

THE HOUSE OF REPRESENTATIVES
Monday, March 2, 2009

Committee Substitute for
House Bill No. 1468

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1468 - By: JACKSON of the House and MYERS of the Senate.

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 3603, as last amended by Section 3, Chapter 406, O.S.L. 2008 (68 O.S. Supp. 2008, Section 3603), which relates to the Oklahoma Quality 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.

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

1 SECTION 1. AMENDATORY 68 O.S. 2001, Section 3603, as last amended by
2 Section 3, Chapter 406, O.S.L. 2008 (68 O.S. Supp. 2008, Section 3603), is amended to
3 read as follows:

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

5 1. a. "Basic industry" means:

6 (1) those manufacturing activities defined or classified in the
7 NAICS Manual under Industry Sector Nos. 31, 32 and 33,
8 Industry Group No. 5111 or Industry No. 11331,

- 1 (2) those electric power generation, transmission and distribution
2 activities defined or classified in the NAICS Manual under U.S.
3 Industry Nos. 221111 through 221122, if:
- 4 (a) an establishment engaged therein qualifies as an exempt
5 wholesale generator as defined by 15 U.S.C., Section 79z-
6 5a,
- 7 (b) the exempt wholesale generator facility consumes from
8 sources located within the state at least ninety percent
9 (90%) of the total energy used to produce the electrical
10 output which qualifies for the specialized treatment
11 provided by the Energy Policy Act of 1992, P.L. 102-486,
12 106 Stat. 2776, as amended, and federal regulations
13 adopted pursuant thereto,
- 14 (c) the exempt wholesale generator facility sells to
15 purchasers located outside the state for consumption in
16 activities located outside the state at least ninety percent
17 (90%) of the total electrical energy output which qualifies
18 for the specialized treatment provided by the Energy
19 Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, as
20 amended, and federal regulations adopted pursuant
21 thereto, and
- 22 (d) the facility is constructed on or after July 1, 1996,

- 1 (3) those administrative and facilities support service activities
2 defined or classified in the NAICS Manual under Industry
3 Group Nos. 5611 and 5612, Industry Nos. 51821, 519130, 52232,
4 56142 and 54191 or U.S. Industry Nos. 524291 and 551114, and
5 those other support activities for air transportation defined or
6 classified in the NAICS Manual under Industry Group No.
7 488190,
- 8 (4) those professional, scientific and technical service activities
9 defined or classified in the NAICS Manual under U.S. Industry
10 Nos. 541710 and 541380,
- 11 (5) distribution centers for retail or wholesale businesses defined or
12 classified in the NAICS Manual under Sector No. 42, if forty
13 percent (40%) or more of the inventory processed through such
14 warehouse is shipped out-of-state,
- 15 (6) those adjustment and collection service activities defined or
16 classified in the NAICS Manual under U.S. Industry No.
17 561440, if seventy-five percent (75%) of the loans to be serviced
18 were made by out-of-state debtors,
- 19 (7) (a) those air transportation activities defined or classified in
20 the NAICS Manual under Industry Group No. 4811, if the
21 following facilities are located in this state:

- 1 (i) the corporate headquarters of an establishment
2 classified therein, and
3 (ii) a facility or facilities at which reservations for
4 transportation provided by such an establishment
5 are processed, whether such services are performed
6 by employees of the establishment, by employees of
7 a subsidiary of or other entity affiliated with the
8 establishment or by employees of an entity with
9 whom the establishment has contracted for the
10 performance of such services; provided, this
11 provision shall not disqualify an establishment
12 which uses an out-of-state entity or employees for
13 some reservations services, or
14 (b) those air transportation activities defined or classified in
15 the NAICS Manual under Industry Group No. 4811, if an
16 establishment classified therein has or will have within
17 one (1) year sales of at least seventy-five percent (75%) of
18 its total sales, as determined by the Incentive Approval
19 Committee pursuant to the provisions of subsection B of
20 this section, to out-of-state customers or buyers, to in-
21 state customers or buyers if the product or service is

- 1 (b) those passenger transportation activities defined or
2 classified in the NAICS Manual under Industry Nos.
3 561510, 561520 and 561599,
- 4 (c) those freight or cargo transportation activities defined or
5 classified in the NAICS Manual under Industry No.
6 541614,
- 7 (d) those insurance activities defined or classified in the
8 NAICS Manual under Industry Group No. 5241,
- 9 (e) those mailing, reproduction, commercial art and
10 photography and stenographic service activities defined or
11 classified in the NAICS Manual under U.S. Industry Nos.
12 541430, 541860, 541922, 561439 and 561492,
- 13 (f) those services to dwellings and other buildings, as defined
14 or classified in the NAICS Manual under Industry Group
15 No. 5617, excluding U.S. Industry No. 561730,
- 16 (g) those equipment rental and leasing activities defined or
17 classified in the NAICS Manual under Industry Group
18 Nos. 5323 and 5324,
- 19 (h) those employment services defined or classified in the
20 NAICS Manual under Industry Group No. 5613,
- 21 (i) those information technology and other computer-related
22 service activities defined or classified in the NAICS

- 1 Manual under Industry Group Nos. 5112, 5182, 5191 and
2 5415,
- 3 (j) those business support service activities defined or
4 classified in the NAICS Manual under U.S. Industry Nos.
5 561410 through 561439, Industry Group No. 5616 and
6 Industry No. 51911,
- 7 (k) those medical and diagnostic laboratory activities defined
8 or classified in the NAICS Manual under Industry Group
9 No. 6215,
- 10 (l) those professional, scientific and technical service
11 activities defined or classified in the NAICS Manual
12 under Industry Group Nos. 5412, 5414, 5415, 5416 and
13 5417, Industry Nos. 54131, 54133, 54136, 54137 and
14 54182, and U.S. Industry No. 541990, if not otherwise
15 listed in this paragraph,
- 16 (m) those communication service activities defined or
17 classified in the NAICS Manual under Industry Nos.
18 51741 and 51791,
- 19 (n) those refuse systems activities defined or classified in the
20 NAICS Manual under Industry Group No. 5622, provided
21 that the establishment is primarily engaged in the

- 1 capture and distribution of methane gas produced within
2 a landfill,
- 3 (o) general wholesale distribution of groceries, defined or
4 classified in the NAICS Manual under Industry Group
5 Nos. 4244 and 4245,
- 6 (p) those activities relating to processing of insurance claims,
7 defined or classified in the NAICS Manual under U.S.
8 Industry Nos. 524210 and 524292; provided, activities
9 described in U.S. Industry Nos. 524210 and 524292 in the
10 NAICS Manual other than processing of insurance claims
11 shall not be included for purposes of this subdivision,
- 12 (q) those agricultural activities classified in the NAICS
13 Manual under U.S. Industry Nos. 112120 and 112310,
14 and
- 15 (r) those professional organization activities classified in the
16 NAICS Manual under U.S. Industry No. 813920;
- 17 (10) those activities related to extraction of crude petroleum and
18 natural gas defined or classified in the NAICS Manual under
19 Industry Group No. 2111, subject to the limitations provided in
20 paragraph 3 of this subsection and paragraph 3 of subsection B
21 of this section,

- 1 (11) those activities performed by the federal civilian workforce at a
2 facility of the Federal Aviation Administration located in this
3 state if the Director of the Department of Commerce determines
4 or is notified that the federal government is soliciting proposals
5 or otherwise inviting states to compete for additional federal
6 civilian employment or expansion of federal civilian employment
7 at such facilities,
- 8 (12) those activities defined or classified in the NAICS Manual under
9 U.S. Industry No. 711211 (2007 version), or
- 10 (13) those real estate or brokerage activities classified in the NAICS
11 Manual under U.S. Industry No. 53120 for which at least
12 seventy-five percent (75%) of the establishment's revenues are
13 attributed to out-of-state sales and at least seventy-five percent
14 (75%) of the real estate transactions generating those revenues
15 are attributed to real property located outside the State of
16 Oklahoma.
- 17 b. An establishment described in subparagraph a of this paragraph shall
18 not be considered to be engaged in a basic industry unless it offers, or
19 will offer within one hundred eighty (180) days of employment, a basic
20 health benefits plan to the individuals it employs in new direct jobs in
21 this state which is determined by the Oklahoma Department of

1 Commerce to consist of the following elements or elements
2 substantially equivalent thereto:

- 3 (1) not more than fifty percent (50%) of the premium shall be paid
4 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 unrelated
12 establishments or unrelated persons, of either:

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

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

1 as amended, in which event the transferor and transferee will be treated as unrelated;
2 provided, an establishment applying for the Oklahoma Quality Jobs Program Act as a
3 result of a change of control event is required to apply within one hundred eighty (180)
4 days of the change in control event to qualify for consideration. An establishment
5 entering the Oklahoma Quality Jobs Program Act as the result of a change of control
6 event shall be required to maintain a level of new direct jobs as agreed to in its contract
7 with the Department of Commerce and to pay new direct jobs an average annualized
8 wage which equals or exceeds one hundred twenty-five percent (125%) of the average
9 county wage as that percentage is determined by the Oklahoma State Data Center based
10 upon the most recent U.S. Department of Commerce data for the county in which the
11 new jobs are located. For purposes of this paragraph, healthcare premiums paid by the
12 applicant for individuals in new direct jobs shall not be included in the annualized wage.
13 Such establishment entering the Quality Jobs Program Act as the result of a change of
14 control event shall be required to retain the contracted average annualized wage and
15 maintain the contracted maintenance level of new direct jobs numbers as certified by the
16 Oklahoma Tax Commission. If the required average annualized wage or the required
17 new direct jobs numbers do not equal or exceed such contracted level during any quarter,
18 the quarterly incentive payments shall not be made and shall not be resumed until such
19 time as such requirements are met. An establishment described in this paragraph shall
20 be required to repay all incentive payments received under the Quality Jobs Program Act
21 if the establishment is determined by the Oklahoma Tax Commission to no longer have

1 business operations in the state within three (3) years from the beginning of the calendar
2 quarter for which the first incentive payment claim is filed.

3 3. “New direct job”:

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

1 principal place of business located in the state and owns real or
2 personal property having a market value of at least One Million
3 Dollars (\$1,000,000.00) located in the state; provided, that if an
4 application of an establishment is approved by the Department of
5 Commerce after a change in control event and the Director of the
6 Department of Commerce determines that the jobs located at such
7 establishment are likely to leave the state, “new direct job” shall
8 include employment that existed in this state prior to the date of
9 application which is retained in this state by the new establishment
10 following a change in control event, if such job otherwise qualifies as a
11 new direct job, and

12 b. shall include full-time-equivalent employment in this state of
13 employees who are employed by an employment agency or similar
14 entity other than the establishment which has qualified to receive an
15 incentive payment and who are leased or otherwise provided under
16 contract to the qualified establishment, if such job did not exist in this
17 state prior to the date of approval by the Department of the application
18 of the establishment or the job otherwise qualifies as a new direct job
19 following a change in control event. A job shall be deemed to exist in
20 this state prior to approval of an application if the activities and
21 functions for which the particular job exists have been ongoing at any
22 time within six (6) months prior to such approval. With respect to

1 establishments defined in division (10) of subparagraph a of paragraph
2 1 of this subsection, new direct jobs shall be limited to those jobs
3 directly comprising the corporate headquarters of or directly relating
4 to administrative, financial, engineering, surveying, geological or
5 geophysical services performed by the establishment. Under no
6 circumstances shall employment relating to drilling or field services be
7 considered new direct jobs;

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

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

- 13 a. the costs of education of new state resident children,
- 14 b. the costs of public health, public safety and transportation services to
15 be provided to new state residents,
- 16 c. the costs of other state services to be provided to new state residents,
17 and
- 18 d. the costs of other state services;

19 6. "Estimated net direct state benefits" means the estimated direct state benefits
20 less the estimated direct state costs;

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

- 1 a. except as otherwise provided in this paragraph, the net benefit rate
2 may be variable and shall not exceed five percent (5%),
3 b. the net benefit rate shall not exceed six percent (6%) in connection
4 with an establishment which is owned and operated by an entity which
5 has been awarded a United States Department of Defense contract for
6 which:
7 (1) bids were solicited and accepted by the United States
8 Department of Defense from facilities located outside this state,
9 (2) the term is or is renewable for not less than twenty (20) years,
10 and
11 (3) the average annual salary, excluding benefits which are not
12 subject to Oklahoma income taxes, for new direct jobs created as
13 a direct result of the awarding of the contract is projected by the
14 Department of Commerce to equal or exceed Forty Thousand
15 Dollars (\$40,000.00) within three (3) years of the date of the first
16 incentive payment,
17 c. except as otherwise provided in subparagraph d of this paragraph, in
18 no event shall incentive payments, cumulatively, exceed the estimated
19 net direct state benefits,
20 d. the net benefit rate shall be five percent (5%) for an establishment
21 locating:

- 1 (1) in an opportunity zone located in a high-employment county, as
2 such terms are defined in subsection G of Section 3604 of this
3 title, or
4 (2) in a county in which:
5 (a) the per capita personal income, as determined by the
6 Department, is eighty-five percent (85%) or less of the
7 statewide average per capita personal income,
8 (b) the population has decreased over the previous ten (10)
9 years, as determined by the State Data Center based on
10 the most recent U.S. Department of Commerce data, or
11 (c) the unemployment rate exceeds the lesser of five percent
12 (5%) or two percentage points above the state average
13 unemployment rate as certified by the Oklahoma
14 Employment Security Commission,
15 e. the net benefit rate shall not exceed six percent (6%) in connection
16 with an establishment which:
17 (1) is, as of the date of application, receiving incentive payments
18 pursuant to the Oklahoma Quality Jobs Program Act and has
19 been receiving such payments for at least one (1) year prior to
20 the date of application, and
21 (2) expands its operations in this state by creating additional new
22 direct jobs which pay average annualized wages which equal or

1 exceed one hundred fifty percent (150%) of the average
2 annualized wages of new direct jobs on which incentive
3 payments were received during the preceding calendar year, and

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

20 Incentive payments made pursuant to the provisions of this subparagraph shall be
21 based upon payroll associated with such new direct jobs. For purposes of this
22 subparagraph, the amount of health insurance premiums or other benefits paid by the

1 establishment shall not be included for purposes of computation of the average
2 annualized wage;

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

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

- 15 (1) within three (3) years of the first complete calendar quarter
16 following the start date, the entity must have a minimum
17 payroll of Two Million Five Hundred Thousand Dollars
18 (\$2,500,000.00) and the subunit must also have or will have a
19 minimum payroll of Two Million Five Hundred Thousand
20 Dollars (\$2,500,000.00),
21 (2) the subunit is engaged in an activity or service or produces a
22 product which is demonstratively independent and separate

1 from the entity's other activities, services or products and could
2 be conducted or produced in the absence of any other activity,
3 service or production of the entity,

4 (3) has an accounting system capable of tracking or facilitating an
5 audit of the subunit's payroll, expenses, revenue and production.

6 Limited interunit overlap of administrative and purchasing
7 functions shall not disqualify a subunit from consideration as an
8 establishment by the Department,

9 (4) the entity has not previously had a subunit determined to be an
10 establishment pursuant to this section; provided, the restriction
11 set forth in this division shall not apply to subunits which
12 qualify pursuant to the provisions of subparagraph b of
13 paragraph 6 of this subsection, and

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

17 b. The Department may promulgate rules to further limit the
18 circumstances under which a subunit may be considered an
19 establishment. The Department shall promulgate rules to determine
20 whether a subunit of an entity achieves a net gain in total
21 employment. The Department shall establish criteria for determining

1 the period of time within which such gain must be demonstrated and a
2 method for determining net gain in total employment;

3 10. “NAICS Manual” means any manual, book or other publication containing the
4 North American Industry Classification System, United States, 1997, promulgated by
5 the Office of Management and Budget of the United States of America, or the latest
6 revised edition;

7 11. “Qualified federal contract” means a contract between an agency or
8 instrumentality of the United States government, including but not limited to the
9 Department of Defense or any branch of the United States Armed Forces and a lawfully
10 recognized business entity, whether or not the business entity is organized under the
11 laws of the State of Oklahoma or whether or not the principal place of business of the
12 business entity is located within the State of Oklahoma, for the performance of services,
13 including but not limited to testing, research, development, consulting or other services,
14 if the contract involves the performance of such services by the employees of the business
15 entity within the State of Oklahoma or if the contract involves the performance of such
16 services by employees of a lawfully recognized business entity that is a subcontractor of
17 the business entity with which the prime contract has been formed;

18 12. “Qualified federal contractor verifier” means a nonprofit entity organized under
19 the laws of the State of Oklahoma, having an affiliation with a comprehensive university
20 which is part of The Oklahoma State System of Higher Education, and having the
21 following characteristics:

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

1 i. the ability to house state-of-the-art surety facilities, including
2 chemical, biological, radiological, explosives, electronics, and
3 unmanned systems laboratories and ranges;

4 13. “SIC Manual” means the 1987 revision to the Standard Industrial Classification
5 Manual, promulgated by the Office of Management and Budget of the United States of
6 America;

7 ~~12.~~ 14. “Start date” means the date on which an establishment may begin accruing
8 benefits for the creation of new direct jobs, which date shall be determined by the
9 Department; ~~and~~

10 ~~13.~~ 15. “Effective date” means the date of approval of a contract under which
11 incentive payments will be made pursuant to the Oklahoma Quality Jobs Program Act,
12 which shall be the date the signed and accepted incentive contract is received by the
13 Department; provided, an approved project may have a start date which is different from
14 the effective date;

15 16. “Total qualified labor hours” means the hours of work performed within the
16 state by the employees of a qualified federal contractor or the employees of a
17 subcontractor of a qualified federal contractor and which are required for the full
18 performance of a qualified federal contract; and

19 17. “Qualified labor rate” means the fully reimbursed labor rate paid through a
20 qualified federal contract for qualified labor hours to the qualified federal contractor or
21 subcontractor.

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

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

9 2. If an establishment would have been defined as a “basic industry” prior to the
10 amendments to this section to convert from SIC Codes to NAICS Codes. If the
11 Committee so determines, the establishment shall be considered as a “basic industry” for
12 purposes of the Oklahoma Quality Jobs Program Act; and

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

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

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

4 A. A qualified federal contractor may receive quarterly incentive payments for
5 renewable ten-year periods from the Oklahoma Tax Commission pursuant to the
6 provisions of the Oklahoma Quality Jobs Program Act and the provisions of this section.

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

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

1 be more than twenty-four (24) months from the date the application is submitted to the
2 Department.

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

7 1. One hundred ten percent (110%) of the average county wage as determined by
8 the Oklahoma State Data Center based on the most recent U.S. Department of
9 Commerce data for the county in which the new direct jobs are located. For purposes of
10 this paragraph, health 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 that percentage is
13 determined by the Oklahoma State Data Center based upon the most recent U.S.
14 Department of Commerce data for the county in which the new jobs are located. For
15 purposes of this paragraph, health care premiums paid by the applicant for individuals
16 in new direct jobs shall not be included in the annualized wage.

17 Provided, no average wage requirement shall exceed Twenty-five Thousand Dollars
18 (\$25,000.00), in any county. This maximum wage threshold shall be indexed and
19 modified from time to time based on the latest Consumer Price Index year-to-date
20 percent change release as of the date of the annual average county wage data release
21 from the Bureau of Economic Analysis of the U.S. Department of Commerce.

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

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

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

21 G. Upon approval of such an application, the Department shall notify the Tax
22 Commission and shall provide it with a copy of the contract and the results of the

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

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

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

20 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
21 dated 02-26-09 - DO PASS, As Amended and Coauthored.