

1 **SENATE FLOOR VERSION**
February 20, 2023
2 **AS AMENDED**

3 SENATE BILL NO. 385

By: Kirt

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5
6 **[incentive payments - Oklahoma Quality Jobs Program**
- wage requirement - effective date]
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8

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

10 SECTION 1. AMENDATORY 68 O.S. 2021, Section 3603, is
11 amended to read as follows:

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

14 1. a. "Basic industry" means:

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

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

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
23 technical service activities defined or
24 classified in the NAICS Manual under

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

1 gas, or refined petroleum products, defined or
2 classified in the NAICS Manual under Industry
3 Group No. 2111, 213111, 213112, or 486, subject
4 to the limitations provided in paragraph 3 of
5 this subsection ~~and paragraph 3 of subsection B~~
6 ~~of 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~~ this state, 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, for the county in which the new jobs are located, for
4 applications submitted by an establishment before January 1, 2024.
5 For applications submitted by an establishment on or after January
6 1, 2024, the establishment shall pay one hundred twenty-five percent
7 (125%) of the average county wage, for the county in which the new
8 jobs are located, or one hundred percent (100%) of the average state
9 wage for application submitted by an establishment on or after
10 January 1, 2024, whichever is greater, as that percentage is
11 determined by the Oklahoma Department of Commerce based upon the
12 most recent U.S. Department of Commerce data ~~for the county in which~~
13 ~~the new jobs are located.~~ For purposes of this paragraph,
14 healthcare premiums paid by the applicant for individuals in new
15 direct jobs shall not be included in the annualized wage. Such
16 establishment entering the Oklahoma Quality Jobs Program Act as the
17 result of a change-in-control event shall be required to retain the
18 contracted average annualized wage and maintain the contracted
19 maintenance level of new direct jobs numbers as certified by the
20 Oklahoma Tax Commission. If the required average annualized wage or
21 the required new direct jobs numbers do not equal or exceed such
22 contracted level during any quarter, the quarterly incentive
23 payments shall not be made and shall not be resumed until such time
24 as such requirements are met. An establishment described in this

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

7 3. "New direct job":

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

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

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:

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 the Oklahoma
6 Quality Jobs Program Act, by the Department subject to
7 the following conditions:

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

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

21 (3) has an accounting system capable of tracking or
22 facilitating an audit of the subunit's payroll,
23 expenses, revenue, and production. Limited
24 interunit overlap of administrative and

1 purchasing functions shall not disqualify a
2 subunit from consideration as an establishment by
3 the Department,

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

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

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

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

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

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

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

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

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

24

- 1 d. on-site secure mass data storage complex with the
2 capability of isolating, segregating, and protecting
3 corporate proprietary and classified information,
4 e. trusted agent status by maintaining no ownership of,
5 vested interest in, nor royalty production from any
6 intellectual property,
7 f. at least one hundred thousand (100,000) square feet of
8 configurable laboratory and support space,
9 g. the direct access to restricted air space through a
10 formalized memorandum of agreement with the Department
11 of Defense,
12 h. at least five thousand (5,000) acres available for
13 outdoor testing and training facilities, and
14 i. the ability to house state-of-the-art surety
15 facilities, including chemical, biological,
16 radiological, explosives, electronics, and unmanned
17 systems laboratories and ranges;

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

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

24

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

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

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

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

17 a. maintaining a prime contract with the federal
18 government as defined in paragraph 11 of this
19 subsection,

20 b. providing notice of intent to apply to the Department
21 within one hundred eighty (180) days of July 1, 2010,
22 or one hundred eighty (180) days of the date of the
23 award of a qualified federal contract or award of a
24

1 new qualified subcontract under an existing qualified
2 federal contract, and

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

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

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

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

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

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

20 B. The Incentive Approval Committee is hereby created and shall
21 consist of the Director of the Office of Management and Enterprise
22 Services, the Director of the Department and one member of the
23 Oklahoma Tax Commission appointed by the Tax Commission, or a
24 designee from each agency approved by such member. It shall be the

1 duty of the Committee to determine the eligibility of all applicants
2 for the Oklahoma Quality Jobs Program Act, subject to the applicable
3 requirements.

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

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

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

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

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

12 1. Be engaged in a basic industry;

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

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

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

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

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

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

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

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

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

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

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

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

20 a. the site designated by the entity does meet one or
21 more of the requirements listed in paragraph 1 of this
22 subsection, and
23
24

1 b. the site is being or has been remediated to a level
2 which is consistent with the intended use of the
3 property.

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

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

14 F. Except as otherwise provided by subsection G of this
15 section~~r~~:

16 1. ~~for~~ For applications submitted on and after June 4, 2003 and
17 before January 1, 2024, in order to qualify to receive incentive
18 payments as authorized by the Oklahoma Quality Jobs Program Act, in
19 addition to other qualifications specified herein, an establishment
20 shall be required to pay new direct jobs an average annualized wage
21 which equals or exceeds:

22 ~~1.~~ a. One hundred ten percent (110%) of the average county
23 wage as determined by the Department of Commerce based
24 on the most recent U.S. Department of Commerce data

1 for the county in which the new direct jobs are
2 located. For purposes of this paragraph, health care
3 premiums paid by the applicant for individuals in new
4 direct jobs shall be included in the annualized wage~~+~~,
5 or

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

14 2. For applications submitted on and after January 1, 2024, in
15 order to qualify to receive incentive payments as authorized by the
16 Oklahoma Quality Jobs Program Act, in addition to other
17 qualifications specified herein, an establishment shall be required
18 to pay new direct jobs an average annualized wage which equals or
19 exceeds one hundred percent (100%) of the average county wage for
20 the county in which the new jobs are located or one hundred percent
21 (100%) of the average state wage, whichever is greater, as that
22 percentage is determined by the Department of Commerce based upon
23 the most recent U.S. Department of Commerce data. For purposes of
24 this paragraph, health care premiums paid by the applicant for

1 individuals in new direct jobs shall not be included in the
2 annualized wage.

3 Provided, no average wage requirement shall exceed Twenty-five
4 Thousand Dollars (\$25,000.00), in any county, for applications
5 received before January 1, 2024. This maximum wage threshold shall
6 be indexed and modified from time to time based on the latest
7 Consumer Price Index year-to-date percent change release as of the
8 date of the annual average county wage data release from the Bureau
9 of Economic Analysis of the U.S. Department of Commerce.

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

19 2. As used in this subsection:

20 a. "negative economic event" means:

21 (1) a man-made disaster or natural disaster as
22 defined in Section 683.3 of Title 63 of the
23 Oklahoma Statutes, resulting in the loss of a
24

1 significant number of jobs within a particular
2 county of this state, or

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

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

17 An establishment which is otherwise qualified to receive
18 incentive payments and which locates in a county in which a negative
19 economic event has occurred within the eighteen-month period
20 preceding the start date shall not be subject to the requirements of
21 subsection F of this section; provided, an establishment shall not
22 be eligible to receive incentive payments based upon a negative
23 economic event with respect to jobs that are transferred from one
24 county of this state to another.

1 H. The Department shall determine if the applicant is qualified
2 to receive incentive payments.

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

22 J. Upon approval of such an application, the Department shall
23 notify the Tax Commission and shall provide it with a copy of the
24 contract and the results of the cost/benefit analysis. The Tax

1 Commission may require the qualified establishment to submit such
2 additional information as may be necessary to administer the
3 provisions of the Oklahoma Quality Jobs Program Act. The approved
4 establishment shall file quarterly claims with the Tax Commission
5 and shall continue to file such quarterly claims during the ten-year
6 incentive period to show its continued eligibility for incentive
7 payments, as provided in Section 3606 of this title, or until it is
8 no longer qualified to receive incentive payments. The
9 establishment may be audited by the Tax Commission to verify such
10 eligibility. Once the establishment is approved, an agreement shall
11 be deemed to exist between the establishment and ~~the State of~~
12 ~~Oklahoma~~ this state, requiring the continued incentive payment to be
13 made as long as the establishment retains its eligibility as defined
14 in and established pursuant to this section and Sections 3603 and
15 3606 of this title and within the limitations contained in the
16 Oklahoma Quality Jobs Program Act, which existed at the time of such
17 approval. An establishment described in this subsection shall be
18 required to repay all incentive payments received under the Oklahoma
19 Quality Jobs Program Act if the establishment is determined by the
20 Oklahoma Tax Commission to no longer have business operations in the
21 state within three (3) years from the beginning of the calendar
22 quarter for which the first incentive payment claim is filed.

23 K. A municipality with a population of less than one hundred
24 thousand (100,000) persons in which an establishment eligible to

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

18 L. For any contract executed by an establishment on or after
19 ~~the effective date of this act~~ August 2, 2018, five percent (5%) of
20 the quarterly incentive payment amount shall be transferred by the
21 Oklahoma Tax Commission to the Oklahoma Quick Action Closing Fund.

22 SECTION 3. AMENDATORY 68 O.S. 2021, Section 3604.1, is
23 amended to read as follows:
24

1 Section 3604.1. A. A qualified federal contractor may receive
2 quarterly incentive payments for renewable ten-year periods from the
3 Oklahoma Tax Commission pursuant to the provisions of the Oklahoma
4 Quality Jobs Program Act and the provisions of this section.

5 B. The amount of such payments shall be equal to a net benefit
6 rate of not less than twenty-five hundredths of one percent (0.25%),
7 but not greater than two percent (2%), multiplied by the total
8 qualified labor hours worked by employees of the federal contractor
9 or employees of a qualified federal subcontractor, or both, pursuant
10 to a qualified federal contract for a calendar quarter as verified
11 by the Oklahoma Employment Security Commission and certified by a
12 qualified federal contractor verifier. The net benefit rate for a
13 qualified federal contractor shall be scaled to annual
14 subcontracting goals that account for both total qualified
15 subcontract labor hours and the ratio of qualified subcontract labor
16 hours to total qualified labor hours. Unless limited by the
17 cost/benefit analysis, the net benefit rate shall:

18 1. Not exceed twenty-five hundredths of one percent (0.25%)
19 when annual qualified subcontract labor hours are less than Two
20 Hundred Thousand Dollars (\$200,000.00) or when annual qualified
21 subcontract labor is less than one percent (1%) of the annual total
22 qualified labor hours claimed;

23 2. Not be less than five-tenths of one percent (0.5%) when
24 subcontract goals are met with a minimum of Two Hundred Thousand

1 Dollars (\$200,000.00) of annual total qualified subcontractor labor
2 hours and these hours are a minimum of one percent (1%) of the
3 annual total qualified hours claimed;

4 3. Not be less than one percent (1%) when subcontract goals are
5 met with a minimum of One Million Dollars (\$1,000,000.00) of annual
6 total qualified subcontractor labor hours and when these hours
7 represent a minimum of five percent (5%) of the annual total
8 qualified hours claimed;

9 4. Not be less than one and five-tenths percent (1.5%) when
10 subcontract goals are met with a minimum of Two Million Dollars
11 (\$2,000,000.00) of annual total qualified subcontractor labor hours
12 and these hours are a minimum of ten percent (10%) of the annual
13 total qualified hours claimed; and

14 5. Not be less than two percent (2.0%) when subcontract goals
15 are met with a minimum of Four Million Dollars (\$4,000,000.00) of
16 annual total qualified subcontractor labor hours and these hours are
17 a minimum of twenty percent (20%) of the annual total qualified
18 hours claimed.

19 C. In order to receive incentive payments, a qualified federal
20 contractor shall apply to the Oklahoma Department of Commerce within
21 one hundred eighty (180) days following the date of the award of a
22 qualified federal contract or award of a new qualified subcontract
23 under an existing qualified federal contract. The application shall
24 be on a form prescribed by the Department and shall contain such

1 information as may be required by the Department to determine if the
2 applicant is qualified. Once qualified by the Department, the
3 applicant shall submit qualified federal contracts to the federal
4 contract verifier. The federal contract verifier shall establish
5 with the applicant an information system(s) or contract(s) as may be
6 required to certify the total qualified labor hours, qualified labor
7 rates, and reimbursement through the qualified federal contract. A
8 qualified federal contractor may apply for an effective date for a
9 project, which shall not be more than twenty-four (24) months from
10 the date the application is submitted to the Department. No state
11 agency shall be required to make any payment to a qualified federal
12 contract verifier for any information needed by the agency to
13 perform any duty imposed upon it pursuant to the provisions of
14 Section 3601 et seq. of this title. All costs for the federal
15 contract verifier shall be reimbursed through value-added services
16 on the qualified federal contract or other mechanisms agreed to by
17 the federal contractor verifier and the federal contract performers.

18 D. In order to qualify to receive incentive payments as
19 authorized by the Oklahoma Quality Jobs Program Act, in addition to
20 other qualifications specified herein, a qualified federal
21 contractor shall be required to pay direct jobs an average
22 annualized wage which equals or exceeds:

23 1. For applications submitted before January 1, 2024:
24

1 a. ~~One~~ one hundred ten percent (110%) of the average
2 county wage as determined by the Department of
3 Commerce based on the most recent U.S. Department of
4 Commerce data for the county in which the new direct
5 jobs are located. For purposes of this paragraph,
6 health care premiums paid by the applicant for
7 individuals in new direct jobs shall be included in
8 the annualized wage~~+~~, or

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

17 2. For applications submitted on or after January 1, 2024, one
18 hundred percent (100%) of the average county wage for the county in
19 which the new direct jobs are located or one hundred percent (100%)
20 of the average state wage, whichever is greater, as determined by
21 the Department of Commerce based on the most recent U.S. Department
22 of Commerce data. For purposes of this paragraph, health care
23 premiums paid by the applicant for individuals in new direct jobs
24 shall not be included in the annualized wage.

1 Provided, no average wage requirement shall exceed Twenty-nine
2 Thousand Four Hundred Nine Dollars (\$29,409.00), in any county, for
3 applications submitted before January 1, 2024. This maximum wage
4 threshold shall be indexed and modified from time to time based on
5 the latest Consumer Price Index year-to-date percent change release
6 as of the date of the annual average county wage data release from
7 the Bureau of Economic Analysis of the U.S. Department of Commerce.

8 3. For qualified subcontractor work, the qualified federal
9 contractor shall have a minimum average qualified labor rate
10 requirement paid to the subcontractor of Thirty-one Dollars (\$31.00)
11 per hour, in any county. This maximum wage threshold shall be
12 indexed and modified from time to time based on the latest Consumer
13 Price Index year-to-date percent change release as of the date of
14 the annual average county wage data release from the Bureau of
15 Economic Analysis of the U.S. Department of Commerce.

16 E. The Department shall determine if the applicant is qualified
17 to receive incentive payments using information supplied to the
18 Department by the qualified federal contractor verifier. The NAICS
19 code or codes under which the federal government awarded the
20 qualified federal contract shall be used to determine the basic
21 industry for a qualified federal contractor. For federal contracts
22 awarded under NAICS codes not within the definition of basic
23 industry pursuant to paragraph 1 of subsection A of Section 3603 of
24 this title, the Department of Commerce, with the federal contract

1 verifier, may evaluate and utilize individual statement of work
2 items that would qualify within a basic industry definition.

3 F. If the applicant is determined to be qualified by the
4 Department, the Department shall conduct a cost/benefit analysis to
5 determine the estimated net direct state benefits and the net
6 benefit rate, as provided by subsection B of this section,
7 applicable for a ten-year period beginning with the first complete
8 calendar quarter following the start date and to estimate the amount
9 of gross payroll and total qualified labor hours for a ten-year
10 period beginning with the first complete calendar quarter following
11 the start date. In conducting such cost/benefit analysis, the
12 Department shall consider quantitative factors, such as the
13 anticipated level of new tax revenues to the state along with the
14 added cost to the state of providing services, and such other
15 criteria as deemed appropriate by the Department. In no event shall
16 incentive payments, cumulatively, exceed the estimated net direct
17 state benefits. Using this net cost/benefit analysis model, the
18 Department may establish the renewable ten-year contract with a
19 qualified federal contractor at the entity level to encompass any
20 current or future qualified federal contracts that meet the
21 cost/benefit analysis metrics as determined by the federal
22 contractor verifier and confirmed by the Department.

23 G. Upon approval of such an application, the Department shall
24 notify the Tax Commission and shall provide it with a copy of the

1 contract that has been cosigned by the federal contractor verifier
2 and the results of the cost/benefit analysis. The Tax Commission
3 may require the qualified federal contractor, federal contract
4 verifier, and qualified subcontractors to submit such additional
5 information as may be necessary to administer the provisions of the
6 Oklahoma Quality Jobs Program Act. The approved qualified federal
7 contractor shall file quarterly claims with the Tax Commission and
8 shall continue to file such quarterly claims during the ten-year
9 incentive period to show its continued eligibility for incentive
10 payments, as provided in Section 3606 of this title, or until it is
11 no longer qualified to receive incentive payments. The qualified
12 federal contractor may be audited by the Tax Commission to verify
13 such eligibility. Once the qualified federal contractor is
14 approved, an agreement shall be deemed to exist between the
15 qualified federal contractor and the State of Oklahoma, requiring
16 the continued incentive payment to be made as long as the qualified
17 federal contractor retains its eligibility as defined in and
18 established pursuant to this section and Sections 3603 and 3606 of
19 this title and within the limitations contained in the Oklahoma
20 Quality Jobs Program Act, which existed at the time of such
21 approval.

22 H. For qualified federal contracts with periods of performance
23 exceeding two (2) years, if the actual annual verified gross
24 qualified labor hours for four (4) consecutive calendar quarters

1 does not equal or exceed Two Million Five Hundred Thousand Dollars
2 (\$2,500,000.00) within three (3) years of the start date, or does
3 not equal or exceed actual annual gross qualified labor hours of Two
4 Million Five Hundred Thousand Dollars (\$2,500,000.00) at any other
5 time during the ten-year period after the start date, the incentive
6 payments shall not be made and shall not be resumed until such time
7 as the actual annual qualified labor hours exceed Two Million Five
8 Hundred Thousand Dollars (\$2,500,000.00).

9 I. If the average annualized wage or minimum average qualified
10 labor rate required by subsection H of this section is not met
11 during any calendar quarter, the incentive payments shall not be
12 made and shall not be resumed until such time as such requirements
13 are met.

14 J. Before approving a quarterly incentive payment for a
15 qualified federal contract, the federal contract verifier must first
16 determine through the Department that neither the qualified federal
17 contractor nor the subcontractor are receiving incentive payments
18 under the Oklahoma Quality Jobs Program Act, the Saving Quality Jobs
19 Act, the 21st Century Quality Jobs Incentive Act or the Former
20 Military Facility Development Act for the performance of the same
21 such services under the qualified federal contract and is not
22 qualified for approval of an application for incentive payments
23 under the Oklahoma Quality Jobs Program Act, the Saving Quality Jobs
24 Act, the 21st Century Quality Jobs Incentive Act or the Former

1 Military Facility Development Act for the performance of the same
2 such services under the qualified federal contract. If the
3 qualified federal contractor or the subcontractor are receiving or
4 have an approved application for incentive payments under the
5 Oklahoma Quality Jobs Program Act, the Saving Quality Jobs Act, the
6 21st Century Quality Jobs Incentive Act or the Former Military
7 Facility Development Act for the performance of the same such
8 services under the qualified federal contract, each may choose to
9 defer in part or in entirety the other incentives for the qualified
10 federal contractor to receive the incentives pursuant to subsection
11 B of this section. The federal contract verifier shall confirm any
12 deferrals and ensure the total for all quality jobs incentive
13 payments on any individual does not exceed the total net benefit to
14 the state. Should neither the federal contractor nor the
15 subcontractor defer in part or in entirety their incentive payments
16 such that the total for all Quality Jobs incentive payments exceeds
17 the total net benefit to the state, the priority for incentive
18 payments shall go to the entity with the earliest recognized start
19 date ~~identified~~ identified within the current Department of
20 Commerce Quality Jobs contract.

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

22 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
23 February 20, 2023 - DO PASS AS AMENDED
24