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THE STATE SENATE
Monday, April 6, 2009

ENGROSSED
House Bill No. 1468
As Amended

ENGROSSED HOUSE BILL NO. 1468 - By: Jackson, Williams, Dorman and Shannon of the House and Myers of the Senate.

[revenue and taxation - Oklahoma Quality Jobs Program Act -
modifying definitions - authorizing payments - codification
- effective date -
emergency]

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

SECTION 1. AMENDATORY 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), is amended to read as follows:

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

- 1. a. "Basic industry" means:
 - (1) those manufacturing activities defined or classified in the NAICS Manual under Industry Sector Nos. 31, 32 and 33, Industry Group No. 5111 or Industry No. 11331,
 - (2) those electric power generation, transmission and 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

1 amended, and federal regulations adopted
2 pursuant thereto, and
3 (d) the facility is constructed on or after July
4 1, 1996,
5 (3) those administrative and facilities support
6 service activities defined or classified in the
7 NAICS Manual under Industry Group Nos. 5611 and
8 5612, Industry Nos. 51821, 519130, 52232, 56142
9 and 54191 or U.S. Industry Nos. 524291 and
10 551114, and those other support activities for
11 air transportation defined or classified in the
12 NAICS Manual under Industry Group No. 488190,
13 (4) those professional, scientific and technical
14 service activities defined or classified in the
15 NAICS Manual under U.S. Industry Nos. 541710 and
16 541380,
17 (5) distribution centers for retail or wholesale
18 businesses defined or classified in the NAICS
19 Manual under Sector No. 42, if forty percent
20 (40%) or more of the inventory processed through
21 such warehouse is shipped out-of-state,
22 (6) those adjustment and collection service
23 activities defined or classified in the NAICS

1 Manual under U.S. Industry No. 561440, if
2 seventy-five percent (75%) of the loans to be
3 serviced were made by out-of-state debtors,

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

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

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

1 state entity or employees for some
2 reservations services, or

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

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

1 (9) the following, if an establishment classified
2 therein has or will have within one (1) year
3 sales of at least seventy-five percent (75%) of
4 its total sales, as determined by the Incentive
5 Approval Committee pursuant to the provisions of
6 subsection B of this section, to out-of-state
7 customers or buyers, to in-state customers or
8 buyers if the product or service is resold by the
9 purchaser to an out-of-state customer or buyer
10 for ultimate use, or to the federal government:
11 (a) those transportation and warehousing
12 activities defined or classified in the
13 NAICS Manual under Industry Subsector No.
14 493, if not otherwise listed in this
15 paragraph, Industry Subsector No. 484 and
16 Industry Group Nos. 4884 through 4889,
17 (b) those passenger transportation activities
18 defined or classified in the NAICS Manual
19 under Industry Nos. 561510, 561520 and
20 561599,
21 (c) those freight or cargo transportation
22 activities defined or classified in the
23 NAICS Manual under Industry No. 541614,

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

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

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

1 2111, subject to the limitations provided in
2 paragraph 3 of this subsection and paragraph 3 of
3 subsection B of this section,

4 (11) those activities performed by the federal
5 civilian workforce at a facility of the Federal
6 Aviation Administration located in this state if
7 the Director of the Department of Commerce
8 determines or is notified that the federal
9 government is soliciting proposals or otherwise
10 inviting states to compete for additional federal
11 civilian employment or expansion of federal
12 civilian employment at such facilities,

13 (12) those activities defined or classified in the
14 NAICS Manual under U.S. Industry No. 711211 (2007
15 version), or

16 (13) those real estate or brokerage activities
17 classified in the NAICS Manual under U.S.
18 Industry No. 53120 for which at least seventy-
19 five percent (75%) of the establishment's
20 revenues are attributed to out-of-state sales and
21 at least seventy-five percent (75%) of the real
22 estate transactions generating those revenues are

1 attributed to real property located outside the
2 State of Oklahoma.

3 b. An establishment described in subparagraph a of this
4 paragraph shall not be considered to be engaged in a
5 basic industry unless it offers, or will offer within
6 one hundred eighty (180) days of employment, a basic
7 health benefits plan to the individuals it employs in
8 new direct jobs in this state which is determined by
9 the Oklahoma Department of Commerce to consist of the
10 following elements or elements substantially
11 equivalent thereto:

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

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

22 a. beneficial ownership of more than fifty percent (50%)
23 in value and more than fifty percent (50%) in voting

1 power of the outstanding equity securities of the
2 transferred establishment, or
3 b. more than fifty percent (50%) in value of the assets
4 of an establishment.

5 A transferor shall be treated as related to a transferee if more
6 than fifty percent (50%) of the voting interests of the transferor
7 and transferee are owned, directly or indirectly, by the other or
8 are owned, directly or indirectly, by the same person or persons,
9 unless such transferred establishment has an outstanding class of
10 equity securities registered under Sections 12(b) or 15(d) of the
11 Securities Exchange Act of 1934, as amended, in which event the
12 transferor and transferee will be treated as unrelated; provided, an
13 establishment applying for the Oklahoma Quality Jobs Program Act as
14 a result of a change of control event is required to apply within
15 one hundred eighty (180) days of the change in control event to
16 qualify for consideration. An establishment entering the Oklahoma
17 Quality Jobs Program Act as the result of a change of control event
18 shall be required to maintain a level of new direct jobs as agreed
19 to in its contract with the Department of Commerce and to pay new
20 direct jobs an average annualized wage which equals or exceeds one
21 hundred twenty-five percent (125%) of the average county wage as
22 that percentage is determined by the Oklahoma State Data Center
23 based upon the most recent U.S. Department of Commerce data for the

1 county in which the new jobs are located. For purposes of this
2 paragraph, healthcare premiums paid by the applicant for individuals
3 in new direct jobs shall not be included in the annualized wage.
4 Such establishment entering the Quality Jobs Program Act as the
5 result of a change of control event shall be required to retain the
6 contracted average annualized wage and maintain the contracted
7 maintenance level of new direct jobs numbers as certified by the
8 Oklahoma Tax Commission. If the required average annualized wage or
9 the required new direct jobs numbers do not equal or exceed such
10 contracted level during any quarter, the quarterly incentive
11 payments shall not be made and shall not be resumed until such time
12 as such requirements are met. An establishment described in this
13 paragraph shall be required to repay all incentive payments received
14 under the Quality Jobs Program Act if the establishment is
15 determined by the Oklahoma Tax Commission to no longer have business
16 operations in the state within three (3) years from the beginning of
17 the calendar quarter for which the first incentive payment claim is
18 filed.

- 19 3. "New direct job":
- 20 a. means full-time-equivalent employment in this state in
21 an establishment which has qualified to receive an
22 incentive payment pursuant to the provisions of
23 Section 3601 et seq. of this title which employment

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

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

14 b. shall include full-time-equivalent employment in this
15 state of employees who are employed by an employment
16 agency or similar entity other than the establishment
17 which has qualified to receive an incentive payment
18 and who are leased or otherwise provided under
19 contract to the qualified establishment, if such job
20 did not exist in this state prior to the date of
21 approval by the Department of the application of the
22 establishment or the job otherwise qualifies as a new
23 direct job following a change in control event. A job

1 shall be deemed to exist in this state prior to
2 approval of an application if the activities and
3 functions for which the particular job exists have
4 been ongoing at any time within six (6) months prior
5 to such approval. With respect to establishments
6 defined in division (10) of subparagraph a of
7 paragraph 1 of this subsection, new direct jobs shall
8 be limited to those jobs directly comprising the
9 corporate headquarters of or directly relating to
10 administrative, financial, engineering, surveying,
11 geological or geophysical services performed by the
12 establishment. Under no circumstances shall
13 employment relating to drilling or field services be
14 considered new direct jobs;

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

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

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

- 1 b. the costs of public health, public safety and
- 2 transportation services to be provided to new state
- 3 residents,
- 4 c. the costs of other state services to be provided to
- 5 new state residents, and
- 6 d. the costs of other state services;

7 6. "Estimated net direct state benefits" means the estimated
8 direct state benefits less the estimated direct state costs;

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

- 11 a. except as otherwise provided in this paragraph, the
- 12 net benefit rate may be variable and shall not exceed
- 13 five percent (5%),
- 14 b. the net benefit rate shall not exceed six percent (6%)
- 15 in connection with an establishment which is owned and
- 16 operated by an entity which has been awarded a United
- 17 States Department of Defense contract for which:
- 18 (1) bids were solicited and accepted by the United
- 19 States Department of Defense from facilities
- 20 located outside this state,
- 21 (2) the term is or is renewable for not less than
- 22 twenty (20) years, and

1 (3) the average annual salary, excluding benefits
2 which are not subject to Oklahoma income taxes,
3 for new direct jobs created as a direct result of
4 the awarding of the contract is projected by the
5 Department of Commerce to equal or exceed Forty
6 Thousand Dollars (\$40,000.00) within three (3)
7 years of the date of the first incentive payment,
8 c. except as otherwise provided in subparagraph d of this
9 paragraph, in no event shall incentive payments,
10 cumulatively, exceed the estimated net direct state
11 benefits,
12 d. the net benefit rate shall be five percent (5%) for an
13 establishment locating:
14 (1) in an opportunity zone located in a high-
15 employment county, as such terms are defined in
16 subsection G of Section 3604 of this title, or
17 (2) in a county in which:
18 (a) the per capita personal income, as
19 determined by the Department, is eighty-five
20 percent (85%) or less of the statewide
21 average per capita personal income,
22 (b) the population has decreased over the
23 previous ten (10) years, as determined by

1 the State Data Center based on the most
2 recent U.S. Department of Commerce data, or
3 (c) the unemployment rate exceeds the lesser of
4 five percent (5%) or two percentage points
5 above the state average unemployment rate as
6 certified by the Oklahoma Employment
7 Security Commission,

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

10 (1) is, as of the date of application, receiving
11 incentive payments pursuant to the Oklahoma
12 Quality Jobs Program Act and has been receiving
13 such payments for at least one (1) year prior to
14 the date of application, and

15 (2) expands its operations in this state by creating
16 additional new direct jobs which pay average
17 annualized wages which equal or exceed one
18 hundred fifty percent (150%) of the average
19 annualized wages of new direct jobs on which
20 incentive payments were received during the
21 preceding calendar year, and

22 f. with respect to an establishment defined or classified
23 in the NAICS Manual under U.S. Industry No. 711211

1 (2007 version) or any establishment defined or
2 classified in the NAICS Manual as a U.S. Industry
3 Number which is not included within the definition of
4 "basic industry" as such term is defined in this
5 section on April 17, 2008, the net benefit rate shall
6 not exceed the highest rate of income tax imposed upon
7 the Oklahoma taxable income of individuals pursuant to
8 subparagraph (g) or subparagraph (h), as applicable,
9 of paragraph 1 and paragraph 2 of subsection B of
10 Section 2355 of this title. Any change in such
11 highest rate of individual income tax imposed pursuant
12 to the provisions of Section 2355 of this title shall
13 be applicable to the computation of incentive payments
14 to an establishment as described by this subparagraph
15 and shall be effective for purposes of incentive
16 payments based on payroll paid by such establishment
17 on or after January 1 of any applicable year for which
18 the net benefit rate is modified as required by this
19 subparagraph.

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

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

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

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

19 (1) within three (3) years of the first complete
20 calendar quarter following the start date, the
21 entity must have a minimum payroll of Two Million
22 Five Hundred Thousand Dollars (\$2,500,000.00) and
23 the subunit must also have or will have a minimum

1 payroll of Two Million Five Hundred Thousand
2 Dollars (\$2,500,000.00),

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

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

16 (4) the entity has not previously had a subunit
17 determined to be an establishment pursuant to
18 this section; provided, the restriction set forth
19 in this division shall not apply to subunits
20 which qualify pursuant to the provisions of
21 subparagraph b of paragraph 6 of this subsection,
22 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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), in any county. This maximum wage
23 threshold shall be indexed and modified from time to time based on

1 the latest Consumer Price Index year-to-date percent change release
2 as of the date of the annual average county wage data release from
3 the Bureau 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

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

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

1 incentive payment to be made as long as the qualified federal
2 contractor retains its eligibility as defined in and established
3 pursuant to this section and Sections 3603 and 3606 of Title 68 of
4 the Oklahoma Statutes and within the limitations contained in the
5 Oklahoma Quality Jobs Program Act, which existed at the time of such
6 approval.

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

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

12 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 3-31-09 - DO PASS,
13 As Amended and Coauthored.