

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 53rd Legislature (2012)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3005

By: Kern of the House

and

Holt of the Senate

8
9
10 COMMITTEE SUBSTITUTE

11 [revenue and taxation - Oklahoma Quality Jobs
12 Program Act - net benefit rate - income tax rate -
13 effective date -
14
15 emergency]

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

19 SECTION 1. AMENDATORY 68 O.S. 2011, Section 3603, is
20 amended to read as follows:

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

23 1. a. "Basic industry" means:

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

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

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

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

21 (c) the exempt wholesale generator facility
22 sells to purchasers located outside the
23 state for consumption in activities located
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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, those other support activities for air
16 transportation defined or classified in the NAICS
17 Manual under Industry Group No. 488190, and those
18 support, repair, and maintenance service
19 activities for the wind industry defined or
20 classified in the NAICS Manual under Industry
21 Group No. 811310,

22 (4) those professional, scientific and technical
23 service activities defined or classified in the
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1 NAICS Manual under U.S. Industry Nos. 541710 and
2 541380,

3 (5) distribution centers for retail or wholesale
4 businesses defined or classified in the NAICS
5 Manual under Sector No. 42, if forty percent
6 (40%) or more of the inventory processed through
7 such warehouse is shipped out-of-state,

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

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

17 (i) the corporate headquarters of an
18 establishment classified therein, and

19 (ii) a facility or facilities at which
20 reservations for transportation
21 provided by such an establishment are
22 processed, whether such services are
23 performed by employees of the
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1 establishment, by employees of a
2 subsidiary of or other entity
3 affiliated with the establishment or by
4 employees of an entity with whom the
5 establishment has contracted for the
6 performance of such services; provided,
7 this provision shall not disqualify an
8 establishment which uses an out-of-
9 state entity or employees for some
10 reservations services, or

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

3 (8) flight training services activities defined or
4 classified in the NAICS Manual under U.S.

5 Industry Group No. 611512, which for purposes of
6 Section 3601 et seq. of this title shall include
7 new direct jobs for which gross payroll existed
8 on or after January 1, 2003, as identified in the
9 NAICS Manual,

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

20 (a) those transportation and warehousing
21 activities defined or classified in the
22 NAICS Manual under Industry Subsector No.
23 493, if not otherwise listed in this
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1 paragraph, Industry Subsector No. 484 and
2 Industry Group Nos. 4884 through 4889,

3 (b) those passenger transportation activities
4 defined or classified in the NAICS Manual
5 under Industry Nos. 561510, 561520 and
6 561599,

7 (c) those freight or cargo transportation
8 activities defined or classified in the
9 NAICS Manual under Industry No. 541614,

10 (d) those insurance activities defined or
11 classified in the NAICS Manual under
12 Industry Group No. 5241,

13 (e) those mailing, reproduction, commercial art
14 and photography and stenographic service
15 activities defined or classified in the
16 NAICS Manual under U.S. Industry Nos.

17 541430, 541860, 541922, 561439 and 561492,

18 (f) those services to dwellings and other
19 buildings, as defined or classified in the
20 NAICS Manual under Industry Group No. 5617,
21 excluding U.S. Industry No. 561730,

22 (g) those equipment rental and leasing
23 activities defined or classified in the
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1 NAICS Manual under Industry Group Nos. 5323
2 and 5324,

3 (h) those employment services defined or
4 classified in the NAICS Manual under
5 Industry Group No. 5613,

6 (i) those information technology and other
7 computer-related service activities defined
8 or classified in the NAICS Manual under
9 Industry Group Nos. 5112, 5182, 5191 and
10 5415,

11 (j) those business support service activities
12 defined or classified in the NAICS Manual
13 under U.S. Industry Nos. 561410 through
14 561439, Industry Group No. 5616 and Industry
15 No. 51911,

16 (k) those medical and diagnostic laboratory
17 activities defined or classified in the
18 NAICS Manual under Industry Group No. 6215,

19 (l) those professional, scientific and technical
20 service activities defined or classified in
21 the NAICS Manual under Industry Group Nos.
22 5412, 5414, 5415, 5416 and 5417, Industry
23 Nos. 54131, 54133, 54136, 54137 and 54182,

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1 and U.S. Industry No. 541990, if not
2 otherwise listed in this paragraph,

3 (m) those communication service activities
4 defined or classified in the NAICS Manual
5 under Industry Nos. 51741 and 51791,

6 (n) those refuse systems activities defined or
7 classified in the NAICS Manual under
8 Industry Group No. 5622, provided that the
9 establishment is primarily engaged in the
10 capture and distribution of methane gas
11 produced within a landfill,

12 (o) general wholesale distribution of groceries,
13 defined or classified in the NAICS Manual
14 under Industry Group Nos. 4244 and 4245,

15 (p) those activities relating to processing of
16 insurance claims, defined or classified in
17 the NAICS Manual under U.S. Industry Nos.
18 524210 and 524292; provided, activities
19 described in U.S. Industry Nos. 524210 and
20 524292 in the NAICS Manual other than
21 processing of insurance claims shall not be
22 included for purposes of this subdivision,
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1 (q) those agricultural activities classified in
2 the NAICS Manual under U.S. Industry Nos.
3 112120 and 112310,

4 (r) those professional organization activities
5 classified in the NAICS Manual under U.S.
6 Industry No. 813920,

7 (s) alternative energy structure construction
8 classified in the NAICS Manual under U.S.
9 Industry No. 237130,

10 (t) solar reflective coating application
11 classified in the NAICS Manual under U.S.
12 Industry No. 238160, and

13 (u) solar heating equipment installation
14 classified in the NAICS Manual under U.S.
15 Industry No. 238220;

16 (10) those activities related to extraction of crude
17 petroleum and natural gas defined or classified
18 in the NAICS Manual under Industry Group No.
19 2111, subject to the limitations provided in
20 paragraph 3 of this subsection and paragraph 3 of
21 subsection B of this section,

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

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

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

20 (14) those support activities for rail transportation
21 and those support activities for water
22 transportation defined or classified in the NAICS
23 Manual under U.S. Industry Nos. 4882 and 4883.

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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

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

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

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1 3604 of this title and with respect to an
2 establishment qualifying for incentive payments
3 pursuant to division (12) of subparagraph a of
4 paragraph 1 of this subsection shall not include
5 compensation paid to an employee or independent
6 contractor for an athletic contest conducted in the
7 state if the compensation is paid by an entity that
8 does not have its principal place of business in the
9 state or that does not own real or personal property
10 having a market value of at least One Million Dollars
11 (\$1,000,000.00) located in the state, and the
12 employees or independent contractors of such entity
13 are compensated to compete against the employees or
14 independent contractors of an establishment that
15 qualifies for incentive payments pursuant to division
16 (12) of subparagraph a of paragraph 1 of this
17 subsection and which is organized under Oklahoma law
18 or that is lawfully registered to do business in the
19 state and which does have its principal place of
20 business located in the state and owns real or
21 personal property having a market value of at least
22 One Million Dollars (\$1,000,000.00) located in the
23 state; provided, that if an application of an
24

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

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

1 been ongoing at any time within six (6) months prior
2 to such approval. With respect to establishments
3 defined in division (10) of subparagraph a of
4 paragraph 1 of this subsection, new direct jobs shall
5 be limited to those jobs directly comprising the
6 corporate headquarters of or directly relating to
7 administrative, financial, engineering, surveying,
8 geological or geophysical services performed by the
9 establishment. Under no circumstances shall
10 employment relating to drilling or field services be
11 considered new direct jobs;

12 4. "Estimated direct state benefits" means the tax revenues
13 projected by the Department to accrue to the state as a result of
14 new direct jobs;

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

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

1 d. the costs of other state services;

2 6. "Estimated net direct state benefits" means the estimated
3 direct state benefits less the estimated direct state costs;

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

6 a. except as otherwise provided in this paragraph, the
7 net benefit rate may be variable and shall not exceed
8 ~~five percent (5%)~~ the highest individual income tax
9 rate authorized pursuant to the provisions of Section
10 2355 of this title or five percent (5%), whichever
11 figure is less, or such other provision of state
12 income tax law authorizing an individual income tax
13 rate,

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

18 (1) bids were solicited and accepted by the United
19 States Department of Defense from facilities
20 located outside this state,

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

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

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

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

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

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

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

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

20 Incentive payments made pursuant to the provisions of this
21 subparagraph shall be based upon payroll associated with such new
22 direct jobs. For purposes of this subparagraph, the amount of
23 health insurance premiums or other benefits paid by the
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1 establishment shall not be included for purposes of computation of
2 the average annualized wage;

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

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

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

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

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

16 (4) the entity has not previously had a subunit
17 determined to be an establishment pursuant to
18 this section; provided, the restriction set forth
19 in this division shall not apply to subunits
20 which qualify pursuant to the provisions of
21 subparagraph b of paragraph 7 of this subsection,
22 and

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

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

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

17 11. "Qualified federal contract" means a contract between an
18 agency or instrumentality of the United States government, including
19 but not limited to the Department of Defense or any branch of the
20 United States Armed Forces, but exclusive of any contract performed
21 for the Federal Emergency Management Agency as a direct result of a
22 natural disaster declared by the Governor or the President of the
23 United States with respect to damage to property located in Oklahoma

1 or loss of life or personal injury to persons in Oklahoma, and a
2 lawfully recognized business entity, whether or not the business
3 entity is organized under the laws of the State of Oklahoma or
4 whether or not the principal place of business of the business
5 entity is located within the State of Oklahoma, for the performance
6 of services, including but not limited to testing, research,
7 development, consulting or other services in a basic industry, if
8 the contract involves the performance of such services performed on
9 or after July 1, 2009, by the employees of the business entity
10 within the State of Oklahoma or if the contract involves the
11 performance of such services performed on or after July 1, 2009, by
12 employees of a lawfully recognized business entity that is a
13 subcontractor of the business entity with which the prime contract
14 has been formed. A qualified federal contract described in this
15 paragraph shall not qualify unless both the qualified federal
16 contractor and any subcontractors originally involved in the work or
17 added subsequently during the period of performance verify to the
18 qualified federal contractor verifier that it offers, or will offer
19 within one hundred eighty (180) days of employment of its respective
20 employees, a basic health benefits plan as described in subparagraph
21 b of paragraph 1 of this subsection to individuals who perform
22 qualified labor hours in this state;

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

- 6 a. established multiyear classified and unclassified
7 indefinite-delivery/indefinite-quantity federal
8 contract vehicles in excess of Fifty Million Dollars
9 (\$50,000,000.00),
- 10 b. current capability to sponsor and maintain personnel
11 security clearances and authorized by the federal
12 government to handle and perform classified work up to
13 the Top Secret Sensitive Compartmented Information
14 levels,
- 15 c. at least one on-site federally certified Sensitive
16 Compartmented Information Facility,
- 17 d. on-site secure mass data storage complex with the
18 capability of isolating, segregating and protecting
19 corporate proprietary and classified information,
- 20 e. trusted agent status by maintaining no ownership of,
21 vested interest in, nor royalty production from any
22 intellectual property,

- 1 f. at least one hundred thousand (100,000) square feet of
2 configurable laboratory and support space,
3 g. the direct access to restricted air space through a
4 formalized memorandum of agreement with the Department
5 of Defense,
6 h. at least five thousand (5,000) acres available for
7 outdoor testing and training facilities, and
8 i. the ability to house state-of-the-art surety
9 facilities, including chemical, biological,
10 radiological, explosives, electronics, and unmanned
11 systems laboratories and ranges;

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

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

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

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

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

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

- 11 a. maintaining a prime contract with the federal
12 government as defined in paragraph 11 of this
13 subsection,
- 14 b. providing notice of intent to apply to the Department
15 within one hundred eighty (180) days of the effective
16 date of this act or one hundred eighty (180) days of
17 the date of the award of a qualified federal contract
18 or award of a new qualified subcontract under an
19 existing qualified federal contract, and
- 20 c. adding substantively to the contract by performing at
21 least eight percent (8%) of the total labor whether
22 qualified and nonqualified labor as determined by the
23 federal contractor verifier on a direct contract or

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

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

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

20 1. Upon initial application on a form approved by the
21 Committee, if an establishment is engaged in a basic industry as
22 defined in subdivision (b) of division (7) or in subdivisions (a)
23 through (p) of division (9) of subparagraph a of paragraph 1 of
24

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

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

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

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

19 SECTION 2. This act shall become effective July 1, 2012.

20 SECTION 3. It being immediately necessary for the preservation
21 of the public peace, health and safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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4 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
5 02/23/2012 - DO PASS, As Amended and Coauthored.

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