 contractor for an athletic contest conducted in the
22 state if the compensation is paid by an entity that
23 does not have its principal place of business in the
24 state or that does not own real or personal property

1 having a market value of at least One Million Dollars
2 (\$1,000,000.00) located in the state, and the
3 employees or independent contractors of such entity
4 are compensated to compete against the employees or
5 independent contractors of an establishment that
6 qualifies for incentive payments pursuant to division
7 (12) of subparagraph a of paragraph 1 of this
8 subsection and which is organized under Oklahoma law
9 or that is lawfully registered to do business in the
10 state and which does have its principal place of
11 business located in the state and owns real or
12 personal property having a market value of at least
13 One Million Dollars (\$1,000,000.00) located in the
14 state; provided, that if an application of an
15 establishment is approved by the Department of
16 Commerce after a change in control event and the
17 Director of the Department of Commerce determines that
18 the jobs located at such establishment are likely to
19 leave the state, "new direct job" shall include
20 employment that existed in this state prior to the
21 date of application which is retained in this state by
22 the new establishment following a change in control
23 event, if such job otherwise qualifies as a new direct
24 job, and

1 b. shall include full-time-equivalent employment in this
2 state of employees who are employed by an employment
3 agency or similar entity other than the establishment
4 which has qualified to receive an incentive payment
5 and who are leased or otherwise provided under
6 contract to the qualified establishment, if such job
7 did not exist in this state prior to the date of
8 approval by the Department of the application of the
9 establishment or the job otherwise qualifies as a new
10 direct job following a change in control event. A job
11 shall be deemed to exist in this state prior to
12 approval of an application if the activities and
13 functions for which the particular job exists have
14 been ongoing at any time within six (6) months prior
15 to such approval. With respect to establishments
16 defined in division (10) of subparagraph a of
17 paragraph 1 of this subsection, new direct jobs shall
18 be limited to those jobs directly comprising the
19 corporate headquarters of or directly relating to
20 administrative, financial, engineering, surveying,
21 geological or geophysical services performed by the
22 establishment. Under no circumstances shall
23 employment relating to drilling or field services be
24 considered new direct jobs;

1 4. "Estimated direct state benefits" means the tax revenues
2 projected by the Department to accrue to the state as a result of
3 new direct jobs;

4 5. "Estimated direct state costs" means the costs projected by
5 the Department to accrue to the state as a result of new direct
6 jobs. Such costs shall include, but not be limited to:

7 a. the costs of education of new state resident children,

8 b. the costs of public health, public safety and

9 transportation services to be provided to new state
10 residents,

11 c. the costs of other state services to be provided to
12 new state residents, and

13 d. the costs of other state services;

14 6. "Estimated net direct state benefits" means the estimated
15 direct state benefits less the estimated direct state costs;

16 7. "Net benefit rate" means the estimated net direct state
17 benefits computed as a percentage of gross payroll; provided:

18 a. except as otherwise provided in this paragraph, the
19 net benefit rate may be variable and shall not exceed
20 five percent (5%),

21 b. the net benefit rate shall not exceed six percent (6%)
22 in connection with an establishment which is owned and
23 operated by an entity which has been awarded a United
24 States Department of Defense contract for which:

1 (1) bids were solicited and accepted by the United
2 States Department of Defense from facilities
3 located outside this state,

4 (2) the term is or is renewable for not less than
5 twenty (20) years, and

6 (3) the average annual salary, excluding benefits
7 which are not subject to Oklahoma income taxes,
8 for new direct jobs created as a direct result of
9 the awarding of the contract is projected by the
10 Department of Commerce to equal or exceed Forty
11 Thousand Dollars (\$40,000.00) within three (3)
12 years of the date of the first incentive payment,

13 c. except as otherwise provided in subparagraph d of this
14 paragraph, in no event shall incentive payments,
15 cumulatively, exceed the estimated net direct state
16 benefits,

17 d. the net benefit rate shall be five percent (5%) for an
18 establishment locating:

19 (1) in an opportunity zone located in a high-
20 employment county, as such terms are defined in
21 subsection G of Section 3604 of this title, or

22 (2) in a county in which:

23 (a) the per capita personal income, as

24 determined by the Department, is eighty-five

1 percent (85%) or less of the statewide
2 average per capita personal income,

3 (b) the population has decreased over the
4 previous ten (10) years, as determined by
5 the State Data Center based on the most
6 recent U.S. Department of Commerce data, or

7 (c) the unemployment rate exceeds the lesser of
8 five percent (5%) or two percentage points
9 above the state average unemployment rate as
10 certified by the Oklahoma Employment
11 Security Commission,

12 e. the net benefit rate shall not exceed six percent (6%)
13 in connection with an establishment which:

14 (1) is, as of the date of application, receiving
15 incentive payments pursuant to the Oklahoma
16 Quality Jobs Program Act and has been receiving
17 such payments for at least one (1) year prior to
18 the date of application, and

19 (2) expands its operations in this state by creating
20 additional new direct jobs which pay average
21 annualized wages which equal or exceed one
22 hundred fifty percent (150%) of the average
23 annualized wages of new direct jobs on which
24

1 incentive payments were received during the
2 preceding calendar year, and

3 f. with respect to an establishment defined or classified
4 in the NAICS Manual under U.S. Industry No. 711211
5 (2007 version) or any establishment defined or
6 classified in the NAICS Manual as a U.S. Industry
7 Number which is not included within the definition of
8 "basic industry" as such term is defined in this
9 section on April 17, 2008, the net benefit rate shall
10 not exceed the highest rate of income tax imposed upon
11 the Oklahoma taxable income of individuals pursuant to
12 subparagraph (g) or subparagraph (h), as applicable,
13 of paragraph 1 and paragraph 2 of subsection B of
14 Section 2355 of this title. Any change in such
15 highest rate of individual income tax imposed pursuant
16 to the provisions of Section 2355 of this title shall
17 be applicable to the computation of incentive payments
18 to an establishment as described by this subparagraph
19 and shall be effective for purposes of incentive
20 payments based on payroll paid by such establishment
21 on or after January 1 of any applicable year for which
22 the net benefit rate is modified as required by this
23 subparagraph.

1 Incentive payments made pursuant to the provisions of this
2 subparagraph shall be based upon payroll associated with such new
3 direct jobs. For purposes of this subparagraph, the amount of
4 health insurance premiums or other benefits paid by the
5 establishment shall not be included for purposes of computation of
6 the average annualized wage;

7 8. "Gross payroll" means wages, as defined in Section 2385.1 of
8 this title for new direct jobs;

9 9. a. "Establishment" means any business or governmental
10 entity, no matter what legal form, including, but not
11 limited to, a sole proprietorship; partnership;
12 limited liability company; corporation or combination
13 of corporations which have a central parent
14 corporation which makes corporate management decisions
15 such as those involving consolidation, acquisition,
16 merger or expansion; federal agency; political
17 subdivision of the State of Oklahoma; or trust
18 authority; provided, distinct, identifiable subunits
19 of such entities may be determined to be an
20 establishment, for all purposes of Section 3601 et
21 seq. of this title, by the Department subject to the
22 following conditions:

23 (1) within three (3) years of the first complete
24 calendar quarter following the start date, the

1 entity must have a minimum payroll of Two Million
2 Five Hundred Thousand Dollars (\$2,500,000.00) and
3 the subunit must also have or will have a minimum
4 payroll of Two Million Five Hundred Thousand
5 Dollars (\$2,500,000.00),

6 (2) the subunit is engaged in an activity or service
7 or produces a product which is demonstratively
8 independent and separate from the entity's other
9 activities, services or products and could be
10 conducted or produced in the absence of any other
11 activity, service or production of the entity,

12 (3) has an accounting system capable of tracking or
13 facilitating an audit of the subunit's payroll,
14 expenses, revenue and production. Limited
15 interunit overlap of administrative and
16 purchasing functions shall not disqualify a
17 subunit from consideration as an establishment by
18 the Department,

19 (4) the entity has not previously had a subunit
20 determined to be an establishment pursuant to
21 this section; provided, the restriction set forth
22 in this division shall not apply to subunits
23 which qualify pursuant to the provisions of
24

1 subparagraph b of paragraph 6 of this subsection,
2 and

3 (5) it is determined by the Department that the
4 entity will have a probable net gain in total
5 employment within the incentive period.

6 b. The Department may promulgate rules to further limit
7 the circumstances under which a subunit may be
8 considered an establishment. The Department shall
9 promulgate rules to determine whether a subunit of an
10 entity achieves a net gain in total employment. The
11 Department shall establish criteria for determining
12 the period of time within which such gain must be
13 demonstrated and a method for determining net gain in
14 total employment;

15 10. "NAICS Manual" means any manual, book or other publication
16 containing the North American Industry Classification System, United
17 States, 1997, promulgated by the Office of Management and Budget of
18 the United States of America, or the latest revised edition;

19 11. "Qualified federal contract" means a contract between an
20 agency or instrumentality of the United States government, including
21 but not limited to the Department of Defense or any branch of the
22 United States Armed Forces and a lawfully recognized business
23 entity, whether or not the business entity is organized under the
24 laws of the State of Oklahoma or whether or not the principal place

1 of business of the business entity is located within the State of
2 Oklahoma, for the performance of services, including but not limited
3 to testing, research, development, consulting or other services, if
4 the contract involves the performance of such services by the
5 employees of the business entity within the State of Oklahoma or if
6 the contract involves the performance of such services by employees
7 of a lawfully recognized business entity that is a subcontractor of
8 the business entity with which the prime contract has been formed;

9 12. "Qualified federal contractor verifier" means a nonprofit
10 entity organized under the laws of the State of Oklahoma, having an
11 affiliation with a comprehensive university which is part of The
12 Oklahoma State System of Higher Education, and having the following
13 characteristics:

- 14 a. established multiyear classified and unclassified
15 indefinite-delivery/indefinite-quantity federal
16 contract vehicles in excess of Fifty Million Dollars
17 (\$50,000,000.00),
- 18 b. current capability to sponsor and maintain personnel
19 security clearances and authorized by the federal
20 government to handle and perform classified work up to
21 the Top Secret Sensitive Compartmented Information
22 levels,
- 23 c. at least one on-site federally certified Sensitive
24 Compartmented Information Facility,

- 1 d. on-site secure mass data storage complex with the
2 capability of isolating, segregating and protecting
3 corporate proprietary and classified information,
4 e. trusted agent status by maintaining no ownership of,
5 vested interest in, nor royalty production from any
6 intellectual property,
7 f. at least one hundred thousand (100,000) square feet of
8 configurable laboratory and support space,
9 g. the direct access to restricted air space through a
10 formalized memorandum of agreement with the Department
11 of Defense,
12 h. at least five thousand (5,000) acres available for
13 outdoor testing and training facilities, and
14 i. the ability to house state-of-the-art surety
15 facilities, including chemical, biological,
16 radiological, explosives, electronics, and unmanned
17 systems laboratories and ranges;

18 13. "SIC Manual" means the 1987 revision to the Standard
19 Industrial Classification Manual, promulgated by the Office of
20 Management and Budget of the United States of America;

21 ~~12.~~ 14. "Start date" means the date on which an establishment
22 may begin accruing benefits for the creation of new direct jobs,
23 which date shall be determined by the Department; and
24

1 ~~13.~~ 15. "Effective date" means the date of approval of a
2 contract under which incentive payments will be made pursuant to the
3 Oklahoma Quality Jobs Program Act, which shall be the date the
4 signed and accepted incentive contract is received by the
5 Department; provided, an approved project may have a start date
6 which is different from the effective date;

7 16. "Total qualified labor hours" means the hours of work
8 performed within the state by the employees of a qualified federal
9 contractor or the employees of a subcontractor of a qualified
10 federal contractor and which are required for the full performance
11 of a qualified federal contract; and

12 17. "Qualified labor rate" means the fully reimbursed labor
13 rate paid through a qualified federal contract for qualified labor
14 hours to the qualified federal contractor or subcontractor.

15 B. The Incentive Approval Committee is hereby created and shall
16 consist of the Director of State Finance, the Director of the
17 Department and one member of the Oklahoma Tax Commission appointed
18 by the Tax Commission, or a designee from each agency approved by
19 such member. It shall be the duty of the Committee to determine:

20 1. Upon initial application on a form approved by the
21 Committee, if an establishment is engaged in a basic industry as
22 defined in subdivision (b) of division (7) or in subdivisions (a)
23 through (p) of division (9) of subparagraph a of paragraph 1 of
24

1 subsection A of this section or as otherwise provided by subsection
2 C of this section;

3 2. If an establishment would have been defined as a "basic
4 industry" prior to the amendments to this section to convert from
5 SIC Codes to NAICS Codes. If the Committee so determines, the
6 establishment shall be considered as a "basic industry" for purposes
7 of the Oklahoma Quality Jobs Program Act; and

8 3. If employees of an establishment as defined in division (10)
9 of subparagraph a of paragraph 1 of subsection A of this section
10 meet the requirements to be considered employed in new direct jobs
11 as specified in paragraph 3 of subsection A of this section.

12 C. For an establishment defined as a "basic industry" pursuant
13 to division (4) of subparagraph a of paragraph 1 of subsection A of
14 this section, the Incentive Approval Committee shall consist of the
15 members provided by subsection B of this section and the Executive
16 Director of the Oklahoma Center for the Advancement of Science and
17 Technology, or a designee from the Center appointed by the Executive
18 Director.

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 3604.1 of Title 68, unless there
21 is created a duplication in numbering, reads as follows:

22 A. A qualified federal contractor may receive quarterly
23 incentive payments for renewable ten-year periods from the Oklahoma
24

1 Tax Commission pursuant to the provisions of the Oklahoma Quality
2 Jobs Program Act and the provisions of this section.

3 B. The amount of such payments shall be equal to a net benefit
4 rate of not less than one percent (1%), but not greater than two
5 percent (2%), multiplied by the total qualified labor hours worked
6 by employees of the federal contractor or employees of a qualified
7 federal subcontractor related, or both, pursuant to a qualified
8 federal contract for a calendar quarter as verified by the Oklahoma
9 Employment Security Commission and certified by a qualified federal
10 contractor verifier.

11 C. In order to receive incentive payments, a qualified federal
12 contractor shall apply to the Oklahoma Department of Commerce. The
13 application shall be on a form prescribed by the Department and
14 shall contain such information as may be required by the Department
15 to determine if the applicant is qualified. Once qualified by the
16 Department, the applicant shall submit qualified federal contracts
17 to the federal contract verifier. The federal contract verifier
18 shall establish with the applicant an information system(s) or
19 contract(s) as may be required to certify the total qualified labor
20 hours, qualified labor rates, and reimbursement through the
21 qualified federal contract. A qualified federal contractor may
22 apply for an effective date for a project, which shall not be more
23 than twenty-four (24) months from the date the application is
24 submitted to the Department.

1 D. In order to qualify to receive incentive payments as
2 authorized by the Oklahoma Quality Jobs Program Act, in addition to
3 other qualifications specified herein, a qualified federal
4 contractor shall be required to pay direct jobs an average
5 annualized wage which equals or exceeds:

6 1. One hundred ten percent (110%) of the average county wage as
7 determined by the Oklahoma State Data Center based on the most
8 recent U.S. Department of Commerce data for the county in which the
9 new direct jobs are located. For purposes of this paragraph, health
10 care premiums paid by the applicant for individuals in new direct
11 jobs shall be included in the annualized wage; or

12 2. One hundred percent (100%) of the average county wage as
13 that percentage is determined by the Oklahoma State Data Center
14 based upon the most recent U.S. Department of Commerce data for the
15 county in which the new jobs are located. For purposes of this
16 paragraph, health care premiums paid by the applicant for
17 individuals in new direct jobs shall not be included in the
18 annualized wage.

19 Provided, no average wage requirement shall exceed Twenty-five
20 Thousand Dollars (\$25,000.00), in any county. This maximum wage
21 threshold shall be indexed and modified from time to time based on
22 the latest Consumer Price Index year-to-date percent change release
23 as of the date of the annual average county wage data release from
24 the Bureau of Economic Analysis of the U.S. Department of Commerce.

1 3. For qualified subcontractor work, the qualified federal
2 contractor shall have a minimum average qualified labor rate
3 requirement paid to the subcontractor of Twenty-six Dollars (\$26.00)
4 per hour, in any county. This maximum wage threshold shall be
5 indexed and modified from time to time based on the latest Consumer
6 Price Index year-to-date percent change release as of the date of
7 the annual average county wage data release from the Bureau of
8 Economic Analysis of the U.S. Department of Commerce.

9 E. The Department shall determine if the applicant is qualified
10 to receive incentive payments using information supplied to the
11 Department by the qualified federal contractor verifier.

12 F. If the applicant is determined to be qualified by the
13 Department, the Department shall conduct a cost/benefit analysis to
14 determine the estimated net direct state benefits and the net
15 benefit rate, as provided by subsection B of this section,
16 applicable for a ten-year period beginning with the first complete
17 calendar quarter following the start date and to estimate the amount
18 of gross payroll and total qualified labor hours for a ten-year
19 period beginning with the first complete calendar quarter following
20 the start date. In conducting such cost/benefit analysis, the
21 Department shall consider quantitative factors, such as the
22 anticipated level of new tax revenues to the state along with the
23 added cost to the state of providing services, and such other
24 criteria as deemed appropriate by the Department. In no event shall

1 incentive payments, cumulatively, exceed the estimated net direct
2 state benefits.

3 G. Upon approval of such an application, the Department shall
4 notify the Tax Commission and shall provide it with a copy of the
5 contract and the results of the cost/benefit analysis. The Tax
6 Commission may require the qualified federal contractor, federal
7 contract verifier, and qualified subcontractors to submit such
8 additional information as may be necessary to administer the
9 provisions of the Oklahoma Quality Jobs Program Act. The approved
10 qualified federal contractor shall file quarterly claims with the
11 Tax Commission and shall continue to file such quarterly claims
12 during the ten-year incentive period to show its continued
13 eligibility for incentive payments, as provided in Section 3606 of
14 Title 68 of the Oklahoma Statutes, or until it is no longer
15 qualified to receive incentive payments. The qualified federal
16 contractor may be audited by the Tax Commission to verify such
17 eligibility. Once the qualified federal contractor is approved, an
18 agreement shall be deemed to exist between the qualified federal
19 contractor and the State of Oklahoma, requiring the continued
20 incentive payment to be made as long as the qualified federal
21 contractor retains its eligibility as defined in and established
22 pursuant to this section and Sections 3603 and 3606 of Title 68 of
23 the Oklahoma Statutes and within the limitations contained in the
24

1 Oklahoma Quality Jobs Program Act, which existed at the time of such
2 approval.

3 SECTION 3. This act shall become effective July 1, 2009.

4 SECTION 4. It being immediately necessary for the preservation
5 of the public peace, health and safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

8 Passed the House of Representatives the 9th day of March, 2009.

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Presiding Officer of the House of
Representatives

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Passed the Senate the ____ day of _____, 2009.

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Presiding Officer of the Senate

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