

1 **SENATE FLOOR VERSION**

2 March 1, 2023

3 SENATE BILL NO. 210

By: Dahm of the Senate

4 and

5 Hilbert of the House

6  
7 [ income tax - exemption - qualification -  
8 determination - application - forms - rules - tax  
9 credit - quality jobs program - net benefit rate  
10 limit - codification - effective date ]

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

12 SECTION 1. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 2357.204A of Title 68, unless  
14 there is created a duplication in numbering, reads as follows:

15 A. For tax years 2024 through 2034, revenues generated from the  
16 operation of a newly constructed establishment in this state placed  
17 in service after the effective date of this act, primarily engaged  
18 in the refining of crude petroleum into refined petroleum classified  
19 in the NAICS Manual under Industry No. 324110 shall be exempt from  
20 the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes  
21 for the first five (5) years of operations.

22 B. To qualify for the exemption provided in subsection A of  
23 this section, an establishment shall meet the following  
24 requirements:

1           1. Employment of at least one hundred (100) full-time-  
2 equivalent employees, as certified by the Oklahoma Employment  
3 Security Commission, for the entire tax year;

4           2. Payment of wages or salaries at a wage that equals or  
5 exceeds the average wage requirements in the Oklahoma Quality Jobs  
6 Program Act, Section 3601 et seq. of Title 68 of the Oklahoma  
7 Statutes; and

8           3. Be primarily engaged in the processing of liquid fuel from  
9 crude oil or qualified fuels. No exemption shall be allowed for any  
10 refinery whose primary purpose is for use as a topping plant,  
11 asphalt plant, lube oil facility, or crude or product terminal.

12           C. Eligibility for an establishment pursuant to this section  
13 for each tax year shall be determined by the Oklahoma Tax  
14 Commission, upon the annual filing of an application provided by the  
15 Tax Commission stating that the establishment qualifies and  
16 containing information required by the Tax Commission.

17           D. An establishment that fails to qualify for the exemption in  
18 any of the first five (5) years of operations shall not be eligible  
19 for the exemption provided in this section in any subsequent tax  
20 year.

21           E. The Tax Commission shall prescribe forms and promulgate  
22 rules to administer the provisions of this section.

23           SECTION 2.           AMENDATORY           68 O.S. 2021, Section 2357.4, is  
24 amended to read as follows:

1 Section 2357.4. A. Except as otherwise provided in subsection  
2 F of Section 3658 of this title and in subsections J and K of this  
3 section, for taxable years beginning after December 31, 1987, there  
4 shall be allowed a credit against the tax imposed by Section 2355 of  
5 this title for:

6 1. Investment in qualified depreciable property placed in  
7 service during those years for use in a manufacturing operation, as  
8 defined in Section 1352 of this title, which has received a  
9 manufacturer exemption permit pursuant to the provisions of Section  
10 1359.2 of this title or a qualified aircraft maintenance or  
11 manufacturing facility as defined in Section 1357 of this title in  
12 this state or a qualified web search portal as defined in Section  
13 1357 of this title; or

14 2. A net increase in the number of full-time-equivalent  
15 employees in a manufacturing operation, as defined in Section 1352  
16 of this title, which has received a manufacturer exemption permit  
17 pursuant to the provisions of Section 1359.2 of this title or a  
18 qualified aircraft maintenance or manufacturing facility defined in  
19 Section 1357 of this title in this state or in a qualified web  
20 search portal as defined in Section 1357 of this title including  
21 employees engaged in support services.

22 B. Except as otherwise provided in subsection F of Section 3658  
23 of this title and in subsections J and K of this section, for  
24 taxable years beginning after December 31, 1998, there shall be

1 allowed a credit against the tax imposed by Section 2355 of this  
2 title for:

3 1. Investment in qualified depreciable property with a total  
4 cost equal to or greater than Forty Million Dollars (\$40,000,000.00)  
5 within three (3) years from the date of initial qualifying  
6 expenditure and placed in service in this state during those years  
7 for use in the manufacture of products described by any Industry  
8 Number contained in Division D of Part I of the Standard Industrial  
9 Classification (SIC) Manual, latest revision; or

10 2. A net increase in the number of full-time-equivalent  
11 employees in this state engaged in the manufacture of any goods  
12 identified by any Industry Number contained in Division D of Part I  
13 of the Standard Industrial Classification (SIC) Manual, latest  
14 revision, if the total cost of qualified depreciable property placed  
15 in service by the business entity within the state equals or exceeds  
16 Forty Million Dollars (\$40,000,000.00) within three (3) years from  
17 the date of initial qualifying expenditure.

18 C. The business entity may claim the credit authorized by  
19 subsection B of this section for expenditures incurred or for a net  
20 increase in the number of full-time-equivalent employees after the  
21 business entity provides proof satisfactory to the Oklahoma Tax  
22 Commission that the conditions imposed pursuant to paragraph 1 or  
23 paragraph 2 of subsection B of this section have been satisfied.

24

1 D. If a business entity fails to expend the amount required by  
2 paragraph 1 or paragraph 2 of subsection B of this section within  
3 the time required, the business entity may not claim the credit  
4 authorized by subsection B of this section but shall be allowed to  
5 claim a credit pursuant to subsection A of this section if the  
6 requirements of subsection A of this section are met with respect to  
7 the investment in qualified depreciable property or net increase in  
8 the number of full-time-equivalent employees.

9 E. The credit provided for in subsection A of this section, if  
10 based upon investment in qualified depreciable property, shall not  
11 be allowed unless the investment in qualified depreciable property  
12 is at least Fifty Thousand Dollars (\$50,000.00). The credit  
13 provided for in subsection A or B of this section shall not be  
14 allowed if the applicable investment is the direct cause of a  
15 decrease in the number of full-time-equivalent employees. Qualified  
16 property shall be limited to machinery, fixtures, equipment,  
17 buildings or substantial improvements thereto, placed in service in  
18 this state during the taxable year. The taxable years for which the  
19 credit may be allowed if based upon investment in qualified  
20 depreciable property shall be measured from the year in which the  
21 qualified property is placed in service. If the credit provided for  
22 in subsection A or B of this section is calculated on the basis of  
23 the cost of the qualified property, the credit shall be allowed in  
24 each of the four (4) subsequent years. If the qualified property on

1 which a credit has previously been allowed is acquired from a  
2 related party, the date such property is placed in service by the  
3 transferor shall be considered to be the date such property is  
4 placed in service by the transferee, for purposes of determining the  
5 aggregate number of years for which credit may be allowed.

6 F. The credit provided for in subsection A or B of this  
7 section, if based upon an increase in the number of full-time-  
8 equivalent employees, shall be allowed in each of the four (4)  
9 subsequent years only if the level of new employees is maintained in  
10 the subsequent year. In calculating the credit by the number of new  
11 employees, only those employees whose paid wages or salary were at  
12 least Seven Thousand Dollars (\$7,000.00) during each year the credit  
13 is claimed shall be included in the calculation. Provided, that the  
14 first year a credit is claimed for a new employee, such employee may  
15 be included in the calculation notwithstanding paid wages of less  
16 than Seven Thousand Dollars (\$7,000.00) if the employee was hired in  
17 the last three quarters of the tax year, has wages or salary which  
18 will result in annual paid wages in excess of Seven Thousand Dollars  
19 (\$7,000.00) and the taxpayer submits an affidavit stating that the  
20 employee's position will be retained in the following tax year and  
21 will result in the payment of wages in excess of Seven Thousand  
22 Dollars (\$7,000.00). The number of new employees shall be  
23 determined by comparing the monthly average number of full-time  
24 employees subject to Oklahoma income tax withholding for the final

1 quarter of the taxable year with the corresponding period of the  
2 prior taxable year, as substantiated by such reports as may be  
3 required by the Tax Commission.

4 G. The credit allowed by subsection A of this section shall be  
5 the greater amount of either:

6 1. One percent (1%) of the cost of the qualified property in  
7 the year the property is placed in service; or

8 2. Five Hundred Dollars (\$500.00) for each new employee. No  
9 credit shall be allowed in any taxable year for a net increase in  
10 the number of full-time-equivalent employees if such increase is a  
11 result of an investment in qualified depreciable property for which  
12 an income tax credit has been allowed as authorized by this section.

13 H. The credit allowed by subsection B of this section shall be  
14 the greater amount of either:

15 1. Two percent (2%) of the cost of the qualified property in  
16 the year the property is placed in service. Provided, for property  
17 placed in service after the effective date of this act that is  
18 primarily engaged in the refining of crude petroleum into refined  
19 petroleum classified in the NAICS Manual under Industry No. 324110,  
20 the credit allowed shall be three percent (3%) of the cost of the  
21 qualified property; or

22 2. One Thousand Dollars (\$1,000.00) for each new employee.

23 No credit shall be allowed in any taxable year for a net  
24 increase in the number of full-time-equivalent employees if such

1 increase is a result of an investment in qualified depreciable  
2 property for which an income tax credit has been allowed as  
3 authorized by this section.

4 I. Except as provided by subsection G of Section 3658 of this  
5 title, any credits allowed but not used in any taxable year may be  
6 carried over in order as follows:

7 1. To each of the four (4) years following the year of  
8 qualification;

9 2. To the extent not used in those years in order to each of  
10 the fifteen (15) years following the initial five-year period;

11 3. If a C corporation that otherwise qualified for the credits  
12 under subsection A of this section subsequently changes its  
13 operating status to that of a pass-through entity which is being  
14 treated as the same entity for federal tax purposes, the credits  
15 will continue to be available as if the pass-through entity had  
16 originally qualified for the credits subject to the limitations of  
17 this section;

18 4. To the extent not used in paragraphs 1 and 2 of this  
19 subsection, such credits from qualified depreciable property placed  
20 in service on or after January 1, 2000, may be utilized in any  
21 subsequent tax years after the initial twenty-year period; and

22 5. Provided, for tax years beginning on or after January 1,  
23 2016, and ending on or before December 31, 2018, the amount of  
24 credits available as an offset in a taxable year shall be limited to



1 the percentage calculated by the Tax Commission pursuant to the  
2 provisions of subsection L of this section.

3 J. No credit otherwise authorized by the provisions of this  
4 section may be claimed for any event, transaction, investment,  
5 expenditure or other act occurring on or after July 1, 2010, for  
6 which the credit would otherwise be allowable until the provisions  
7 of this subsection shall cease to be operative on July 1, 2012.  
8 Beginning July 1, 2012, the credit authorized by this section may be  
9 claimed for any event, transaction, investment, expenditure or other  
10 act occurring on or after July 1, 2010, according to the provisions  
11 of this section; provided, credits accrued during the period from  
12 July 1, 2010, through June 30, 2012, shall be limited to a period of  
13 two (2) taxable years. The credit shall be limited in each taxable  
14 year to fifty percent (50%) of the total amount of the accrued  
15 credit. Any tax credits which accrue during the period of July 1,  
16 2010, through June 30, 2012, may not be claimed for any period prior  
17 to the taxable year beginning January 1, 2012. No credits which  
18 accrue during the period of July 1, 2010, through June 30, 2012, may  
19 be used to file an amended tax return for any taxable year prior to  
20 the taxable year beginning January 1, 2012.

21 K. Beginning January 1, 2017, except with respect to tax  
22 credits allowed from investment or job creation occurring prior to  
23 January 1, 2017, the credits authorized by this section shall not be  
24 allowed for investment or job creation in electric power generation

1 by means of wind as described by the North American Industry  
2 Classification System, No. 221119.

3 L. For tax years beginning on or after January 1, 2016, and  
4 ending on or before December 31, 2018, the total amount of credits  
5 authorized by this section used to offset tax shall be adjusted  
6 annually to limit the annual amount of credits to Twenty-five  
7 Million Dollars (\$25,000,000.00). The Tax Commission shall annually  
8 calculate and publish a percentage by which the credits authorized  
9 by this section shall be reduced so the total amount of credits used  
10 to offset tax does not exceed Twenty-five Million Dollars  
11 (\$25,000,000.00) per year. The formula to be used for the  
12 percentage adjustment shall be Twenty-five Million Dollars  
13 (\$25,000,000.00) divided by the credits used to offset tax in the  
14 second preceding year.

15 M. Pursuant to subsection L of this section, in the event the  
16 total tax credits authorized by this section exceed Twenty-five  
17 Million Dollars (\$25,000,000.00) in any calendar year, the Tax  
18 Commission shall permit any excess over Twenty-five Million Dollars  
19 (\$25,000,000.00) but shall factor such excess into the percentage  
20 adjustment formula for subsequent years.

21 SECTION 3. AMENDATORY 68 O.S. 2021, Section 3603, is  
22 amended to read as follows:

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

1           1.    a.    "Basic industry" means:

2                   (1)   those manufacturing activities defined or  
3                               classified in the NAICS Manual under Industry  
4                               Sector Nos. 31, 32 and 33, Industry Group No.  
5                               5111 or Industry No. 11331,

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

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

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

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

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

8 (d) the facility is constructed on or after July  
9 1, 1996,

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

22 (4) those professional, scientific, and technical  
23 service activities defined or classified in the  
24

1 NAICS Manual under U.S. Industry Nos. 541710 and  
2 541380,

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

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

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

17 (i) the corporate headquarters of an  
18 establishment classified therein, and

19 (ii) a facility or facilities at which  
20 reservations for transportation  
21 provided by such an establishment are  
22 processed, whether such services are  
23 performed by employees of the  
24 establishment, by employees of a

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

10 (b) those air transportation activities defined  
11 or classified in the NAICS Manual under  
12 Industry Group No. 4811, if an establishment  
13 classified therein has or will have within  
14 one (1) year sales of at least seventy-five  
15 percent (75%) of its total sales, as  
16 determined by the Incentive Approval  
17 Committee pursuant to the provisions of  
18 subsection B of this section, to out-of-  
19 state customers or buyers, to in-state  
20 customers or buyers if the product or  
21 service is resold by the purchaser to an  
22 out-of-state customer or buyer for ultimate  
23 use, or to the federal government,  
24

1 (8) flight training services activities defined or  
2 classified in the NAICS Manual under U.S.  
3 Industry Group No. 611512, which for purposes of  
4 the Oklahoma Quality Jobs Program Act shall  
5 include new direct jobs for which gross payroll  
6 existed on or after January 1, 2003, as  
7 identified in the NAICS Manual,

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

18 (a) those transportation and warehousing  
19 activities defined or classified in the  
20 NAICS Manual under Industry Subsector No.  
21 493, if not otherwise listed in this  
22 paragraph, Industry Subsector Nos. 482 and  
23 484 and Industry Group Nos. 4884 through  
24 4889,

- 1 (b) those passenger transportation activities  
2 defined or classified in the NAICS Manual  
3 under Industry Nos. 561510 and 561599,  
4 (c) those freight or cargo transportation  
5 activities defined or classified in the  
6 NAICS Manual under Industry No. 541614,  
7 (d) those insurance activities defined or  
8 classified in the NAICS Manual under  
9 Industry Group No. 5241,  
10 (e) those services to dwellings and other  
11 buildings, as defined or classified in the  
12 NAICS Manual under Industry Group No. 5617,  
13 excluding U.S. Industry Nos. 561730, 56171,  
14 56172, 56174 and 56179,  
15 (f) those equipment rental and leasing  
16 activities defined or classified in the  
17 NAICS Manual under Industry Group No. 5324,  
18 (g) those information technology and other  
19 computer-related service activities defined  
20 or classified in the NAICS Manual under  
21 Industry Group Nos. 5112, 5182, 5191 and  
22 5415,  
23 (h) those business support service activities  
24 defined or classified in the NAICS Manual



1 under U.S. Industry Nos. 561410 through  
2 561430, excluding 56143, and Industry No.  
3 51911,

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

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

14 (k) those communication service activities  
15 defined or classified in the NAICS Manual  
16 under Industry Nos. 51741 and 51791,

17 (l) those refuse systems activities defined or  
18 classified in the NAICS Manual under  
19 Industry Group No. 5622, provided that the  
20 establishment is primarily engaged in the  
21 capture and distribution of methane gas  
22 produced within a landfill,

- 1 (m) general wholesale distribution of groceries,  
2 defined or classified in the NAICS Manual  
3 under Industry Group Nos. 4244 and 4245,  
4 (n) those activities relating to processing of  
5 insurance claims, defined or classified in  
6 the NAICS Manual under U.S. Industry Nos.  
7 524210 and 524292; provided, activities  
8 described in U.S. Industry Nos. 524210 and  
9 524292 in the NAICS Manual other than  
10 processing of insurance claims shall not be  
11 included for purposes of this subdivision,  
12 (o) those agricultural activities classified in  
13 the NAICS Manual under U.S. Industry Nos.  
14 112120 and 112310,  
15 (p) those professional organization activities  
16 classified in the NAICS Manual under U.S.  
17 Industry No. 813920,  
18 (q) alternative energy structure construction  
19 classified in the NAICS Manual under U.S.  
20 Industry No. 237130,  
21 (r) solar reflective coating application  
22 classified in the NAICS Manual under U.S.  
23 Industry No. 238160,  
24

1 (s) solar heating equipment installation  
2 classified in the NAICS Manual under U.S.  
3 Industry No. 238220,  
4 (t) those wired telecommunications carriers  
5 classified in the NAICS Manual under U.S.  
6 Industry No. 517110, and  
7 (u) those securities, commodity contracts and  
8 investment activities classified in the  
9 NAICS Manual under Industry Subsector No.  
10 523,

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

19 (11) those activities performed by the federal  
20 civilian workforce at a facility of the Federal  
21 Aviation Administration located in this state if  
22 the Director of the Oklahoma Department of  
23 Commerce determines or is notified that the  
24 federal government is soliciting proposals or

1 otherwise inviting states to compete for  
2 additional federal civilian employment or  
3 expansion of federal civilian employment at such  
4 facilities,

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

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

17 (14) those support activities for rail transportation  
18 and those support activities for water  
19 transportation defined or classified in the NAICS  
20 Manual under U.S. Industry Nos. 4882 and 4883.

21 b. An establishment described in subparagraph a of this  
22 paragraph shall not be considered to be engaged in a  
23 basic industry unless it offers, or will offer within  
24 one hundred eighty (180) days of employment, a basic

1 health benefits plan to the individuals it employs in  
2 new direct jobs in this state which is determined by  
3 the Oklahoma Department of Commerce to consist of the  
4 following elements or elements substantially  
5 equivalent thereto:

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

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

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

22 A transferor shall be treated as related to a transferee if more  
23 than fifty percent (50%) of the voting interests of the transferor  
24 and transferee are owned, directly or indirectly, by the other or

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

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

11 3. "New direct job":

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

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



1 state by the new establishment following a change in  
2 control event, if such job otherwise qualifies as a  
3 new direct job, and

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

1 services performed by the establishment. Under no  
2 circumstances shall employment relating to field  
3 services be considered new direct jobs;

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

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

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

17 6. "Estimated net direct state benefits" means the estimated  
18 direct state benefits less the estimated direct state costs;

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

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

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

5                    (1)   bids were solicited and accepted by the United  
6                            States Department of Defense from facilities  
7                            located outside this state,

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

10                   (3)   the average annual salary, excluding benefits  
11                            which are not subject to Oklahoma income taxes,  
12                            for new direct jobs created as a direct result of  
13                            the awarding of the contract is projected by the  
14                            Oklahoma Department of Commerce to equal or  
15                            exceed Forty Thousand Dollars (\$40,000.00) within  
16                            three (3) years of the date of the first  
17                            incentive payment,

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

22           d.    the net benefit rate shall be five percent (5%) for an  
23                    establishment locating:  
24

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

4 (2) in a county in which:

5 (a) the per capita personal income, as  
6 determined by the Department, is eighty-five  
7 percent (85%) or less of the statewide  
8 average per capita personal income,

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

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

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

21 (1) is, as of the date of application, receiving  
22 incentive payments pursuant to the Oklahoma  
23 Quality Jobs Program Act and has been receiving  
24

1                   such payments for at least one (1) year prior to  
2                   the date of application, and

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

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

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

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

14 h. with respect to a petroleum refinery establishment  
15 placed in service after the effective date of this  
16 act, defined or classified in the NAICS Manual under  
17 U.S. Industry No. 324110, the net benefit rate shall  
18 not exceed six percent (6%).

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

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

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

- 17 (1) within three (3) years of the first complete  
18 calendar quarter following the start date, the  
19 entity must have a minimum payroll of Two Million  
20 Five Hundred Thousand Dollars (\$2,500,000.00) and  
21 the subunit must also have or will have a minimum  
22 payroll of Two Million Five Hundred Thousand  
23 Dollars (\$2,500,000.00),  
24

- 1 (2) the subunit is engaged in an activity or service  
2 or produces a product which is demonstratively  
3 independent and separate from the entity's other  
4 activities, services or products and could be  
5 conducted or produced in the absence of any other  
6 activity, service or production of the entity,
- 7 (3) has an accounting system capable of tracking or  
8 facilitating an audit of the subunit's payroll,  
9 expenses, revenue and production. Limited  
10 interunit overlap of administrative and  
11 purchasing functions shall not disqualify a  
12 subunit from consideration as an establishment by  
13 the Department,
- 14 (4) the entity has not previously had a subunit  
15 determined to be an establishment pursuant to  
16 this section; provided, the restriction set forth  
17 in this division shall not apply to subunits  
18 which qualify pursuant to the provisions of  
19 subparagraph b of paragraph 7 of this subsection,  
20 and
- 21 (5) it is determined by the Department that the  
22 entity will have a probable net gain in total  
23 employment within the incentive period.
- 24



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

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

14           11.  "Qualified federal contract" means a contract between an  
15 agency or instrumentality of the United States government, including  
16 but not limited to the Department of Defense or any branch of the  
17 United States Armed Forces, but exclusive of any contract performed  
18 for the Federal Emergency Management Agency as a direct result of a  
19 natural disaster declared by the Governor or the President of the  
20 United States with respect to damage to property located in Oklahoma  
21 or loss of life or personal injury to persons in Oklahoma, and a  
22 lawfully recognized business entity, whether or not the business  
23 entity is organized under the laws of ~~the State of Oklahoma~~ this  
24 state or whether or not the principal place of business of the

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

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

24

- 1 a. established multiyear classified and unclassified  
2 indefinite-delivery/indefinite-quantity federal  
3 contract vehicles in excess of Fifty Million Dollars  
4 (\$50,000,000.00),
- 5 b. current capability to sponsor and maintain personnel  
6 security clearances and authorized by the federal  
7 government to handle and perform classified work up to  
8 the Top Secret Sensitive Compartmented Information  
9 levels,
- 10 c. at least one on-site federally certified Sensitive  
11 Compartmented Information Facility,
- 12 d. on-site secure mass data storage complex with the  
13 capability of isolating, segregating and protecting  
14 corporate proprietary and classified information,
- 15 e. trusted agent status by maintaining no ownership of,  
16 vested interest in, nor royalty production from any  
17 intellectual property,
- 18 f. at least one hundred thousand (100,000) square feet of  
19 configurable laboratory and support space,
- 20 g. the direct access to restricted air space through a  
21 formalized memorandum of agreement with the Department  
22 of Defense,
- 23 h. at least five thousand (5,000) acres available for  
24 outdoor testing and training facilities, and

1 i. the ability to house state-of-the-art surety  
2 facilities, including chemical, biological,  
3 radiological, explosives, electronics, and unmanned  
4 systems laboratories and ranges;

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

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

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

17 16. "Total qualified labor hours" means the reimbursed payment  
18 amount for hours of work performed by the State of Oklahoma  
19 workforce of a qualified federal contractor or the State of Oklahoma  
20 workforce of a subcontractor of a qualified federal contractor and  
21 which are required for the full performance of a qualified federal  
22 contract;

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

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

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

21 Should a prime contractor provide notice to the Department of  
22 its intent not to apply for incentive for a qualified federal  
23 contract or fails to qualify under the criteria above,  
24 subcontractors in order of tier ranking as determined by the federal

1 contract verifier may assume the role of the prime and apply to  
2 become a qualified federal contractor provided the entity meets the  
3 same criteria above with the exception that notice of intent to  
4 apply with the Department must be provided within sixty (60) days of  
5 the prime's disqualification or one hundred eighty (180) days of the  
6 award of its subcontract, whichever is later; and

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

- 8 a. is organized and existing under Section 176 of Title  
9 60 of the Oklahoma Statutes for the benefit of a  
10 geographic area which includes a city or county or  
11 some combination thereof, and
- 12 b. benefits a geographic area where new direct jobs which  
13 meet the requirements of the Oklahoma Quality Jobs  
14 Program Act are created by an establishment, other  
15 than the proxy establishment, which is a branch of the  
16 Armed Forces of the United States.

17 A proxy establishment may be determined to be an establishment  
18 for all purposes of the Oklahoma Quality Jobs Program Act by the  
19 Department and incentive payments may be made to such proxy  
20 establishment for new direct jobs otherwise qualified pursuant to  
21 the Oklahoma Quality Jobs Program Act. The Department may  
22 promulgate rules to further specify the circumstances under which a  
23 proxy establishment may be considered an establishment for the  
24 purposes of making application for incentive payments pursuant to

1 the Oklahoma Quality Jobs Program Act. Provided, however, that with  
2 respect to any data on qualifying direct new jobs from a branch of  
3 the Armed Forces of the United States, such rules shall only require  
4 a proxy establishment to provide such data as would otherwise be  
5 publicly releasable by the branch of the Armed Forces of the United  
6 States.

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

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

22 SECTION 4. This act shall become effective November 1, 2023.

23 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
24 March 1, 2023 - DO PASS