

1 ENGROSSED HOUSE
2 BILL NO. 2704

By: Vaughan and Pittman of the
House

3 and

4 Fields of the Senate

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6
7
8 (revenue and taxation - amending 68 O.S., Section

9 3604.1 - Oklahoma Quality Jobs Program Act -

10 labor hours)

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

14 SECTION 1. AMENDATORY 68 O.S. 2011, Section 3604.1, is
15 amended to read as follows:

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

20 1. A qualified contractor operating as a "small business
21 establishment" means any qualifying small business as defined in 13
22 C.F.R. Section 121.201 and as regularly and last published by the
23 United States Small Business Administration; and

1 2. A change of contractual basis will occur when there is a
2 change of a federal prime contract constituting the loss or change
3 of more than fifty percent (50%) in the annual revenue of an
4 establishment and that might reasonably result in an establishment
5 leaving Oklahoma and shall have the same effect as a "change in
6 control event" as defined in Section 3603 of this title.

7 B. The amount of such payments shall be equal to a net benefit
8 rate of not less than twenty-five hundredths of one percent (0.25%),
9 but not greater than two percent (2%), multiplied by the total
10 qualified labor hours worked by employees of the federal contractor
11 or employees of a qualified federal subcontractor, or both, pursuant
12 to a qualified federal contract for a calendar quarter as verified
13 by the Oklahoma Employment Security Commission and certified by a
14 qualified federal contractor verifier. The net benefit rate for a
15 qualified federal contractor shall be scaled to annual
16 subcontracting goals that account for both total qualified
17 subcontract labor hours and the ratio of qualified subcontract labor
18 hours to total qualified labor hours. Unless limited by the
19 cost/benefit analysis, the net benefit rate shall:

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

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

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

11 4. Not be less than one and five-tenths percent (1.5%) when
12 subcontract goals are met with a minimum of Two Million Dollars
13 (\$2,000,000.00) of annual total qualified subcontractor labor hours
14 and these hours are a minimum of ten percent (10%) of the annual
15 total qualified hours claimed; and

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

21 C. Any qualified federal contractor that is classified as a
22 small business establishment in Oklahoma as verified by the
23 qualified federal contract verifier shall be permitted to use
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1 qualified labor hours of the small business establishment to meet
2 the subcontracting requirements under this title.

3 ~~C.~~ D. In order to receive incentive payments, a qualified
4 federal contractor shall apply to the Oklahoma Department of
5 Commerce within one hundred eighty (180) days following the date of
6 the award of a qualified federal contract or award of a new
7 qualified subcontract under an existing qualified federal contract.
8 The application shall be on a form prescribed by the Department and
9 shall contain such information as may be required by the Department
10 to determine if the applicant is qualified. Once qualified by the
11 Department, the applicant shall submit qualified federal contracts
12 to the federal contract verifier. The federal contract verifier
13 shall establish with the applicant an information system(s) or
14 contract(s) as may be required to certify the total qualified labor
15 hours, qualified labor rates, and reimbursement through the
16 qualified federal contract. A qualified federal contractor may
17 apply for an effective date for a project, which shall not be more
18 than twenty-four (24) months from the date the application is
19 submitted to the Department. No state agency shall be required to
20 make any payment to a qualified federal contract verifier for any
21 information needed by the agency to perform any duty imposed upon it
22 pursuant to the provisions of Section 3601 et seq. of this title.
23 All costs for the federal contract verifier shall be reimbursed
24 through value-added services on the qualified federal contract or

1 other mechanisms agreed to by the federal contractor verifier and
2 the federal contract performers.

3 ~~D.~~ E. 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-nine
22 Thousand Four Hundred Nine Dollars (\$29,409.00), in any county.
23 This maximum wage threshold shall be indexed and modified from time
24 to time based on the latest Consumer Price Index year-to-date

1 percent change release as of the date of the annual average county
2 wage data release from the Bureau of Economic Analysis of the U.S.
3 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 Thirty-one Dollars (\$31.00)
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.~~ F. The Department shall determine if the applicant is
13 qualified to receive incentive payments using information supplied
14 to the Department by the qualified federal contractor verifier. The
15 NAICS code or codes under which the federal government awarded the
16 qualified federal contract shall be used to determine the basic
17 industry for a qualified federal contractor. For federal contracts
18 awarded under NAICS codes not within the definition of basic
19 industry pursuant to paragraph 1 of subsection A of Section 3603 of
20 this title, the Department of Commerce, with the federal contract
21 verifier, may evaluate and utilize individual statement of work
22 items that would qualify within a basic industry definition.

23 ~~F.~~ G. If the applicant is determined to be qualified by the
24 Department, the Department shall conduct a cost/benefit analysis to

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

19 ~~G.~~ H. Upon approval of such an application, the Department
20 shall notify the Tax Commission and shall provide it with a copy of
21 the contract that has been cosigned by the federal contractor
22 verifier and the results of the cost/benefit analysis. The Tax
23 Commission may require the qualified federal contractor, federal
24 contract verifier, and qualified subcontractors to submit such

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

18 ~~H.~~ I. For qualified federal contracts with periods of
19 performance exceeding two (2) years, if the actual annual verified
20 gross qualified labor hours for four (4) consecutive calendar
21 quarters does not equal or exceed Two Million Five Hundred Thousand
22 Dollars (\$2,500,000.00) within three (3) years of the start date, or
23 does not equal or exceed actual annual gross qualified labor hours
24 of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) at any

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

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

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

1 Oklahoma Quality Jobs Program Act, the Saving Quality Jobs Act, the
2 21st Century Quality Jobs Incentive Act or the Former Military
3 Facility Development Act for the performance of the same such
4 services under the qualified federal contract, each may choose to
5 defer in part or in entirety the other incentives for the qualified
6 federal contractor to receive the incentives pursuant to subsection
7 B of this section. The federal contract verifier shall confirm any
8 deferrals and ensure the total for all quality jobs incentive
9 payments on any individual does not exceed the total net benefit to
10 the state. Should neither the federal contractor nor the
11 subcontractor defer in part or in entirety their incentive payments
12 such that the total for all Quality Jobs incentive payments exceeds
13 the total net benefit to the state, the priority for incentive
14 payments shall go to the entity with the earliest recognized start
15 date ~~identified~~ identified within the current Department of
16 Commerce Quality Jobs contract.

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1 Passed the House of Representatives the 6th day of March, 2012.

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4 Presiding Officer of the House of
Representatives

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6 Passed the Senate the ____ day of _____, 2012.

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9 Presiding Officer of the Senate