

1 ENGROSSED SENATE  
2 BILL NO. 2128

By: Myers of the Senate

3 and

4 Jackson of the House

5  
6  
7 [ revenue and taxation - Oklahoma Quality Jobs  
8 Program Act - limiting time period during which  
9 certain application must be made - effective date -  
10 emergency ]

11  
12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY 68 O.S. 2001, Section 3603, as  
14 last amended by Section 1, Chapter 369, O.S.L. 2009 (68 O.S. Supp.  
15 2009, Section 3603), is amended to read as follows:

16 Section 3603. A. As used in Section 3601 et seq. of this  
17 title:

18 1. a. "Basic industry" means:

19 (1) those manufacturing activities defined or  
20 classified in the NAICS Manual under Industry  
21 Sector Nos. 31, 32 and 33, Industry Group No.  
22 5111 or Industry No. 11331,

23 (2) those electric power generation, transmission and  
24 distribution activities defined or classified in

1 the NAICS Manual under U.S. Industry Nos. 221111  
2 through 221122, if:

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

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

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

1 (d) the facility is constructed on or after July  
2 1, 1996,

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

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

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

20 (6) those adjustment and collection service  
21 activities defined or classified in the NAICS  
22 Manual under U.S. Industry No. 561440, if  
23 seventy-five percent (75%) of the loans to be  
24 serviced were made by out-of-state debtors,

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

5 (i) the corporate headquarters of an  
6 establishment classified therein, and

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

22 (b) those air transportation activities defined  
23 or classified in the NAICS Manual under  
24 Industry Group No. 4811, if an establishment

1 classified therein has or will have within  
2 one (1) year sales of at least seventy-five  
3 percent (75%) of its total sales, as  
4 determined by the Incentive Approval  
5 Committee pursuant to the provisions of  
6 subsection B of this section, to out-of-  
7 state customers or buyers, to in-state  
8 customers or buyers if the product or  
9 service is resold by the purchaser to an  
10 out-of-state customer or buyer for ultimate  
11 use, or to the federal government,

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

19 (9) the following, if an establishment classified  
20 therein has or will have within one (1) year  
21 sales of at least seventy-five percent (75%) of  
22 its total sales, as determined by the Incentive  
23 Approval Committee pursuant to the provisions of  
24 subsection B of this section, to out-of-state

1 customers or buyers, to in-state customers or  
2 buyers if the product or service is resold by the  
3 purchaser to an out-of-state customer or buyer  
4 for ultimate use, or to the federal government:

5 (a) those transportation and warehousing  
6 activities defined or classified in the  
7 NAICS Manual under Industry Subsector No.  
8 493, if not otherwise listed in this  
9 paragraph, Industry Subsector No. 484 and  
10 Industry Group Nos. 4884 through 4889,

11 (b) those passenger transportation activities  
12 defined or classified in the NAICS Manual  
13 under Industry Nos. 561510, 561520 and  
14 561599,

15 (c) those freight or cargo transportation  
16 activities defined or classified in the  
17 NAICS Manual under Industry No. 541614,

18 (d) those insurance activities defined or  
19 classified in the NAICS Manual under  
20 Industry Group No. 5241,

21 (e) those mailing, reproduction, commercial art  
22 and photography and stenographic service  
23 activities defined or classified in the  
24

1 NAICS Manual under U.S. Industry Nos.

2 541430, 541860, 541922, 561439 and 561492,

3 (f) those services to dwellings and other

4 buildings, as defined or classified in the

5 NAICS Manual under Industry Group No. 5617,

6 excluding U.S. Industry No. 561730,

7 (g) those equipment rental and leasing

8 activities defined or classified in the

9 NAICS Manual under Industry Group Nos. 5323

10 and 5324,

11 (h) those employment services defined or

12 classified in the NAICS Manual under

13 Industry Group No. 5613,

14 (i) those information technology and other

15 computer-related service activities defined

16 or classified in the NAICS Manual under

17 Industry Group Nos. 5112, 5182, 5191 and

18 5415,

19 (j) those business support service activities

20 defined or classified in the NAICS Manual

21 under U.S. Industry Nos. 561410 through

22 561439, Industry Group No. 5616 and Industry

23 No. 51911,

24

- 1 (k) those medical and diagnostic laboratory  
2 activities defined or classified in the  
3 NAICS Manual under Industry Group No. 6215,  
4 (l) those professional, scientific and technical  
5 service activities defined or classified in  
6 the NAICS Manual under Industry Group Nos.  
7 5412, 5414, 5415, 5416 and 5417, Industry  
8 Nos. 54131, 54133, 54136, 54137 and 54182,  
9 and U.S. Industry No. 541990, if not  
10 otherwise listed in this paragraph,  
11 (m) those communication service activities  
12 defined or classified in the NAICS Manual  
13 under Industry Nos. 51741 and 51791,  
14 (n) those refuse systems activities defined or  
15 classified in the NAICS Manual under  
16 Industry Group No. 5622, provided that the  
17 establishment is primarily engaged in the  
18 capture and distribution of methane gas  
19 produced within a landfill,  
20 (o) general wholesale distribution of groceries,  
21 defined or classified in the NAICS Manual  
22 under Industry Group Nos. 4244 and 4245,  
23 (p) those activities relating to processing of  
24 insurance claims, defined or classified in

1 the NAICS Manual under U.S. Industry Nos.  
2 524210 and 524292; provided, activities  
3 described in U.S. Industry Nos. 524210 and  
4 524292 in the NAICS Manual other than  
5 processing of insurance claims shall not be  
6 included for purposes of this subdivision,

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

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

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

19 (11) those activities performed by the federal  
20 civilian workforce at a facility of the Federal  
21 Aviation Administration located in this state if  
22 the Director of the Department of Commerce  
23 determines or is notified that the federal  
24 government is soliciting proposals or otherwise

1           inviting states to compete for additional federal  
2           civilian employment or expansion of federal  
3           civilian employment at such facilities,

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

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

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

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

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

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

17 A transferor shall be treated as related to a transferee if more  
18 than fifty percent (50%) of the voting interests of the transferor  
19 and transferee are owned, directly or indirectly, by the other or  
20 are owned, directly or indirectly, by the same person or persons,  
21 unless such transferred establishment has an outstanding class of  
22 equity securities registered under Sections 12(b) or 15(d) of the  
23 Securities Exchange Act of 1934, as amended, in which event the  
24 transferor and transferee will be treated as unrelated; provided, an

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

1 under the Quality Jobs Program Act if the establishment is  
2 determined by the Oklahoma Tax Commission to no longer have business  
3 operations in the state within three (3) years from the beginning of  
4 the calendar quarter for which the first incentive payment claim is  
5 filed.

6 3. "New direct job":

7 a. means full-time-equivalent employment in this state in  
8 an establishment which has qualified to receive an  
9 incentive payment pursuant to the provisions of  
10 Section 3601 et seq. of this title which employment  
11 did not exist in this state prior to the date of  
12 approval by the Department of the application of the  
13 establishment pursuant to the provisions of Section  
14 3604 of this title and with respect to an  
15 establishment qualifying for incentive payments  
16 pursuant to division (12) of subparagraph a of  
17 paragraph 1 of this subsection shall not include  
18 compensation paid to an employee or independent  
19 contractor for an athletic contest conducted in the  
20 state if the compensation is paid by an entity that  
21 does not have its principal place of business in the  
22 state or that does not own real or personal property  
23 having a market value of at least One Million Dollars  
24 (\$1,000,000.00) located in the state, and the

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

- 23 b. shall include full-time-equivalent employment in this  
24 state of employees who are employed by an employment

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

1 United States with respect to damage to property located in Oklahoma  
2 or loss of life or personal injury to persons in Oklahoma, and a  
3 lawfully recognized business entity, whether or not the business  
4 entity is organized under the laws of the State of Oklahoma or  
5 whether or not the principal place of business of the business  
6 entity is located within the State of Oklahoma, for the performance  
7 of services, including but not limited to testing, research,  
8 development, consulting or other services in a basic industry, if  
9 the contract involves the performance of such services performed on  
10 or after the effective date of this act by the employees of the  
11 business entity within the State of Oklahoma or if the contract  
12 involves the performance of such services performed on or after the  
13 effective date of this act by employees of a lawfully recognized  
14 business entity that is a subcontractor of the business entity with  
15 which the prime contract has been formed. A qualified federal  
16 contract described in this paragraph shall not qualify unless both  
17 the qualified federal contractor and subcontractor verify to the  
18 qualified federal contractor verifier that they offer, or will offer  
19 within one hundred eighty (180) days of employment of their  
20 respective employees, a basic health benefits plan as described in  
21 subparagraph b of paragraph 1 of this subsection to individuals who  
22 perform qualified labor hours in this state;

23 12. "Qualified federal contractor verifier" means a nonprofit  
24 entity organized under the laws of the State of Oklahoma, having an

1 affiliation with a comprehensive university which is part of The  
2 Oklahoma State System of Higher Education, and having the following  
3 characteristics:

- 4 a. established multiyear classified and unclassified  
5 indefinite-delivery/indefinite-quantity federal  
6 contract vehicles in excess of Fifty Million Dollars  
7 (\$50,000,000.00),
- 8 b. current capability to sponsor and maintain personnel  
9 security clearances and authorized by the federal  
10 government to handle and perform classified work up to  
11 the Top Secret Sensitive Compartmented Information  
12 levels,
- 13 c. at least one on-site federally certified Sensitive  
14 Compartmented Information Facility,
- 15 d. on-site secure mass data storage complex with the  
16 capability of isolating, segregating and protecting  
17 corporate proprietary and classified information,
- 18 e. trusted agent status by maintaining no ownership of,  
19 vested interest in, nor royalty production from any  
20 intellectual property,
- 21 f. at least one hundred thousand (100,000) square feet of  
22 configurable laboratory and support space,

- 1           g. the direct access to restricted air space through a  
2           formalized memorandum of agreement with the Department  
3           of Defense,  
4           h. at least five thousand (5,000) acres available for  
5           outdoor testing and training facilities, and  
6           i. the ability to house state-of-the-art surety  
7           facilities, including chemical, biological,  
8           radiological, explosives, electronics, and unmanned  
9           systems laboratories and ranges;

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

13         14. "Start date" means the date on which an establishment may  
14         begin accruing benefits for the creation of new direct jobs, which  
15         date shall be determined by the Department;

16         15. "Effective date" means the date of approval of a contract  
17         under which incentive payments will be made pursuant to the Oklahoma  
18         Quality Jobs Program Act, which shall be the date the signed and  
19         accepted incentive contract is received by the Department; provided,  
20         an approved project may have a start date which is different from  
21         the effective date;

22         16. "Total qualified labor hours" means the reimbursed payment  
23         amount for hours of work performed within the state by the employees  
24         of a qualified federal contractor or the employees of a

1 subcontractor of a qualified federal contractor and which are  
2 required for the full performance of a qualified federal contract;  
3 and

4 17. "Qualified labor rate" means the fully reimbursed labor  
5 rate paid through a qualified federal contract for qualified labor  
6 hours to the qualified federal contractor or subcontractor.

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

12 1. Upon initial application on a form approved by the  
13 Committee, if an establishment is engaged in a basic industry as  
14 defined in subdivision (b) of division (7) or in subdivisions (a)  
15 through (p) of division (9) of subparagraph a of paragraph 1 of  
16 subsection A of this section or as otherwise provided by subsection  
17 C of this section;

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

23 3. If employees of an establishment as defined in division (10)  
24 of subparagraph a of paragraph 1 of subsection A of this section

1 meet the requirements to be considered employed in new direct jobs  
2 as specified in paragraph 3 of subsection A of this section.

3 C. For an establishment defined as a "basic industry" pursuant  
4 to division (4) of subparagraph a of paragraph 1 of subsection A of  
5 this section, the Incentive Approval Committee shall consist of the  
6 members provided by subsection B of this section and the Executive  
7 Director of the Oklahoma Center for the Advancement of Science and  
8 Technology, or a designee from the Center appointed by the Executive  
9 Director.

10 SECTION 2. AMENDATORY Section 2, Chapter 369, O.S.L.  
11 2009 (68 O.S. Supp. 2009, Section 3604.1), is amended to read as  
12 follows:

13 Section 3604.1 A. A qualified federal contractor may receive  
14 quarterly incentive payments for renewable ten-year periods from the  
15 Oklahoma Tax Commission pursuant to the provisions of the Oklahoma  
16 Quality Jobs Program Act and the provisions of this section.

17 B. The amount of such payments shall be equal to a net benefit  
18 rate of not less than twenty-five hundredths of one percent (0.25%),  
19 but not greater than two percent (2%), multiplied by the total  
20 qualified labor hours worked by employees of the federal contractor  
21 or employees of a qualified federal subcontractor, or both, pursuant  
22 to a qualified federal contract for a calendar quarter as verified  
23 by the Oklahoma Employment Security Commission and certified by a  
24 qualified federal contractor verifier. The net benefit rate for a

1 qualified federal contractor shall be scaled to annual  
2 subcontracting goals that account for both total qualified  
3 subcontract labor hours and the ratio of qualified subcontract labor  
4 hours to total qualified labor hours. Unless limited by the  
5 cost/benefit analysis, the net benefit rate shall:

6 1. Not exceed twenty-five hundredths of one percent (0.25%)  
7 when annual qualified subcontract labor hours are less than Two  
8 Hundred Thousand Dollars (\$200,000.00) or when annual qualified  
9 subcontract labor is less than one percent (1%) of the annual total  
10 qualified labor hours claimed;

11 2. Not be less than five-tenths of one percent (0.5%) when  
12 subcontract goals are met with a minimum of Two Hundred Thousand  
13 Dollars (\$200,000.00) of annual total qualified subcontractor labor  
14 hours and these hours are a minimum of one percent (1%) of the  
15 annual total qualified hours claimed;

16 3. Not be less than one percent (1%) when subcontract goals are  
17 met with a minimum of One Million Dollars (\$1,000,000.00) of annual  
18 total qualified subcontractor labor hours and when these hours  
19 represent a minimum of five percent (5%) of the annual total  
20 qualified hours claimed;

21 4. Not be less than one and five-tenths percent (1.5%) when  
22 subcontract goals are met with a minimum of Two Million Dollars  
23 (\$2,000,000.00) of annual total qualified subcontractor labor hours  
24

1 and these hours are a minimum of ten percent (10%) of the annual  
2 total qualified hours claimed; and

3 5. Not be less than two percent (2.0%) when subcontract goals  
4 are met with a minimum of Four Million Dollars (\$4,000,000.00) of  
5 annual total qualified subcontractor labor hours and these hours are  
6 a minimum of twenty percent (20%) of the annual total qualified  
7 hours claimed.

8 C. In order to receive incentive payments, a qualified federal  
9 contractor shall apply to the Oklahoma Department of Commerce within  
10 one hundred eighty (180) days following the date of the award or  
11 renewal of a qualified federal contract. The application shall be  
12 on a form prescribed by the Department and shall contain such  
13 information as may be required by the Department to determine if the  
14 applicant is qualified. Once qualified by the Department, the  
15 applicant shall submit qualified federal contracts to the federal  
16 contract verifier. The federal contract verifier shall establish  
17 with the applicant an information system(s) or contract(s) as may be  
18 required to certify the total qualified labor hours, qualified labor  
19 rates, and reimbursement through the qualified federal contract. A  
20 qualified federal contractor may apply for an effective date for a  
21 project, which shall not be more than twenty-four (24) months from  
22 the date the application is submitted to the Department. No state  
23 agency shall be required to make any payment to a qualified federal  
24 contract verifier for any information needed by the agency to

1 perform any duty imposed upon it pursuant to the provisions of this  
2 act.

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

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

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

21 Provided, no average wage requirement shall exceed ~~Twenty-five~~  
22 ~~Thousand Dollars (\$25,000.00)~~ Twenty-nine Thousand Four Hundred Nine  
23 Dollars (\$29,409.00), in any county. This maximum wage threshold  
24 shall be indexed and modified from time to time based on the latest

1 Consumer Price Index year-to-date percent change release as of the  
2 date of the annual average county wage data release from the Bureau  
3 of Economic Analysis of the U.S. Department of Commerce.

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

12 E. The Department shall determine if the applicant is qualified  
13 to receive incentive payments using information supplied to the  
14 Department by the qualified federal contractor verifier.

15 F. If the applicant is determined to be qualified by the  
16 Department, the Department shall conduct a cost/benefit analysis to  
17 determine the estimated net direct state benefits and the net  
18 benefit rate, as provided by subsection B of this section,  
19 applicable for a ten-year period beginning with the first complete  
20 calendar quarter following the start date and to estimate the amount  
21 of gross payroll and total qualified labor hours for a ten-year  
22 period beginning with the first complete calendar quarter following  
23 the start date. In conducting such cost/benefit analysis, the  
24 Department shall consider quantitative factors, such as the

1 anticipated level of new tax revenues to the state along with the  
2 added cost to the state of providing services, and such other  
3 criteria as deemed appropriate by the Department. In no event shall  
4 incentive payments, cumulatively, exceed the estimated net direct  
5 state benefits.

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

1 pursuant to this section and Sections 3603 and 3606 of Title 68 of  
2 the Oklahoma Statutes and within the limitations contained in the  
3 Oklahoma Quality Jobs Program Act, which existed at the time of such  
4 approval.

5 H. Within three (3) years of the first complete calendar  
6 quarter following the start date, the qualified federal contractor  
7 must have actual annual verified gross qualified labor hours of a  
8 minimum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00)  
9 to continue to receive incentive payment. If the actual annual  
10 verified gross qualified labor hours for four (4) consecutive  
11 calendar quarters does not equal or exceed Two Million Five Hundred  
12 Thousand Dollars (\$2,500,000.00) within three (3) years of the start  
13 date, or does not equal or exceed actual annual gross qualified  
14 labor hours of Two Million Five Hundred Thousand Dollars  
15 (\$2,500,000.00) at any other time during the ten-year period after  
16 the start date, the incentive payments shall not be made and shall  
17 not be resumed until such time as the actual annual verified gross  
18 qualified labor hours exceed Two Million Five Hundred Thousand  
19 Dollars (\$2,500,000.00).

20 I. If the average annualized wage required in this section or  
21 minimum average qualified labor rate required above is not met  
22 during any calendar quarter, the incentive payments shall not be  
23 made and shall not be resumed until such time as such requirements  
24 are met.

1        J. Before approving an application for incentive payments for a  
2 qualified federal contract, the Department of Commerce shall first  
3 determine that neither the qualified federal contractor nor  
4 subcontractor have received incentive payments under the Oklahoma  
5 Quality Jobs Program Act, the 21st Century Quality Jobs Program Act  
6 or Former Military Facility Development Act for the performance of  
7 the same such services under the qualified federal contract and is  
8 not qualified for approval of an application for incentive payments  
9 under the Oklahoma Quality Jobs Program Act, the 21st Century  
10 Quality Jobs Program Act or Former Military Facility Development Act  
11 for the performance of the same such services under the qualified  
12 federal contract.

13        SECTION 3. This act shall become effective July 1, 2010.

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

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