

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 ENGROSSED SENATE
5 BILL NO. 936

 By: Leewright and Hall of the
 Senate

6 and

7 Wallace of the House

8
9
10 An Act relating to quality jobs; amending 68 O.S.
11 2011, Sections 3602, 3603, as last amended by Section
12 1, Chapter 156, O.S.L. 2018, 3604, as last amended by
13 Section 2, Chapter 144, O.S.L. 2018, 3605, 3606, as
14 last amended by Section 1, Chapter 138, O.S.L. 2020
15 and 3607, as amended by Section 26, Chapter 227,
16 O.S.L. 2013 (68 O.S. Supp. 2020, Sections 3603, 3604,
17 3606 and 3607), which relates to the Oklahoma Quality
18 Jobs Program Act; modifying intent; modifying
19 definitions; creating definitions; authorizing
20 utilization of compound net benefit rate; requiring
21 minimum net benefit rate; removing member of
22 Incentive Approval Committee for basic industry
23 establishments; eliminating quarterly incentive
24 payments for certain establishments; adding compound
 net benefit rate to payment formula; removing
 exception; modifying wage requirement; prohibiting
 certain payments from wage requirement; removing tax
 liability requirement; removing average working hours
 requirement; requiring establishment to meet certain
 payroll and jobs threshold before receiving payment;
 requiring prior payments paid upon meeting certain
 threshold; providing minimum payroll and job
 requirements for certain qualification; removing
 certain payroll requirements for qualification;
 removing certain wage requirements for qualification
 after certain date; removing exception for certain
 negative economic event; authorizing political
 subdivision to apply for and receive payments for

1 attracting and developing certain facility for
2 certain term; limiting certain payments; providing
3 minimum payroll requirements for qualified federal
4 facility; removing determination requirement for
5 certain net benefits; removing limit for certain
6 incentive payment; requiring utilization of
7 cost/benefit analysis to determine certain benefit,
8 rate and payment; removing repayment requirement for
9 certain cessation of operations; requiring repayment
10 of incentives for certain relocation within a
11 provided timeframe; deleting certain fund deposit
12 formula; requiring deposit according to estimate
13 provided by Oklahoma Tax Commission; prohibiting
14 payments in excess of certain state benefits for
15 certain establishments; prohibiting application for
16 additional payments until certain job creation or
17 payroll thresholds are met; removing outdated and
18 repealed statutory references; updating statutory
19 references; clarifying statutory language; repealing
20 68 O.S. 2011, Sections 3501, 3502, 3503, 3504, 3505,
21 3506, 3507 and 3508, which relate to the Oklahoma
22 Federal Facilities Development Act; repealing 68 O.S.
23 2011, Sections 3604.1, as amended by Section 25,
24 Chapter 227, O.S.L. 2013, 3611 and 3612 (68 O.S.
25 Supp. 2020, Section 3604.1), which relate to the
26 Oklahoma Quality Jobs Program Act; repealing 68 O.S.
27 2011, Sections 3801, 3802, 3803, 3804, 3805, 3806,
28 3807 and 3808, which relate to the Former Military
29 Facility Development Act; repealing 68 O.S. 2011,
30 Sections 3901, 3902, 3903, as last amended by Section
31 1, Chapter 128, O.S.L. 2014, 3904, as last amended by
32 Section 1, Chapter 197, O.S.L. 2019, 3905, 3906,
33 3907, 3908, 3909 and 3910 (68 O.S. Supp. 2020,
34 Sections 3903 and 3904), which relate to Small
35 Employer Quality Jobs Incentive Act; repealing 68
36 O.S. 2011, Sections 3911, 3912, 3913, 3914, as last
37 amended by Section 4, Chapter 144, O.S.L. 2018, 3915,
38 3916, 3917, 3918, 3919 and 3920 (68 O.S. Supp. 2020,
39 Section 3914), which relate to the 21st Century
40 Quality Jobs Incentive Act; and providing an
41 effective date.

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

1 SECTION 1. AMENDATORY 68 O.S. 2011, Section 3602, is
2 amended to read as follows:

3 Section 3602. It is the intent of the Legislature that:

4 1. a. The State of Oklahoma provide appropriate incentives
5 to support establishments of basic industries that
6 hold the promise of significant development of the
7 economy of the State of Oklahoma, and

8 b. to assist political subdivisions in attracting federal
9 facility development and consequent job creation and
10 ancillary economic growth within this state. In order
11 to achieve these essential public purposes, it is
12 necessary to assist and encourage political
13 subdivisions to develop facilities for use by the
14 federal government;

15 2. The amount of incentives provided pursuant to this act in
16 connection with a particular establishment:

17 a. be ~~directly~~ related to the jobs created as a result of
18 the establishment locating in the State of Oklahoma,
19 and

20 b. not exceed the estimated ~~net direct~~ state benefits
21 that will accrue to the state as a result of the
22 establishment locating or expanding in the State of
23 Oklahoma;

24

1 3. The Oklahoma Department of Commerce and the Oklahoma Tax
2 Commission implement the provisions of this act and exercise all
3 powers as authorized in this act. The exercise of powers conferred
4 by this act shall be deemed and held to be the performance of
5 essential public purposes; and

6 4. Nothing herein shall be construed to constitute a guarantee
7 or assumption by the State of Oklahoma of any debt of any
8 individual, company, corporation or association nor to authorize the
9 credit of the State of Oklahoma to be given, pledged or loaned to
10 any individual, company, corporation or association.

11 SECTION 2. AMENDATORY 68 O.S. 2011, Section 3603, as
12 last amended by Section 1, Chapter 156, O.S.L. 2018 (68 O.S. Supp.
13 2020, Section 3603), is amended to read as follows:

14 Section 3603. A. As used in the Oklahoma Quality Jobs Program
15 Act:

16 1. a. "Basic industry" means:

17 (1) those manufacturing activities defined or
18 classified in the NAICS Manual under Industry
19 Sector Nos. 31, 32 and 33, Industry Group No.
20 5111 or Industry No. 11331,

21 (2) ~~those electric power generation, transmission and~~
22 ~~distribution activities defined or classified in~~
23 ~~the NAICS Manual under U.S. Industry Nos. 221111~~
24 ~~through 221122, if:~~

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

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

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

23 ~~(d) the facility is constructed on or after July~~
24 ~~1, 1996 those health care activities~~

1 including medical and diagnostic laboratory
2 activities defined or classified in the
3 NAICS Manual under Industry Group No. 6215,
4 miscellaneous ambulatory health care
5 services defined as Industry Group No.
6 621999, and specialty hospitals, except
7 psychiatric and substance abuse hospitals,
8 in the NAICS Manual under U.S. Industry
9 Group No. 62231,

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 and~~
14 ~~56142 or U.S. Industry Nos. 524291 and 551114,~~
15 ~~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~~ and those management of
22 companies and enterprises defined of classified
23 under Industry Group No. 5511,
24

1 (4) those professional, scientific and technical
2 service activities defined or classified in the
3 NAICS Manual under U.S. Industry Nos. ~~541710 and~~
4 ~~541380~~ 5413, 5415, 5416 and 5417,

5 (5) distribution centers for retail or wholesale
6 businesses defined or classified in the NAICS
7 Manual under Sector No. 42 and warehousing and
8 storage businesses defined or classified in the
9 NAICS Manual under Sector No. 493, if forty
10 percent (40%) or more of the inventory processed
11 through such distribution center or warehouse is
12 shipped out-of-state,

13 ~~(6) those adjustment and collection service~~
14 ~~activities defined or classified in the NAICS~~
15 ~~Manual under U.S. Industry No. 561440, if~~
16 ~~seventy-five percent (75%) of the loans to be~~
17 ~~serviced were made by out-of-state debtors~~ those
18 information technology and other computer related
19 service activities defined or classified in the
20 NAICS Manual under Industry Group Nos. 5112, 518
21 and 519,

22 (7) ~~(a) those air transportation activities defined~~
23 ~~or classified in the NAICS Manual under~~

1 ~~Industry Group No. 4811, if the following~~
2 ~~facilities are located in this state:~~

3 ~~(i) the corporate headquarters of an~~
4 ~~establishment classified therein, and~~

5 ~~(ii) a facility or facilities at which~~
6 ~~reservations for transportation~~
7 ~~provided by such an establishment are~~
8 ~~processed, whether such services are~~
9 ~~performed by employees of the~~
10 ~~establishment, by employees of a~~
11 ~~subsidiary of or other entity~~
12 ~~affiliated with the establishment or by~~
13 ~~employees of an entity with whom the~~
14 ~~establishment has contracted for the~~
15 ~~performance of such services; provided,~~
16 ~~this provision shall not disqualify an~~
17 ~~establishment which uses an out-of-~~
18 ~~state entity or employees for some~~
19 ~~reservations services, or~~

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

1 ~~percent (75%) of its total sales, as~~
2 ~~determined by the Incentive Approval~~
3 ~~Committee pursuant to the provisions of~~
4 ~~subsection B of this section, to out-of-~~
5 ~~state customers or buyers, to in-state~~
6 ~~customers or buyers if the product or~~
7 ~~service is resold by the purchaser to an~~
8 ~~out-of-state customer or buyer for ultimate~~
9 ~~use, or to the federal government those~~
10 ~~credit bureaus defined or classified in the~~
11 ~~NAICS Manual under U.S. Industry No. 56145,~~

12 (8) flight training services and apprenticeship
13 program activities defined or classified in the
14 NAICS Manual under U.S. Industry Group ~~No.~~ Nos.
15 611512 and 611513, ~~which for purposes of the~~
16 ~~Oklahoma Quality Jobs Program Act shall include~~
17 ~~new direct jobs for which gross payroll existed~~
18 ~~on or after January 1, 2003, as identified in the~~
19 ~~NAICS Manual,~~

20 (9) the following, if an establishment located in a
21 Tier 4 County or a Tier 5 County and classified
22 therein has or will have within ~~one (1) year~~
23 ~~sales of at least seventy-five percent (75%) of~~
24 ~~its total sales twenty-four (24) months of the~~

1 date of application, as determined by the
2 Oklahoma Department of Commerce, sales of at
3 least forty percent (40%) for the first two (2)
4 years and subsequently sixty percent (60%) of its
5 total sales, or if an establishment located in a
6 Tier 3 County and classified therein has or will
7 have within twenty-four (24) months of the date
8 of application, as determined by the Department,
9 sales of at least thirty-five percent (35%) for
10 the first two (2) years and subsequently fifty-
11 five percent (55%) of its total sales, or if an
12 establishment located in a Tier 1 County or Tier
13 2 County and classified therein has or will have
14 within twenty-four (24) months of the date of
15 application, as determined by the Department,
16 sales of at least twenty-five percent (25%) for
17 the first two (2) years and subsequently fifty
18 percent (50%) of its total sales, as determined
19 by the Incentive Approval Committee pursuant to
20 the provisions of subsection B of this section,
21 to out-of-state customers or buyers, to in-state
22 customers or buyers if the product or service is
23 resold by the purchaser to an out-of-state
24

1 customer or buyer for ultimate use, or to the
2 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 Nos. ~~482 and~~
8 ~~484 and Industry Group Nos. 4884 through~~
9 ~~4889~~ 481, 482, 483, 484 and 488,

10 (b) those ~~passenger transportation activities~~
11 travel arrangement services defined or
12 classified in the NAICS Manual under
13 Industry Nos. ~~561510 and 561599~~ 5615 and
14 56192,

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

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

21 ~~(e) those services to dwellings and other~~
22 ~~buildings, as defined or classified in the~~
23 ~~NAICS Manual under Industry Group No. 5617,~~

24

1 ~~excluding U.S. Industry Nos. 561730, 56171,~~
2 ~~56172, 56174 and 56179,~~

3 ~~(f) those equipment rental and leasing~~
4 ~~activities defined or classified in the~~
5 ~~NAICS Manual under Industry Group No. 5324,~~

6 ~~(g) 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 those securities, commodity contracts~~
11 ~~and other financial investment activities~~
12 ~~defined or classified in the NAICS Manual~~
13 ~~under U.S. Industry Group No. 523,~~

14 (d) those insurance carriers and related
15 activities defined or classified in the
16 NAICS Manual under U.S. Industry Group No.
17 524,

18 (e) those funds, trusts and other financial
19 vehicles defined or classified in the NAICS
20 Manual under U.S. Industry Group No. 525,

21 (f) those financial and credit intermediation
22 activities defined or classified in the
23 NAICS Manual under Industry Group Nos.
24 522210, 522293, 522294, and 522320,

1 (g) those heavy and civil engineering
2 construction activities defined or
3 classified in the NAICS Manual under U.S.
4 Industry Group No. 237,

5 (h) those business support service activities
6 defined or classified in the NAICS Manual
7 under U.S. Industry Nos. 561410 through
8 ~~561430, excluding 56143,~~ 561422 and Industry
9 No. 51911,

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

13 ~~(j) those professional, scientific and technical~~
14 ~~service activities defined or classified in~~
15 ~~the NAICS Manual under Industry Group Nos.~~
16 ~~5412, 5414, 5415, 5416 and 5417, Industry~~
17 ~~Nos. 54131, 54133, 54136 and 54137, and U.S.~~
18 ~~Industry No. 541990, if not otherwise listed~~
19 ~~in this paragraph~~ those electric utility
20 activities defined or classified in the
21 NAICS Manual under U.S. Industry Group No.
22 2211,

23 (j) those professional, scientific and technical
24 services defined or classified in the NAICS

1 Manual under U.S. Industry Group Nos. 5411,
2 5412, 5414, 5418 and 5419,

3 (k) those ~~communication~~ telecommunication
4 service activities defined or classified in
5 the NAICS Manual under Industry Nos. ~~51741~~
6 ~~and 51791~~ No. 517,

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

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

16 ~~(n) those activities relating to processing of~~
17 ~~insurance claims, defined or classified in~~
18 ~~the NAICS Manual under U.S. Industry Nos.~~
19 ~~524210 and 524292; provided, activities~~
20 ~~described in U.S. Industry Nos. 524210 and~~
21 ~~524292 in the NAICS Manual other than~~
22 ~~processing of insurance claims shall not be~~
23 ~~included for purposes of this subdivision,~~

24

1 ~~(o)~~ ~~those agricultural activities classified in~~
2 ~~the NAICS Manual under U.S. Industry Nos.~~
3 ~~112120 and 112310~~ those real estate or
4 brokerage activities classified in the NAICS
5 Manual under U.S. Industry No. 53120 for
6 which at least seventy-five percent (75%) of
7 the establishment's revenues are attributed
8 to out-of-state sales and at least seventy-
9 five percent (75%) of the real estate
10 transactions generating those revenues are
11 attributed to real property located outside
12 this state,

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

19 ~~(p)~~

20 (o) those business associations and professional
21 organization activities classified in the
22 NAICS Manual under U.S. Industry ~~No.~~ Nos.
23 813910 and 813920,

1 ~~(q) alternative energy structure construction~~
2 ~~classified in the NAICS Manual under U.S.~~
3 ~~Industry No. 237130,~~

4 ~~(r)~~

5 (p) solar reflective coating application
6 classified in the NAICS Manual under U.S.
7 Industry No. 238160, and

8 ~~(s)~~

9 (q) solar heating equipment installation
10 classified in the NAICS Manual under U.S.
11 Industry No. 238220,

12 ~~(t) those wired telecommunications carriers~~
13 ~~classified in the NAICS Manual under U.S.~~
14 ~~Industry No. 517110, and~~

15 ~~(u) those securities, commodity contracts and~~
16 ~~investment activities classified in the~~
17 ~~NAICS Manual under Industry Subsector No.~~
18 ~~523,~~

19 (10) those activities related to extraction or
20 pipeline transportation of petroleum, natural gas
21 or refined petroleum products, defined or
22 classified in the NAICS Manual under Industry
23 Group No. 2111, 213111, 213112 or 486, subject to
24 the limitations provided in paragraph 3 of this

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

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

13 (12) those activities defined or classified in the
14 NAICS Manual under U.S. Industry No. 711211 (~~2007~~
15 2017 version),

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

1 companies defined or classified in the NAICS
2 Manual under U.S. Industry Group No. 7111,

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

7 (15) those motion picture and video industries defined
8 or classified in the NAICS Manual under U.S.
9 Industry Group No. 5121, and those sound
10 recording industries defined or classified in the
11 NAICS Manual under U.S. Industry Group No. 5122,
12 and those employees of film support industries
13 classified in the NAICS Manual under U.S.
14 Industry Group Nos. 7114, 7115 and 236220 when
15 contracting with a film studio or film production
16 located in this state,

17 (16) those agricultural activities classified in the
18 NAICS Manual under U.S. Industry Nos. 1114,
19 112120, 112310, 112340, 1125, 112910 and 115, and

20 (17) equipment rental and leasing activities defined
21 or classified in the NAICS Manual under Industry
22 Group No. 5324.

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-in-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-in-control event
14 shall be required to maintain a level of new direct jobs as agreed
15 to in its contract with the Oklahoma Department of Commerce and to
16 pay new direct jobs an average annualized wage which equals or
17 exceeds one hundred twenty-five percent (125%) of the average county
18 wage as that percentage is determined by the Oklahoma Department of
19 Commerce based upon the most recent U.S. Department of Commerce data
20 for the county in which the new jobs are located. For purposes of
21 this paragraph, healthcare premiums paid by the applicant for
22 individuals in new direct jobs shall not be included in the
23 annualized wage. Such establishment entering the Oklahoma Quality
24 Jobs Program Act as the result of a change-in-control event shall be

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

14 3. "New direct job":

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

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

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

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

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

7 c. shall include full-time-equivalent employment at a
8 qualified federal facility which did not exist in this
9 state prior to the date of approval by the Department
10 of Commerce of the application of the political
11 subdivision for a qualified federal facility;

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
24

1 d. ~~the costs of other state services~~ direct state costs
2 as deemed relevant by the Oklahoma Department of
3 Commerce;

4 6. "Estimated net direct state benefits" means the estimated
5 direct state benefits less the estimated direct state costs;

6 7. "Estimated indirect state benefits" means the indirect new
7 tax revenues projected by the Oklahoma Department of Commerce to
8 accrue to the state including, but not limited to, revenue generated
9 from ancillary support jobs directly related to the establishment;

10 8. "Estimated indirect state costs" means the costs projected
11 by the Department to accrue to the state as a result of new indirect
12 jobs. Such costs shall include, but not be limited to, costs
13 enumerated in subparagraphs a, b, c and d of paragraph 5 of this
14 subsection;

15 9. "Estimated net direct and indirect state benefits" means the
16 estimated direct and indirect state benefits less the estimated
17 direct and indirect state costs;

18 10. "Net benefit rate" means the estimated net direct state
19 benefits computed as a percentage of gross payroll; provided:

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

23 b. ~~the net benefit rate shall not exceed six percent (6%)~~
24 ~~in connection with an establishment which is owned and~~

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 ~~Oklahoma Department of Commerce to equal or~~
13 ~~exceed Forty Thousand Dollars (\$40,000.00) within~~
14 ~~three (3) years of the date of the first~~
15 ~~incentive payment,~~

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

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

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

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 Oklahoma Department of Commerce based on~~
9 ~~the most recent U.S. Department of Commerce~~
10 ~~data, or~~

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

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

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

23 ~~(2) expands its operations in this state by creating~~
24 ~~additional new direct jobs which pay average~~

1 ~~annualized wages which equal or exceed one hundred~~
2 ~~fifty percent (150%) of the average annualized~~
3 ~~wages of new direct jobs on which incentive~~
4 ~~payments were received during the preceding~~
5 ~~calendar year, except as otherwise provided in~~
6 ~~this section, in no event shall incentive payments~~
7 ~~based on the net benefit rate, cumulatively,~~
8 ~~exceed the estimated net direct state benefits;~~

9 ~~f. with~~

10 11. "Compound net benefit rate" means the estimated net direct
11 benefits and indirect state benefits computed as a percentage of
12 gross payroll, provided:

13 a. the compound net benefit rate may be variable, may be
14 less than five percent (5%), and shall not exceed ten
15 percent (10%), and

16 b. in no event shall incentive payments, cumulatively,
17 exceed the estimated net direct benefit and indirect
18 state benefits;

19 12. With respect to an establishment defined or classified in
20 the NAICS Manual under U.S. Industry No. 711211 (2007 version) or
21 any establishment defined or classified in the NAICS Manual as a
22 U.S. Industry Number which is not included within the definition of
23 "basic industry" as such term is defined in this section on April
24 17, 2008, the net benefit rate shall not exceed the highest rate of

1 income tax imposed upon the Oklahoma taxable income of individuals
2 pursuant to subparagraph (g) or subparagraph (h), as applicable, of
3 paragraph 1 and paragraph 2 of subsection B of Section 2355 of this
4 title. Any change in such highest rate of individual income tax
5 imposed pursuant to the provisions of Section 2355 of this title
6 shall be applicable to the computation of incentive payments to an
7 establishment as described by this subparagraph and shall be
8 effective for purposes of incentive payments based on payroll paid
9 by such establishment on or after January 1 of any applicable year
10 for which the net benefit rate is modified as required by this
11 subparagraph; and

12 ~~g. the net benefit rate shall not exceed six percent (6%)~~
13 ~~in connection with an establishment which employs~~
14 ~~United States military veterans in at least ten~~
15 ~~percent (10%) of its gross payroll. The net benefit~~
16 ~~rate for an establishment which employs United States~~
17 ~~military veterans in at least ten percent (10%) of its~~
18 ~~payroll shall not be lower than five percent (5%).~~

19 13. An establishment that employs United States military
20 veterans whose wages make up at least ten percent (10%) of its gross
21 payroll may utilize the compound net benefit rate. The net benefit
22 rate for an establishment that employs United States military
23 veterans whose wages make up at least ten percent (10%) of its
24 payroll shall not be lower than five percent (5%).

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

7 ~~8.~~ 14. "Gross payroll" means wages, as defined in Section
8 2385.1 of this title for new direct jobs;

9 ~~9.~~

10 15. a. "Establishment" means any business, nonprofit or
11 governmental entity, no matter what legal form,
12 including, but not limited to, a nonreligious 501(c)3,
13 501(c)6, qualified federal facility, a sole
14 proprietorship, partnership, limited liability
15 company, corporation or combination of corporations
16 which have a central parent corporation which makes
17 corporate management decisions such as those involving
18 consolidation, acquisition, merger or expansion;
19 federal agency; political subdivision of the State of
20 Oklahoma; or trust authority; provided, distinct,
21 identifiable subunits of such entities may be
22 determined to be an establishment, for all purposes of
23 the Oklahoma Quality Jobs Program Act, by the
24 Department subject to the following conditions:

- 1 (1) within three (3) years of the first complete
2 calendar quarter following the start date, the
3 entity must have a minimum payroll of ~~Two Million~~
4 ~~Five Hundred Thousand Dollars (\$2,500,000.00)~~ at
5 least the payroll threshold required in the
6 county where it is located and the subunit must
7 also have or will have a minimum payroll of ~~Two~~
8 ~~Million Five Hundred Thousand Dollars~~
9 ~~(\$2,500,000.00)~~ at least the payroll threshold
10 required in the county where it is located,
- 11 (2) the subunit is engaged in an activity or service
12 or produces a product which is demonstratively
13 independent and separate from the entity's other
14 activities, services or products and could be
15 conducted or produced in the absence of any other
16 activity, service or production of the entity,
- 17 (3) has an accounting system capable of tracking or
18 facilitating an audit of the subunit's payroll,
19 expenses, revenue and production. Limited
20 interunit overlap of administrative and
21 purchasing functions shall not disqualify a
22 subunit from consideration as an establishment by
23 the Department,
24

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.~~ 16. "NAICS Manual" means any manual, book or other
21 publication containing the North American Industry Classification
22 System, United States, 1997, promulgated by the Office of Management
23 and Budget of the United States of America, or the latest revised
24 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.~~ 17. "Start date" means the date on which an establishment
19 may begin accruing benefits for the creation of new direct jobs,
20 which date shall be determined by the Department;

21 ~~15.~~ 18. "Effective date" means the date of approval of a
22 contract under which incentive payments will be made pursuant to the
23 Oklahoma Quality Jobs Program Act, which shall be the date the
24 signed and accepted incentive contract is received by the

1 Department; provided, an approved project may have a start date
2 which is different from 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;~~

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 July 1, 2010,~~
18 ~~or one hundred eighty (180) days of the date of the~~
19 ~~award of a qualified federal contract or award of a~~
20 ~~new qualified subcontract under an existing qualified~~
21 ~~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~~

~~federal contractor verifier on a direct contract or individual task order or delivery order on an indefinite delivery/indefinite quantity or other blanket contract vehicle.~~

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

~~19. "Proxy establishment" means a public trust which:~~

~~a. is organized and existing under Section 176 of Title 60 of the Oklahoma Statutes for the benefit of a geographic area which includes a city or county or some combination thereof, and~~

~~b. benefits a geographic area where new direct jobs which meet the requirements of the Oklahoma Quality Jobs Program Act are created by an establishment, other than the proxy establishment, which is a branch of the Armed Forces of the United States.~~

1 ~~A proxy establishment may be determined to be an establishment~~
2 ~~for all purposes of the Oklahoma Quality Jobs Program Act by the~~
3 ~~Department and incentive payments may be made to such proxy~~
4 ~~establishment for new direct jobs otherwise qualified pursuant to~~
5 ~~the Oklahoma Quality Jobs Program Act. The Department may~~
6 ~~promulgate rules to further specify the circumstances under which a~~
7 ~~proxy establishment may be considered an establishment for the~~
8 ~~purposes of making application for incentive payments pursuant to~~
9 ~~the Oklahoma Quality Jobs Program Act. Provided however, that with~~
10 ~~respect to any data on qualifying direct new jobs from a branch of~~
11 ~~the Armed Forces of the United States, such rules shall only require~~
12 ~~a proxy establishment to provide such data as would otherwise be~~
13 ~~publicly releasable by the branch of the Armed Forces of the United~~
14 ~~States.~~

15 19. "Full-time employment" means employment of persons residing
16 in this state, and subject to the tax imposed by Section 2355 of
17 this title, and working an annual average of thirty (30) or more
18 hours per week in new direct jobs located in this state;

19 20. "Qualified federal facility" means a facility developed by
20 or at the expense of a political subdivision of this state and
21 leased or conveyed to the government of the United States which
22 primarily houses federal employees;

23
24

1 21. "Political subdivision" means a municipality, a county or a
2 public trust, the beneficiary or beneficiaries of which are a
3 municipality, a county, this state or a combination thereof;

4 22. "Project term" means the length of time a political
5 subdivision may receive incentive payments associated with a
6 qualified federal facility pursuant to the provisions of this act;
7 provided, the project term shall not exceed twenty (20) years from
8 the date of the first incentive payment;

9 23. "Develops" means acquires, maintains, constructs, improves,
10 enlarges, renews, renovates, replaces, leases, equips, furnishes or
11 operates;

12 24. "Average county wage" means the annualized average county
13 wage as determined by the Department of Commerce based on the most
14 recent United States Department of Commerce data for the county in
15 which the new direct jobs are located. For purposes of this
16 paragraph, health care premiums paid by the applicant for
17 individuals in new direct jobs shall not be included in the
18 annualized wage;

19 25. "State threshold wage" means an annualized average wage of
20 Forty Thousand Dollars (\$40,000.00). This maximum wage threshold
21 shall be indexed and modified from time to time based on the latest
22 Consumer Price Index year-to-date percent change release as of the
23 date of the annual average county wage data release from the Bureau
24 of Economic Analysis of the United States Department of Commerce.

1 For purposes of this paragraph, health care premiums paid by the
2 applicant for individuals in new direct jobs shall not be included
3 in the annualized wage;

4 26. "Small employer wage" means the average county wage of
5 employers with less than five hundred employees located in that
6 county as that percentage is determined by the Department of
7 Commerce based upon the most recent wage and employment data from
8 the Oklahoma Employment Security Commission for the county where the
9 new direct jobs are located. For purposes of this paragraph, health
10 care premiums paid by the applicant for individuals in new direct
11 jobs shall not be included in the annualized wage;

12 27. "Tier 1 County" means a county that has a population of
13 less than ten thousand (10,000) as identified by the most recent
14 federal decennial Census from the United States Census Bureau;

15 28. "Tier 2 County" means a county that has a population of
16 greater than or equal to ten thousand (10,000) and less than thirty
17 thousand (30,000) as identified by the most recent federal decennial
18 Census from the United States Census Bureau;

19 29. "Tier 3 County" means a county that has a population of
20 greater than or equal to thirty thousand (30,000) and less than
21 sixty thousand (60,000) as identified by the most recent federal
22 decennial Census from the United States Census Bureau;

23 30. "Tier 4 County" means a county that has a population of
24 greater than or equal to sixty thousand (60,000) and less than three

1 hundred thousand (300,000) as identified by the most recent federal
2 decennial Census from the United States Census Bureau;

3 31. "Tier 5 County" means a county that has a population of
4 greater than or equal to three hundred thousand (300,000) as
5 identified by the most recent federal decennial Census from the
6 United States Census Bureau;

7 32. "Former military facility" means any tract or parcel of
8 real property used primarily for a military purpose during a state
9 of war, armed conflict or during peace time, title to has been
10 vested in the United States Government, any branch of the Armed
11 Forces of the United States of America or was subsequently conveyed
12 by such entities to this state, any political subdivision of this
13 state, or any public trust having this state or any political
14 subdivision of this state as its beneficiary, whether singly or in
15 combination with other government entities prior to the date the
16 establishment acquired its interest;

17 33. "Tier 3 County basic industry" means all industries defined
18 as basic industries in subsection A of this section and includes:

- 19 a. forest nurseries and gathering of forest products
20 activities defined or classified in the NAICS Manual
21 under Industry Group No. 1132,
22 b. arts, entertainment and recreation activities defined
23 or classified in the NAICS Manual under Industry Group
24

1 Nos. 711219, 711310, 7121, 713110, 713940 and 713990,

2 and

3 c. electronic and precision equipment repair and
4 maintenance activities defined or classified in the
5 NAICS Manual under Industry Group No. 8112, and
6 support, repair, and maintenance service activities
7 for the wind industry defined or classified in the
8 NAICS Manual under Industry Group No. 811310;

9 34. "Tier 2 County basic industry" means all industries
10 included in Tier 3 County basic industry and includes:

11 a. mining activities, except oil and gas, defined or
12 classified in the NAICS Manual under Industry Group
13 No. 212,

14 b. support activities for nonmetallic minerals mining
15 activities defined or classified in the NAICS Manual
16 under Industry Group No. 213115, and

17 c. materials recovery and remediation services activities
18 defined or classified in the NAICS Manual under
19 Industry Group Nos. 562910 and 562920; and

20 35. "Tier 1 County basic industry" means all industries
21 included in Tier 2 County basic industry and Tier 3 County basic
22 industry and includes:

1 a. depository credit intermediation activities defined or
2 classified in the NAICS Manual under Industry Group
3 No. 5221, and

4 b. hospitals and health care activities defined or
5 classified in the NAICS Manual under Industry Group
6 No. 622.

7 B. The Incentive Approval Committee is hereby created and shall
8 consist of the Director of the Office of Management and Enterprise
9 Services, the Director of the Department and one member of the
10 Oklahoma Tax Commission appointed by the Tax Commission, or a
11 designee from each agency approved by such member. It shall be the
12 duty of the Committee to determine the eligibility of all applicants
13 for the Oklahoma Quality Jobs Program Act, subject to the applicable
14 requirements.

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

22 SECTION 3. AMENDATORY 68 O.S. 2011, Section 3604, as
23 last amended by Section 2, Chapter 144, O.S.L. 2018 (68 O.S. Supp.
24 2020, Section 3604), is amended to read as follows:

1 Section 3604. A. Except as otherwise provided in subsection I
2 or subsection L of this section, an establishment which meets the
3 qualifications specified in the Oklahoma Quality Jobs Program Act
4 may receive quarterly incentive payments for a ten-year period from
5 the Oklahoma Tax Commission pursuant to the provisions of the
6 Oklahoma Quality Jobs Program Act; ~~provided, such an establishment~~
7 ~~defined or classified in the NAICS Manual under U.S. Industry No.~~
8 ~~711211 (2007 version) may receive quarterly incentive payments for a~~
9 ~~fifteen year period.~~ The amount of such payments shall be equal to
10 the net benefit rate or the compound net benefit rate multiplied by
11 the actual gross payroll of new direct jobs for a calendar quarter
12 as verified by the Oklahoma Employment Security Commission.

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

21 ~~C. Except as otherwise provided by subsection D or E of this~~
22 ~~section, in~~ In order to qualify to receive ~~such~~ incentive payments,
23 the establishment applying shall be required to:
24

1 1. Be engaged in a basic industry, a Tier 3 County basic
2 industry in a Tier 1, Tier 2 or Tier 3 County, a Tier 2 County basic
3 industry in a Tier 1 or Tier 2 County or Tier 1 County basic
4 industry in a Tier 1 County;

5 2. ~~Have an annual gross payroll for new direct jobs projected~~
6 ~~by the Department to equal or exceed Two Million Five Hundred~~
7 ~~Thousand Dollars (\$2,500,000.00) within three (3) years of the first~~
8 ~~complete calendar quarter following the start date~~ Pay new direct
9 jobs an average annualized wage which equals or exceeds the average
10 county wage, the state threshold wage, or when the establishment has
11 less than five hundred (500) employees, pay new direct jobs an
12 average annualized wage which equals or exceeds the small employer
13 wage. For purposes of this paragraph, health care premiums paid by
14 the applicant for individuals in new direct jobs shall not be
15 included in the annualized wage; and

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

21 D. ~~In~~ Before receiving its first quarterly payment, an
22 establishment shall meet the payroll and/or the new jobs
23 requirements set forth in this section and stipulated in the
24 agreement with the state. When these requirements are met, the

1 establishment shall be paid the prior quarter incentive payments and
2 the current quarter incentive payments for those quarters when the
3 average wage threshold was also met. Except as otherwise provided
4 in this section, in order to qualify to receive incentive payments
5 as authorized by the Oklahoma Quality Jobs Program Act, an
6 establishment engaged in an activity described under shall be
7 required to have an annual gross payroll for new direct jobs
8 projected by the Department to equal or exceed:

9 1. Five Hundred Thousand Dollars (\$500,000.00) within three (3)
10 years of the first complete calendar quarter following the start
11 date in a Tier 1 County;

12 2. One Million Dollars (\$1,000,000.00) within three (3) years
13 of the first complete calendar quarter following the start date in a
14 Tier 2 County;

15 3. One Million Five Hundred Thousand Dollars (\$1,500,000.00)
16 within three (3) years of the first complete calendar quarter
17 following the start date in a Tier 3 County;

18 4. Two Million Dollars (\$2,000,000.00) within three (3) years
19 of the first complete calendar quarter following the start date in a
20 Tier 4 County; and

21 5. Two Million Five Hundred Thousand Dollars (\$2,500,000.00)
22 within three (3) years of the first complete calendar quarter
23 following the start date in a Tier 5 County.

24

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

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

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

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

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

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

13 E. An establishment with less than five hundred (500) total
14 jobs may also qualify to receive incentive payments as authorized by
15 the Oklahoma Quality Jobs Program Act if the establishment:

16 1. Creates at least five (5) new qualifying jobs with at least
17 Two Hundred Thousand Dollars (\$200,000.00) in gross payroll within
18 two (2) years of the first complete calendar quarter following the
19 start date in a Tier 1 County;

20 2. Creates at least five (5) new qualifying jobs with at least
21 Two Hundred Fifty Thousand Dollars (\$250,000.00) in gross payroll
22 within two (2) years of the first complete calendar quarter
23 following the start date in a Tier 2 County;

1 3. Creates at least ten (10) new jobs with at least Four
2 Hundred Thousand Dollars (\$400,000.00) in gross payroll within two
3 (2) years of the first complete calendar quarter following the start
4 date in a Tier 3 County;

5 4. Creates at least fifteen (15) new jobs with at least Five
6 Hundred Thousand Dollars (\$500,000.00) in gross payroll within two
7 (2) years of the first complete calendar quarter following the start
8 date in a Tier 4 county; and

9 5. Creates at least fifteen (15) new jobs with at least Seven
10 Hundred Thousand Dollars (\$700,000.00) in gross payroll within two
11 (2) years of the first complete calendar quarter following the start
12 date in a Tier 5 county.

13 F. 1. An establishment which locates its principal business
14 activity within a site consisting of at least ten (10) acres which:

- 15 a. is a federal Superfund removal site,
- 16 b. is listed on the National Priorities List established
17 under Section 9605 of Title 42 of the United States
18 Code,
- 19 c. has been formally deferred to the state in lieu of
20 listing on the National Priorities List, or
- 21 d. has been determined by the Department of Environmental
22 Quality to be contaminated by any substance regulated
23 by a federal or state statute governing environmental

24

1 conditions for real property pursuant to an order of
2 the Department of Environmental Quality,
3 shall qualify for incentive payments irrespective of its actual
4 gross payroll or the number of full-time-equivalent employees
5 engaged in new direct jobs.

6 2. In order to qualify for the incentive payments pursuant to
7 this subsection, the establishment shall conduct the activity
8 resulting in at least fifty percent (50%) of its Oklahoma taxable
9 income or adjusted gross income, as determined under Section 2358 of
10 this title, whether from the sale of products or services or both
11 products and services, at the physical location which has been
12 determined not to comply with the federal or state statutes
13 described in this subsection with respect to environmental
14 conditions for real property. The establishment shall be subject to
15 all other requirements of the Oklahoma Quality Jobs Program Act
16 other than the exemptions provided by this subsection.

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

20 a. the site designated by the entity does meet one or
21 more of the requirements listed in paragraph 1 of this
22 subsection, and
23
24

1 b. the site is being or has been remediated to a level
2 which is consistent with the intended use of the
3 property.

4 In making its determination, the Department of Environmental
5 Quality may rely on existing data and information available to it,
6 but may also require the applying entity to provide additional data
7 and information as necessary.

8 4. If authorized by the Department of Environmental Quality
9 pursuant to paragraph 3 of this subsection, the entity may utilize a
10 remediated portion of the property for its intended purpose prior to
11 remediation of the remainder of the site, and shall qualify for
12 incentive payments based on employment associated with the portion
13 of the site.

14 ~~F. Except as otherwise provided by subsection C of this~~
15 ~~section, for applications submitted on and after June 4, 2003, in~~
16 ~~order to qualify to receive incentive payments as authorized by the~~
17 ~~Oklahoma Quality Jobs Program Act, in addition to other~~
18 ~~qualifications specified herein, an establishment shall be required~~
19 ~~to pay new direct jobs an average annualized wage which equals or~~
20 ~~exceeds:~~

21 ~~1. One hundred ten percent (110%) of the average county wage as~~
22 ~~determined by the Department of Commerce based on the most recent~~
23 ~~U.S. Department of Commerce data for the county in which the new~~
24 ~~direct jobs are located. For purposes of this paragraph, health~~

1 ~~care premiums paid by the applicant for individuals in new direct~~
2 ~~jobs shall be included in the annualized wage; or~~

3 ~~2. One hundred percent (100%) of the average county wage as~~
4 ~~that percentage is determined by the Department of Commerce based~~
5 ~~upon the most recent U.S. Department of Commerce data for the county~~
6 ~~in which the new jobs are located. For purposes of this paragraph,~~
7 ~~health care premiums paid by the applicant for individuals in new~~
8 ~~direct jobs shall not be included in the annualized wage.~~

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

15 ~~G. 1. As used in this subsection, "opportunity zone" means one~~
16 ~~or more census tracts in which, according to the most recent Federal~~
17 ~~Decennial Census, at least thirty percent (30%) of the residents~~
18 ~~have annual gross household incomes from all sources below the~~
19 ~~poverty guidelines established by the U.S. Department of Health and~~
20 ~~Human Services. An establishment which is otherwise qualified to~~
21 ~~receive incentive payments and which locates its principal business~~
22 ~~activity in an opportunity zone shall not be subject to the~~
23 ~~requirements of subsection F of this section.~~

24 ~~2. As used in this subsection:~~

1 ~~a. "negative economic event" means:~~

2 ~~(1) a man-made disaster or natural disaster as~~
3 ~~defined in Section 683.3 of Title 63 of the~~
4 ~~Oklahoma Statutes, resulting in the loss of a~~
5 ~~significant number of jobs within a particular~~
6 ~~county of this state, or~~

7 ~~(2) an economic circumstance in which a significant~~
8 ~~number of jobs within a particular county of this~~
9 ~~state have been lost due to an establishment~~
10 ~~changing its structure, consolidating with~~
11 ~~another establishment, closing or moving all or~~
12 ~~part of its operations out of this state, and~~

13 ~~b. "significant number of jobs" means Local Area~~

14 ~~Unemployment Statistics (LAUS) data, as determined by~~
15 ~~the Bureau of Labor Statistics, for a county which are~~
16 ~~equal to or in excess of five percent (5%) of the~~
17 ~~total amount of Local Area Unemployment Statistics~~
18 ~~(LAUS) data for that county for the calendar year, or~~
19 ~~most recent twelve-month period in which employment is~~
20 ~~measured, preceding the event.~~

21 ~~An establishment which is otherwise qualified to receive~~
22 ~~incentive payments and which locates in a county in which a negative~~
23 ~~economic event has occurred within the eighteen-month period~~
24 ~~preceding the start date shall not be subject to the requirements of~~

1 ~~subsection F of this section; provided, an establishment shall not~~
2 ~~be eligible to receive incentive payments based upon a negative~~
3 ~~economic event with respect to jobs that are transferred from one~~
4 ~~county of this state to another.~~ In order to qualify to receive
5 incentive payments as authorized by the Oklahoma Quality Jobs
6 Program Act, a political subdivision that attracts a federal
7 facility and develops, or causes to be developed, a qualified
8 federal facility may apply to the Oklahoma Department of Commerce
9 and receive quarterly incentive payments from the Oklahoma Tax
10 Commission for the project term pursuant to the provisions of this
11 act in an amount which shall be equal to the net benefit rate
12 multiplied by the actual gross payroll of new direct jobs at the new
13 qualified federal facility for a calendar quarter; provided, the
14 total amount of such payments shall not exceed the total net
15 benefit. The qualified federal facility must have gross payroll
16 that are projected by the Department to equal or exceed:

17 1. One Million Dollars (\$1,000,000.00) within three (3) years
18 of the first complete calendar quarter following the start date in a
19 Tier 1 or Tier 2 County;

20 2. One Million Five Hundred Thousand Dollars (\$1,500,000.00)
21 within three (3) years of the first complete calendar quarter
22 following the start date in a Tier 3 County;
23
24

1 3. Two Million Dollars (\$2,000,000.00) within three (3) years
2 of the first complete calendar quarter following the start date in a
3 Tier 4 County; or

4 4. Two Million Five Hundred Thousand Dollars (\$2,500,000.00)
5 within three (3) years of the first complete calendar quarter
6 following the start date in a Tier 5 County.

7 H. The Department shall determine if the applicant is qualified
8 to receive incentive payments.

9 I. If the applicant is determined to be qualified by the
10 Department ~~and is not subject to the provisions of subparagraph d of~~
11 ~~paragraph 7 of subsection A of Section 3603 of this title, the~~
12 Department shall conduct a cost/benefit analysis ~~to determine the~~
13 ~~estimated net direct state benefits and the net benefit rate~~
14 ~~applicable~~ for a ten-year period beginning with the first complete
15 calendar quarter following the start date and to estimate the amount
16 of gross payroll for a ten-year period beginning with the first
17 complete calendar quarter following the start date or for a fifteen-
18 year period for an establishment defined or classified in the NAICS
19 Manual under U.S. Industry No. 711211 (2007 version) or for the
20 project term for a political subdivision applying in conjunction
21 with a qualified federal facility. In conducting such cost/benefit
22 analysis, the Department shall consider quantitative factors, such
23 as the anticipated level of new tax revenues to the state along with
24 the added cost to the state of providing services, and such other

1 criteria as deemed appropriate by the Department. ~~In no event shall~~
2 ~~incentive payments, cumulatively, exceed the estimated net direct~~
3 ~~state benefits, except for applicants subject to the provisions of~~
4 ~~subparagraph d of paragraph 7 of subsection A of Section 3603 of~~
5 ~~this title. The cost/benefit analysis shall determine the estimated~~
6 ~~net direct state benefit, the net benefit rate and the incentive~~
7 ~~payment for an applicant, except:~~

8 1. In Tier 1 Counties, the cost/benefit analysis shall
9 determine the estimated net direct and indirect state benefits, the
10 compound net benefit rate and the incentive payment for an applicant
11 if the establishment pays average county wages equal to or in excess
12 of one hundred twenty-five percent (125%) of the average county
13 wage;

14 2. In Tier 2 and Tier 3 Counties, the cost/benefit analysis
15 shall determine the estimated net direct and indirect state
16 benefits, the compound net benefit rate and the incentive payment
17 for an applicant if the establishment pays average county wages
18 equal to or in excess of one hundred fifty percent (150%) of the
19 average county wage;

20 3. In Tier 4 and Tier 5 Counties, the cost/benefit analysis
21 shall determine the estimated net direct and indirect state
22 benefits, the compound net benefit rate and the incentive payment
23 for an applicant if the establishment pays average county wages
24

1 equal to or in excess of two hundred percent (200%) of the average
2 county wage.

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

1 Oklahoma Tax Commission to ~~no longer have business operations in the~~
2 state have moved the business operations that received incentive
3 payments to another state within three (3) years from the beginning
4 of the calendar quarter for which the first incentive payment claim
5 is filed.

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

1 L. For any contract executed by an establishment on or after
2 ~~the effective date of this act~~ August 1, 2018, five percent (5%) of
3 the quarterly incentive payment amount shall be transferred by the
4 Oklahoma Tax Commission to the Oklahoma Quick Action Closing Fund.

5 SECTION 4. AMENDATORY 68 O.S. 2011, Section 3605, is
6 amended to read as follows:

7 Section 3605. There is hereby created within the State Treasury
8 a special fund for the Oklahoma Tax Commission to be designated the
9 "Quality Jobs Program Incentive Payment Fund". The Oklahoma Tax
10 Commission is hereby authorized and directed to withhold a portion
11 of the taxes levied and collected pursuant to Section 2355 of Title
12 68 of the Oklahoma Statutes for deposit into the fund. The amount
13 deposited shall equal the sum ~~of an amount determined by multiplying~~
14 ~~the net benefit rate provided by the Department of Commerce by the~~
15 ~~gross payroll as determined pursuant to the provisions~~ estimated by
16 the Tax Commission to be sufficient to pay incentive payments
17 claimed pursuant to the provisions of subsection A of ~~Section 6 of~~
18 ~~this act~~ Section 3606 of this title. All of the amounts deposited
19 in such fund shall be used and expended by the Tax Commission solely
20 for the purposes and in the amounts authorized by the Oklahoma
21 Quality Jobs Program Act. The liability of the State of Oklahoma to
22 make the incentive payments under this act shall be limited to the
23 balance contained in the fund created by this section.

24

1 SECTION 5. AMENDATORY 68 O.S. 2011, Section 3606, as
2 last amended by Section 1, Chapter 138, O.S.L. 2020 (68 O.S. Supp.
3 2020, Section 3606), is amended to read as follows:

4 Section 3606. A. As soon as practicable after the end of the
5 first complete calendar quarter following the start date, the
6 establishment shall file a claim for the payment with the Oklahoma
7 Tax Commission and shall specify the actual number and gross payroll
8 of new direct jobs for the establishment for the calendar quarter.
9 The Tax Commission shall verify the actual gross payroll for new
10 direct jobs for the establishment for such calendar quarter. If the
11 Tax Commission is not able to provide such verification utilizing
12 all available resources, the Tax Commission may request such
13 additional information from the establishment as may be necessary or
14 may request the establishment to revise its claim. An establishment
15 may file for an extension of the initial filing date with the
16 Oklahoma Department of Commerce. Any such extension shall be based
17 solely upon an extraordinary adverse business circumstance which
18 prevented the establishment from hiring the new direct jobs as
19 projected. If an establishment fails to file claims as required by
20 this section, it shall forfeit the right to receive any incentive
21 payments after three (3) years from the start date. If an
22 establishment has filed at least one claim pursuant to this section
23 but fails to file another claim within two (2) years of the most
24 recent claim, the Tax Commission, after consulting with the

1 Department of Commerce, may dismiss the establishment from the
2 program, forfeiting the establishment's right to receive incentive
3 payments based on that contract.

4 B. 1. Except as otherwise provided in paragraph 2 of this
5 subsection, if the actual verified gross payroll for four (4)
6 consecutive calendar quarters does not equal or exceed the
7 applicable total required by Section 3604 of this title within three
8 (3) years of the start date, or does not equal or exceed the
9 applicable total required by Section 3604 of this title at any other
10 time during the ten-year period after the start date or during the
11 fifteen-year period after the start date for establishments defined
12 or classified in the NAICS Manual under U.S. Industry No. 711211
13 (2007 version), the incentive payments shall not be made and shall
14 not be resumed until such time as the actual verified gross payroll
15 equals or exceeds the amounts specified in Section 3604 of this
16 title. If an establishment fails to achieve the required gross
17 payroll within three (3) years of the start date, the establishment
18 shall not make a new or renewal application for incentive payments
19 authorized pursuant to the Oklahoma Quality Jobs Program Act for a
20 period of twelve (12) months from the last day of the last month of
21 the three-year period during which the required gross payroll amount
22 was not achieved.

23 2. Any establishment which does not meet the quarterly payroll
24 requirements provided pursuant to paragraph 1 of this subsection

1 during the time period which begins on April 1, 2020, and ends on
2 June 30, 2021, shall continue to receive incentive payments and
3 shall be exempt from the prescribed limitations.

4 C. If the average annualized wage required for an establishment
5 does not equal or exceed the amount specified in ~~paragraph 1 or 2 of~~
6 ~~subsection F~~ paragraph 2 of subsection C of Section 3604 of this
7 title during any calendar quarter, the incentive payments shall not
8 be made and shall not be resumed until such time as such
9 requirements are met.

10 D. In no event shall incentive payments, cumulatively, exceed
11 ~~the estimated net direct state benefits, except for establishments~~
12 ~~subject to the provisions of subparagraph d of paragraph 7 of~~
13 ~~subsection A of Section 3603 of this title:~~

14 1. The estimated net direct state benefits for establishments
15 utilizing the net benefit rate; or

16 2. The estimated net direct and indirect state benefits for
17 establishments utilizing the compound net benefit rate.

18 E. An establishment that has qualified pursuant to Section 3604
19 of this title may receive payments only in accordance with the
20 provisions of the law under which it initially applied and was
21 approved. If an establishment that is receiving incentive payments
22 expands, it may apply for additional incentive payments based on the
23 gross payroll anticipated from the expansion only, pursuant to
24 Section 3604 of this title. Provided, an establishment which has

1 suffered an extraordinary adverse business circumstance, as
2 certified by the Incentive Approval Committee, may be allowed to
3 voluntarily withdraw from the Oklahoma Quality Jobs Program, repay
4 to the Tax Commission the total amount of incentive payments
5 received pursuant to the provisions of this section, plus interest
6 at the rate specified in Section 727.1 of Title 12 of the Oklahoma
7 Statutes, and reapply to the Department for a new incentive contract
8 if the establishment qualifies pursuant to the provisions of the
9 Oklahoma Quality Jobs Program Act. Any funds received by the Tax
10 Commission pursuant to the provisions of this subsection shall be
11 apportioned in the manner that income tax revenues are apportioned.

12 F. An establishment that is receiving incentive payments may
13 not apply for additional incentive payments for any new projects
14 until twelve (12) quarters after receipt of the first incentive
15 payment, or until the establishment's actual verified gross payroll
16 for new direct jobs or new job creation equals or exceeds ~~Two~~
17 ~~Million Five Hundred Thousand Dollars (\$2,500,000.00)~~ the payroll or
18 job threshold requirements specified in subsection D or subsection G
19 of Section 3604 of this title during any four consecutive-calendar-
20 quarter period, whichever comes first. After meeting the
21 requirements of this subsection, an establishment may apply for
22 additional incentive payments based upon the gross payroll
23 anticipated from an expansion only.

24

1 G. As soon as practicable after verification of the actual
2 gross payroll as required by this section and except as otherwise
3 provided by subsection K of Section 3604 of this title, the Tax
4 Commission shall issue a warrant to the establishment in the amount
5 of the net benefit rate multiplied by the actual gross payroll as
6 determined pursuant to subsection A of this section for the calendar
7 quarter.

8 SECTION 6. AMENDATORY 68 O.S. 2011, Section 3607, as
9 amended by Section 26, Chapter 227, O.S.L. 2013 (68 O.S. Supp. 2020,
10 Section 3607), is amended to read as follows:

11 Section 3607. A. Notwithstanding any other provision of law,
12 if a qualified establishment receives an incentive payment pursuant
13 to the provisions of Section 3601 et seq. of this title, neither the
14 qualified establishment nor its contractors or subcontractors shall
15 be eligible to receive the credits or exemptions provided for in the
16 following provisions of law in connection with the activity for
17 which the incentive payment was received:

18 1. Paragraphs 16 and 17 of Section 1357 of this title;

19 2. Paragraph 7 of Section 1359 of this title;

20 3. Section 2357.4 of this title; except as provided in
21 subsection B of this section;

22 4. ~~Section 2357.7 of this title;~~

23 5. ~~Section 2-11-303 of Title 27A of the Oklahoma Statutes;~~

24 6. ~~Section 2357.22 of this title;~~

- ~~7.~~ 5. Section 2357.31 of this title;
- ~~8.~~ 6. Section 54003 of this title; or
- ~~9.~~ ~~Section 54006 of this title;~~
- ~~10.~~ 7. Section 625.1 of Title 36 of the Oklahoma Statutes;
- ~~11.~~ ~~Subsections C and D of Section 2357.59 of this title;~~
- ~~12.~~ ~~Section 2357.13 of this title; or~~
- ~~13.~~ ~~Section 4201 of this title.~~

B. Any establishment which has qualified to receive quarterly incentive payments pursuant to subsection B of Section 3604 of this title for a ten-year period with a project start date after January 1, 2010, shall be eligible to receive the credit provided for in Section 2357.4 of this title if such establishment:

1. Qualifies for the credit allowed pursuant to paragraph 1 of subsection B of Section 2357.4 of this title based on an investment made after January 1, 2010;

2. Pays an average annualized wage which equals or exceeds the average state wage as determined by the Department of Commerce based on the most recent U.S. Department of Commerce data; and

3. Obtains a determination letter from the Oklahoma Department of Commerce that the business activity of the entity will result in a positive net benefit rate.

C. For purposes of the exception provided for in this section:

1. "Estimated direct state benefits" has the meaning set out in paragraph 4 of subsection A of Section 3603 of this title;

1 2. "Estimated indirect state benefits" means the indirect new
2 tax revenues projected by the Oklahoma Department of Commerce to
3 accrue to the state, including, but not limited to, revenue
4 generated from ancillary support jobs directly related to the
5 primary business;

6 3. "Estimated direct state costs" has the meaning set out in
7 paragraph 5 of subsection A of Section 3603 of this title; and

8 4. "Estimated indirect state costs" means the costs projected
9 by the Oklahoma Department of Commerce to accrue to the state as a
10 result of new indirect jobs. Such costs shall include, but not be
11 limited to, costs enumerated in paragraph 3 of this subsection.

12 D. Any establishment which has qualified to receive quarterly
13 incentive payments pursuant to subsection B of Section 3604 of this
14 title for a ten-year period with a project start date after January
15 1, 2010, shall be eligible to receive the credit provided for in
16 Section 2357.4 of this title pursuant to the provisions of this
17 section if such establishment obtains a determination letter from
18 the Oklahoma Department of Commerce that the business activity of
19 the entity will result in a positive net benefit rate, to be
20 computed by the Oklahoma Department of Commerce using a methodology
21 which provides for the analysis of estimated direct state benefits,
22 estimated indirect state benefits, estimated direct state costs and
23 estimated indirect state costs. The Oklahoma Department of Commerce
24 shall use such information as it determines to be relevant for the

1 analysis required by this subsection including, but not limited to,
2 the type of business activity in which the entity is engaged or will
3 be engaged, amount of capital investment, type of assets acquired or
4 utilized by the business entity, economic impact of the business
5 activity within the relevant geographic region and such other
6 factors as the Department determines to be relevant. The Oklahoma
7 Department of Commerce may use information regarding the business
8 entity alone or in conjunction with relevant information regarding
9 other business activity in a geographically relevant area
10 surrounding the principal business location of the primary business
11 entity in order to perform the computation of the net benefit rate.
12 If the result of the analysis is a positive net benefit rate, the
13 establishment shall be allowed to qualify to receive quarterly
14 incentive payments pursuant to subsection B of Section 3604 of this
15 title for a ten-year period and shall be eligible to receive the
16 credit provided for in Section 2357.4 of this title. The Oklahoma
17 Department of Commerce shall transmit a determination letter to the
18 authorized representative of the establishment and shall also
19 transmit a copy of the determination letter to the Oklahoma Tax
20 Commission, regardless of whether the result is a positive or
21 negative net benefit rate.

22 SECTION 7. REPEALER 68 O.S. 2011, Sections 3501, 3502,
23 3503, 3504, 3505, 3506, 3507 and 3508, are hereby repealed.

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1 SECTION 8. REPEALER 68 O.S. 2011, Sections 3604.1, as
2 amended by Section 25, Chapter 227, O.S.L. 2013, 3611 and 3612 (68
3 O.S. Supp. 2020, Section 3604.1), are hereby repealed.

4 SECTION 9. REPEALER 68 O.S. 2011, Sections 3801, 3802,
5 3803, 3804, 3805, 3806, 3807 and 3808, are hereby repealed.

6 SECTION 10. REPEALER 68 O.S. 2011, Sections 3901, 3902,
7 3903, as last amended by Section 1, Chapter 128, O.S.L. 2014, 3904,
8 as last amended by Section 1, Chapter 197, O.S.L. 2019, 3905, 3906,
9 3907, 3908, 3909 and 3910 (68 O.S. Supp. 2020, Sections 3903 and
10 3904), are hereby repealed.

11 SECTION 11. REPEALER 68 O.S. 2011, Sections 3911, 3912,
12 3913, 3914, as last amended by Section 4, Chapter 144, O.S.L. 2018,
13 3915, 3916, 3917, 3918, 3919 and 3920 (68 O.S. Supp. 2020, Section
14 3914), are hereby repealed.

15 SECTION 12. This act shall become effective November 1, 2021.

16

17 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
18 04/01/2021 - DO PASS.

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