

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 HOUSE BILL 1630

 By: Brown and Pittman

7 AS INTRODUCED

8 An Act relating to revenue and taxation; enacting the
9 Green Quality Jobs Act of 2011; amending 68 O.S.
10 2001, Sections 3603, as last amended by Section 1,
11 Chapter 347, O.S.L. 2010, and 3604, as last amended
12 by Section 5, Chapter 406, O.S.L. 2008 (68 O.S. Supp.
13 2010, Sections 3603 and 3604), which relate to the
14 Oklahoma Quality Jobs Program Act; modifying
15 definitions; providing for net benefit rate for
16 designated business activities; providing specialized
17 gross direct payroll requirements; providing for
18 noncodification; providing an effective date; and
19 declaring an emergency.

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 2011".

1 SECTION 2. AMENDATORY 68 O.S. 2001, Section 3603, as
2 last amended by Section 1, Chapter 347, O.S.L. 2010 (68 O.S. Supp.
3 2010, Section 3603), is amended to read as follows:

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

6 1. a. "Basic industry" means:

7 (1) those manufacturing activities defined or
8 classified in the NAICS Manual under Industry
9 Sector Nos. 31, 32 and 33, Industry Group No.
10 5111 or Industry No. 11331,

11 (2) those electric power generation, transmission and
12 distribution activities defined or classified in
13 the NAICS Manual under U.S. Industry Nos. 221111
14 through 221122, if:

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

18 (b) the exempt wholesale generator facility
19 consumes from sources located within the
20 state at least ninety percent (90%) of the
21 total energy used to produce the electrical
22 output which qualifies for the specialized
23 treatment provided by the Energy Policy Act

1 of 1992, P.L. 102-486, 106 Stat. 2776, as
2 amended, and federal regulations adopted
3 pursuant thereto,

4 (c) the exempt wholesale generator facility
5 sells to purchasers located outside the
6 state for consumption in activities located
7 outside the state at least ninety percent
8 (90%) of the total electrical energy output
9 which qualifies for the specialized
10 treatment provided by the Energy Policy Act
11 of 1992, P.L. 102-486, 106 Stat. 2776, as
12 amended, and federal regulations adopted
13 pursuant thereto, and

14 (d) the facility is constructed on or after July
15 1, 1996,

16 (3) those administrative and facilities support
17 service activities defined or classified in the
18 NAICS Manual under Industry Group Nos. 5611 and
19 5612, Industry Nos. 51821, 519130, 52232, 56142
20 and 54191 or U.S. Industry Nos. 524291 and
21 551114, those other support activities for air
22 transportation defined or classified in the NAICS
23 Manual under Industry Group No. 488190, and those

1 support, repair, and maintenance service
2 activities for the wind industry defined or
3 classified in the NAICS Manual under Industry
4 Group No. 811310,

5 (4) those professional, scientific and technical
6 service activities defined or classified in the
7 NAICS Manual under U.S. Industry Nos. 541710 and
8 541380,

9 (5) distribution centers for retail or wholesale
10 businesses defined or classified in the NAICS
11 Manual under Sector No. 42, if forty percent
12 (40%) or more of the inventory processed through
13 such warehouse is shipped out-of-state,

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

19 (7) (a) those air transportation activities defined
20 or classified in the NAICS Manual under
21 Industry Group No. 4811, if the following
22 facilities are located in this state:
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1 (i) the corporate headquarters of an
2 establishment classified therein, and
3 (ii) a facility or facilities at which
4 reservations for transportation
5 provided by such an establishment are
6 processed, whether such services are
7 performed by employees of the
8 establishment, by employees of a
9 subsidiary of or other entity
10 affiliated with the establishment or by
11 employees of an entity with whom the
12 establishment has contracted for the
13 performance of such services; provided,
14 this provision shall not disqualify an
15 establishment which uses an out-of-
16 state entity or employees for some
17 reservations services, or

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

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

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

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

3 (a) those transportation and warehousing
4 activities defined or classified in the
5 NAICS Manual under Industry Subsector No.
6 493, if not otherwise listed in this
7 paragraph, Industry Subsector No. 484 and
8 Industry Group Nos. 4884 through 4889,

9 (b) those passenger transportation activities
10 defined or classified in the NAICS Manual
11 under Industry Nos. 561510, 561520 and
12 561599,

13 (c) those freight or cargo transportation
14 activities defined or classified in the
15 NAICS Manual under Industry No. 541614,

16 (d) those insurance activities defined or
17 classified in the NAICS Manual under
18 Industry Group No. 5241,

19 (e) those mailing, reproduction, commercial art
20 and photography and stenographic service
21 activities defined or classified in the
22 NAICS Manual under U.S. Industry Nos.
23 541430, 541860, 541922, 561439 and 561492,

1 (f) those services to dwellings and other
2 buildings, as defined or classified in the
3 NAICS Manual under Industry Group No. 5617,
4 excluding U.S. Industry No. 561730,

5 (g) those equipment rental and leasing
6 activities defined or classified in the
7 NAICS Manual under Industry Group Nos. 5323
8 and 5324,

9 (h) those employment services defined or
10 classified in the NAICS Manual under
11 Industry Group No. 5613,

12 (i) those information technology and other
13 computer-related service activities defined
14 or classified in the NAICS Manual under
15 Industry Group Nos. 5112, 5182, 5191 and
16 5415,

17 (j) those business support service activities
18 defined or classified in the NAICS Manual
19 under U.S. Industry Nos. 561410 through
20 561439, Industry Group No. 5616 and Industry
21 No. 51911,

- 1 (k) those medical and diagnostic laboratory
2 activities defined or classified in the
3 NAICS Manual under Industry Group No. 6215,
4 (l) those professional, scientific and technical
5 service activities defined or classified in
6 the NAICS Manual under Industry Group Nos.
7 5412, 5414, 5415, 5416 and 5417, Industry
8 Nos. 54131, 54133, 54136, 54137 and 54182,
9 and U.S. Industry No. 541990, if not
10 otherwise listed in this paragraph,
11 (m) those communication service activities
12 defined or classified in the NAICS Manual
13 under Industry Nos. 51741 and 51791,
14 (n) those refuse systems activities defined or
15 classified in the NAICS Manual under
16 Industry Group No. 5622, provided that the
17 establishment is primarily engaged in the
18 capture and distribution of methane gas
19 produced within a landfill,
20 (o) general wholesale distribution of groceries,
21 defined or classified in the NAICS Manual
22 under Industry Group Nos. 4244 and 4245,
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- 1 (p) those activities relating to processing of
2 insurance claims, defined or classified in
3 the NAICS Manual under U.S. Industry Nos.
4 524210 and 524292; provided, activities
5 described in U.S. Industry Nos. 524210 and
6 524292 in the NAICS Manual other than
7 processing of insurance claims shall not be
8 included for purposes of this subdivision,
- 9 (q) those agricultural activities classified in
10 the NAICS Manual under U.S. Industry Nos.
11 112120 and 112310,
- 12 (r) those professional organization activities
13 classified in the NAICS Manual under U.S.
14 Industry No. 813920,
- 15 (s) alternative energy structure construction
16 classified in the NAICS Manual under U.S.
17 Industry No. 237130,
- 18 (t) solar reflective coating application
19 classified in the NAICS Manual under U.S.
20 Industry No. 238160, and
- 21 (u) solar heating equipment installation
22 classified in the NAICS Manual under U.S.
23 Industry No. 238220;

1 (10) those activities related to extraction of crude
2 petroleum and natural gas defined or classified
3 in the NAICS Manual under Industry Group No.
4 2111, subject to the limitations provided in
5 paragraph 3 of this subsection and paragraph 3 of
6 subsection B of this section,

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

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

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

5 (14) those support activities for rail transportation
6 and those support activities for water
7 transportation defined or classified in the NAICS
8 Manual under U.S. Industry Nos. 4882 and 4883.

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

- 18 (1) not more than fifty percent (50%) of the premium
19 shall be paid by the employee,
20 (2) coverage for basic hospital care,
21 (3) coverage for physician care,
22 (4) coverage for mental health care,
23 (5) coverage for substance abuse treatment,

1 (6) coverage for prescription drugs, and

2 (7) coverage for prenatal care;

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

5 a. beneficial ownership of more than fifty percent (50%)
6 in value and more than fifty percent (50%) in voting
7 power of the outstanding equity securities of the
8 transferred establishment, or

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

11 A transferor shall be treated as related to a transferee if more
12 than fifty percent (50%) of the voting interests of the transferor
13 and transferee are owned, directly or indirectly, by the other or
14 are owned, directly or indirectly, by the same person or persons,
15 unless such transferred establishment has an outstanding class of
16 equity securities registered under Sections 12(b) or 15(d) of the
17 Securities Exchange Act of 1934, as amended, in which event the
18 transferor and transferee will be treated as unrelated; provided, an
19 establishment applying for the Oklahoma Quality Jobs Program Act as
20 a result of a change of control event is required to apply within
21 one hundred eighty (180) days of the change in control event to
22 qualify for consideration. An establishment entering the Oklahoma
23 Quality Jobs Program Act as the result of a change of control event

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

3 3. "New direct job":

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

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

1 independent contractors of an establishment that
2 qualifies for incentive payments pursuant to division
3 (12) of subparagraph a of paragraph 1 of this
4 subsection and which is organized under Oklahoma law
5 or that is lawfully registered to do business in the
6 state and which does have its principal place of
7 business located in the state and owns real or
8 personal property having a market value of at least
9 One Million Dollars (\$1,000,000.00) located in the
10 state; provided, that if an application of an
11 establishment is approved by the Department of
12 Commerce after a change in control event and the
13 Director of the Department of Commerce determines that
14 the jobs located at such establishment are likely to
15 leave the state, "new direct job" shall include
16 employment that existed in this state prior to the
17 date of application which is retained in this state by
18 the new establishment following a change in control
19 event, if such job otherwise qualifies as a new direct
20 job, and

- 21 b. shall include full-time-equivalent employment in this
22 state of employees who are employed by an employment
23 agency or similar entity other than the establishment

1 which has qualified to receive an incentive payment
2 and who are leased or otherwise provided under
3 contract to the qualified establishment, if such job
4 did not exist in this state prior to the date of
5 approval by the Department of the application of the
6 establishment or the job otherwise qualifies as a new
7 direct job following a change in control event. A job
8 shall be deemed to exist in this state prior to
9 approval of an application if the activities and
10 functions for which the particular job exists have
11 been ongoing at any time within six (6) months prior
12 to such approval. With respect to establishments
13 defined in division (10) of subparagraph a of
14 paragraph 1 of this subsection, new direct jobs shall
15 be limited to those jobs directly comprising the
16 corporate headquarters of or directly relating to
17 administrative, financial, engineering, surveying,
18 geological or geophysical services performed by the
19 establishment. Under no circumstances shall
20 employment relating to drilling or field services be
21 considered new direct jobs;

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

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

- 7 a. the costs of education of new state resident children,
- 8 b. the costs of public health, public safety and
9 transportation services to be provided to new state
10 residents,
- 11 c. the costs of other state services to be provided to
12 new state residents, and
- 13 d. the costs of other state services;

14 6. "Estimated net direct state benefits" means the estimated
15 direct state benefits less the estimated direct state costs;

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

- 18 a. except as otherwise provided in this paragraph, the
19 net benefit rate may be variable and shall not exceed
20 five percent (5%),
- 21 b. the net benefit rate shall not exceed six percent (6%)
22 in connection with an establishment which is owned and
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1 operated by an entity which has been awarded a United
2 States Department of Defense contract for which:

3 (1) bids were solicited and accepted by the United
4 States Department of Defense from facilities
5 located outside this state,

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

8 (3) the average annual salary, excluding benefits
9 which are not subject to Oklahoma income taxes,
10 for new direct jobs created as a direct result of
11 the awarding of the contract is projected by the
12 Department of Commerce to equal or exceed Forty
13 Thousand Dollars (\$40,000.00) within three (3)
14 years of the date of the first incentive payment,

15 c. except as otherwise provided in subparagraph d of this
16 paragraph, in no event shall incentive payments,
17 cumulatively, exceed the estimated net direct state
18 benefits,

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

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

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1 (2) in a county in which:

2 (a) the per capita personal income, as
3 determined by the Department, is eighty-five
4 percent (85%) or less of the statewide
5 average per capita personal income,

6 (b) the population has decreased over the
7 previous ten (10) years, as determined by
8 the State Data Center based on the most
9 recent U.S. Department of Commerce data, or

10 (c) the unemployment rate exceeds the lesser of
11 five percent (5%) or two percentage points
12 above the state average unemployment rate as
13 certified by the Oklahoma Employment
14 Security Commission,

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

17 (1) is, as of the date of application, receiving
18 incentive payments pursuant to the Oklahoma
19 Quality Jobs Program Act and has been receiving
20 such payments for at least one (1) year prior to
21 the date of application, and

22 (2) expands its operations in this state by creating
23 additional new direct jobs which pay average
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1 annualized wages which equal or exceed one
2 hundred fifty percent (150%) of the average
3 annualized wages of new direct jobs on which
4 incentive payments were received during the
5 preceding calendar year, ~~and~~

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

1 on or after January 1 of any applicable year for which
2 the net benefit rate is modified as required by this
3 subparagraph, and

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

6 (1) Industry Group No. 221119 (solar electric power
7 generation or wind electric power generation),

8 (2) Industry Group No. 237130 (solar power structure
9 construction or wind power structure
10 construction),

11 (3) Industry Group No. 333414 (solar energy heating
12 equipment manufacturing),

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

15 (5) Industry Group No. 334413 (solar cells
16 manufacturing),

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

20 (7) a business primarily engaged in the conversion of
21 passenger or commercial motor vehicles using
22 conventional gasoline or diesel combustion

1 engines to a propulsion system using compressed
2 natural gas, and
3 (8) a business engaged in the manufacture of
4 components that can be used for a compressed
5 natural gas fill station.

6 Incentive payments made pursuant to the provisions of this
7 subparagraph shall be based upon payroll associated with such new
8 direct jobs. For purposes of this subparagraph, the amount of
9 health insurance premiums or other benefits paid by the
10 establishment shall not be included for purposes of computation of
11 the average annualized wage;

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

14 9. a. "Establishment" means any business or governmental
15 entity, no matter what legal form, including, but not
16 limited to, a sole proprietorship; partnership;
17 limited liability company; corporation or combination
18 of corporations which have a central parent
19 corporation which makes corporate management decisions
20 such as those involving consolidation, acquisition,
21 merger or expansion; federal agency; political
22 subdivision of the State of Oklahoma; or trust
23 authority; provided, distinct, identifiable subunits

1 of such entities may be determined to be an
2 establishment, for all purposes of Section 3601 et
3 seq. of this title, by the Department subject to the
4 following conditions:

5 (1) within three (3) years of the first complete
6 calendar quarter following the start date, the
7 entity must have a minimum payroll of Two Million
8 Five Hundred Thousand Dollars (\$2,500,000.00) and
9 the subunit must also have or will have a minimum
10 payroll of Two Million Five Hundred Thousand
11 Dollars (\$2,500,000.00),

12 (2) the subunit is engaged in an activity or service
13 or produces a product which is demonstratively
14 independent and separate from the entity's other
15 activities, services or products and could be
16 conducted or produced in the absence of any other
17 activity, service or production of the entity,

18 (3) has an accounting system capable of tracking or
19 facilitating an audit of the subunit's payroll,
20 expenses, revenue and production. Limited
21 interunit overlap of administrative and
22 purchasing functions shall not disqualify a
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1 subunit from consideration as an establishment by
2 the Department,

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

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

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

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

3 11. "Qualified federal contract" means a contract between an
4 agency or instrumentality of the United States government, including
5 but not limited to the Department of Defense or any branch of the
6 United States Armed Forces, but exclusive of any contract performed
7 for the Federal Emergency Management Agency as a direct result of a
8 natural disaster declared by the Governor or the President of the
9 United States with respect to damage to property located in Oklahoma
10 or loss of life or personal injury to persons in Oklahoma, and a
11 lawfully recognized business entity, whether or not the business
12 entity is organized under the laws of the State of Oklahoma or
13 whether or not the principal place of business of the business
14 entity is located within the State of Oklahoma, for the performance
15 of services, including but not limited to testing, research,
16 development, consulting or other services in a basic industry, if
17 the contract involves the performance of such services that are
18 capable of being accomplished without a State of Oklahoma workforce
19 and are performed by a State of Oklahoma workforce on or after July
20 1, 2009, by the employees of the business entity within the State of
21 Oklahoma or if the contract involves the performance of such
22 services performed on or after July 1, 2009, by employees of a
23 lawfully recognized business entity that is a subcontractor of the

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

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

- 16 a. established multiyear classified and unclassified
17 indefinite-delivery/indefinite-quantity federal
18 contract vehicles in excess of Fifty Million Dollars
19 (\$50,000,000.00),
20 b. current capability to sponsor and maintain personnel
21 security clearances and authorized by the federal
22 government to handle and perform classified work up to
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1 the Top Secret Sensitive Compartmented Information
2 levels,

3 c. at least one on-site federally certified Sensitive
4 Compartmented Information Facility,

5 d. on-site secure mass data storage complex with the
6 capability of isolating, segregating and protecting
7 corporate proprietary and classified information,

8 e. trusted agent status by maintaining no ownership of,
9 vested interest in, nor royalty production from any
10 intellectual property,

11 f. at least one hundred thousand (100,000) square feet of
12 configurable laboratory and support space,

13 g. the direct access to restricted air space through a
14 formalized memorandum of agreement with the Department
15 of Defense,

16 h. at least five thousand (5,000) acres available for
17 outdoor testing and training facilities, and

18 i. the ability to house state-of-the-art surety
19 facilities, including chemical, biological,
20 radiological, explosives, electronics, and unmanned
21 systems laboratories and ranges;

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

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

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

13 16. "Total qualified labor hours" means the reimbursed payment
14 amount for hours of work performed by the State of Oklahoma
15 workforce of a qualified federal contractor or the State of Oklahoma
16 workforce of a subcontractor of a qualified federal contractor and
17 which are required for the full performance of a qualified federal
18 contract;

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

22 18. "Qualified federal contractor" means a business entity:
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- 1 a. maintaining a prime contract with the federal
2 government as defined in paragraph 11 of this
3 subsection,
4 b. providing notice of intent to apply to the Department
5 within one hundred eighty (180) days of the effective
6 date of this act or one hundred eighty (180) days of
7 the date of the award of a qualified federal contract
8 or award of a new qualified subcontract under an
9 existing qualified federal contract, and
10 c. adding substantively to the contract by performing at
11 least eight percent (8%) of the total labor whether
12 qualified and nonqualified labor as determined by the
13 federal contractor verifier on a direct contract or
14 individual task order or delivery order on an
15 indefinite-delivery/indefinite-quantity or other
16 blanket contract vehicle.

17 Should a prime contractor provide notice to the Department of
18 its intent not to apply for incentive for a qualified federal
19 contract or fails to qualify under the criteria above,
20 subcontractors in order of tier ranking as determined by the federal
21 contract verifier may assume the role of the prime and apply to
22 become a qualified federal contractor provided the entity meets the
23 same criteria above with the exception that notice of intent to

1 apply with the Department must be provided within sixty (60) days of
2 the prime's disqualification or one hundred eighty (180) days of the
3 award of its subcontract, whichever is later.

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

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

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

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

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

10 SECTION 3. AMENDATORY 68 O.S. 2001, Section 3604, as
11 last amended by Section 5, Chapter 406, O.S.L. 2008 (68 O.S. Supp.
12 2010, Section 3604), is amended to read as follows:

13 Section 3604. A. Except as otherwise provided in subsection I
14 of this section, an establishment which meets the qualifications
15 specified in the Oklahoma Quality Jobs Program Act may receive
16 quarterly incentive payments for a ten-year period from the Oklahoma
17 Tax Commission pursuant to the provisions of the Oklahoma Quality
18 Jobs Program Act; provided, such an establishment defined or
19 classified in the NAICS Manual under U.S. Industry No. 711211 (2007
20 version) may receive quarterly incentive payments for a fifteen-year
21 period. The amount of such payments shall be equal to the net
22 benefit rate multiplied by the actual gross payroll of new direct
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1 jobs for a calendar quarter as verified by the Oklahoma Employment
2 Security Commission.

3 B. In order to receive incentive payments, an establishment
4 shall apply to the Oklahoma Department of Commerce. The application
5 shall be on a form prescribed by the Department and shall contain
6 such information as may be required by the Department to determine
7 if the applicant is qualified. An establishment may apply for an
8 effective date for a project, which shall not be more than twenty-
9 four (24) months from the date the application is submitted to the
10 Department.

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

14 1. Be engaged in a basic industry;

15 2. Have an annual gross payroll for new direct jobs projected
16 by the Department to equal or exceed Two Million Five Hundred
17 Thousand Dollars (\$2,500,000.00) within three (3) years of the first
18 complete calendar quarter following the start date; and

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

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

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

- 6 a. have an annual gross payroll for new direct jobs
7 projected by the Department to equal or exceed One
8 Million Five Hundred Thousand Dollars (\$1,500,000.00)
9 within three (3) years of the first complete calendar
10 quarter following the start date and make, or which
11 will make within one (1) year, at least seventy-five
12 percent (75%) of its total sales, as determined by the
13 Incentive Approval Committee pursuant to the
14 provisions of subsection B of Section 3603 of this
15 title, to out-of-state customers or buyers, to in-
16 state customers or buyers if the product or service is
17 resold by the purchaser to an out-of-state customer or
18 buyer for ultimate use, or to the federal government,
19 unless the annual gross payroll equals or exceeds Two
20 Million Five Hundred Thousand Dollars (\$2,500,000.00)
21 in which case the requirements for purchase of output
22 provided by this subparagraph shall not apply, and
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1 b. have a number of full-time-equivalent employees
2 working an average of thirty (30) or more hours per
3 week in new direct jobs equal to or in excess of
4 eighty percent (80%) of the total number of new direct
5 jobs; ~~and~~

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

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

13 b. have a number of full-time-equivalent employees
14 working an average of thirty (30) or more hours per
15 week in new direct jobs equal to or in excess of
16 eighty percent (80%) of the total number of new direct
17 jobs; and

18 3. Industry Groups described by the NAICS Manual (2007 version)
19 or other business activity specified in subparagraphs a through h of
20 this paragraph, any of which businesses shall be required to have an
21 annual gross payroll for new direct jobs projected by the Department
22 to equal or exceed One Million Two Hundred Thousand Dollars
23 (\$1,200,000.00) within three (3) years of the first complete

1 calendar quarter following the start date, and have a number of
2 full-time-equivalent employees working an average of thirty (30) or
3 more hours per week in new direct jobs equal to or in excess of
4 eighty percent (80%) of the total number of new direct jobs, as
5 follows:

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

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

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

- 6 a. is a federal Superfund removal site,
7 b. is listed on the National Priorities List established
8 under Section 9605 of Title 42 of the United States
9 Code,
10 c. has been formally deferred to the state in lieu of
11 listing on the National Priorities List, or
12 d. has been determined by the Department of Environmental
13 Quality to be contaminated by any substance regulated
14 by a federal or state statute governing environmental
15 conditions for real property pursuant to an order of
16 the Department of Environmental Quality,

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

20 2. In order to qualify for the incentive payments pursuant to
21 this subsection, the establishment shall conduct the activity
22 resulting in at least fifty percent (50%) of its Oklahoma taxable
23 income or adjusted gross income, as determined under Section 2358 of

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

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

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

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

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

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

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1 (2) an economic circumstance in which a significant
2 number of jobs within a particular county of this
3 state have been lost due to an establishment
4 changing its structure, consolidating with
5 another establishment, closing or moving all or
6 part of its operations out of this state, and

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

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

1 H. The Department shall determine if the applicant is qualified
2 to receive incentive payments.

3 I. If the applicant is determined to be qualified by the
4 Department and is not subject to the provisions of subparagraph d of
5 paragraph 7 of subsection A of Section 3603 of this title, the
6 Department shall conduct a cost/benefit analysis to determine the
7 estimated net direct state benefits and the net benefit rate
8 applicable for a ten-year period beginning with the first complete
9 calendar quarter following the start date and to estimate the amount
10 of gross payroll for a ten-year period beginning with the first
11 complete calendar quarter following the start date or for a fifteen-
12 year period for an establishment defined or classified in the NAICS
13 Manual under U.S. Industry No. 711211 (2007 version). In conducting
14 such cost/benefit analysis, the Department shall consider
15 quantitative factors, such as the anticipated level of new tax
16 revenues to the state along with the added cost to the state of
17 providing services, and such other criteria as deemed appropriate by
18 the Department. In no event shall incentive payments, cumulatively,
19 exceed the estimated net direct state benefits, except for
20 applicants subject to the provisions of subparagraph d of paragraph
21 7 of subsection A of Section 3603 of this title.

22 J. Upon approval of such an application, the Department shall
23 notify the Tax Commission and shall provide it with a copy of the

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

19 K. A municipality with a population of less than one hundred
20 thousand (100,000) persons in which an establishment eligible to
21 receive quarterly incentive payments pursuant to the provisions of
22 this section is located may file a claim with the Tax Commission for
23 up to twenty-five percent (25%) of the amount of such payment. The
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1 amount of such claim shall not exceed amounts paid by the
2 municipality for direct costs of municipal infrastructure
3 improvements to provide water and sewer service to the
4 establishment. Such claim shall not be approved by the Tax
5 Commission unless the municipality and the establishment have
6 entered into a written agreement for such claims to be filed by the
7 municipality prior to submission of the application of the
8 establishment pursuant to the provisions of this section. If such
9 claim is approved, the amount of the payment to the establishment
10 made pursuant to the provisions of Section 3606 of this title shall
11 be reduced by the amount of the approved claim by the municipality
12 and the Tax Commission shall issue a warrant to the municipality in
13 the amount of the approved claim in the same manner as warrants are
14 issued to qualifying establishments.

15 SECTION 4. This act shall become effective July 1, 2011.

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

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21 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
22 03-03-2011 - DO PASS, As Coauthored.

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