

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL 487

By: Bergstrom

AS INTRODUCED

An Act relating to the Oklahoma Quality Jobs Program Act; amending 68 O.S. 2011, Section 3603, as last amended by Section 1, Chapter 156, O.S.L. 2018 (68 O.S. Supp. 2018, Section 3603), which relates to definitions; modifying definition; and providing an effective date.

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

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

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

1. a. "Basic industry" means:

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

(2) those electric power generation, transmission and distribution activities defined or classified in

1 the NAICS Manual under U.S. Industry Nos. 221111  
2 through 221122, if:

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

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

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

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

(3) those administrative and facilities support service activities defined or classified in the NAICS Manual under Industry Group Nos. 5611 and 5612, Industry Nos. 51821, 519130, 52232 and 56142 or U.S. Industry Nos. 524291 and 551114, those other support activities for air transportation defined or classified in the NAICS Manual under Industry Group No. 488190, and those support, repair, and maintenance service activities for the wind industry defined or classified in the NAICS Manual under Industry Group No. 811310,

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

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

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

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

10 (i) the corporate headquarters of an  
11 establishment classified therein, and

12 (ii) a facility or facilities at which  
13 reservations for transportation  
14 provided by such an establishment are  
15 processed, whether such services are  
16 performed by employees of the  
17 establishment, by employees of a  
18 subsidiary of or other entity  
19 affiliated with the establishment or by  
20 employees of an entity with whom the  
21 establishment has contracted for the  
22 performance of such services; provided,  
23 this provision shall not disqualify an  
24 establishment which uses an out-of-

1 state entity or employees for some  
2 reservations services, or

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

17 (8) flight training services activities defined or  
18 classified in the NAICS Manual under U.S.  
19 Industry Group No. 611512, which for purposes of  
20 the Oklahoma Quality Jobs Program Act shall  
21 include new direct jobs for which gross payroll  
22 existed on or after January 1, 2003, as  
23 identified in the NAICS Manual,

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

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

18 (b) those passenger transportation activities  
19 defined or classified in the NAICS Manual  
20 under Industry Nos. 561510 and 561599,

21 (c) those freight or cargo transportation  
22 activities defined or classified in the  
23 NAICS Manual under Industry No. 541614,  
24

- 1 (d) those insurance activities defined or  
2 classified in the NAICS Manual under  
3 Industry Group No. 5241,  
4 (e) those services to dwellings and other  
5 buildings, as defined or classified in the  
6 NAICS Manual under Industry Group No. 5617,  
7 excluding U.S. Industry Nos. 561730, 56171,  
8 56172, 56174 and 56179,  
9 (f) those equipment rental and leasing  
10 activities defined or classified in the  
11 NAICS Manual under Industry Group No. 5324,  
12 (g) those information technology and other  
13 computer-related service activities defined  
14 or classified in the NAICS Manual under  
15 Industry Group Nos. 5112, 5182, 5191 and  
16 5415,  
17 (h) those business support service activities  
18 defined or classified in the NAICS Manual  
19 under U.S. Industry Nos. 561410 through  
20 561430, excluding 56143, and Industry No.  
21 51911,  
22 (i) those medical and diagnostic laboratory  
23 activities defined or classified in the  
24 NAICS Manual under Industry Group No. 6215,

- (j) those professional, scientific and technical service activities defined or classified in the NAICS Manual under Industry Group Nos. 5412, 5414, 5415, 5416 and 5417, Industry Nos. 54131, 54133, 54136 and 54137, and U.S. Industry No. 541990, if not otherwise listed in this paragraph,
- (k) those communication service activities defined or classified in the NAICS Manual under Industry Nos. 51741 and 51791,
- (l) those refuse systems activities defined or classified in the NAICS Manual under Industry Group No. 5622, provided that the establishment is primarily engaged in the capture and distribution of methane gas produced within a landfill,
- (m) general wholesale distribution of groceries, defined or classified in the NAICS Manual under Industry Group Nos. 4244 and 4245,
- (n) those activities relating to processing of insurance claims, defined or classified in the NAICS Manual under U.S. Industry Nos. 524210 and 524292; provided, activities described in U.S. Industry Nos. 524210 and



524292 in the NAICS Manual other than  
processing of insurance claims shall not be  
included for purposes of this subdivision,  
(o) those agricultural activities classified in  
the NAICS Manual under U.S. Industry Nos.  
112120 and 112310,  
(p) those professional organization activities  
classified in the NAICS Manual under U.S.  
Industry No. 813920,  
(q) alternative energy structure construction  
classified in the NAICS Manual under U.S.  
Industry No. 237130,  
(r) solar reflective coating application  
classified in the NAICS Manual under U.S.  
Industry No. 238160,  
(s) solar heating equipment installation  
classified in the NAICS Manual under U.S.  
Industry No. 238220,  
(t) those wired telecommunications carriers  
classified in the NAICS Manual under U.S.  
Industry No. 517110, and  
(u) those securities, commodity contracts and  
investment activities classified in the

NAICS Manual under Industry Subsector No.

523,

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

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

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

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

10 (14) those support activities for rail transportation  
11 and those support activities for water  
12 transportation defined or classified in the NAICS  
13 Manual under U.S. Industry Nos. 4882 and 4883.

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

23 (1) not more than fifty percent (50%) of the premium  
24 shall be paid by the employee,

- (2) coverage for basic hospital care,
- (3) coverage for physician care,
- (4) coverage for mental health care,
- (5) coverage for substance abuse treatment,
- (6) coverage for prescription drugs, and
- (7) coverage for prenatal care;

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

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

A transferor shall be treated as related to a transferee if more than fifty percent (50%) of the voting interests of the transferor and transferee are owned, directly or indirectly, by the other or are owned, directly or indirectly, by the same person or persons, unless such transferred establishment has an outstanding class of equity securities registered under Sections 12(b) or 15(d) of the Securities Exchange Act of 1934, as amended, in which event the transferor and transferee will be treated as unrelated; provided, an establishment applying for the Oklahoma Quality Jobs Program Act as a result of a change-in-control event is required to apply within

1 one hundred eighty (180) days of the change-in-control event to  
2 qualify for consideration. An establishment entering the Oklahoma  
3 Quality Jobs Program Act as the result of a change-in-control event  
4 shall be required to maintain a level of new direct jobs as agreed  
5 to in its contract with the Oklahoma Department of Commerce and to  
6 pay new direct jobs an average annualized wage which equals or  
7 exceeds one hundred twenty-five percent (125%) of the average county  
8 wage as that percentage is determined by the Oklahoma Department of  
9 Commerce based upon the most recent U.S. Department of Commerce data  
10 for the county in which the new jobs are located. For purposes of  
11 this paragraph, healthcare premiums paid by the applicant for  
12 individuals in new direct jobs shall not be included in the  
13 annualized wage. Such establishment entering the Oklahoma Quality  
14 Jobs Program Act as the result of a change-in-control event shall be  
15 required to retain the contracted average annualized wage and  
16 maintain the contracted maintenance level of new direct jobs numbers  
17 as certified by the Tax Commission. If the required average  
18 annualized wage or the required new direct jobs numbers do not equal  
19 or exceed such contracted level during any quarter, the quarterly  
20 incentive payments shall not be made and shall not be resumed until  
21 such time as such requirements are met. An establishment described  
22 in this paragraph shall be required to repay all incentive payments  
23 received under the Oklahoma Quality Jobs Program Act if the  
24 establishment is determined by the Tax Commission to no longer have

1 business operations in the state within three (3) years from the  
2 beginning of the calendar quarter for which the first incentive  
3 payment claim is filed;

4 3. "New direct job":

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

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

- 21 b. shall include full-time-equivalent employment in this  
22 state of employees who are employed by an employment  
23 agency or similar entity other than the establishment  
24 which has qualified to receive an incentive payment  
25

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

21 4. "Estimated direct state benefits" means the tax revenues  
22 projected by the Department to accrue to the state as a result of  
23 new direct jobs;  
24



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

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

11        6. "Estimated net direct state benefits" means the estimated  
12 direct state benefits less the estimated direct state costs;

13        7. "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%),
- 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,~~

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

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

e. the net benefit rate shall not exceed six percent (6%)

in connection with an establishment which:

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

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

- 1 f. with respect to an establishment defined or classified  
2 in the NAICS Manual under U.S. Industry No. 711211  
3 (2007 version) or any establishment defined or  
4 classified in the NAICS Manual as a U.S. Industry  
5 Number which is not included within the definition of  
6 "basic industry" as such term is defined in this  
7 section on April 17, 2008, the net benefit rate shall  
8 not exceed the highest rate of income tax imposed upon  
9 the Oklahoma taxable income of individuals pursuant to  
10 subparagraph (g) or subparagraph (h), as applicable,  
11 of paragraph 1 and paragraph 2 of subsection B of  
12 Section 2355 of this title. Any change in such  
13 highest rate of individual income tax imposed pursuant  
14 to the provisions of Section 2355 of this title shall  
15 be applicable to the computation of incentive payments  
16 to an establishment as described by this subparagraph  
17 and shall be effective for purposes of incentive  
18 payments based on payroll paid by such establishment  
19 on or after January 1 of any applicable year for which  
20 the net benefit rate is modified as required by this  
21 subparagraph, and
- 22 g. the net benefit rate shall not exceed six percent (6%)  
23 in connection with an establishment which employs  
24 United States military veterans in at least ten

1           percent (10%) of its gross payroll. The net benefit  
2           rate for an establishment which employs United States  
3           military veterans in at least ten percent (10%) of its  
4           payroll shall not be lower than five percent (5%).

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

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

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

1           Quality Jobs Program Act, by the Department subject to  
2           the following conditions:

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

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

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

23          (4)   the entity has not previously had a subunit  
24                determined to be an establishment pursuant to  
25

1                   this section; provided, the restriction set forth  
2                   in this division shall not apply to subunits  
3                   which qualify pursuant to the provisions of  
4                   subparagraph b of paragraph 7 of this subsection,  
5                   and

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

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

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

22                11. "Qualified federal contract" means a contract between an  
23                agency or instrumentality of the United States government, including  
24                but not limited to the Department of Defense or any branch of the  
25

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



b of paragraph 1 of this subsection to individuals who perform qualified labor hours in this state;

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

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

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

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

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

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

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

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

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

- 11        a. maintaining a prime contract with the federal  
12                government as defined in paragraph 11 of this  
13                subsection,
- 14        b. providing notice of intent to apply to the Department  
15                within one hundred eighty (180) days of July 1, 2010,  
16                or one hundred eighty (180) days of the date of the  
17                award of a qualified federal contract or award of a  
18                new qualified subcontract under an existing qualified  
19                federal contract, and
- 20        c. adding substantively to the contract by performing at  
21                least eight percent (8%) of the total labor whether  
22                qualified and nonqualified labor as determined by the  
23                federal contractor verifier on a direct contract or  
24                individual task order or delivery order on an

1 indefinite-delivery/indefinite-quantity or other  
2 blanket contract vehicle.

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

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

- 14 a. is organized and existing under Section 176 of Title  
15 60 of the Oklahoma Statutes for the benefit of a  
16 geographic area which includes a city or county or  
17 some combination thereof, and  
18 b. benefits a geographic area where new direct jobs which  
19 meet the requirements of the Oklahoma Quality Jobs  
20 Program Act are created by an establishment, other  
21 than the proxy establishment, which is a branch of the  
22 Armed Forces of the United States.

23 A proxy establishment may be determined to be an establishment  
24 for all purposes of the Oklahoma Quality Jobs Program Act by the  
25

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

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

21 C. For an establishment defined as a "basic industry" pursuant  
22 to division (4) of subparagraph a of paragraph 1 of subsection A of  
23 this section, the Incentive Approval Committee shall consist of the  
24 members provided by subsection B of this section and the Executive  
25

1 Director of the Oklahoma Center for the Advancement of Science and  
2 Technology, or a designee from the Center appointed by the Executive  
3 Director.

4 SECTION 2. This act shall become effective in accordance with  
5 the provisions of Section 58 of Article V of the Oklahoma  
6 Constitution.

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