

THE HOUSE OF REPRESENTATIVES  
Tuesday, April 13, 2010

Committee Substitute for  
ENGROSSED  
Senate Bill No. 2128

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 2128 - By: MYERS  
of the Senate and JACKSON of the House.

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 3603, as last amended by Section 70 of Enrolled Senate Bill No. 2113 of the 2nd Session of the 52nd Oklahoma Legislature and Section 2, Chapter 369, O.S.L. 2009 (68 O.S. Supp. 2009, Section 3604.1), which relate to the Oklahoma Quality Jobs Program Act; modifying definitions; modifying procedures and requirements with respect to incentive payments awarded based on certain contractor or subcontractor relationships; providing for nonpayment of incentive under certain conditions; providing for resumed payments; disallowing incentive payments based upon receipt of incentive payments from designated statutory provisions; 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 70 of Enrolled Senate Bill No. 2113 of the 2nd Session of the 52nd Oklahoma  
3    Legislature, is amended to read as follows:  
4           Section 3603. A. As used in Section 3601 et seq. of this title:  
5           1.     a.     “Basic industry” means:

- 1 (1) those manufacturing activities defined or classified in the  
2 NAICS Manual under Industry Sector Nos. 31, 32 and 33,  
3 Industry Group No. 5111 or Industry No. 11331,  
4 (2) those electric power generation, transmission and distribution  
5 activities defined or classified in the NAICS Manual under U.S.  
6 Industry Nos. 221111 through 221122, if:
- 7 (a) an establishment engaged therein qualifies as an exempt  
8 wholesale generator as defined by 15 U.S.C., Section 79z-  
9 5a,  
10 (b) the exempt wholesale generator facility consumes from  
11 sources located within the state at least ninety percent  
12 (90%) of the total energy used to produce the electrical  
13 output which qualifies for the specialized treatment  
14 provided by the Energy Policy Act of 1992, P.L. 102-486,  
15 106 Stat. 2776, as amended, and federal regulations  
16 adopted pursuant thereto,  
17 (c) the exempt wholesale generator facility sells to  
18 purchasers located outside the state for consumption in  
19 activities located outside the state at least ninety percent  
20 (90%) of the total electrical energy output which qualifies  
21 for the specialized treatment provided by the Energy  
22 Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, as



1 561440, if seventy-five percent (75%) of the loans to be serviced  
2 were made by out-of-state debtors,

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

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

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

19 (b) those air transportation activities defined or classified in  
20 the NAICS Manual under Industry Group No. 4811, if an  
21 establishment classified therein has or will have within  
22 one (1) year sales of at least seventy-five percent (75%) of

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

7 (8) flight training services activities defined or classified in the  
8 NAICS Manual under U.S. Industry Group No. 611512, which  
9 for purposes of Section 3601 et seq. of this title shall include new  
10 direct jobs for which gross payroll existed on or after January 1,  
11 2003, as identified in the NAICS Manual,

12 (9) the following, if an establishment classified therein has or will  
13 have within one (1) year sales of at least seventy-five percent  
14 (75%) of its total sales, as determined by the Incentive Approval  
15 Committee pursuant to the provisions of subsection B of this  
16 section, to out-of-state customers or buyers, to in-state  
17 customers or buyers if the product or service is resold by the  
18 purchaser to an out-of-state customer or buyer for ultimate use,  
19 or to the federal government:

20 (a) those transportation and warehousing activities defined  
21 or classified in the NAICS Manual under Industry  
22 Subsector No. 493, if not otherwise listed in this

- 1 paragraph, Industry Subsector No. 484 and Industry  
2 Group Nos. 4884 through 4889,
- 3 (b) those passenger transportation activities defined or  
4 classified in the NAICS Manual under Industry Nos.  
5 561510, 561520 and 561599,
- 6 (c) those freight or cargo transportation activities defined or  
7 classified in the NAICS Manual under Industry No.  
8 541614,
- 9 (d) those insurance activities defined or classified in the  
10 NAICS Manual under Industry Group No. 5241,
- 11 (e) those mailing, reproduction, commercial art and  
12 photography and stenographic service activities defined or  
13 classified in the NAICS Manual under U.S. Industry Nos.  
14 541430, 541860, 541922, 561439 and 561492,
- 15 (f) those services to dwellings and other buildings, as defined  
16 or classified in the NAICS Manual under Industry Group  
17 No. 5617, excluding U.S. Industry No. 561730,
- 18 (g) those equipment rental and leasing activities defined or  
19 classified in the NAICS Manual under Industry Group  
20 Nos. 5323 and 5324,
- 21 (h) those employment services defined or classified in the  
22 NAICS Manual under Industry Group No. 5613,

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

1 that the establishment is primarily engaged in the  
2 capture and distribution of methane gas produced within  
3 a landfill,  
4 (o) general wholesale distribution of groceries, defined or  
5 classified in the NAICS Manual under Industry Group  
6 Nos. 4244 and 4245,  
7 (p) those activities relating to processing of insurance claims,  
8 defined or classified in the NAICS Manual under U.S.  
9 Industry Nos. 524210 and 524292; provided, activities  
10 described in U.S. Industry Nos. 524210 and 524292 in the  
11 NAICS Manual other than processing of insurance claims  
12 shall not be included for purposes of this subdivision,  
13 (q) those agricultural activities classified in the NAICS  
14 Manual under U.S. Industry Nos. 112120 and 112310,  
15 and  
16 (r) those professional organization activities classified in the  
17 NAICS Manual under U.S. Industry No. 813920;  
18 (10) those activities related to extraction of crude petroleum and  
19 natural gas defined or classified in the NAICS Manual under  
20 Industry Group No. 2111, subject to the limitations provided in  
21 paragraph 3 of this subsection and paragraph 3 of subsection B  
22 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, but exclusive  
10 of any contract performed for the Federal Emergency Management Agency as a direct  
11 result of a natural disaster declared by the Governor or the President of the United  
12 States with respect to damage to property located in Oklahoma or loss of life or personal  
13 injury to persons in Oklahoma, and a lawfully recognized business entity, whether or not  
14 the business entity is organized under the laws of the State of Oklahoma or whether or  
15 not the principal place of business of the business entity is located within the State of  
16 Oklahoma, for the performance of services, including but not limited to testing, research,  
17 development, consulting or other services in a basic industry, if the contract involves the  
18 performance of such services that are capable of being accomplished without a State of  
19 Oklahoma workforce and are performed by a State of Oklahoma workforce on or after the  
20 effective date of this act by the employees of the business entity within the State of  
21 Oklahoma or if the contract involves the performance of such services performed on or  
22 after the effective date of this act by employees of a lawfully recognized business entity

1 that is a subcontractor of the business entity with which the prime contract has been  
2 formed. A qualified federal contract described in this paragraph shall not qualify unless  
3 both the qualified federal contractor and any subcontractors originally involved in the  
4 work or added subsequently during the period of performance verify to the qualified  
5 federal contractor verifier that it offers, or will offer within one hundred eighty (180)  
6 days of employment of its respective employees, a basic health benefits plan as described  
7 in subparagraph b of paragraph 1 of this subsection to individuals who perform qualified  
8 labor hours in this state;

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

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

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

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

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

21 15. "Effective date" means the date of approval of a contract under which incentive  
22 payments will be made pursuant to the Oklahoma Quality Jobs Program Act, which shall

1 be the date the signed and accepted incentive contract is received by the Department;  
2 provided, an approved project may have a start date which is different from the effective  
3 date;

4 16. "Total qualified labor hours" means the reimbursed payment amount for hours  
5 of work performed ~~within the state by the employees~~ by the State of Oklahoma workforce  
6 of a qualified federal contractor or the ~~employees~~ State of Oklahoma workforce of a  
7 subcontractor of a qualified federal contractor and which are required for the full  
8 performance of a qualified federal contract; ~~and~~

9 17. "Qualified labor rate" means the fully reimbursed labor rate paid through a  
10 qualified federal contract for qualified labor hours to the qualified federal contractor or  
11 subcontractor; and

12 18. "Qualified federal contractor" means a business entity:

13 a. maintaining a prime contract with the federal government as defined  
14 in paragraph 11 of this subsection.

15 b. providing notice of intent to apply to the Department within one  
16 hundred eighty (180) days of the effective date of this act or one  
17 hundred eighty (180) days of the date of the award of a qualified  
18 federal contract or award of a new qualified subcontract under an  
19 existing qualified federal contract, and

20 c. adding substantively to the contract by performing at least eight  
21 percent (8%) of the total labor whether qualified and nonqualified labor  
22 as determined by the federal contractor verifier on a direct contract or

1 individual task order or delivery order on an indefinite-  
2 delivery/indefinite-quantity or other blanket contract vehicle.

3 Should a prime contractor provide notice to the Department of its intent not to  
4 apply for incentive for a qualified federal contract or fail to qualify under the criteria  
5 above, subcontractors in order of tier ranking as determined by the federal contract  
6 verifier may assume the role of the prime and apply to become a qualified federal  
7 contractor provided the entity meets the same criteria above with the exception that  
8 notice of intent to apply with the Department must be provided within sixty (60) days of  
9 the prime's disqualification or one hundred eighty (180) days of the award of its  
10 subcontract, whichever is later.

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

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

20 2. If an establishment would have been defined as a "basic industry" prior to the  
21 amendments to this section to convert from SIC Codes to NAICS Codes. If the



1 Committee so determines, the establishment shall be considered as a “basic industry” for  
2 purposes of the Oklahoma Quality Jobs Program Act; and

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

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

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

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

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

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

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

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

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

17 4. Not be less than one and five-tenths percent (1.5%) when subcontract goals are  
18 met with a minimum of Two Million Dollars (\$2,000,000.00) of annual total qualified  
19 subcontractor labor hours and these hours are a minimum of ten percent (10%) of the  
20 annual total qualified hours claimed; and

21 5. Not be less than two percent (2.0%) when subcontract goals are met with a  
22 minimum of Four Million Dollars (\$4,000,000.00) of annual total qualified subcontractor

1 labor hours and these hours are a minimum of twenty percent (20%) of the annual total  
2 qualified hours claimed.

3 C. In order to receive incentive payments, a qualified federal contractor shall apply  
4 to the Oklahoma Department of Commerce within one hundred eighty (180) days  
5 following the date of the award of a qualified federal contract or award of a new qualified  
6 subcontract under an existing qualified federal contract. The application shall be on a  
7 form prescribed by the Department and shall contain such information as may be  
8 required by the Department to determine if the applicant is qualified. Once qualified by  
9 the Department, the applicant shall submit qualified federal contracts to the federal  
10 contract verifier. The federal contract verifier shall establish with the applicant an  
11 information system(s) or contract(s) as may be required to certify the total qualified labor  
12 hours, qualified labor rates, and reimbursement through the qualified federal contract.  
13 A qualified federal contractor may apply for an effective date for a project, which shall  
14 not be more than twenty-four (24) months from the date the application is submitted to  
15 the Department. No state agency shall be required to make any payment to a qualified  
16 federal contract verifier for any information needed by the agency to perform any duty  
17 imposed upon it pursuant to the provisions of this act. All costs for the federal contract  
18 verifier shall be reimbursed through value-added services on the qualified federal  
19 contract or other mechanisms agreed to by the federal contractor verifier and the federal  
20 contract performers.

21 D. In order to qualify to receive incentive payments as authorized by the Oklahoma  
22 Quality Jobs Program Act, in addition to other qualifications specified herein, a qualified

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

1 federal contractor shall be required to pay direct jobs an average annualized wage which  
2 equals or exceeds:

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

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

13 Provided, no average wage requirement shall exceed ~~Twenty-five Thousand Dollars~~  
14 ~~(\$25,000.00)~~ Twenty-nine Thousand Four Hundred Nine Dollars (\$29,409.00), in any  
15 county. This maximum wage threshold shall be indexed and modified from time to time  
16 based on the latest Consumer Price Index year-to-date percent change release as of the  
17 date of the annual average county wage data release from the Bureau of Economic  
18 Analysis of the U.S. Department of Commerce.

19 3. For qualified subcontractor work, the qualified federal contractor shall have a  
20 minimum average qualified labor rate requirement paid to the subcontractor of ~~Twenty-~~  
21 ~~six Dollars (\$26.00)~~ Thirty-one Dollars (\$31.00) per hour, in any county. This maximum  
22 wage threshold 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 date of the annual  
2 average county wage data release from the Bureau of Economic Analysis of the U.S.  
3 Department of Commerce.

4 E. The Department shall determine if the applicant is qualified to receive incentive  
5 payments using information supplied to the Department by the qualified federal  
6 contractor verifier.

7 F. If the applicant is determined to be qualified by the Department, the  
8 Department shall conduct a cost/benefit analysis to determine the estimated net direct  
9 state benefits and the net benefit rate, as provided by subsection B of this section,  
10 applicable for a ten-year period beginning with the first complete calendar quarter  
11 following the start date and to estimate the amount of gross payroll and total qualified  
12 labor hours for a ten-year period beginning with the first complete calendar quarter  
13 following the start date. In conducting such cost/benefit analysis, the Department shall  
14 consider quantitative factors, such as the anticipated level of new tax revenues to the  
15 state along with the added cost to the state of providing services, and such other criteria  
16 as deemed appropriate by the Department. In no event shall incentive payments,  
17 cumulatively, exceed the estimated net direct state benefits. Using this net cost/benefit  
18 analysis model, the Department may establish the renewable ten-year contract with a  
19 qualified federal contractor at the entity level to encompass any current or future  
20 qualified federal contracts that meet the cost/benefit analysis metrics as determined by  
21 the federal contractor verifier and confirmed by the Department.

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

19 H. For qualified federal contracts with periods of performance exceeding two (2)  
20 years, if the actual annual verified gross qualified labor hours for four consecutive  
21 calendar quarters does not equal or exceed Two Million Five Hundred Thousand Dollars  
22 (\$2,500,000.00) within three (3) years of the start date, or does not equal or exceed actual

1 annual gross qualified labor hours of Two Million Five Hundred Thousand Dollars  
2 (\$2,500,000.00) at any other time during the ten-year period after the start date, the  
3 incentive payments shall not be made and shall not be resumed until such time as the  
4 actual annual qualified labor hours exceed Two Million Five Hundred Thousand Dollars  
5 (\$2,500,000.00).

6 I. If the average annualized wage or minimum average qualified labor rate  
7 required by subsection H of this section is not met during any calendar quarter, the  
8 incentive payments shall not be made and shall not be resumed until such time as such  
9 requirements are met.

10 J. Before approving a quarterly incentive payment for a qualified federal contract,  
11 the federal contract verifier must first determine through the Department that neither  
12 the qualified federal contractor nor the subcontractor are receiving incentive payments  
13 under the Oklahoma Quality Jobs Program Act, the Saving Quality Jobs Act, the 21st  
14 Century Quality Jobs Incentive Act or the Former Military Facility Development Act for  
15 the performance of the same such services under the qualified federal contract and is not  
16 qualified for approval of an application for incentive payments under the Oklahoma  
17 Quality Jobs Program Act, the Saving Quality Jobs Act, the 21st Century Quality Jobs  
18 Incentive Act or the Former Military Facility Development Act for the performance of the  
19 same such services under the qualified federal contract. If the qualified federal  
20 contractor or the subcontractor are receiving or have an approved application for  
21 incentive payments under the Oklahoma Quality Jobs Program Act, the Saving Quality  
22 Jobs Act, the 21st Century Quality Jobs Incentive Act or the Former Military Facility

1 Development Act for the performance of the same such services under the qualified  
2 federal contract, each may choose to defer in part or in entirety the other incentives for  
3 the qualified federal contractor to receive the incentives pursuant to subsection B of this  
4 section. The federal contract verifier shall confirm any deferrals and ensure the total for  
5 all quality jobs incentive payments on any individual does not exceed the total net benefit  
6 to the state.

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

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

11 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,  
12 dated 04-12-10 - DO PASS, As Amended.