

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 71 By: Allen of the Senate
3 and
4 Bennett of the House
5
6

7 [Oklahoma Quality Jobs Program Act - modifying
8 definition - effective date]
9

10 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
11 entire bill and insert

12 "An Act relating to the Oklahoma Quality Jobs Program
13 Act; amending 68 O.S. 2011, Section 3603, as last
14 amended by Section 1, Chapter 332, O.S.L. 2014 (68
15 O.S. Supp. 2014, Section 3603), which relates to
16 definitions; modifying definition; updating
17 statutory reference; and providing an effective
18 date.

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

19 SECTION 1. AMENDATORY 68 O.S. 2011, Section 3603, as
20 last amended by Section 1, Chapter 332, O.S.L. 2014 (68 O.S. Supp.
21 2014, Section 3603), is amended to read as follows:

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

24 1. a. "Basic industry" means:

1 (1) those manufacturing activities defined or
2 classified in the NAICS Manual under Industry
3 Sector Nos. 31, 32 and 33, Industry Group No.
4 5111 or Industry No. 11331,

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

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

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

21 (c) the exempt wholesale generator facility
22 sells to purchasers located outside the
23 state for consumption in activities located
24 outside the state at least ninety percent

1 (90%) of the total electrical energy output
2 which qualifies for the specialized
3 treatment provided by the Energy Policy Act
4 of 1992, P.L. 102-486, 106 Stat. 2776, as
5 amended, and federal regulations adopted
6 pursuant thereto, and

7 (d) the facility is constructed on or after July
8 1, 1996,

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

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,

- 1 (5) distribution centers for retail or wholesale
2 businesses defined or classified in the NAICS
3 Manual under Sector No. 42, if forty percent
4 (40%) or more of the inventory processed through
5 such warehouse is shipped out-of-state,
- 6 (6) those adjustment and collection service
7 activities defined or classified in the NAICS
8 Manual under U.S. Industry No. 561440, if
9 seventy-five percent (75%) of the loans to be
10 serviced were made by out-of-state debtors,
- 11 (7) (a) those air transportation activities defined
12 or classified in the NAICS Manual under
13 Industry Group No. 4811, if the following
14 facilities are located in this state:
- 15 (i) the corporate headquarters of an
16 establishment classified therein, and
- 17 (ii) a facility or facilities at which
18 reservations for transportation
19 provided by such an establishment are
20 processed, whether such services are
21 performed by employees of the
22 establishment, by employees of a
23 subsidiary of or other entity
24 affiliated with the establishment or by

1 employees of an entity with whom the
2 establishment has contracted for the
3 performance of such services; provided,
4 this provision shall not disqualify an
5 establishment which uses an out-of-
6 state entity or employees for some
7 reservations services, or

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

22 (8) flight training services activities defined or
23 classified in the NAICS Manual under U.S.
24 Industry Group No. 611512, which for purposes of

1 the Oklahoma Quality Jobs Program Act shall
2 include new direct jobs for which gross payroll
3 existed on or after January 1, 2003, as
4 identified in the NAICS Manual,

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

15 (a) those transportation and warehousing
16 activities defined or classified in the
17 NAICS Manual under Industry Subsector No.
18 493, if not otherwise listed in this
19 paragraph, Industry Subsector Nos. 482 and
20 484 and Industry Group Nos. 4884 through
21 4889,

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

- 1 (c) those freight or cargo transportation
2 activities defined or classified in the
3 NAICS Manual under Industry No. 541614,
4 (d) those insurance activities defined or
5 classified in the NAICS Manual under
6 Industry Group No. 5241,
7 (e) those services to dwellings and other
8 buildings, as defined or classified in the
9 NAICS Manual under Industry Group No. 5617,
10 excluding U.S. Industry Nos. 561730, 56171,
11 56172, 56174 and 56179,
12 (f) those equipment rental and leasing
13 activities defined or classified in the
14 NAICS Manual under Industry Group No. 5324,
15 (g) those information technology and other
16 computer-related service activities defined
17 or classified in the NAICS Manual under
18 Industry Group Nos. 5112, 5182, 5191 and
19 5415,
20 (h) those business support service activities
21 defined or classified in the NAICS Manual
22 under U.S. Industry Nos. 561410 through
23 561430, excluding 56143, and Industry No.
24 51911,

- 1 (i) those medical and diagnostic laboratory
2 activities defined or classified in the
3 NAICS Manual under Industry Group No. 6215,
4 (j) those professional, scientific and technical
5 service activities defined or classified in
6 the NAICS Manual under Industry Group Nos.
7 5412, 5414, 5415, 5416 and 5417, Industry
8 Nos. 54131, 54133, 54136 and 54137, and U.S.
9 Industry No. 541990, if not otherwise listed
10 in this paragraph,
11 (k) those communication service activities
12 defined or classified in the NAICS Manual
13 under Industry Nos. 51741 and 51791,
14 (l) those refuse systems activities defined or
15 classified in the NAICS Manual under
16 Industry Group No. 5622, provided that the
17 establishment is primarily engaged in the
18 capture and distribution of methane gas
19 produced within a landfill,
20 (m) general wholesale distribution of groceries,
21 defined or classified in the NAICS Manual
22 under Industry Group Nos. 4244 and 4245,
23 (n) those activities relating to processing of
24 insurance claims, defined or classified in

1 the NAICS Manual under U.S. Industry Nos.
2 524210 and 524292; provided, activities
3 described in U.S. Industry Nos. 524210 and
4 524292 in the NAICS Manual other than
5 processing of insurance claims shall not be
6 included for purposes of this subdivision,

7 (o) those agricultural activities classified in
8 the NAICS Manual under U.S. Industry ~~No.~~
9 Nos. 112120 and 112310,

10 (p) those professional organization activities
11 classified in the NAICS Manual under U.S.
12 Industry No. 813920,

13 (q) alternative energy structure construction
14 classified in the NAICS Manual under U.S.
15 Industry No. 237130,

16 (r) solar reflective coating application
17 classified in the NAICS Manual under U.S.
18 Industry No. 238160,

19 (s) solar heating equipment installation
20 classified in the NAICS Manual under U.S.
21 Industry No. 238220,

22 (t) those wired telecommunications carriers
23 classified in the NAICS Manual under U.S.
24 Industry No. 517110, and

1 (u) those securities, commodity contracts and
2 investment activities classified in the
3 NAICS Manual under Industry Subsector No.
4 523,

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

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

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

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

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

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

1 following elements or elements substantially
2 equivalent thereto:

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

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

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

19 A transferor shall be treated as related to a transferee if more
20 than fifty percent (50%) of the voting interests of the transferor
21 and transferee are owned, directly or indirectly, by the other or
22 are owned, directly or indirectly, by the same person or persons,
23 unless such transferred establishment has an outstanding class of
24 equity securities registered under Sections 12(b) or 15(d) of the

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

1 such time as such requirements are met. An establishment described
2 in this paragraph shall be required to repay all incentive payments
3 received under the Oklahoma Quality Jobs Program Act if the
4 establishment is determined by the ~~Oklahoma~~ Tax Commission to no
5 longer have business operations in the state within three (3) years
6 from the beginning of the calendar quarter for which the first
7 incentive payment claim is filed;

8 3. "New direct job":

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

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

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

1 4. "Estimated direct state benefits" means the tax revenues
2 projected by the Department to accrue to the state as a result of
3 new direct jobs;

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

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

14 6. "Estimated net direct state benefits" means the estimated
15 direct state benefits less the estimated direct state costs;

16 7. "Net benefit rate" means the estimated net direct state
17 benefits computed as a percentage of gross payroll; provided:

- 18 a. except as otherwise provided in this paragraph, the
19 net benefit rate may be variable and shall not exceed
20 five percent (5%),
- 21 b. the net benefit rate shall not exceed six percent (6%)
22 in connection with an establishment which is owned and
23 operated by an entity which has been awarded a United
24 States Department of Defense contract for which:

- 1 (1) bids were solicited and accepted by the United
- 2 States Department of Defense from facilities
- 3 located outside this state,
- 4 (2) the term is or is renewable for not less than
- 5 twenty (20) years, and
- 6 (3) the average annual salary, excluding benefits
- 7 which are not subject to Oklahoma income taxes,
- 8 for new direct jobs created as a direct result of
- 9 the awarding of the contract is projected by the
- 10 Oklahoma Department of Commerce to equal or
- 11 exceed Forty Thousand Dollars (\$40,000.00) within
- 12 three (3) years of the date of the first
- 13 incentive payment,

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

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

- 20 (1) in an opportunity zone located in a high-
- 21 employment county, as such terms are defined in
- 22 subsection G of Section 3604 of this title, or
- 23 (2) in a county in which:
- 24

1 (a) the per capita personal income, as
2 determined by the Department, is eighty-five
3 percent (85%) or less of the statewide
4 average per capita personal income,

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

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

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

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

22 (2) expands its operations in this state by creating
23 additional new direct jobs which pay average
24 annualized wages which equal or exceed one

1 hundred fifty percent (150%) of the average
2 annualized wages of new direct jobs on which
3 incentive payments were received during the
4 preceding calendar year,

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

1 the net benefit rate is modified as required by this
2 subparagraph, and

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

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

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

- 18 9. a. "Establishment" means any business or governmental
19 entity, no matter what legal form, including, but not
20 limited to, a sole proprietorship; partnership;
21 limited liability company; corporation or combination
22 of corporations which have a central parent
23 corporation which makes corporate management decisions
24 such as those involving consolidation, acquisition,

1 merger or expansion; federal agency; political
2 subdivision of the State of Oklahoma; or trust
3 authority; provided, distinct, identifiable subunits
4 of such entities may be determined to be an
5 establishment, for all purposes of ~~Section 3601 et~~
6 ~~seq. of this title~~ the Oklahoma Quality Jobs Program
7 Act, by the Department subject to the following
8 conditions:

- 9 (1) within three (3) years of the first complete
10 calendar quarter following the start date, the
11 entity must have a minimum payroll of Two Million
12 Five Hundred Thousand Dollars (\$2,500,000.00) and
13 the subunit must also have or will have a minimum
14 payroll of Two Million Five Hundred Thousand
15 Dollars (\$2,500,000.00),
- 16 (2) the subunit is engaged in an activity or service
17 or produces a product which is demonstratively
18 independent and separate from the entity's other
19 activities, services or products and could be
20 conducted or produced in the absence of any other
21 activity, service or production of the entity,
- 22 (3) has an accounting system capable of tracking or
23 facilitating an audit of the subunit's payroll,
24 expenses, revenue and production. Limited

1 interunit overlap of administrative and
2 purchasing functions shall not disqualify a
3 subunit from consideration as an establishment by
4 the Department,

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

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

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

24

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

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

1 has been formed. A qualified federal contract described in this
2 paragraph shall not qualify unless both the qualified federal
3 contractor and any subcontractors originally involved in the work or
4 added subsequently during the period of performance verify to the
5 qualified federal contractor verifier that it offers, or will offer
6 within one hundred eighty (180) days of employment of its respective
7 employees, a basic health benefits plan as described in subparagraph
8 b of paragraph 1 of this subsection to individuals who perform
9 qualified labor hours in this state;

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

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

24

- 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;

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

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

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

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

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

20 a. maintaining a prime contract with the federal
21 government as defined in paragraph 11 of this
22 subsection,

23 b. providing notice of intent to apply to the Department
24 within one hundred eighty (180) days of July 1, 2010,

1 or one hundred eighty (180) days of the date of the
2 award of a qualified federal contract or award of a
3 new qualified subcontract under an existing qualified
4 federal contract, and

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

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

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

- 23 a. is organized and existing under Section 176 of Title
24 60 of the Oklahoma Statutes for the benefit of a

1 geographic area which includes a city or county or
2 some combination thereof, and

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

8 A proxy establishment may be determined to be an establishment
9 for all purposes of ~~Section 3601 et seq. of this title~~ the Oklahoma
10 Quality Jobs Program Act by the Department and incentive payments
11 may be made to such proxy establishment for new direct jobs
12 otherwise qualified pursuant to ~~this act~~ the Oklahoma Quality Jobs
13 Program Act. The Department may promulgate rules to further specify
14 the circumstances under which a proxy establishment may be
15 considered an establishment for the purposes of making application
16 for incentive payments pursuant to ~~this act~~ the Oklahoma Quality
17 Jobs Program Act. Provided however, that with respect to any data
18 on qualifying direct new jobs from a branch of the Armed Forces of
19 the United States, such rules shall only require a proxy
20 establishment to provide such data as would otherwise be publicly
21 releasable by the branch of the Armed Forces of the United States.

22 B. The Incentive Approval Committee is hereby created and shall
23 consist of the Director of the Office of Management and Enterprise
24 Services, the Director of the Department and one member of the

1 Oklahoma Tax Commission appointed by the Tax Commission, or a
2 designee from each agency approved by such member. It shall be the
3 duty of the Committee to determine:

4 1. Upon initial application on a form approved by the
5 Committee, if an establishment is engaged in a basic industry as
6 defined in subdivision (b) of division (7) or in subdivisions (a)
7 through (n) of division (9) of subparagraph a of paragraph 1 of
8 subsection A of this section or as otherwise provided by subsection
9 C of this section;

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

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

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

1 Technology, or a designee from the Center appointed by the Executive
2 Director.

3 SECTION 2. This act shall become effective November 1, 2015."

4 Passed the House of Representatives the 7th day of April, 2015.

5

6

7 _____
8 Presiding Officer of the House of
9 Representatives

10 Passed the Senate the ____ day of _____, 2015.

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Presiding Officer of the Senate

1 NGROSSED SENATE
2 BILL NO. 71

By: Allen of the Senate
and
Bennett of the House

3
4
5
6 [Oklahoma Quality Jobs Program Act - modifying
7 definition - effective date]
8

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

10 SECTION 1. AMENDATORY 68 O.S. 2011, Section 3603, as
11 last amended by Section 1, Chapter 332, O.S.L. 2014 (68 O.S. Supp.
12 2014, Section 3603), is amended to read as follows:

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

15 1. a. "Basic industry" means:

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

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

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

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

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

23 (d) the facility is constructed on or after July
24 1, 1996,

1 (3) those administrative and facilities support
2 service activities defined or classified in the
3 NAICS Manual under Industry Group Nos. 5611 and
4 5612, Industry Nos. 51821, 519130, 52232 and
5 56142 or U.S. Industry Nos. 524291 and 551114,
6 those other support activities for air
7 transportation defined or classified in the NAICS
8 Manual under Industry Group No. 488190, and those
9 support, repair, and maintenance service
10 activities for the wind industry defined or
11 classified in the NAICS Manual under Industry
12 Group No. 811310,

13 (4) those professional, scientific and technical
14 service activities defined or classified in the
15 NAICS Manual under U.S. Industry Nos. 541710 and
16 541380,

17 (5) distribution centers for retail or wholesale
18 businesses defined or classified in the NAICS
19 Manual under Sector No. 42, if forty percent
20 (40%) or more of the inventory processed through
21 such warehouse is shipped out-of-state,

22 (6) those adjustment and collection service
23 activities defined or classified in the NAICS
24 Manual under U.S. Industry No. 561440, if

1 seventy-five percent (75%) of the loans to be
2 serviced were made by out-of-state debtors,

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

7 (i) the corporate headquarters of an
8 establishment classified therein, and

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

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

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

22 (9) the following, if an establishment classified
23 therein has or will have within one (1) year
24 sales of at least seventy-five percent (75%) of

1 its total sales, as determined by the Incentive
2 Approval Committee pursuant to the provisions of
3 subsection B of this section, to out-of-state
4 customers or buyers, to in-state customers or
5 buyers if the product or service is resold by the
6 purchaser to an out-of-state customer or buyer
7 for ultimate use, or to the federal government:

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

15 (b) those passenger transportation activities
16 defined or classified in the NAICS Manual
17 under Industry Nos. 561510 and 561599,

18 (c) those freight or cargo transportation
19 activities defined or classified in the
20 NAICS Manual under Industry No. 541614,

21 (d) those insurance activities defined or
22 classified in the NAICS Manual under
23 Industry Group No. 5241,
24

1 (e) those services to dwellings and other
2 buildings, as defined or classified in the
3 NAICS Manual under Industry Group No. 5617,
4 excluding U.S. Industry Nos. 561730, 56171,
5 56172, 56174 and 56179,

6 (f) those equipment rental and leasing
7 activities defined or classified in the
8 NAICS Manual under Industry Group No. 5324,

9 (g) those information technology and other
10 computer-related service activities defined
11 or classified in the NAICS Manual under
12 Industry Group Nos. 5112, 5182, 5191 and
13 5415,

14 (h) those business support service activities
15 defined or classified in the NAICS Manual
16 under U.S. Industry Nos. 561410 through
17 561430, excluding 56143, and Industry No.
18 51911,

19 (i) those medical and diagnostic laboratory
20 activities defined or classified in the
21 NAICS Manual under Industry Group No. 6215,

22 (j) those professional, scientific and technical
23 service activities defined or classified in
24 the NAICS Manual under Industry Group Nos.

1 5412, 5414, 5415, 5416 and 5417, Industry
2 Nos. 54131, 54133, 54136 and 54137, and U.S.
3 Industry No. 541990, if not otherwise listed
4 in this paragraph,

5 (k) those communication service activities
6 defined or classified in the NAICS Manual
7 under Industry Nos. 51741 and 51791,

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

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

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

- 1 (o) those agricultural activities classified in
2 the NAICS Manual under U.S. Industry ~~No.~~
3 Nos. 112120 and 112310,
- 4 (p) those professional organization activities
5 classified in the NAICS Manual under U.S.
6 Industry No. 813920,
- 7 (q) alternative energy structure construction
8 classified in the NAICS Manual under U.S.
9 Industry No. 237130,
- 10 (r) solar reflective coating application
11 classified in the NAICS Manual under U.S.
12 Industry No. 238160,
- 13 (s) solar heating equipment installation
14 classified in the NAICS Manual under U.S.
15 Industry No. 238220,
- 16 (t) those wired telecommunications carriers
17 classified in the NAICS Manual under U.S.
18 Industry No. 517110, and
- 19 (u) those securities, commodity contracts and
20 investment activities classified in the
21 NAICS Manual under Industry Subsector No.
22 523,
- 23 (10) those activities related to extraction or
24 pipeline transportation of petroleum, natural gas

1 or refined petroleum products, defined or
2 classified in the NAICS Manual under Industry
3 Group No. 2111, 213111, 213112 or 486, subject to
4 the limitations provided in paragraph 3 of this
5 subsection and paragraph 3 of subsection B of
6 this section,

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

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

20 (13) those real estate or brokerage activities
21 classified in the NAICS Manual under U.S.
22 Industry No. 53120 for which at least seventy-
23 five percent (75%) of the establishment's
24 revenues are attributed to out-of-state sales and

1 at least seventy-five percent (75%) of the real
2 estate transactions generating those revenues are
3 attributed to real property located outside the
4 State of Oklahoma, or

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

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

- 18 (1) not more than fifty percent (50%) of the premium
19 shall be paid by the employee,
20 (2) coverage for basic hospital care,
21 (3) coverage for physician care,
22 (4) coverage for mental health care,
23 (5) coverage for substance abuse treatment,
24 (6) coverage for prescription drugs, and

1 (7) coverage for prenatal care;

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

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

10 A transferor shall be treated as related to a transferee if more
11 than fifty percent (50%) of the voting interests of the transferor
12 and transferee are owned, directly or indirectly, by the other or
13 are owned, directly or indirectly, by the same person or persons,
14 unless such transferred establishment has an outstanding class of
15 equity securities registered under Sections 12(b) or 15(d) of the
16 Securities Exchange Act of 1934, as amended, in which event the
17 transferor and transferee will be treated as unrelated; provided, an
18 establishment applying for the Oklahoma Quality Jobs Program Act as
19 a result of a change-in-control event is required to apply within
20 one hundred eighty (180) days of the change-in-control event to
21 qualify for consideration. An establishment entering the Oklahoma
22 Quality Jobs Program Act as the result of a change-in-control event
23 shall be required to maintain a level of new direct jobs as agreed
24 to in its contract with the Oklahoma Department of Commerce and to

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

23 3. "New direct job":
24

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

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

17 b. shall include full-time-equivalent employment in this
18 state of employees who are employed by an employment
19 agency or similar entity other than the establishment
20 which has qualified to receive an incentive payment
21 and who are leased or otherwise provided under
22 contract to the qualified establishment, if such job
23 did not exist in this state prior to the date of
24 approval by the Department of the application of the

1 establishment or the job otherwise qualifies as a new
2 direct job following a change-in-control event. A job
3 shall be deemed to exist in this state prior to
4 approval of an application if the activities and
5 functions for which the particular job exists have
6 been ongoing at any time within six (6) months prior
7 to such approval. With respect to establishments
8 defined in division (10) of subparagraph a of
9 paragraph 1 of this subsection, new direct jobs shall
10 be limited to those jobs directly comprising the
11 corporate headquarters of or directly relating to
12 manufacturing, maintenance, administrative, financial,
13 engineering, surveying, geological or geophysical
14 services performed by the establishment. Under no
15 circumstances shall employment relating to field
16 services be considered new direct jobs;

17 4. "Estimated direct state benefits" means the tax revenues
18 projected by the Department to accrue to the state as a result of
19 new direct jobs;

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

23 a. the costs of education of new state resident children,
24

1 b. the costs of public health, public safety and
2 transportation services to be provided to new state
3 residents,

4 c. the costs of other state services to be provided to
5 new state residents, and

6 d. the costs of other state services;

7 6. "Estimated net direct state benefits" means the estimated
8 direct state benefits less the estimated direct state costs;

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

11 a. except as otherwise provided in this paragraph, the
12 net benefit rate may be variable and shall not exceed
13 five percent (5%),

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

18 (1) bids were solicited and accepted by the United
19 States Department of Defense from facilities
20 located outside this state,

21 (2) the term is or is renewable for not less than
22 twenty (20) years, and

23 (3) the average annual salary, excluding benefits
24 which are not subject to Oklahoma income taxes,

1 for new direct jobs created as a direct result of
2 the awarding of the contract is projected by the
3 Oklahoma Department of Commerce to equal or
4 exceed Forty Thousand Dollars (\$40,000.00) within
5 three (3) years of the date of the first
6 incentive payment,

7 c. except as otherwise provided in subparagraph d of this
8 paragraph, in no event shall incentive payments,
9 cumulatively, exceed the estimated net direct state
10 benefits,

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

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

16 (2) in a county in which:

17 (a) the per capita personal income, as
18 determined by the Department, is eighty-five
19 percent (85%) or less of the statewide
20 average per capita personal income,

21 (b) the population has decreased over the
22 previous ten (10) years, as determined by
23 the Oklahoma Department of Commerce based on
24

1 the most recent U.S. Department of Commerce
2 data, or

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

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

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

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

22 f. with respect to an establishment defined or classified
23 in the NAICS Manual under U.S. Industry No. 711211
24 (2007 version) or any establishment defined or

1 classified in the NAICS Manual as a U.S. Industry
2 Number which is not included within the definition of
3 "basic industry" as such term is defined in this
4 section on April 17, 2008, the net benefit rate shall
5 not exceed the highest rate of income tax imposed upon
6 the Oklahoma taxable income of individuals pursuant to
7 subparagraph (g) or subparagraph (h), as applicable,
8 of paragraph 1 and paragraph 2 of subsection B of
9 Section 2355 of this title. Any change in such
10 highest rate of individual income tax imposed pursuant
11 to the provisions of Section 2355 of this title shall
12 be applicable to the computation of incentive payments
13 to an establishment as described by this subparagraph
14 and shall be effective for purposes of incentive
15 payments based on payroll paid by such establishment
16 on or after January 1 of any applicable year for which
17 the net benefit rate is modified as required by this
18 subparagraph, and

- 19 g. the net benefit rate shall not exceed six percent (6%)
20 in connection with an establishment which employs
21 United States military veterans in at least ten
22 percent (10%) of its gross payroll. The net benefit
23 rate for an establishment which employs United States
24

1 military veterans in at least ten percent (10%) of its
2 payroll shall not be lower than five percent (5%).

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

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

11 9. a. "Establishment" means any business or governmental
12 entity, no matter what legal form, including, but not
13 limited to, a sole proprietorship; partnership;
14 limited liability company; corporation or combination
15 of corporations which have a central parent
16 corporation which makes corporate management decisions
17 such as those involving consolidation, acquisition,
18 merger or expansion; federal agency; political
19 subdivision of the State of Oklahoma; or trust
20 authority; provided, distinct, identifiable subunits
21 of such entities may be determined to be an
22 establishment, for all purposes of ~~Section 3601 et~~
23 ~~seq. of this title~~ the Oklahoma Quality Jobs Program
24

1 Act, by the Department subject to the following
2 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

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

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

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

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

8 a. established multiyear classified and unclassified
9 indefinite-delivery/indefinite-quantity federal
10 contract vehicles in excess of Fifty Million Dollars
11 (\$50,000,000.00),

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

17 c. at least one on-site federally certified Sensitive
18 Compartmented Information Facility,

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

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

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

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

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

18 15. "Effective date" means the date of approval of a contract
19 under which incentive payments will be made pursuant to the Oklahoma
20 Quality Jobs Program Act, which shall be the date the signed and
21 accepted incentive contract is received by the Department; provided,
22 an approved project may have a start date which is different from
23 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 ~~this act~~ the Oklahoma Quality
20 Jobs Program Act are created by an establishment,
21 other than the proxy establishment, which is a branch
22 of the Armed Forces of the United States.

23 A proxy establishment may be determined to be an establishment
24 for all purposes of ~~Section 3601 et seq. of this title~~ the Oklahoma

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

19 1. Upon initial application on a form approved by the
20 Committee, if an establishment is engaged in a basic industry as
21 defined in subdivision (b) of division (7) or in subdivisions (a)
22 through (n) of division (9) of subparagraph a of paragraph 1 of
23 subsection A of this section or as otherwise provided by subsection
24 C of this section;

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

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

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

17 SECTION 2. This act shall become effective November 1, 2015.

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1 Passed the Senate the 16th day of February, 2015.

2
3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2015.

7
8 _____
9 Presiding Officer of the House
10 of Representatives