

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 2117

By: Brown

4  
5  
6 AS INTRODUCED

7 An Act relating to revenue and taxation; enacting the  
8 Green Quality Jobs Act of 2009; amending 68 O.S.  
9 2001, Sections 3603, as last amended by Section 3,  
10 Chapter 406, O.S.L. 2008, and 3604, as last amended  
11 by Section 5, Chapter 406, O.S.L. 2008 (68 O.S. Supp.  
12 2008, Sections 3603 and 3604), which relate to the  
13 Oklahoma Quality Jobs Program Act; modifying  
14 definitions; providing for net benefit rate for  
15 designated business activities; providing specialized  
16 gross direct payroll requirements; providing for  
17 noncodification; providing an effective date; and  
18 declaring an emergency.

19  
20 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

21 SECTION 1. NEW LAW A new section of law not to be  
22 codified in the Oklahoma Statutes reads as follows:

23 This act shall be known and may be cited as the "Green Quality  
24 Jobs Act of 2009".

SECTION 2. 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        1.    a.    "Basic industry" means:

2                    (1)   those manufacturing activities defined or  
3    classified in the NAICS Manual under Industry  
4    Sector Nos. 31, 32 and 33, Industry Group No.  
5    5111 or Industry No. 11331,

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

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

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

22    (c)   the exempt wholesale generator facility  
23    sells to purchasers located outside the  
24    state for consumption in activities located

1 outside the state at least ninety percent  
2 (90%) of the total electrical energy output  
3 which qualifies for the specialized  
4 treatment provided by the Energy Policy Act  
5 of 1992, P.L. 102-486, 106 Stat. 2776, as  
6 amended, and federal regulations adopted  
7 pursuant thereto, and

8 (d) the facility is constructed on or after July  
9 1, 1996,

10 (3) those administrative and facilities support  
11 service activities defined or classified in the  
12 NAICS Manual under Industry Group Nos. 5611 and  
13 5612, Industry Nos. 51821, 519130, 52232, 56142  
14 and 54191 or U.S. Industry Nos. 524291 and  
15 551114, and those other support activities for  
16 air transportation defined or classified in the  
17 NAICS Manual under Industry Group No. 488190,

18 (4) those professional, scientific and technical  
19 service activities defined or classified in the  
20 NAICS Manual under U.S. Industry Nos. 541710 and  
21 541380,

22 (5) distribution centers for retail or wholesale  
23 businesses defined or classified in the NAICS  
24 Manual under Sector No. 42, if forty percent

1 (40%) or more of the inventory processed through  
2 such warehouse is shipped out-of-state,

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

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

12 (i) the corporate headquarters of an  
13 establishment classified therein, and

14 (ii) a facility or facilities at which  
15 reservations for transportation  
16 provided by such an establishment are  
17 processed, whether such services are  
18 performed by employees of the  
19 establishment, by employees of a  
20 subsidiary of or other entity  
21 affiliated with the establishment or by  
22 employees of an entity with whom the  
23 establishment has contracted for the  
24 performance of such services; provided,

1 this provision shall not disqualify an  
2 establishment which uses an out-of-  
3 state entity or employees for some  
4 reservations services, or

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

19 (8) flight training services activities defined or  
20 classified in the NAICS Manual under U.S.  
21 Industry Group No. 611512, which for purposes of  
22 Section 3601 et seq. of this title shall include  
23 new direct jobs for which gross payroll existed  
24

1 on or after January 1, 2003, as identified in the  
2 NAICS Manual,

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

13 (a) those transportation and warehousing  
14 activities defined or classified in the  
15 NAICS Manual under Industry Subsector No.  
16 493, if not otherwise listed in this  
17 paragraph, Industry Subsector No. 484 and  
18 Industry Group Nos. 4884 through 4889,

19 (b) those passenger transportation activities  
20 defined or classified in the NAICS Manual  
21 under Industry Nos. 561510, 561520 and  
22 561599,  
23  
24

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

1 or classified in the NAICS Manual under  
2 Industry Group Nos. 5112, 5182, 5191 and  
3 5415,

4 (j) those business support service activities  
5 defined or classified in the NAICS Manual  
6 under U.S. Industry Nos. 561410 through  
7 561439, Industry Group No. 5616 and Industry  
8 No. 51911,

9 (k) those medical and diagnostic laboratory  
10 activities defined or classified in the  
11 NAICS Manual under Industry Group No. 6215,

12 (l) those professional, scientific and technical  
13 service activities defined or classified in  
14 the NAICS Manual under Industry Group Nos.  
15 5412, 5414, 5415, 5416 and 5417, Industry  
16 Nos. 54131, 54133, 54136, 54137 and 54182,  
17 and U.S. Industry No. 541990, if not  
18 otherwise listed in this paragraph,

19 (m) those communication service activities  
20 defined or classified in the NAICS Manual  
21 under Industry Nos. 51741 and 51791,

22 (n) those refuse systems activities defined or  
23 classified in the NAICS Manual under  
24 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.  
24 2111, subject to the limitations provided in

1 paragraph 3 of this subsection and paragraph 3 of  
2 subsection B of this section,

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

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

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

24

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

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

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

- 20           a. beneficial ownership of more than fifty percent (50%)  
21                 in value and more than fifty percent (50%) in voting  
22                 power of the outstanding equity securities of the  
23                 transferred establishment, or  
24

1           b.    more than fifty percent (50%) in value of the assets  
2                   of an establishment.

3           A transferor shall be treated as related to a transferee if more  
4 than fifty percent (50%) of the voting interests of the transferor  
5 and transferee are owned, directly or indirectly, by the other or  
6 are owned, directly or indirectly, by the same person or persons,  
7 unless such transferred establishment has an outstanding class of  
8 equity securities registered under Sections 12(b) or 15(d) of the  
9 Securities Exchange Act of 1934, as amended, in which event the  
10 transferor and transferee will be treated as unrelated; provided, an  
11 establishment applying for the Oklahoma Quality Jobs Program Act as  
12 a result of a change of control event is required to apply within  
13 one hundred eighty (180) days of the change in control event to  
14 qualify for consideration. An establishment entering the Oklahoma  
15 Quality Jobs Program Act as the result of a change of control event  
16 shall be required to maintain a level of new direct jobs as agreed  
17 to in its contract with the Department of Commerce and to pay new  
18 direct jobs an average annualized wage which equals or exceeds one  
19 hundred twenty-five percent (125%) of the average county wage as  
20 that percentage is determined by the Oklahoma State Data Center  
21 based upon the most recent U.S. Department of Commerce data for the  
22 county in which the new jobs are located. For purposes of this  
23 paragraph, healthcare premiums paid by the applicant for individuals  
24 in new direct jobs shall not be included in the annualized wage.

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

16 3. "New direct job":

- 17 a. means full-time-equivalent employment in this state in  
18 an establishment which has qualified to receive an  
19 incentive payment pursuant to the provisions of  
20 Section 3601 et seq. of this title which employment  
21 did not exist in this state prior to the date of  
22 approval by the Department of the application of the  
23 establishment pursuant to the provisions of Section  
24 3604 of this title and with respect to an

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

1 Director of the Department of Commerce determines that  
2 the jobs located at such establishment are likely to  
3 leave the state, "new direct job" shall include  
4 employment that existed in this state prior to the  
5 date of application which is retained in this state by  
6 the new establishment following a change in control  
7 event, if such job otherwise qualifies as a new direct  
8 job, and

9 b. shall include full-time-equivalent employment in this  
10 state of employees who are employed by an employment  
11 agency or similar entity other than the establishment  
12 which has qualified to receive an incentive payment  
13 and who are leased or otherwise provided under  
14 contract to the qualified establishment, if such job  
15 did not exist in this state prior to the date of  
16 approval by the Department of the application of the  
17 establishment or the job otherwise qualifies as a new  
18 direct job following a change in control event. A job  
19 shall be deemed to exist in this state prior to  
20 approval of an application if the activities and  
21 functions for which the particular job exists have  
22 been ongoing at any time within six (6) months prior  
23 to such approval. With respect to establishments  
24 defined in division (10) of subparagraph a of

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

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

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

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

22 6. "Estimated net direct state benefits" means the estimated  
23 direct state benefits less the estimated direct state costs;

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

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

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

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

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

15           (3) the average annual salary, excluding benefits  
16 which are not subject to Oklahoma income taxes,  
17 for new direct jobs created as a direct result of  
18 the awarding of the contract is projected by the  
19 Department of Commerce to equal or exceed Forty  
20 Thousand Dollars (\$40,000.00) within three (3)  
21 years of the date of the first incentive payment,

22           c. except as otherwise provided in subparagraph d of this  
23 paragraph, in no event shall incentive payments,  
24

1                   cumulatively, exceed the estimated net direct state  
2                   benefits,

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

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

8                   (2)   in a county in which:

9                           (a)   the per capita personal income, as  
10                           determined by the Department, is eighty-five  
11                           percent (85%) or less of the statewide  
12                           average per capita personal income,

13                           (b)   the population has decreased over the  
14                           previous ten (10) years, as determined by  
15                           the State Data Center based on the most  
16                           recent U.S. Department of Commerce data, or

17                           (c)   the unemployment rate exceeds the lesser of  
18                           five percent (5%) or two percentage points  
19                           above the state average unemployment rate as  
20                           certified by the Oklahoma Employment  
21                           Security Commission,

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

1 (1) is, as of the date of application, receiving  
2 incentive payments pursuant to the Oklahoma  
3 Quality Jobs Program Act and has been receiving  
4 such payments for at least one (1) year prior to  
5 the date of application, and

6 (2) expands its operations in this state by creating  
7 additional new direct jobs which pay average  
8 annualized wages which equal or exceed one  
9 hundred fifty percent (150%) of the average  
10 annualized wages of new direct jobs on which  
11 incentive payments were received during the  
12 preceding calendar year, ~~and~~

13 f. with respect to an establishment defined or classified  
14 in the NAICS Manual under U.S. Industry No. 711211  
15 (2007 version) or any establishment defined or  
16 classified in the NAICS Manual as a U.S. Industry  
17 Number which is not included within the definition of  
18 "basic industry" as such term is defined in this  
19 section on April 17, 2008, the net benefit rate shall  
20 not exceed the highest rate of income tax imposed upon  
21 the Oklahoma taxable income of individuals pursuant to  
22 subparagraph (g) or subparagraph (h), as applicable,  
23 of paragraph 1 and paragraph 2 of subsection B of  
24 Section 2355 of this title. Any change in such

1 highest rate of individual income tax imposed pursuant  
2 to the provisions of Section 2355 of this title shall  
3 be applicable to the computation of incentive payments  
4 to an establishment as described by this subparagraph  
5 and shall be effective for purposes of incentive  
6 payments based on payroll paid by such establishment  
7 on or after January 1 of any applicable year for which  
8 the net benefit rate is modified as required by this  
9 subparagraph, and

10 g. the net benefit rate shall equal five percent (5%) for  
11 the following industries:

12 (1) Industry Group No. 221119 (solar electric power  
13 generation or wind electric power generation),

14 (2) Industry Group No. 237130 (solar power structure  
15 construction or wind power structure  
16 construction),

17 (3) Industry Group No. 333414 (solar energy heating  
18 equipment manufacturing),

19 (4) Industry Group No. 333611 (wind-powered turbine  
20 generator set manufacturing),

21 (5) Industry Group No. 334413 (solar cells  
22 manufacturing),

1           (6) a business primarily engaged in the production  
2           and manufacture of passenger or commercial motor  
3           vehicles powered by compressed natural gas,

4           (7) a business primarily engaged in the conversion of  
5           passenger or commercial motor vehicles using  
6           conventional gasoline or diesel combustion  
7           engines to a propulsion system using compressed  
8           natural gas, and

9           (8) a business engaged in the manufacture of  
10           components that can be used for a compressed  
11           natural gas fill station.

12           Incentive payments made pursuant to the provisions of this  
13           subparagraph shall be based upon payroll associated with such new  
14           direct jobs. For purposes of this subparagraph, the amount of  
15           health insurance premiums or other benefits paid by the  
16           establishment shall not be included for purposes of computation of  
17           the average annualized wage;

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

20           9. a. "Establishment" means any business or governmental  
21           entity, no matter what legal form, including, but not  
22           limited to, a sole proprietorship; partnership;  
23           limited liability company; corporation or combination  
24           of corporations which have a central parent

1 corporation which makes corporate management decisions  
2 such as those involving consolidation, acquisition,  
3 merger or expansion; federal agency; political  
4 subdivision of the State of Oklahoma; or trust  
5 authority; provided, distinct, identifiable subunits  
6 of such entities may be determined to be an  
7 establishment, for all purposes of Section 3601 et  
8 seq. of this title, by the Department subject to the  
9 following conditions:

- 10 (1) within three (3) years of the first complete  
11 calendar quarter following the start date, the  
12 entity must have a minimum payroll of Two Million  
13 Five Hundred Thousand Dollars (\$2,500,000.00) and  
14 the subunit must also have or will have a minimum  
15 payroll of Two Million Five Hundred Thousand  
16 Dollars (\$2,500,000.00),
- 17 (2) the subunit is engaged in an activity or service  
18 or produces a product which is demonstratively  
19 independent and separate from the entity's other  
20 activities, services or products and could be  
21 conducted or produced in the absence of any other  
22 activity, service or production of the entity,
- 23 (3) has an accounting system capable of tracking or  
24 facilitating an audit of the subunit's payroll,

1 expenses, revenue and production. Limited  
2 interunit overlap of administrative and  
3 purchasing functions shall not disqualify a  
4 subunit from consideration as an establishment by  
5 the Department,

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

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

16 b. The Department may promulgate rules to further limit  
17 the circumstances under which a subunit may be  
18 considered an establishment. The Department shall  
19 promulgate rules to determine whether a subunit of an  
20 entity achieves a net gain in total employment. The  
21 Department shall establish criteria for determining  
22 the period of time within which such gain must be  
23 demonstrated and a method for determining net gain in  
24 total employment;

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

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

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

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

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

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

1 through (p) of division (9) of subparagraph a of paragraph 1 of  
2 subsection A of this section or as otherwise provided by subsection  
3 C of this section;

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

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

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

20 SECTION 3. AMENDATORY 68 O.S. 2001, Section 3604, as  
21 last amended by Section 5, Chapter 406, O.S.L. 2008 (68 O.S. Supp.  
22 2008, Section 3604), is amended to read as follows:

23 Section 3604. A. Except as otherwise provided in subsection I  
24 of this section, an establishment which meets the qualifications

1 specified in the Oklahoma Quality Jobs Program Act may receive  
2 quarterly incentive payments for a ten-year period from the Oklahoma  
3 Tax Commission pursuant to the provisions of the Oklahoma Quality  
4 Jobs Program Act; provided, such an establishment defined or  
5 classified in the NAICS Manual under U.S. Industry No. 711211 (2007  
6 version) may receive quarterly incentive payments for a fifteen-year  
7 period. The amount of such payments shall be equal to the net  
8 benefit rate multiplied by the actual gross payroll of new direct  
9 jobs for a calendar quarter as verified by the Oklahoma Employment  
10 Security Commission.

11 B. In order to receive incentive payments, an establishment  
12 shall apply to the Oklahoma Department of Commerce. The application  
13 shall be on a form prescribed by the Department and shall contain  
14 such information as may be required by the Department to determine  
15 if the applicant is qualified. An establishment may apply for an  
16 effective date for a project, which shall not be more than twenty-  
17 four (24) months from the date the application is submitted to the  
18 Department.

19 C. Except as otherwise provided by subsection D or E of this  
20 section, in order to qualify to receive such payments, the  
21 establishment applying shall be required to:

- 22 1. Be engaged in a basic industry;
- 23 2. Have an annual gross payroll for new direct jobs projected  
24 by the Department to equal or exceed Two Million Five Hundred

1 Thousand Dollars (\$2,500,000.00) within three (3) years of the first  
2 complete calendar quarter following the start date; and

3 3. Have a number of full-time-equivalent employees subject to  
4 the tax imposed by Section 2355 of this title and working an annual  
5 average of thirty (30) or more hours per week in new direct jobs  
6 located in this state equal to or in excess of eighty percent (80%)  
7 of the total number of new direct jobs.

8 D. In order to qualify to receive incentive payments as  
9 authorized by the Oklahoma Quality Jobs Program Act, an  
10 establishment engaged in an activity described under:

11 1. Industry Group Nos. 3111 through 3119 of the NAICS Manual  
12 shall be required to:

13 a. have an annual gross payroll for new direct jobs  
14 projected by the Department to equal or exceed One  
15 Million Five Hundred Thousand Dollars (\$1,500,000.00)  
16 within three (3) years of the first complete calendar  
17 quarter following the start date and make, or which  
18 will make within one (1) year, at least seventy-five  
19 percent (75%) of its total sales, as determined by the  
20 Incentive Approval Committee pursuant to the  
21 provisions of subsection B of Section 3603 of this  
22 title, to out-of-state customers or buyers, to in-  
23 state customers or buyers if the product or service is  
24 resold by the purchaser to an out-of-state customer or

1 buyer for ultimate use, or to the federal government,  
2 unless the annual gross payroll equals or exceeds Two  
3 Million Five Hundred Thousand Dollars (\$2,500,000.00)  
4 in which case the requirements for purchase of output  
5 provided by this subparagraph shall not apply, and

- 6 b. have a number of full-time-equivalent employees  
7 working an average of thirty (30) or more hours per  
8 week in new direct jobs equal to or in excess of  
9 eighty percent (80%) of the total number of new direct  
10 jobs; ~~and~~

11 2. Division (4) of subparagraph a of paragraph 1 of subsection  
12 A of Section 3603 of this title, shall be required to:

- 13 a. have an annual gross payroll for new direct jobs  
14 projected by the Department to equal or exceed One  
15 Million Five Hundred Thousand Dollars (\$1,500,000.00)  
16 within three (3) years of the first complete calendar  
17 quarter following the start date, and

- 18 b. have a number of full-time-equivalent employees  
19 working an average of thirty (30) or more hours per  
20 week in new direct jobs equal to or in excess of  
21 eighty percent (80%) of the total number of new direct  
22 jobs; and

23 3. Industry Groups described by the NAICS Manual (2007 version)  
24 or other business activity specified in subparagraphs a through h of

1 this paragraph, any of which businesses shall be required to have an  
2 annual gross payroll for new direct jobs projected by the Department  
3 to equal or exceed One Million Two Hundred Thousand Dollars  
4 (\$1,200,000.00) within three (3) years of the first complete  
5 calendar quarter following the start date, and have a number of  
6 full-time-equivalent employees working an average of thirty (30) or  
7 more hours per week in new direct jobs equal to or in excess of  
8 eighty percent (80%) of the total number of new direct jobs, as  
9 follows:

- 10       a. No. 221119 (solar electric power generation or wind  
11           electric power generation),
- 12       b. No. 237130 (solar power structure construction or wind  
13           power structure construction),
- 14       c. No. 333414 (solar energy heating equipment  
15           manufacturing),
- 16       d. No. 333611 (wind-powered turbine generator set  
17           manufacturing),
- 18       e. No. 334413 (solar cells manufacturing),
- 19       f. a business primarily engaged in the production and  
20           manufacture of passenger or commercial motor vehicles  
21           powered by compressed natural gas,
- 22       g. a business primarily engaged in the conversion of  
23           passenger or commercial motor vehicles using

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1 conventional gasoline or diesel combustion engines to  
2 a propulsion system using compressed natural gas, and

3 h. a business engaged in the manufacture of components  
4 that can be used for a compressed natural gas fill  
5 station.

6 E. 1. An establishment which locates its principal business  
7 activity within a site consisting of at least ten (10) acres which:

8 a. is a federal Superfund removal site,

9 b. is listed on the National Priorities List established  
10 under Section 9605 of Title 42 of the United States  
11 Code,

12 c. has been formally deferred to the state in lieu of  
13 listing on the National Priorities List, or

14 d. has been determined by the Department of Environmental  
15 Quality to be contaminated by any substance regulated  
16 by a federal or state statute governing environmental  
17 conditions for real property pursuant to an order of  
18 the Department of Environmental Quality,

19 shall qualify for incentive payments irrespective of its actual  
20 gross payroll or the number of full-time-equivalent employees  
21 engaged in new direct jobs.

22 2. In order to qualify for the incentive payments pursuant to  
23 this subsection, the establishment shall conduct the activity  
24 resulting in at least fifty percent (50%) of its Oklahoma taxable

1 income or adjusted gross income, as determined under Section 2358 of  
2 this title, whether from the sale of products or services or both  
3 products and services, at the physical location which has been  
4 determined not to comply with the federal or state statutes  
5 described in this subsection with respect to environmental  
6 conditions for real property. The establishment shall be subject to  
7 all other requirements of the Oklahoma Quality Jobs Program Act  
8 other than the exemptions provided by this subsection.

9 3. In order to qualify for the incentive payments pursuant to  
10 this subsection, the entity shall obtain from the Department of  
11 Environmental Quality a letter of concurrence that:

- 12 a. the site designated by the entity does meet one or  
13 more of the requirements listed in paragraph 1 of this  
14 subsection, and
- 15 b. the site is being or has been remediated to a level  
16 which is consistent with the intended use of the  
17 property.

18 In making its determination, the Department of Environmental  
19 Quality may rely on existing data and information available to it,  
20 but may also require the applying entity to provide additional data  
21 and information as necessary.

22 4. If authorized by the Department of Environmental Quality  
23 pursuant to paragraph 3 of this subsection, the entity may utilize a  
24 remediated portion of the property for its intended purpose prior to

1 remediation of the remainder of the site, and shall qualify for  
2 incentive payments based on employment associated with the portion  
3 of the site.

4 F. Except as otherwise provided by subsection G of this  
5 section, for applications submitted on and after June 4, 2003, in  
6 order to qualify to receive incentive payments as authorized by the  
7 Oklahoma Quality Jobs Program Act, in addition to other  
8 qualifications specified herein, an establishment shall be required  
9 to pay new direct jobs an average annualized wage which equals or  
10 exceeds:

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

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

24

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

7        G. 1. As used in this subsection, "opportunity zone" means one  
8        or more census tracts in which, according to the most recent federal  
9        decennial census, at least thirty percent (30%) of the residents  
10       have annual gross household incomes from all sources below the  
11       poverty guidelines established by the U.S. Department of Health and  
12       Human Services. An establishment which is otherwise qualified to  
13       receive incentive payments and which locates its principal business  
14       activity in an opportunity zone shall not be subject to the  
15       requirements of subsection F of this section.

16       2. As used in this subsection:

17       a. "negative economic event" means:

18                (1) a man-made disaster or natural disaster as  
19                defined in Section 683.3 of Title 63 of the  
20                Oklahoma Statutes, resulting in the loss of a  
21                significant number of jobs within a particular  
22                county of this state, or

23                (2) an economic circumstance in which a significant  
24                number of jobs within a particular county of this

1 state have been lost due to an establishment  
2 changing its structure, consolidating with  
3 another establishment, closing or moving all or  
4 part of its operations out of this state, and

5 b. "significant number of jobs" means Local Area  
6 Unemployment Statistics (LAUS) data, as determined by  
7 the Bureau of Labor Statistics, for a county which are  
8 equal to or in excess of five percent (5%) of the  
9 total amount of Local Area Unemployment Statistics  
10 (LAUS) data for that county for the calendar year, or  
11 most recent twelve-month period in which employment is  
12 measured, preceding the event.

13 An establishment which is otherwise qualified to receive  
14 incentive payments and which locates in a county in which a negative  
15 economic event has occurred within the eighteen-month period  
16 preceding the start date shall not be subject to the requirements of  
17 subsection F of this section; provided, an establishment shall not  
18 be eligible to receive incentive payments based upon a negative  
19 economic event with respect to jobs that are transferred from one  
20 county of this state to another.

21 H. The Department shall determine if the applicant is qualified  
22 to receive incentive payments.

23 I. If the applicant is determined to be qualified by the  
24 Department and is not subject to the provisions of subparagraph d of

1 paragraph 7 of subsection A of Section 3603 of this title, the  
2 Department shall conduct a cost/benefit analysis to determine the  
3 estimated net direct state benefits and the net benefit rate  
4 applicable for a ten-year period beginning with the first complete  
5 calendar quarter following the start date and to estimate the amount  
6 of gross payroll for a ten-year period beginning with the first  
7 complete calendar quarter following the start date or for a fifteen-  
8 year period for an establishment defined or classified in the NAICS  
9 Manual under U.S. Industry No. 711211 (2007 version). In conducting  
10 such cost/benefit analysis, the Department shall consider  
11 quantitative factors, such as the anticipated level of new tax  
12 revenues to the state along with the added cost to the state of  
13 providing services, and such other criteria as deemed appropriate by  
14 the Department. In no event shall incentive payments, cumulatively,  
15 exceed the estimated net direct state benefits, except for  
16 applicants subject to the provisions of subparagraph d of paragraph  
17 7 of subsection A of Section 3603 of this title.

18 J. Upon approval of such an application, the Department shall  
19 notify the Tax Commission and shall provide it with a copy of the  
20 contract and the results of the cost/benefit analysis. The Tax  
21 Commission may require the qualified establishment to submit such  
22 additional information as may be necessary to administer the  
23 provisions of the Oklahoma Quality Jobs Program Act. The approved  
24 establishment shall file quarterly claims with the Tax Commission

1 and shall continue to file such quarterly claims during the ten-year  
2 incentive period to show its continued eligibility for incentive  
3 payments, as provided in Section 3606 of this title, or until it is  
4 no longer qualified to receive incentive payments. The  
5 establishment may be audited by the Tax Commission to verify such  
6 eligibility. Once the establishment is approved, an agreement shall  
7 be deemed to exist between the establishment and the State of  
8 Oklahoma, requiring the continued incentive payment to be made as  
9 long as the establishment retains its eligibility as defined in and  
10 established pursuant to this section and Sections 3603 and 3606 of  
11 this title and within the limitations contained in the Oklahoma  
12 Quality Jobs Program Act, which existed at the time of such  
13 approval.

14 K. A municipality with a population of less than one hundred  
15 thousand (100,000) persons in which an establishment eligible to  
16 receive quarterly incentive payments pursuant to the provisions of  
17 this section is located may file a claim with the Tax Commission for  
18 up to twenty-five percent (25%) of the amount of such payment. The  
19 amount of such claim shall not exceed amounts paid by the  
20 municipality for direct costs of municipal infrastructure  
21 improvements to provide water and sewer service to the  
22 establishment. Such claim shall not be approved by the Tax  
23 Commission unless the municipality and the establishment have  
24 entered into a written agreement for such claims to be filed by the

1 municipality prior to submission of the application of the  
2 establishment pursuant to the provisions of this section. If such  
3 claim is approved, the amount of the payment to the establishment  
4 made pursuant to the provisions of Section 3606 of this title shall  
5 be reduced by the amount of the approved claim by the municipality  
6 and the Tax Commission shall issue a warrant to the municipality in  
7 the amount of the approved claim in the same manner as warrants are  
8 issued to qualifying establishments.

9 SECTION 4. This act shall become effective July 1, 2009.

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

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