

1 **SENATE FLOOR VERSION**

2 February 12, 2013

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 613

By: Brinkley of the Senate

and

McNiel of the House

6
7
8
9 [incentive payments - modifying definition of basic
10 industry - modifying requirements for incentive
11 payment application - effective date]
12

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

14 SECTION 1. AMENDATORY 68 O.S. 2011, Section 3603, as
15 amended by Section 1, Chapter 310, O.S.L. 2012 (68 O.S. Supp. 2012,
16 Section 3603), is amended to read as follows:

17 Section 3603. A. As used in ~~Section 3601 et seq. of this title~~
18 the Oklahoma Quality Jobs Program Act:

19 1. a. "Basic industry" means:

- 20 (1) those manufacturing activities defined or
21 classified in the NAICS Manual under Industry
22 Sector Nos. 31, 32 and 33, Industry Group No.
23 5111 or Industry No. 11331,
24

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

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

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

17 (c) the exempt wholesale generator facility
18 sells to purchasers located outside the
19 state for consumption in activities located
20 outside the state at least ninety percent
21 (90%) of the total electrical energy output
22 which qualifies for the specialized
23 treatment provided by the Energy Policy Act
24 of 1992, P.L. 102-486, 106 Stat. 2776, as

1 amended, and federal regulations adopted
2 pursuant thereto, and

3 (d) the facility is constructed on or after July
4 1, 1996,

5 (3) those administrative and facilities support
6 service activities defined or classified in the
7 NAICS Manual under Industry Group Nos. 5611 and
8 5612, Industry Nos. 51821, 519130, 52232, 56142
9 and 54191 or U.S. Industry Nos. 524291 and
10 551114, those other support activities for air
11 transportation defined or classified in the NAICS
12 Manual under Industry Group No. 488190, and those
13 support, repair, and maintenance service
14 activities for the wind industry defined or
15 classified in the NAICS Manual under Industry
16 Group No. 811310,

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

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

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

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

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

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

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

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

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

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

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

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

13 (a) those transportation and warehousing
14 activities defined or classified in the
15 NAICS Manual under Industry Subsector No.
16 493, if not otherwise listed in this
17 paragraph, ~~Industry Subsector No.~~ Subsector
18 Nos. 482 and 484 and Industry Group Nos.
19 4884 through 4889,

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

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

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

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

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

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

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

22 (n) those refuse systems activities defined or
23 classified in the NAICS Manual under
24 Industry Group No. 5622, provided that the

1 establishment is primarily engaged in the
2 capture and distribution of methane gas
3 produced within a landfill,

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

7 (p) those activities relating to processing of
8 insurance claims, defined or classified in
9 the NAICS Manual under U.S. Industry Nos.
10 524210 and 524292; provided, activities
11 described in U.S. Industry Nos. 524210 and
12 524292 in the NAICS Manual other than

13 processing of insurance claims shall not be
14 included for purposes of this subdivision,

15 (q) those agricultural activities classified in
16 the NAICS Manual under U.S. Industry Nos.
17 112120 and 112310,

18 (r) those professional organization activities
19 classified in the NAICS Manual under U.S.
20 Industry No. 813920,

21 (s) alternative energy structure construction
22 classified in the NAICS Manual under U.S.
23 Industry No. 237130,
24

1 (t) solar reflective coating application
2 classified in the NAICS Manual under U.S.
3 Industry No. 238160, ~~and~~

4 (u) solar heating equipment installation
5 classified in the NAICS Manual under U.S.
6 Industry No. 238220,

7 (v) those wired telecommunications carriers
8 classified in the NAICS Manual under U.S.
9 Industry No. 517110, and

10 (w) those securities, commodity contracts and
11 investment activities classified in the
12 NAICS Manual under Industry Subsector No.
13 523;

14 (10) those activities related to extraction or
15 pipeline transportation of crude petroleum, and
16 natural gas or refined petroleum products,
17 defined or classified in the NAICS Manual under
18 Industry Group No. 2111, ~~or~~ 213111, 213112 or
19 486, 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
24 Aviation Administration located in this state if

1 the Director of the Department of Commerce
2 determines or is notified that the federal
3 government is soliciting proposals or otherwise
4 inviting states to compete for additional federal
5 civilian employment or expansion of federal
6 civilian employment at such facilities,

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

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

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

23 b. An establishment described in subparagraph a of this
24 paragraph shall not be considered to be engaged in a

1 basic industry unless it offers, or will offer within
2 one hundred eighty (180) days of employment, a basic
3 health benefits plan to the individuals it employs in
4 new direct jobs in this state which is determined by
5 the Oklahoma Department of Commerce to consist of the
6 following elements or elements substantially
7 equivalent thereto:

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

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

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

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

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

13 3. "New direct job":

14 a. means full-time-equivalent employment in this state in
15 an establishment which has qualified to receive an
16 incentive payment pursuant to the provisions of
17 ~~Section 3601 et seq. of this title~~ the Oklahoma
18 Quality Jobs Program Act which employment did not
19 exist in this state prior to the date of approval by
20 the Department of the application of the establishment
21 pursuant to the provisions of Section 3604 of this
22 title and with respect to an establishment qualifying
23 for incentive payments pursuant to division (12) of
24 subparagraph a of paragraph 1 of this subsection shall

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

1 employment that existed in this state prior to the
2 date of application which is retained in this state by
3 the new establishment following a change in control
4 event, if such job otherwise qualifies as a new direct
5 job, and

6 b. shall include full-time-equivalent employment in this
7 state of employees who are employed by an employment
8 agency or similar entity other than the establishment
9 which has qualified to receive an incentive payment
10 and who are leased or otherwise provided under
11 contract to the qualified establishment, if such job
12 did not exist in this state prior to the date of
13 approval by the Department of the application of the
14 establishment or the job otherwise qualifies as a new
15 direct job following a change in control event. A job
16 shall be deemed to exist in this state prior to
17 approval of an application if the activities and
18 functions for which the particular job exists have
19 been ongoing at any time within six (6) months prior
20 to such approval. With respect to establishments
21 defined in division (10) of subparagraph a of
22 paragraph 1 of this subsection, new direct jobs shall
23 be limited to those jobs directly comprising the
24 corporate headquarters of or directly relating to

1 manufacturing, maintenance, administrative, financial,
2 engineering, surveying, geological or geophysical
3 services performed by the establishment. Under no
4 circumstances shall employment relating to field
5 services be considered new direct jobs;

6 4. "Estimated direct state benefits" means the tax revenues
7 projected by the Department to accrue to the state as a result of
8 new direct jobs;

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

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

19 6. "Estimated net direct state benefits" means the estimated
20 direct state benefits less the estimated direct state costs;

21 7. "Net benefit rate" means the estimated net direct state
22 benefits computed as a percentage of gross payroll; provided:
23
24

- 1 a. except as otherwise provided in this paragraph, the
2 net benefit rate may be variable and shall not exceed
3 five percent (5%),
- 4 b. the net benefit rate shall not exceed six percent (6%)
5 in connection with an establishment which is owned and
6 operated by an entity which has been awarded a United
7 States Department of Defense contract for which:
- 8 (1) bids were solicited and accepted by the United
9 States Department of Defense from facilities
10 located outside this state,
- 11 (2) the term is or is renewable for not less than
12 twenty (20) years, and
- 13 (3) the average annual salary, excluding benefits
14 which are not subject to Oklahoma income taxes,
15 for new direct jobs created as a direct result of
16 the awarding of the contract is projected by the
17 Department of Commerce to equal or exceed Forty
18 Thousand Dollars (\$40,000.00) within three (3)
19 years of the date of the first incentive payment,
- 20 c. except as otherwise provided in subparagraph d of this
21 paragraph, in no event shall incentive payments,
22 cumulatively, exceed the estimated net direct state
23 benefits,
- 24

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

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

6 (2) in a county in which:

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

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

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

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

22 (1) is, as of the date of application, receiving
23 incentive payments pursuant to the Oklahoma
24 Quality Jobs Program Act and has been receiving

1 such payments for at least one (1) year prior to
2 the date of application, and
3 (2) expands its operations in this state by creating
4 additional new direct jobs which pay average
5 annualized wages which equal or exceed one
6 hundred fifty percent (150%) of the average
7 annualized wages of new direct jobs on which
8 incentive payments were received during the
9 preceding calendar year, and

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

1 to an establishment as described by this subparagraph
2 and shall be effective for purposes of incentive
3 payments based on payroll paid by such establishment
4 on or after January 1 of any applicable year for which
5 the net benefit rate is modified as required by this
6 subparagraph.

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

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

15 9. a. "Establishment" means any business or governmental
16 entity, no matter what legal form, including, but not
17 limited to, a sole proprietorship; partnership;
18 limited liability company; corporation or combination
19 of corporations which have a central parent
20 corporation which makes corporate management decisions
21 such as those involving consolidation, acquisition,
22 merger or expansion; federal agency; political
23 subdivision of the State of Oklahoma; or trust
24 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
23 subunit from consideration as an establishment by
24 the Department,

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

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

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

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

1 11. "Qualified federal contract" means a contract between an
2 agency or instrumentality of the United States government, including
3 but not limited to the Department of Defense or any branch of the
4 United States Armed Forces, but exclusive of any contract performed
5 for the Federal Emergency Management Agency as a direct result of a
6 natural disaster declared by the Governor or the President of the
7 United States with respect to damage to property located in Oklahoma
8 or loss of life or personal injury to persons in Oklahoma, and a
9 lawfully recognized business entity, whether or not the business
10 entity is organized under the laws of the State of Oklahoma or
11 whether or not the principal place of business of the business
12 entity is located within the State of Oklahoma, for the performance
13 of services, including but not limited to testing, research,
14 development, consulting or other services in a basic industry, if
15 the contract involves the performance of such services performed on
16 or after July 1, 2009, by the employees of the business entity
17 within the State of Oklahoma or if the contract involves the
18 performance of such services performed on or after July 1, 2009, by
19 employees of a lawfully recognized business entity that is a
20 subcontractor of the business entity with which the prime contract
21 has been formed. A qualified federal contract described in this
22 paragraph shall not qualify unless both the qualified federal
23 contractor and any subcontractors originally involved in the work or
24 added subsequently during the period of performance verify to the

1 qualified federal contractor verifier that it offers, or will offer
2 within one hundred eighty (180) days of employment of its respective
3 employees, a basic health benefits plan as described in subparagraph
4 b of paragraph 1 of this subsection to individuals who perform
5 qualified labor hours in this state;

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

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

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

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

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

21 15. "Effective date" means the date of approval of a contract
22 under which incentive payments will be made pursuant to the Oklahoma
23 Quality Jobs Program Act, which shall be the date the signed and
24 accepted incentive contract is received by the Department; provided,

1 an approved project may have a start date which is different from
2 the effective date;

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

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

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

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

1 federal contractor verifier on a direct contract or
2 individual task order or delivery order on an
3 indefinite-delivery/indefinite-quantity or other
4 blanket contract vehicle.

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

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

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

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

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

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

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

19 SECTION 2. AMENDATORY 68 O.S. 2011, Section 3914, is
20 amended to read as follows:

21 Section 3914. A. An establishment which meets the
22 qualifications specified in the 21st Century Quality Jobs Incentive
23 Act may receive quarterly incentive payments for a ten-year period
24

1 from the Oklahoma Tax Commission pursuant to the provisions of this
2 act, as verified by the Tax Commission, in an amount equal to:

3 1. The gross payroll multiplied by the initial net benefit rate
4 until such time as the establishment creates ten new direct jobs, or

5 2. The gross payroll multiplied by the fulfillment net benefit
6 rate after such time as the establishment created and maintains ten
7 new direct jobs.

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

16 C. Before approving an application for incentive payments, the
17 Department must first determine that the applicant meets the
18 following requirements:

19 1. Be engaged in a basic industry as defined in the 21st
20 Century Quality Jobs Incentive Act;

21 2. Will hire at least ten full-time employees in this state
22 within twelve (12) quarters of the date of application;

23 3. Will pay the individuals it employs in new direct jobs an
24 average annualized wage which equals or exceeds ~~the lower of three~~

1 ~~hundred percent (300%) of the average of Oklahoma county wages or~~
2 three hundred percent (300%) of the average county wage for the
3 county in which the applicant is located as that percentage is
4 determined by the Oklahoma State Data Center based on the most
5 recent U.S. Department of Commerce data. For purposes of this
6 paragraph, health care premiums paid by the applicant for
7 individuals in new direct jobs shall not be included in the
8 annualized wage. Provided, no average wage requirement shall exceed
9 Ninety-Four Thousand Dollars (\$94,000.00) in any county. This
10 maximum wage threshold shall be indexed and modified from time to
11 time based on the latest Consumer Price Index year-to-date percent
12 change release as of the date of the annual average county wage data
13 release from the Bureau of Economic Analysis of the U.S. Department
14 of Commerce.

15 4. Has a basic health benefit plan which, as determined by the
16 Department, meets the elements established under divisions (1)
17 through (7) of subparagraph b of paragraph 1 of subsection A of
18 Section 3603 of Title 68 of the Oklahoma Statutes and which will be
19 offered to individuals within twelve (12) months of employment in a
20 new direct job;

21 5. Has not received incentive payments under the Small Employer
22 Quality Jobs Program Act, the Saving Quality Jobs Act or the Former
23 Military Facility Development Act; and

24

1 6. Is not qualified for approval of an application for
2 incentive payments under the Small Employer Quality Jobs Program
3 Act, the Saving Quality Jobs Act or the Former Military Facility
4 Development Act.

5 D. The Oklahoma Department of Commerce shall determine if an
6 applicant is qualified to receive the incentive payment. Upon
7 qualifying the applicant, the Department shall notify the Tax
8 Commission and shall provide it with a copy of the contract and
9 approval which shall provide the number of persons employed by the
10 applicant upon the date of approval and the maximum total incentives
11 which may be paid to the applicant during the ten-year period. The
12 Tax Commission may require the qualified establishment to submit
13 additional information as may be necessary to administer the
14 provisions of this act. The approved establishment shall report to
15 the Tax Commission quarterly to show its continued eligibility for
16 incentive payments, as provided in Section 3905 of Title 68 of the
17 Oklahoma Statutes. Establishments may be audited by the Tax
18 Commission to verify such eligibility. Once the establishment is
19 approved, an agreement shall be deemed to exist between the
20 establishment and the State of Oklahoma, requiring incentive
21 payments to be made for a ten-year period as long as the
22 establishment retains its eligibility and within the limitations of
23 this act as it existed at the time of such approval.

24 SECTION 3. This act shall become effective November 1, 2013.

1 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
February 12, 2013 - DO PASS AS AMENDED

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