

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

SENATE BILL 1859

By: David

AS INTRODUCED

An Act relating to the Oklahoma Quality Jobs Program Act; amending 68 O.S. 2021, Sections 3603 and 3604, which relate to definitions and quarterly incentive payments; adding net benefit rate limit for certain industry; modifying qualification requirements for certain industry; updating statutory language; updating statutory reference; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2021, 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
25

(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~~ this state, 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 Oklahoma Tax Commission. If the required
18 average annualized wage or the required new direct jobs numbers do
19 not equal or exceed such contracted level during any quarter, the
20 quarterly incentive payments shall not be made and shall not be
21 resumed until such time as such requirements are met. An
22 establishment described in this paragraph shall be required to repay
23 all incentive payments received under the Oklahoma Quality Jobs
24 Program Act if the establishment is determined by the Tax Commission

1 to no longer have business operations in the state within three (3)
2 years from the beginning of the calendar quarter for which the first
3 incentive 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

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,

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
21 hundred fifty percent (150%) of the average
22 annualized wages of new direct jobs on which
23 incentive payments were received during the
24 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
25

percent (10%) of its gross payroll. The net benefit rate for an establishment which employs United States military veterans in at least ten percent (10%) of its payroll shall not be lower than five percent (5%), and
h. with respect to a hydrogen manufacturing establishment defined or classified in the NAICS Manual under U.S. Industry No. 325120, the net benefit rate shall not exceed six percent (6%).

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

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

9. a. "Establishment" means any business or governmental entity, no matter what legal form, including, but not limited to, a sole proprietorship; partnership; limited liability company; corporation or combination of corporations which have a central parent corporation which makes corporate management decisions such as those involving consolidation, acquisition, merger or expansion; federal agency; political

1 subdivision of the State of Oklahoma; or trust
2 authority; provided, distinct, identifiable subunits
3 of such entities may be determined to be an
4 establishment, for all purposes of the Oklahoma
5 Quality Jobs Program Act, by the Department subject to
6 the following conditions:

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

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

20 (3) has an accounting system capable of tracking or
21 facilitating an audit of the subunit's payroll,
22 expenses, revenue and production. Limited
23 interunit overlap of administrative and
24 purchasing functions shall not disqualify a

1 subunit from consideration as an establishment by
2 the Department,

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

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

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

22 10. "NAICS Manual" means any manual, book or other publication
23 containing the North American Industry Classification System, United
24

1 States, 1997, promulgated by the Office of Management and Budget of
2 the United States of America, or the latest revised edition;

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

1 qualified federal contractor and any subcontractors originally
2 involved in the work or added subsequently during the period of
3 performance verify to the qualified federal contractor verifier that
4 it offers, or will offer within one hundred eighty (180) days of
5 employment of its respective employees, a basic health benefits plan
6 as described in subparagraph b of paragraph 1 of this subsection to
7 individuals who perform qualified labor hours in this state;

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

- 13 a. established multiyear classified and unclassified
14 indefinite-delivery/indefinite-quantity federal
15 contract vehicles in excess of Fifty Million Dollars
16 (\$50,000,000.00),
- 17 b. current capability to sponsor and maintain personnel
18 security clearances and authorized by the federal
19 government to handle and perform classified work up to
20 the Top Secret Sensitive Compartmented Information
21 levels,
- 22 c. at least one on-site federally certified Sensitive
23 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;

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

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

13 17. "Qualified labor rate" means the fully reimbursed labor
14 rate paid through a qualified federal contract for qualified labor
15 hours to the qualified federal contractor or subcontractor;

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

- 17 a. maintaining a prime contract with the federal
18 government as defined in paragraph 11 of this
19 subsection,
20 b. providing notice of intent to apply to the Department
21 within one hundred eighty (180) days of July 1, 2010,
22 or one hundred eighty (180) days of the date of the
23 award of a qualified federal contract or award of a
24

- 1 new qualified subcontract under an existing qualified
2 federal contract, and
- 3 c. adding substantively to the contract by performing at
4 least eight percent (8%) of the total labor whether
5 qualified and nonqualified labor as determined by the
6 federal contractor verifier on a direct contract or
7 individual task order or delivery order on an
8 indefinite-delivery/indefinite-quantity or other
9 blanket contract vehicle.

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

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

- 21 a. is organized and existing under Section 176 of Title
22 60 of the Oklahoma Statutes for the benefit of a
23 geographic area which includes a city or county or
24 some combination thereof, and

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

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

20 B. The Incentive Approval Committee is hereby created and shall
21 consist of the Director of the Office of Management and Enterprise
22 Services, the Director of the Department and one member of the
23 Oklahoma Tax Commission appointed by the Tax Commission, or a
24 designee from each agency approved by such member. It shall be the
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1 duty of the Committee to determine the eligibility of all applicants
2 for the Oklahoma Quality Jobs Program Act, subject to the applicable
3 requirements.

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

11 SECTION 2. AMENDATORY 68 O.S. 2021, Section 3604, is
12 amended to read as follows:

13 Section 3604. A. Except as otherwise provided in subsection I
14 or subsection L of this section, an establishment which meets the
15 qualifications specified in the Oklahoma Quality Jobs Program Act
16 may receive quarterly incentive payments for a ten-year period from
17 the Oklahoma Tax Commission pursuant to the provisions of the
18 Oklahoma Quality Jobs Program Act; provided, such an establishment
19 defined or classified in the NAICS Manual under U.S. Industry No.
20 711211 (2007 version) may receive quarterly incentive payments for a
21 fifteen-year period. The amount of such payments shall be equal to
22 the net benefit rate multiplied by the actual gross payroll of new
23 direct jobs for a calendar quarter as verified by the Oklahoma
24 Employment Security Commission.

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

9 C. Except as otherwise provided by subsection D or E of this
10 section, in order to qualify to receive such payments, the
11 establishment applying shall be required to:

12 1. Be engaged in a basic industry;

13 2. Have an annual gross payroll for new direct jobs projected
14 by the Department to equal or exceed Two Million Five Hundred
15 Thousand Dollars (\$2,500,000.00) within three (3) years of the first
16 complete calendar quarter following the start date; and

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

22 D. In order to qualify to receive incentive payments as
23 authorized by the Oklahoma Quality Jobs Program Act, an
24 establishment engaged in an activity described under:

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

- 3 a. have an annual gross payroll for new direct jobs
4 projected by the Department to equal or exceed One
5 Million Five Hundred Thousand Dollars (\$1,500,000.00)
6 within three (3) years of the first complete calendar
7 quarter following the start date and make, or which
8 will make within one (1) year, at least seventy-five
9 percent (75%) of its total sales, as determined by the
10 Incentive Approval Committee pursuant to the
11 provisions of subsection B of Section 3603 of this
12 title, to out-of-state customers or buyers, to in-
13 state customers or buyers if the product or service is
14 resold by the purchaser to an out-of-state customer or
15 buyer for ultimate use, or to the federal government,
16 unless the annual gross payroll equals or exceeds Two
17 Million Five Hundred Thousand Dollars (\$2,500,000.00)
18 in which case the requirements for purchase of output
19 provided by this subparagraph shall not apply, and
20 b. have a number of full-time-equivalent employees
21 working an average of thirty (30) or more hours per
22 week in new direct jobs equal to or in excess of
23 eighty percent (80%) of the total number of new direct
24 jobs; and

1 2. Division (4) of subparagraph a of paragraph 1 of subsection
2 A of Section 3603 of this title, or a hydrogen manufacturing
3 establishment defined or classified in the NAICS Manual under U.S.
4 Industry No. 325120, shall be required to:

- 5 a. have an annual gross payroll for new direct jobs
6 projected by the Department to equal or exceed One
7 Million Five Hundred Thousand Dollars (\$1,500,000.00)
8 within three (3) years of the first complete calendar
9 quarter following the start date, and
- 10 b. have a number of full-time-equivalent employees
11 working an average of thirty (30) or more hours per
12 week in new direct jobs equal to or in excess of
13 eighty percent (80%) of the total number of new direct
14 jobs.

15 E. 1. An establishment which locates its principal business
16 activity within a site consisting of at least ten (10) acres which:

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

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

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

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

- 21 a. the site designated by the entity does meet one or
22 more of the requirements listed in paragraph 1 of this
23 subsection, and
24
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1 b. the site is being or has been remediated to a level
2 which is consistent with the intended use of the
3 property.

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

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

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

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

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

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

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

24 2. As used in this subsection:
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1 a. "negative economic event" means:

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

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

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

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

1 subsection F of this section; provided, an establishment shall not
2 be eligible to receive incentive payments based upon a negative
3 economic event with respect to jobs that are transferred from one
4 county of this state to another.

5 H. The Department shall determine if the applicant is qualified
6 to receive incentive payments.

7 I. If the applicant is determined to be qualified by the
8 Department and is not subject to the provisions of subparagraph d of
9 paragraph 7 of subsection A of Section 3603 of this title, the
10 Department shall conduct a cost/benefit analysis to determine the
11 estimated net direct state benefits and the net benefit rate
12 applicable for a ten-year period beginning with the first complete
13 calendar quarter following the start date and to estimate the amount
14 of gross payroll for a ten-year period beginning with the first
15 complete calendar quarter following the start date or for a fifteen-
16 year period for an establishment defined or classified in the NAICS
17 Manual under U.S. Industry No. 711211 (2007 version). In conducting
18 such cost/benefit analysis, the Department shall consider
19 quantitative factors, such as the anticipated level of new tax
20 revenues to the state along with the added cost to the state of
21 providing services, and such other criteria as deemed appropriate by
22 the Department. In no event shall incentive payments, cumulatively,
23 exceed the estimated net direct state benefits, except for
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1 applicants subject to the provisions of subparagraph d of paragraph
2 7 of subsection A of Section 3603 of this title.

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

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

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

23 L. For any contract executed by an establishment on or after
24 ~~the effective date of this act~~ August 2, 2018, five percent (5%) of

1 the quarterly incentive payment amount shall be transferred by the
2 Oklahoma Tax Commission to the Oklahoma Quick Action Closing Fund.

3 SECTION 3. This act shall become effective November 1, 2022.
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