

1 **SENATE FLOOR VERSION**

2 February 18, 2021

3 SENATE BILL NO. 936

By: Leewright and Hall

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5  
6 An Act relating to quality jobs; amending 68 O.S.  
7 2011, Sections 3602, 3603, as last amended by Section  
8 1, Chapter 156, O.S.L. 2018, 3604, as last amended by  
9 Section 2, Chapter 144, O.S.L. 2018, 3605, 3606, as  
10 last amended by Section 1, Chapter 138, O.S.L. 2020  
11 and 3607, as amended by Section 26, Chapter 227,  
12 O.S.L. 2013 (68 O.S. Supp. 2020, Sections 3603, 3604,  
13 3606 and 3607), which relates to the Oklahoma Quality  
14 Jobs Program Act; modifying intent; modifying  
15 definitions; creating definitions; authorizing  
16 utilization of compound net benefit rate; requiring  
17 minimum net benefit rate; removing member of  
18 Incentive Approval Committee for basic industry  
19 establishments; eliminating quarterly incentive  
20 payments for certain establishments; adding compound  
21 net benefit rate to payment formula; removing  
22 exception; modifying wage requirement; prohibiting  
23 certain payments from wage requirement; removing tax  
24 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  
attracting and developing certain facility for  
certain term; limiting certain payments; providing  
minimum payroll requirements for qualified federal  
facility; removing determination requirement for  
certain net benefits; removing limit for certain  
incentive payment; requiring utilization of  
cost/benefit analysis to determine certain benefit,  
rate and payment; removing repayment requirement for

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9 payroll thresholds are met; removing outdated and  
10 repealed statutory references; updating statutory  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

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

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

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

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

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

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

14 a. be ~~directly~~ related to the jobs created as a result of  
15 the establishment locating in the State of Oklahoma,  
16 and

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

21 3. The Oklahoma Department of Commerce and the Oklahoma Tax  
22 Commission implement the provisions of this act and exercise all  
23 powers as authorized in this act. The exercise of powers conferred  
24

1 by this act shall be deemed and held to be the performance of  
2 essential public purposes; and

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

8 SECTION 2. AMENDATORY 68 O.S. 2011, Section 3603, as  
9 last amended by Section 1, Chapter 156, O.S.L. 2018 (68 O.S. Supp.  
10 2020, Section 3603), is amended to read as follows:

11 Section 3603. A. As used in the Oklahoma Quality Jobs Program  
12 Act:

13 1. a. "Basic industry" means:

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

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

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

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

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

20 ~~(d) the facility is constructed on or after July~~  
21 ~~1, 1996 those health care activities~~  
22 ~~including medical and diagnostic laboratory~~  
23 ~~activities defined or classified in the~~  
24 ~~NAICS Manual under Industry Group No. 6215,~~

1 miscellaneous ambulatory health care  
2 services defined as Industry Group No.  
3 621999, and specialty hospitals, except  
4 psychiatric and substance abuse hospitals,  
5 in the NAICS Manual under U.S. Industry  
6 Group No. 62231,

7 (3) those administrative and facilities support  
8 service activities defined or classified in the  
9 NAICS Manual under Industry Group Nos. 5611 and  
10 5612, ~~Industry Nos. 51821, 519130, 52232 and~~  
11 ~~56142 or U.S. Industry Nos. 524291 and 551114,~~  
12 ~~those other support activities for air~~  
13 ~~transportation defined or classified in the NAICS~~  
14 ~~Manual under Industry Group No. 488190, and those~~  
15 ~~support, repair, and maintenance service~~  
16 ~~activities for the wind industry defined or~~  
17 ~~classified in the NAICS Manual under Industry~~  
18 ~~Group No. 811310~~ and those management of  
19 companies and enterprises defined of classified  
20 under Industry Group No. 5511,

21 (4) those professional, scientific and technical  
22 service activities defined or classified in the  
23 NAICS Manual under U.S. Industry Nos. ~~541710 and~~  
24 ~~541380~~ 5413, 5415, 5416 and 5417,

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

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

18 ~~(7) (a) those air transportation activities defined~~  
19 ~~or classified in the NAICS Manual under~~  
20 ~~Industry Group No. 4811, if the following~~  
21 ~~facilities are located in this state:~~  
22 ~~(i) the corporate headquarters of an~~  
23 ~~establishment classified therein, and~~

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

16 ~~(b) those air transportation activities defined~~  
17 ~~or classified in the NAICS Manual under~~  
18 ~~Industry Group No. 4811, if an establishment~~  
19 ~~classified therein has or will have within~~  
20 ~~one (1) year sales of at least seventy-five~~  
21 ~~percent (75%) of its total sales, as~~  
22 ~~determined by the Incentive Approval~~  
23 ~~Committee pursuant to the provisions of~~  
24 ~~subsection B of this section, to out-of-~~



1 ~~state customers or buyers, to in-state~~  
2 ~~customers or buyers if the product or~~  
3 ~~service is resold by the purchaser to an~~  
4 ~~out-of-state customer or buyer for ultimate~~  
5 ~~use, or to the federal government those~~  
6 ~~credit bureaus defined or classified in the~~  
7 ~~NAICS Manual under U.S. Industry No. 56145,~~

8 (8) flight training services and apprenticeship  
9 program activities defined or classified in the  
10 NAICS Manual under U.S. Industry Group ~~No.~~ Nos.  
11 611512 and 611513, ~~which for purposes of the~~  
12 ~~Oklahoma Quality Jobs Program Act shall include~~  
13 ~~new direct jobs for which gross payroll existed~~  
14 ~~on or after January 1, 2003, as identified in the~~  
15 ~~NAICS Manual,~~

16 (9) the following, if an establishment located in a  
17 Tier 4 County or a Tier 5 County and classified  
18 therein has or will have within ~~one (1) year~~  
19 ~~sales of at least seventy-five percent (75%) of~~  
20 ~~its total sales~~ twenty-four (24) months of the  
21 date of application, as determined by the  
22 Oklahoma Department of Commerce, sales of at  
23 least forty percent (40%) for the first two (2)  
24 years and subsequently sixty percent (60%) of its

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

22 (a) those transportation ~~and warehousing~~  
23 activities defined or classified in the  
24 NAICS Manual ~~under Industry Subsector No.~~

1 ~~493, if not otherwise listed in this~~  
2 ~~paragraph, Industry Subsector Nos. 482 and~~  
3 ~~484 and Industry Group Nos. 4884 through~~  
4 ~~4889~~ 481, 482, 483, 484 and 488,

5 (b) ~~those passenger transportation activities~~  
6 travel arrangement services defined or  
7 classified in the NAICS Manual under  
8 Industry Nos. ~~561510 and 561599~~ 5615 and  
9 56192,

10 (c) ~~those freight or cargo transportation~~  
11 ~~activities defined or classified in the~~  
12 ~~NAICS Manual under Industry No. 541614,~~

13 ~~(d) those insurance activities defined or~~  
14 ~~classified in the NAICS Manual under~~  
15 ~~Industry Group No. 5241,~~

16 ~~(e) those services to dwellings and other~~  
17 ~~buildings, as defined or classified in the~~  
18 ~~NAICS Manual under Industry Group No. 5617,~~  
19 ~~excluding U.S. Industry Nos. 561730, 56171,~~  
20 ~~56172, 56174 and 56179,~~

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

24

1 ~~(g) those information technology and other~~  
2 ~~computer-related service activities defined~~  
3 ~~or classified in the NAICS Manual under~~  
4 ~~Industry Group Nos. 5112, 5182, 5191 and~~  
5 ~~5415 those securities, commodity contracts~~  
6 ~~and other financial investment activities~~  
7 ~~defined or classified in the NAICS Manual~~  
8 ~~under U.S. Industry Group No. 523,~~

9 (d) those insurance carriers and related  
10 activities defined or classified in the  
11 NAICS Manual under U.S. Industry Group No.  
12 524,

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

16 (f) those financial and credit intermediation  
17 activities defined or classified in the  
18 NAICS Manual under Industry Group Nos.  
19 522210, 522293, 522294, and 522320,

20 (g) those heavy and civil engineering  
21 construction activities defined or  
22 classified in the NAICS Manual under U.S.  
23 Industry Group No. 237,

1 (h) those business support service activities  
2 defined or classified in the NAICS Manual  
3 under U.S. Industry Nos. 561410 through  
4 ~~561430, excluding 56143,~~ 561422 and Industry  
5 No. 51911,

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

9 ~~(j) those professional, scientific and technical~~  
10 ~~service activities defined or classified in~~  
11 ~~the NAICS Manual under Industry Group Nos.~~  
12 ~~5412, 5414, 5415, 5416 and 5417, Industry~~  
13 ~~Nos. 54131, 54133, 54136 and 54137, and U.S.~~  
14 ~~Industry No. 541990, if not otherwise listed~~  
15 ~~in this paragraph~~ those electric utility  
16 activities defined or classified in the  
17 NAICS Manual under U.S. Industry Group No.  
18 2211,

19 (j) those professional, scientific and technical  
20 services defined or classified in the NAICS  
21 Manual under U.S. Industry Group Nos. 5411,  
22 5412, 5414, 5418 and 5419,

23 (k) those ~~communication~~ telecommunication  
24 service activities defined or classified in

1 the NAICS Manual under Industry Nos. ~~51741~~  
2 ~~and 51791~~ No. 517,

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

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

12 ~~(n) those activities relating to processing of~~  
13 ~~insurance claims, defined or classified in~~  
14 ~~the NAICS Manual under U.S. Industry Nos.~~  
15 ~~524210 and 524292; provided, activities~~  
16 ~~described in U.S. Industry Nos. 524210 and~~  
17 ~~524292 in the NAICS Manual other than~~  
18 ~~processing of insurance claims shall not be~~  
19 ~~included for purposes of this subdivision,~~

20 ~~(o) those agricultural activities classified in~~  
21 ~~the NAICS Manual under U.S. Industry Nos.~~  
22 ~~112120 and 112310 those real estate or~~  
23 ~~brokerage activities classified in the NAICS~~  
24 ~~Manual under U.S. Industry No. 53120 for~~

1 which at least seventy-five percent (75%) of  
2 the establishment's revenues are attributed  
3 to out-of-state sales and at least seventy-  
4 five percent (75%) of the real estate  
5 transactions generating those revenues are  
6 attributed to real property located outside  
7 this state,

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

14 ~~(p)~~

15 (o) those business associations and professional  
16 organization activities classified in the  
17 NAICS Manual under U.S. Industry ~~No.~~ Nos.  
18 813910 and 813920,

19 ~~(q) alternative energy structure construction~~  
20 ~~classified in the NAICS Manual under U.S.~~  
21 ~~Industry No. 237130,~~

22 ~~(r)~~

23

24

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

4           ~~(s)~~

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

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

11          ~~(u) those securities, commodity contracts and~~  
12          ~~investment activities classified in the~~  
13          ~~NAICS Manual under Industry Subsector No.~~  
14          ~~523,~~

15           (10) those activities related to extraction or  
16           pipeline transportation of petroleum, natural gas  
17           or refined petroleum products, defined or  
18           classified in the NAICS Manual under Industry  
19           Group No. 2111, 213111, 213112 or 486, subject to  
20           the limitations provided in paragraph 3 of this  
21           subsection and ~~paragraph 3 of subsection B of~~  
22           ~~this section,~~

23           (11) those activities performed by the federal  
24           civilian workforce at a facility ~~of the Federal~~



1 ~~Aviation Administration~~ located in this state if  
2 the Director of the Oklahoma Department of  
3 Commerce determines or is notified that the  
4 federal government is soliciting proposals or  
5 otherwise inviting states to compete for  
6 additional federal civilian employment or  
7 expansion of federal civilian employment at such  
8 facilities,

9 (12) those activities defined or classified in the  
10 NAICS Manual under U.S. Industry No. 711211 (~~2007~~  
11 2017 version),

12 ~~(13) those real estate or brokerage activities~~  
13 ~~classified in the NAICS Manual under U.S.~~  
14 ~~Industry No. 53120 for which at least seventy-~~  
15 ~~five percent (75%) of the establishment's~~  
16 ~~revenues are attributed to out-of-state sales and~~  
17 ~~at least seventy-five percent (75%) of the real~~  
18 ~~estate transactions generating those revenues are~~  
19 ~~attributed to real property located outside the~~  
20 ~~State of Oklahoma, or those performing arts~~  
21 ~~companies defined or classified in the NAICS~~  
22 ~~Manual under U.S. Industry Group No. 7111,~~

23 (14) those support activities for rail transportation  
24 and those support activities for water

1 transportation defined or classified in the NAICS  
2 Manual under U.S. Industry Nos. 4882 and 4883,  
3 (15) those motion picture and video industries defined  
4 or classified in the NAICS Manual under U.S.  
5 Industry Group No. 5121, and those sound  
6 recording industries defined or classified in the  
7 NAICS Manual under U.S. Industry Group No. 5122,  
8 and those employees of film support industries  
9 classified in the NAICS Manual under U.S.  
10 Industry Group Nos. 7114, 7115 and 236220 when  
11 contracting with a film studio or film production  
12 located in this state,  
13 (16) those agricultural activities classified in the  
14 NAICS Manual under U.S. Industry Nos. 1114,  
15 112120, 112310, 112340, 1125, 112910 and 115, and  
16 (17) equipment rental and leasing activities defined  
17 or classified in the NAICS Manual under Industry  
18 Group No. 5324.

19 b. An establishment described in subparagraph a of this  
20 paragraph shall not be considered to be engaged in a  
21 basic industry unless it offers, or will offer within  
22 one hundred eighty (180) days of employment, a basic  
23 health benefits plan to the individuals it employs in  
24 new direct jobs in this state which is determined by

1 the Oklahoma Department of Commerce to consist of the  
2 following elements or elements substantially  
3 equivalent thereto:

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

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

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

20 A transferor shall be treated as related to a transferee if more  
21 than fifty percent (50%) of the voting interests of the transferor  
22 and transferee are owned, directly or indirectly, by the other or  
23 are owned, directly or indirectly, by the same person or persons,  
24 unless such transferred establishment has an outstanding class of

1 equity securities registered under Sections 12(b) or 15(d) of the  
2 Securities Exchange Act of 1934, as amended, in which event the  
3 transferor and transferee will be treated as unrelated; provided, an  
4 establishment applying for the Oklahoma Quality Jobs Program Act as  
5 a result of a change-in-control event is required to apply within  
6 one hundred eighty (180) days of the change-in-control event to  
7 qualify for consideration. An establishment entering the Oklahoma  
8 Quality Jobs Program Act as the result of a change-in-control event  
9 shall be required to maintain a level of new direct jobs as agreed  
10 to in its contract with the Oklahoma Department of Commerce and to  
11 pay new direct jobs an average annualized wage which equals or  
12 exceeds one hundred twenty-five percent (125%) of the average county  
13 wage as that percentage is determined by the Oklahoma Department of  
14 Commerce based upon the most recent U.S. Department of Commerce data  
15 for the county in which the new jobs are located. For purposes of  
16 this paragraph, healthcare premiums paid by the applicant for  
17 individuals in new direct jobs shall not be included in the  
18 annualized wage. Such establishment entering the Oklahoma Quality  
19 Jobs Program Act as the result of a change-in-control event shall be  
20 required to retain the contracted average annualized wage and  
21 maintain the contracted maintenance level of new direct jobs numbers  
22 as certified by the Tax Commission. If the required average  
23 annualized wage or the required new direct jobs numbers do not equal  
24 or exceed such contracted level during any quarter, the quarterly

1 incentive payments shall not be made and shall not be resumed until  
2 such time as such requirements are met. An establishment described  
3 in this paragraph shall be required to repay all incentive payments  
4 received under the Oklahoma Quality Jobs Program Act if the  
5 establishment is determined by the Tax Commission to no longer have  
6 business operations in the state within three (3) years from the  
7 beginning of the calendar quarter for which the first incentive  
8 payment claim is filed;

9 3. "New direct job":

10 a. means full-time-equivalent employment in this state in  
11 an establishment which has qualified to receive an  
12 incentive payment pursuant to the provisions of the  
13 Oklahoma Quality Jobs Program Act which employment did  
14 not exist in this state prior to the date of approval  
15 by the Department of the application of the  
16 establishment pursuant to the provisions of Section  
17 3604 of this title and with respect to an  
18 establishment qualifying for incentive payments  
19 pursuant to division (12) of subparagraph a of  
20 paragraph 1 of this subsection shall not include  
21 compensation paid to an employee or independent  
22 contractor for an athletic contest conducted in the  
23 state if the compensation is paid by an entity that  
24 does not have its principal place of business in the

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

1 control event, if such job otherwise qualifies as a  
2 new direct job, ~~and~~

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

1 circumstances shall employment relating to field  
2 services be considered new direct jobs, and  
3 c. shall include full-time-equivalent employment at a  
4 qualified federal facility which did not exist in this  
5 state prior to the date of approval by the Department  
6 of Commerce of the application of the political  
7 subdivision for a qualified federal facility;

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

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

14 a. the costs of education of new state resident children,

15 b. the costs of public health, public safety and  
16 transportation services to be provided to new state  
17 residents,

18 c. the costs of other state services to be provided to  
19 new state residents, and

20 d. ~~the costs of other state services~~ direct state costs  
21 as deemed relevant by the Oklahoma Department of  
22 Commerce;

23 6. "Estimated net direct state benefits" means the estimated  
24 direct state benefits less the estimated direct state costs;



1       7. "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 generated  
4 from ancillary support jobs directly related to the establishment;

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

10       9. "Estimated net direct and indirect state benefits" means the  
11 estimated direct and indirect state benefits less the estimated  
12 direct and indirect state costs;

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

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

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

22           ~~(1) bids were solicited and accepted by the United~~  
23                   ~~States Department of Defense from facilities~~  
24                   ~~located outside this state,~~

1 ~~(2) the term is or is renewable for not less than~~  
2 ~~twenty (20) years, and~~  
3 ~~(3) the average annual salary, excluding benefits~~  
4 ~~which are not subject to Oklahoma income taxes,~~  
5 ~~for new direct jobs created as a direct result of~~  
6 ~~the awarding of the contract is projected by the~~  
7 ~~Oklahoma Department of Commerce to equal or~~  
8 ~~exceed Forty Thousand Dollars (\$40,000.00) within~~  
9 ~~three (3) years of the date of the first~~  
10 ~~incentive payment,~~

11 ~~c. except as otherwise provided in subparagraph d of this~~  
12 ~~paragraph, in no event shall incentive payments,~~  
13 ~~cumulatively, exceed the estimated net direct state~~  
14 ~~benefits,~~

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

17 ~~(1) in an opportunity zone located in a high-~~  
18 ~~employment county, as such terms are defined in~~  
19 ~~subsection G of Section 3604 of this title, or~~

20 ~~(2) in a county in which:~~

21 ~~(a) the per capita personal income, as~~  
22 ~~determined by the Department, is eighty-five~~  
23 ~~percent (85%) or less of the statewide~~  
24 ~~average per capita personal income,~~

1 ~~(b) the population has decreased over the~~  
2 ~~previous ten (10) years, as determined by~~  
3 ~~the Oklahoma Department of Commerce based on~~  
4 ~~the most recent U.S. Department of Commerce~~  
5 ~~data, or~~

6 ~~(c) the unemployment rate exceeds the lesser of~~  
7 ~~five percent (5%) or two percentage points~~  
8 ~~above the state average unemployment rate as~~  
9 ~~certified by the Oklahoma Employment~~  
10 ~~Security Commission,~~

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

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

18 ~~(2) expands its operations in this state by creating~~  
19 ~~additional new direct jobs which pay average~~  
20 ~~annualized wages which equal or exceed one hundred~~  
21 ~~fifty percent (150%) of the average annualized~~  
22 ~~wages of new direct jobs on which incentive~~  
23 ~~payments were received during the preceding~~  
24 ~~calendar year, except as otherwise provided in~~

1 this section, in no event shall incentive payments  
2 based on the net benefit rate, cumulatively,  
3 exceed the estimated net direct state benefits;

4 ~~f.~~ with

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

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

11 b. in no event shall incentive payments, cumulatively,  
12 exceed the estimated net direct benefit and indirect  
13 state benefits;

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

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

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

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

20 Incentive payments made pursuant to the provisions of this  
21 ~~subparagraph~~ paragraph shall be based upon payroll associated with  
22 such new direct jobs. For purposes of this ~~subparagraph~~ paragraph,  
23 the amount of health insurance premiums or other benefits paid by  
24

1 the establishment shall not be included for purposes of computation  
2 of the average annualized wage;

3 ~~8.~~ 14. "Gross payroll" means wages, as defined in Section  
4 2385.1 of this title for new direct jobs;

5 ~~9.~~

6 15. a. "Establishment" means any business, nonprofit or  
7 governmental entity, no matter what legal form,  
8 including, but not limited to, a nonreligious 501(c)3,  
9 501(c)6, qualified federal facility, a sole  
10 proprietorship, a partnership, a limited liability  
11 company, a corporation or combination of corporations  
12 which have a central parent corporation which makes  
13 corporate management decisions such as those involving  
14 consolidation, acquisition, merger or expansion;  
15 federal agency; political subdivision of the State of  
16 Oklahoma; or trust authority; provided, distinct,  
17 identifiable subunits of such entities may be  
18 determined to be an establishment, for all purposes of  
19 the Oklahoma Quality Jobs Program Act, by the  
20 Department subject to the following conditions:

21 (1) within three (3) years of the first complete  
22 calendar quarter following the start date, the  
23 entity must have a minimum payroll of ~~Two Million~~  
24 ~~Five Hundred Thousand Dollars (\$2,500,000.00)~~ at

1                   least the payroll threshold required in the  
2                   county where it is located and the subunit must  
3                   also have or will have a minimum payroll of ~~Two~~  
4                   ~~Million Five Hundred Thousand Dollars~~  
5                   ~~(\$2,500,000.00)~~ at least the payroll threshold  
6                   required in the county where it is located,

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

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

20                  (4) the entity has not previously had a subunit  
21                  determined to be an establishment pursuant to  
22                  this section; ~~provided, the restriction set forth~~  
23                  ~~in this division shall not apply to subunits~~  
24                  ~~which qualify pursuant to the provisions of~~

1                   ~~subparagraph b of paragraph 7 of this subsection,~~  
2                   and

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

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

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

20                  ~~11. "Qualified federal contract" means a contract between an~~  
21                  ~~agency or instrumentality of the United States government, including~~  
22                  ~~but not limited to the Department of Defense or any branch of the~~  
23                  ~~United States Armed Forces, but exclusive of any contract performed~~  
24                  ~~for the Federal Emergency Management Agency as a direct result of a~~



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

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

6           ~~a. established multiyear classified and unclassified~~  
7           ~~indefinite-delivery/indefinite-quantity federal~~  
8           ~~contract vehicles in excess of Fifty Million Dollars~~  
9           ~~(\$50,000,000.00),~~

10          ~~b. current capability to sponsor and maintain personnel~~  
11          ~~security clearances and authorized by the federal~~  
12          ~~government to handle and perform classified work up to~~  
13          ~~the Top Secret Sensitive Compartmented Information~~  
14          ~~levels,~~

15          ~~c. at least one on-site federally certified Sensitive~~  
16          ~~Compartmented Information Facility,~~

17          ~~d. on-site secure mass data storage complex with the~~  
18          ~~capability of isolating, segregating and protecting~~  
19          ~~corporate proprietary and classified information,~~

20          ~~e. trusted agent status by maintaining no ownership of,~~  
21          ~~vested interest in, nor royalty production from any~~  
22          ~~intellectual property,~~

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

1 ~~g. the direct access to restricted air space through a~~  
2 ~~formalized memorandum of agreement with the Department~~  
3 ~~of Defense,~~

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

6 ~~i. the ability to house state-of-the-art surety~~  
7 ~~facilities, including chemical, biological,~~  
8 ~~radiological, explosives, electronics, and unmanned~~  
9 ~~systems laboratories and ranges;~~

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

13 ~~14.~~ 17. "Start date" means the date on which an establishment  
14 may begin accruing benefits for the creation of new direct jobs,  
15 which date shall be determined by the Department;

16 ~~15.~~ 18. "Effective date" means the date of approval of a  
17 contract under which incentive payments will be made pursuant to the  
18 Oklahoma Quality Jobs Program Act, which shall be the date the  
19 signed and accepted incentive contract is received by the  
20 Department; provided, an approved project may have a start date  
21 which is different from the effective date;

22 ~~16. "Total qualified labor hours" means the reimbursed payment~~  
23 ~~amount for hours of work performed by the State of Oklahoma~~  
24 ~~workforce of a qualified federal contractor or the State of Oklahoma~~

1 ~~workforce of a subcontractor of a qualified federal contractor and~~  
2 ~~which are required for the full performance of a qualified federal~~  
3 ~~contract;~~

4 ~~17. "Qualified labor rate" means the fully reimbursed labor~~  
5 ~~rate paid through a qualified federal contract for qualified labor~~  
6 ~~hours to the qualified federal contractor or subcontractor;~~

7 ~~18. "Qualified federal contractor" means a business entity:~~

8 ~~a. maintaining a prime contract with the federal~~  
9 ~~government as defined in paragraph 11 of this~~  
10 ~~subsection;~~

11 ~~b. providing notice of intent to apply to the Department~~  
12 ~~within one hundred eighty (180) days of July 1, 2010,~~  
13 ~~or one hundred eighty (180) days of the date of the~~  
14 ~~award of a qualified federal contract or award of a~~  
15 ~~new qualified subcontract under an existing qualified~~  
16 ~~federal contract, and~~

17 ~~c. adding substantively to the contract by performing at~~  
18 ~~least eight percent (8%) of the total labor whether~~  
19 ~~qualified and nonqualified labor as determined by the~~  
20 ~~federal contractor verifier on a direct contract or~~  
21 ~~individual task order or delivery order on an~~  
22 ~~indefinite-delivery/indefinite-quantity or other~~  
23 ~~blanket contract vehicle.~~

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

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

12           ~~a. is organized and existing under Section 176 of Title~~  
13           ~~60 of the Oklahoma Statutes for the benefit of a~~  
14           ~~geographic area which includes a city or county or~~  
15           ~~some combination thereof, and~~

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

21       ~~A proxy establishment may be determined to be an establishment~~  
22 ~~for all purposes of the Oklahoma Quality Jobs Program Act by the~~  
23 ~~Department and incentive payments may be made to such proxy~~  
24 ~~establishment for new direct jobs otherwise qualified pursuant to~~

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

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

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

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

22 22. "Project term" means the length of time a political  
23 subdivision may receive incentive payments associated with a  
24 qualified federal facility pursuant to the provisions of this act;

1 provided, the project term shall not exceed twenty (20) years from  
2 the date of the first incentive payment;

3 23. "Develops" means acquires, maintains, constructs, improves,  
4 enlarges, renews, renovates, replaces, leases, equips, furnishes or  
5 operates;

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

13 25. "State threshold wage" means an annualized average wage of  
14 Forty Thousand Dollars (\$40,000.00). This maximum wage threshold  
15 shall be indexed and modified from time to time based on the latest  
16 Consumer Price Index year-to-date percent change release as of the  
17 date of the annual average county wage data release from the Bureau  
18 of Economic Analysis of the United States Department of Commerce.  
19 For purposes of this paragraph, health care premiums paid by the  
20 applicant for individuals in new direct jobs shall not be included  
21 in the annualized wage;

22 26. "Small employer wage" means the average county wage of  
23 employers with less than five hundred employees located in that  
24 county as that percentage is determined by the Department of

1 Commerce based upon the most recent wage and employment data from  
2 the Oklahoma Employment Security Commission for the county where the  
3 new direct jobs are located. For purposes of this paragraph, health  
4 care premiums paid by the applicant for individuals in new direct  
5 jobs shall not be included in the annualized wage;

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

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

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

17 30. "Tier 4 County" means a county that has a population of  
18 greater than or equal to sixty thousand (60,000) and less than three  
19 hundred thousand (300,000) as identified by the most recent federal  
20 decennial Census from the United States Census Bureau;

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



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

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

- 13            a. forest nurseries and gathering of forest products  
14                    activities defined or classified in the NAICS Manual  
15                    under Industry Group No. 1132,
- 16            b. arts, entertainment and recreation activities defined  
17                    or classified in the NAICS Manual under Industry Group  
18                    Nos. 711219, 711310, 7121, 713110, 713940 and 713990,  
19                    and
- 20            c. electronic and precision equipment repair and  
21                    maintenance activities defined or classified in the  
22                    NAICS Manual under Industry Group No. 8112, and  
23                    support, repair, and maintenance service activities

1 for the wind industry defined or classified in the  
2 NAICS Manual under Industry Group No. 811310;

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

5 a. mining activities, except oil and gas, defined or  
6 classified in the NAICS Manual under Industry Group  
7 No. 212,

8 b. support activities for nonmetallic minerals mining  
9 activities defined or classified in the NAICS Manual  
10 under Industry Group No. 213115, and

11 c. materials recovery and remediation services activities  
12 defined or classified in the NAICS Manual under  
13 Industry Group Nos. 562910 and 562920; and

14 35. "Tier 1 County basic industry" means all industries  
15 included in Tier 2 County basic industry and Tier 3 County basic  
16 industry and includes:

17 a. depository credit intermediation activities defined or  
18 classified in the NAICS Manual under Industry Group  
19 No. 5221, and

20 b. hospitals and health care activities defined or  
21 classified in the NAICS Manual under Industry Group  
22 No. 622.

23 B. The Incentive Approval Committee is hereby created and shall  
24 consist of the Director of the Office of Management and Enterprise

1 Services, the Director of the Department and one member of the  
2 Oklahoma Tax Commission appointed by the Tax Commission, or a  
3 designee from each agency approved by such member. It shall be the  
4 duty of the Committee to determine the eligibility of all applicants  
5 for the Oklahoma Quality Jobs Program Act, subject to the applicable  
6 requirements.

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

14 SECTION 3. AMENDATORY 68 O.S. 2011, Section 3604, as  
15 last amended by Section 2, Chapter 144, O.S.L. 2018 (68 O.S. Supp.  
16 2020, Section 3604), is amended to read as follows:

17 Section 3604. A. Except as otherwise provided in subsection I  
18 or subsection L of this section, an establishment which meets the  
19 qualifications specified in the Oklahoma Quality Jobs Program Act  
20 may receive quarterly incentive payments for a ten-year period from  
21 the Oklahoma Tax Commission pursuant to the provisions of the  
22 Oklahoma Quality Jobs Program Act; ~~provided, such an establishment~~  
23 ~~defined or classified in the NAICS Manual under U.S. Industry No.~~  
24 ~~711211 (2007 version) may receive quarterly incentive payments for a~~

1 ~~fifteen-year period.~~ The amount of such payments shall be equal to  
2 the net benefit rate or the compound net benefit rate multiplied by  
3 the actual gross payroll of new direct jobs for a calendar quarter  
4 as verified by the Oklahoma Employment Security Commission.

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

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

16 1. Be engaged in a basic industry, a Tier 3 County basic  
17 industry in a Tier 1, Tier 2 or Tier 3 County, a Tier 2 County basic  
18 industry in a Tier 1 or Tier 2 County or Tier 1 County basic  
19 industry in a Tier 1 County;

20 2. ~~Have an annual gross payroll for new direct jobs projected~~  
21 ~~by the Department to equal or exceed Two Million Five Hundred~~  
22 ~~Thousand Dollars (\$2,500,000.00) within three (3) years of the first~~  
23 ~~complete calendar quarter following the start date~~ Pay new direct  
24 jobs an average annualized wage which equals or exceeds the average

1 county wage, the state threshold wage, or when the establishment has  
2 less than five hundred (500) employees, pay new direct jobs an  
3 average annualized wage which equals or exceeds the small employer  
4 wage. For purposes of this paragraph, health care premiums paid by  
5 the applicant for individuals in new direct jobs shall not be  
6 included in the annualized wage; and

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

12 D. ~~In~~ Before receiving its first quarterly payment, an  
13 establishment shall meet the payroll and/or the new jobs  
14 requirements set forth in this section and stipulated in the  
15 agreement with the state. When these requirements are met, the  
16 establishment shall be paid the prior quarter incentive payments and  
17 the current quarter incentive payments for those quarters when the  
18 average wage threshold was also met. Except as otherwise provided  
19 in this section, in order to qualify to receive incentive payments  
20 as authorized by the Oklahoma Quality Jobs Program Act, an  
21 establishment ~~engaged in an activity described under~~ shall be  
22 required to have an annual gross payroll for new direct jobs  
23 projected by the Department to equal or exceed:

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

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

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

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

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

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

18           ~~a. have an annual gross payroll for new direct jobs~~  
19           ~~projected by the Department to equal or exceed One~~  
20           ~~Million Five Hundred Thousand Dollars (\$1,500,000.00)~~  
21           ~~within three (3) years of the first complete calendar~~  
22           ~~quarter following the start date and make, or which~~  
23           ~~will make within one (1) year, at least seventy five~~  
24           ~~percent (75%) of its total sales, as determined by the~~

1 ~~Incentive Approval Committee pursuant to the~~  
2 ~~provisions of subsection B of Section 3603 of this~~  
3 ~~title, to out-of-state customers or buyers, to in-~~  
4 ~~state customers or buyers if the product or service is~~  
5 ~~resold by the purchaser to an out-of-state customer or~~  
6 ~~buyer for ultimate use, or to the federal government,~~  
7 ~~unless the annual gross payroll equals or exceeds Two~~  
8 ~~Million Five Hundred Thousand Dollars (\$2,500,000.00)~~  
9 ~~in which case the requirements for purchase of output~~  
10 ~~provided by this subparagraph shall not apply, and~~

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

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

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

23 ~~b. have a number of full-time equivalent employees~~  
24 ~~working an average of thirty (30) or more hours per~~

1 ~~week in new direct jobs equal to or in excess of~~  
2 ~~eighty percent (80%) of the total number of new direct~~  
3 ~~jobs.~~

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

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

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

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

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

23 5. Creates at least fifteen (15) new jobs with at least Seven  
24 Hundred Thousand Dollars (\$700,000.00) in gross payroll within two



1 (2) years of the first complete calendar quarter following the start  
2 date in a Tier 5 county.

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

5 a. is a federal Superfund removal site,

6 b. is listed on the National Priorities List established  
7 under Section 9605 of Title 42 of the United States  
8 Code,

9 c. has been formally deferred to the state in lieu of  
10 listing on the National Priorities List, or

11 d. has been determined by the Department of Environmental  
12 Quality to be contaminated by any substance regulated  
13 by a federal or state statute governing environmental  
14 conditions for real property pursuant to an order of  
15 the Department of Environmental Quality,

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

19 2. In order to qualify for the incentive payments pursuant to  
20 this subsection, the establishment shall conduct the activity  
21 resulting in at least fifty percent (50%) of its Oklahoma taxable  
22 income or adjusted gross income, as determined under Section 2358 of  
23 this title, whether from the sale of products or services or both  
24 products and services, at the physical location which has been

1 determined not to comply with the federal or state statutes  
2 described in this subsection with respect to environmental  
3 conditions for real property. The establishment shall be subject to  
4 all other requirements of the Oklahoma Quality Jobs Program Act  
5 other than the exemptions provided by this subsection.

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

9 a. the site designated by the entity does meet one or  
10 more of the requirements listed in paragraph 1 of this  
11 subsection, and

12 b. the site is being or has been remediated to a level  
13 which is consistent with the intended use of the  
14 property.

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

19 4. If authorized by the Department of Environmental Quality  
20 pursuant to paragraph 3 of this subsection, the entity may utilize a  
21 remediated portion of the property for its intended purpose prior to  
22 remediation of the remainder of the site, and shall qualify for  
23 incentive payments based on employment associated with the portion  
24 of the site.

1 ~~F. Except as otherwise provided by subsection G of this~~  
2 ~~section, for applications submitted on and after June 4, 2003, in~~  
3 ~~order to qualify to receive incentive payments as authorized by the~~  
4 ~~Oklahoma Quality Jobs Program Act, in addition to other~~  
5 ~~qualifications specified herein, an establishment shall be required~~  
6 ~~to pay new direct jobs an average annualized wage which equals or~~  
7 ~~exceeds:~~

8 ~~1. One hundred ten percent (110%) of the average county wage as~~  
9 ~~determined by the Department of Commerce based on the most recent~~  
10 ~~U.S. Department of Commerce data for the county in which the new~~  
11 ~~direct jobs are located. For purposes of this paragraph, health~~  
12 ~~care premiums paid by the applicant for individuals in new direct~~  
13 ~~jobs shall be included in the annualized wage; or~~

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

20 ~~Provided, no average wage requirement shall exceed Twenty-five~~  
21 ~~Thousand Dollars (\$25,000.00), in any county. This maximum wage~~  
22 ~~threshold shall be indexed and modified from time to time based on~~  
23 ~~the latest Consumer Price Index year-to-date percent change release~~  
24

1 ~~as of the date of the annual average county wage data release from~~  
2 ~~the Bureau of Economic Analysis of the U.S. Department of Commerce.~~

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

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

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

14 ~~(1) a man-made disaster or natural disaster as~~  
15 ~~defined in Section 683.3 of Title 63 of the~~  
16 ~~Oklahoma Statutes, resulting in the loss of a~~  
17 ~~significant number of jobs within a particular~~  
18 ~~county of this state, or~~

19 ~~(2) an economic circumstance in which a significant~~  
20 ~~number of jobs within a particular county of this~~  
21 ~~state have been lost due to an establishment~~  
22 ~~changing its structure, consolidating with~~  
23 ~~another establishment, closing or moving all or~~  
24 ~~part of its operations out of this state, and~~

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

9           ~~An establishment which is otherwise qualified to receive~~  
10          ~~incentive payments and which locates in a county in which a negative~~  
11          ~~economic event has occurred within the eighteen-month period~~  
12          ~~preceding the start date shall not be subject to the requirements of~~  
13          ~~subsection F of this section; provided, an establishment shall not~~  
14          ~~be eligible to receive incentive payments based upon a negative~~  
15          ~~economic event with respect to jobs that are transferred from one~~  
16          ~~county of this state to another. In order to qualify to receive~~  
17          ~~incentive payments as authorized by the Oklahoma Quality Jobs~~  
18          ~~Program Act, a political subdivision that attracts a federal~~  
19          ~~facility and develops, or causes to be developed, a qualified~~  
20          ~~federal facility may apply to the Oklahoma Department of Commerce~~  
21          ~~and receive quarterly incentive payments from the Oklahoma Tax~~  
22          ~~Commission for the project term pursuant to the provisions of this~~  
23          ~~act in an amount which shall be equal to the net benefit rate~~  
24          ~~multiplied by the actual gross payroll of new direct jobs at the new~~

1 qualified federal facility for a calendar quarter; provided, the  
2 total amount of such payments shall not exceed the total net  
3 benefit. The qualified federal facility must have gross payroll  
4 that are projected by the Department to equal or exceed:

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

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

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

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

17 H. The Department shall determine if the applicant is qualified  
18 to receive incentive payments.

19 I. If the applicant is determined to be qualified by the  
20 Department ~~and is not subject to the provisions of subparagraph d of~~  
21 ~~paragraph 7 of subsection A of Section 3603 of this title, the~~  
22 Department shall conduct a cost/benefit analysis ~~to determine the~~  
23 ~~estimated net direct state benefits and the net benefit rate~~  
24 ~~applicable~~ for a ten-year period beginning with the first complete

1 calendar quarter following the start date and to estimate the amount  
2 of gross payroll for a ten-year period beginning with the first  
3 complete calendar quarter following the start date or for a fifteen-  
4 year period for an establishment defined or classified in the NAICS  
5 Manual under U.S. Industry No. 711211 (2007 version) or for the  
6 project term for a political subdivision applying in conjunction  
7 with a qualified federal facility. In conducting such cost/benefit  
8 analysis, the Department shall consider quantitative factors, such  
9 as the anticipated level of new tax revenues to the state along with  
10 the added cost to the state of providing services, and such other  
11 criteria as deemed appropriate by the Department. ~~In no event shall~~  
12 ~~incentive payments, cumulatively, exceed the estimated net direct~~  
13 ~~state benefits, except for applicants subject to the provisions of~~  
14 ~~subparagraph d of paragraph 7 of subsection A of Section 3603 of~~  
15 ~~this title.~~ The cost/benefit analysis shall determine the estimated  
16 net direct state benefit, the net benefit rate and the incentive  
17 payment for an applicant, except:

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

24

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

7        3. In Tier 4 and Tier 5 Counties, the cost/benefit analysis  
8 shall determine the estimated net direct and indirect state  
9 benefits, the compound net benefit rate and the incentive payment  
10 for an applicant if the establishment pays average county wages  
11 equal to or in excess of two hundred percent (200%) of the average  
12 county wage.

13        J. Upon approval of such an application, the Department shall  
14 notify the Tax Commission and shall provide it with a copy of the  
15 contract and the results of the cost/benefit analysis. The Tax  
16 Commission may require the qualified establishment to submit such  
17 additional information as may be necessary to administer the  
18 provisions of the Oklahoma Quality Jobs Program Act. The approved  
19 establishment shall file quarterly claims with the Tax Commission  
20 and shall continue to file such quarterly claims during the ten-year  
21 incentive period to show its continued eligibility for incentive  
22 payments, as provided in Section 3606 of this title, or until it is  
23 no longer qualified to receive incentive payments. The  
24 establishment may be audited by the Tax Commission to verify such



1 eligibility. Once the establishment is approved, an agreement shall  
2 be deemed to exist between the establishment and the State of  
3 Oklahoma, requiring the continued incentive payment to be made as  
4 long as the establishment retains its eligibility as defined in and  
5 established pursuant to this section and Sections 3603 and 3606 of  
6 this title and within the limitations contained in the Oklahoma  
7 Quality Jobs Program Act, which existed at the time of such  
8 approval. An establishment described in this subsection shall be  
9 required to repay all incentive payments received under the Oklahoma  
10 Quality Jobs Program Act if the establishment is determined by the  
11 Oklahoma Tax Commission to ~~no longer have business operations in the~~  
12 state have moved the business operations that received incentive  
13 payments to another state within three (3) years from the beginning  
14 of the calendar quarter for which the first incentive payment claim  
15 is filed.

16 K. A municipality with a population of less than one hundred  
17 thousand (100,000) persons in which an establishment eligible to  
18 receive quarterly incentive payments pursuant to the provisions of  
19 this section is located may file a claim with the Tax Commission for  
20 up to twenty-five percent (25%) of the amount of such payment. The  
21 amount of such claim shall not exceed amounts paid by the  
22 municipality for direct costs of municipal infrastructure  
23 improvements to provide water and sewer service to the  
24 establishment. Such claim shall not be approved by the Tax

1 Commission unless the municipality and the establishment have  
2 entered into a written agreement for such claims to be filed by the  
3 municipality prior to submission of the application of the  
4 establishment pursuant to the provisions of this section. If such  
5 claim is approved, the amount of the payment to the establishment  
6 made pursuant to the provisions of Section 3606 of this title shall  
7 be reduced by the amount of the approved claim by the municipality  
8 and the Tax Commission shall issue a warrant to the municipality in  
9 the amount of the approved claim in the same manner as warrants are  
10 issued to qualifying establishments.

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

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

17 Section 3605. There is hereby created within the State Treasury  
18 a special fund for the Oklahoma Tax Commission to be designated the  
19 "Quality Jobs Program Incentive Payment Fund". The Oklahoma Tax  
20 Commission is hereby authorized and directed to withhold a portion  
21 of the taxes levied and collected pursuant to Section 2355 of Title  
22 68 of the Oklahoma Statutes for deposit into the fund. The amount  
23 deposited shall equal the sum ~~of an amount determined by multiplying~~  
24 ~~the net benefit rate provided by the Department of Commerce by the~~

1 ~~gross payroll as determined pursuant to the provisions~~ estimated by  
2 the Tax Commission to be sufficient to pay incentive payments  
3 claimed pursuant to the provisions of subsection A of ~~Section 6 of~~  
4 ~~this act~~ Section 3606 of this title. All of the amounts deposited  
5 in such fund shall be used and expended by the Tax Commission solely  
6 for the purposes and in the amounts authorized by the Oklahoma  
7 Quality Jobs Program Act. The liability of the State of Oklahoma to  
8 make the incentive payments under this act shall be limited to the  
9 balance contained in the fund created by this section.

10 SECTION 5. AMENDATORY 68 O.S. 2011, Section 3606, as  
11 last amended by Section 1, Chapter 138, O.S.L. 2020 (68 O.S. Supp.  
12 2020, Section 3606), is amended to read as follows:

13 Section 3606. A. As soon as practicable after the end of the  
14 first complete calendar quarter following the start date, the  
15 establishment shall file a claim for the payment with the Oklahoma  
16 Tax Commission and shall specify the actual number and gross payroll  
17 of new direct jobs for the establishment for the calendar quarter.  
18 The Tax Commission shall verify the actual gross payroll for new  
19 direct jobs for the establishment for such calendar quarter. If the  
20 Tax Commission is not able to provide such verification utilizing  
21 all available resources, the Tax Commission may request such  
22 additional information from the establishment as may be necessary or  
23 may request the establishment to revise its claim. An establishment  
24 may file for an extension of the initial filing date with the

1 Oklahoma Department of Commerce. Any such extension shall be based  
2 solely upon an extraordinary adverse business circumstance which  
3 prevented the establishment from hiring the new direct jobs as  
4 projected. If an establishment fails to file claims as required by  
5 this section, it shall forfeit the right to receive any incentive  
6 payments after three (3) years from the start date. If an  
7 establishment has filed at least one claim pursuant to this section  
8 but fails to file another claim within two (2) years of the most  
9 recent claim, the Tax Commission, after consulting with the  
10 Department of Commerce, may dismiss the establishment from the  
11 program, forfeiting the establishment's right to receive incentive  
12 payments based on that contract.

13 B. 1. Except as otherwise provided in paragraph 2 of this  
14 subsection, if the actual verified gross payroll for four (4)  
15 consecutive calendar quarters does not equal or exceed the  
16 applicable total required by Section 3604 of this title within three  
17 (3) years of the start date, or does not equal or exceed the  
18 applicable total required by Section 3604 of this title at any other  
19 time during the ten-year period after the start date or during the  
20 fifteen-year period after the start date for establishments defined  
21 or classified in the NAICS Manual under U.S. Industry No. 711211  
22 (2007 version), the incentive payments shall not be made and shall  
23 not be resumed until such time as the actual verified gross payroll  
24 equals or exceeds the amounts specified in Section 3604 of this

1 title. If an establishment fails to achieve the required gross  
2 payroll within three (3) years of the start date, the establishment  
3 shall not make a new or renewal application for incentive payments  
4 authorized pursuant to the Oklahoma Quality Jobs Program Act for a  
5 period of twelve (12) months from the last day of the last month of  
6 the three-year period during which the required gross payroll amount  
7 was not achieved.

8 2. Any establishment which does not meet the quarterly payroll  
9 requirements provided pursuant to paragraph 1 of this subsection  
10 during the time period which begins on April 1, 2020, and ends on  
11 June 30, 2021, shall continue to receive incentive payments and  
12 shall be exempt from the prescribed limitations.

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

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

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

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

3        E. An establishment that has qualified pursuant to Section 3604  
4 of this title may receive payments only in accordance with the  
5 provisions of the law under which it initially applied and was  
6 approved. If an establishment that is receiving incentive payments  
7 expands, it may apply for additional incentive payments based on the  
8 gross payroll anticipated from the expansion only, pursuant to  
9 Section 3604 of this title. Provided, an establishment which has  
10 suffered an extraordinary adverse business circumstance, as  
11 certified by the Incentive Approval Committee, may be allowed to  
12 voluntarily withdraw from the Oklahoma Quality Jobs Program, repay  
13 to the Tax Commission the total amount of incentive payments  
14 received pursuant to the provisions of this section, plus interest  
15 at the rate specified in Section 727.1 of Title 12 of the Oklahoma  
16 Statutes, and reapply to the Department for a new incentive contract  
17 if the establishment qualifies pursuant to the provisions of the  
18 Oklahoma Quality Jobs Program Act. Any funds received by the Tax  
19 Commission pursuant to the provisions of this subsection shall be  
20 apportioned in the manner that income tax revenues are apportioned.

21        F. An establishment that is receiving incentive payments may  
22 not apply for additional incentive payments for any new projects  
23 until twelve (12) quarters after receipt of the first incentive  
24 payment, or until the establishment's actual verified gross payroll

1 for new direct jobs or new job creation equals or exceeds ~~Two~~  
2 ~~Million Five Hundred Thousand Dollars (\$2,500,000.00)~~ the payroll or  
3 job threshold requirements specified in subsection D or subsection G  
4 of Section 3604 of this title during any four consecutive-calendar-  
5 quarter period, whichever comes first. After meeting the  
6 requirements of this subsection, an establishment may apply for  
7 additional incentive payments based upon the gross payroll  
8 anticipated from an expansion only.

9 G. As soon as practicable after verification of the actual  
10 gross payroll as required by this section and except as otherwise  
11 provided by subsection K of Section 3604 of this title, the Tax  
12 Commission shall issue a warrant to the establishment in the amount  
13 of the net benefit rate multiplied by the actual gross payroll as  
14 determined pursuant to subsection A of this section for the calendar  
15 quarter.

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

19 Section 3607. A. Notwithstanding any other provision of law,  
20 if a qualified establishment receives an incentive payment pursuant  
21 to the provisions of Section 3601 et seq. of this title, neither the  
22 qualified establishment nor its contractors or subcontractors shall  
23 be eligible to receive the credits or exemptions provided for in the  
24

1 following provisions of law in connection with the activity for  
2 which the incentive payment was received:

- 3 1. Paragraphs 16 and 17 of Section 1357 of this title;
- 4 2. Paragraph 7 of Section 1359 of this title;
- 5 3. Section 2357.4 of this title; except as provided in  
6 subsection B of this section;
- 7 ~~4. Section 2357.7 of this title;~~
- 8 ~~5. Section 2-11-303 of Title 27A of the Oklahoma Statutes;~~
- 9 ~~6. Section 2357.22 of this title;~~
- 10 ~~7. 5. Section 2357.31 of this title;~~
- 11 ~~8. 6. Section 54003 of this title; or~~
- 12 ~~9. Section 54006 of this title;~~
- 13 ~~10. 7. Section 625.1 of Title 36 of the Oklahoma Statutes;~~
- 14 ~~11. Subsections C and D of Section 2357.59 of this title;~~
- 15 ~~12. Section 2357.13 of this title; or~~
- 16 ~~13. Section 4201 of this title.~~

17 B. Any establishment which has qualified to receive quarterly  
18 incentive payments pursuant to subsection B of Section 3604 of this  
19 title for a ten-year period with a project start date after January  
20 1, 2010, shall be eligible to receive the credit provided for in  
21 Section 2357.4 of this title if such establishment:

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



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

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

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

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

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

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

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

21          D. Any establishment which has qualified to receive quarterly  
22 incentive payments pursuant to subsection B of Section 3604 of this  
23 title for a ten-year period with a project start date after January  
24 1, 2010, shall be eligible to receive the credit provided for in

1 Section 2357.4 of this title pursuant to the provisions of this  
2 section if such establishment obtains a determination letter from  
3 the Oklahoma Department of Commerce that the business activity of  
4 the entity will result in a positive net benefit rate, to be  
5 computed by the Oklahoma Department of Commerce using a methodology  
6 which provides for the analysis of estimated direct state benefits,  
7 estimated indirect state benefits, estimated direct state costs and  
8 estimated indirect state costs. The Oklahoma Department of Commerce  
9 shall use such information as it determines to be relevant for the  
10 analysis required by this subsection including, but not limited to,  
11 the type of business activity in which the entity is engaged or will  
12 be engaged, amount of capital investment, type of assets acquired or  
13 utilized by the business entity, economic impact of the business  
14 activity within the relevant geographic region and such other  
15 factors as the Department determines to be relevant. The Oklahoma  
16 Department of Commerce may use information regarding the business  
17 entity alone or in conjunction with relevant information regarding  
18 other business activity in a geographically relevant area  
19 surrounding the principal business location of the primary business  
20 entity in order to perform the computation of the net benefit rate.  
21 If the result of the analysis is a positive net benefit rate, the  
22 establishment shall be allowed to qualify to receive quarterly  
23 incentive payments pursuant to subsection B of Section 3604 of this  
24 title for a ten-year period and shall be eligible to receive the

1 credit provided for in Section 2357.4 of this title. The Oklahoma  
2 Department of Commerce shall transmit a determination letter to the  
3 authorized representative of the establishment and shall also  
4 transmit a copy of the determination letter to the Oklahoma Tax  
5 Commission, regardless of whether the result is a positive or  
6 negative net benefit rate.

7 SECTION 7. REPEALER 68 O.S. 2011, Sections 3501, 3502,  
8 3503, 3504, 3505, 3506, 3507 and 3508, are hereby repealed.

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

12 SECTION 9. REPEALER 68 O.S. 2011, Sections 3801, 3802,  
13 3803, 3804, 3805, 3806, 3807 and 3808, are hereby repealed.

14 SECTION 10. REPEALER 68 O.S. 2011, Sections 3901, 3902,  
15 3903, as last amended by Section 1, Chapter 128, O.S.L. 2014, 3904,  
16 as last amended by Section 1, Chapter 197, O.S.L. 2019, 3905, 3906,  
17 3907, 3908, 3909 and 3910 (68 O.S. Supp. 2020, Sections 3903 and  
18 3904), are hereby repealed.

19 SECTION 11. REPEALER 68 O.S. 2011, Sections 3911, 3912,  
20 3913, 3914, as last amended by Section 4, Chapter 144, O.S.L. 2018,  
21 3915, 3916, 3917, 3918, 3919 and 3920 (68 O.S. Supp. 2020, Section  
22 3914), are hereby repealed.

23 SECTION 12. This act shall become effective November 1, 2021.  
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1 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
February 18, 2021 - DO PASS

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