

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 385

By: Kirt

AS INTRODUCED

An Act relating to incentive payments; amending 68 O.S. 2021, Sections 3603, 3604, and 3604.1, which relate to the Oklahoma Quality Jobs Program; modifying wage requirement for establishments entering the Oklahoma Quality Jobs Program Act as the result of a change-in-control event for certain period; modifying wage requirement for certain applicants; limiting maximum wage requirement to certain period; clarifying statutory language; and providing an effective date.

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

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

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

1. a. "Basic industry" means:

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

1 (2) those electric power generation, transmission,
2 and distribution activities defined or classified
3 in the NAICS Manual under U.S. Industry Nos.
4 221111 through 221122, if:

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

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

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

1 amended, and federal regulations adopted
2 pursuant thereto, and

3 (d) the facility is constructed on or after July
4 1, 1996,

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

17 (4) those professional, scientific, and technical
18 service activities defined or classified in the
19 NAICS Manual under U.S. Industry Nos. 541710 and
20 541380,

21 (5) distribution centers for retail or wholesale
22 businesses defined or classified in the NAICS
23 Manual under Sector No. 42, if forty percent
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1 (40%) or more of the inventory processed through
2 such warehouse is shipped out-of-state,

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

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

12 (i) the corporate headquarters of an
13 establishment classified therein, and

14 (ii) a facility or facilities at which
15 reservations for transportation
16 provided by such an establishment are
17 processed, whether such services are
18 performed by employees of the
19 establishment, by employees of a
20 subsidiary of or other entity
21 affiliated with the establishment or by
22 employees of an entity with whom the
23 establishment has contracted for the
24 performance of such services; provided,

1 this provision shall not disqualify an
2 establishment which uses an out-of-
3 state entity or employees for some
4 reservations services, or

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

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

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

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

20 (b) those passenger transportation activities
21 defined or classified in the NAICS Manual
22 under Industry Nos. 561510 and 561599,
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- 1 (c) those freight or cargo transportation
2 activities defined or classified in the
3 NAICS Manual under Industry No. 541614,
4 (d) those insurance activities defined or
5 classified in the NAICS Manual under
6 Industry Group No. 5241,
7 (e) those services to dwellings and other
8 buildings, as defined or classified in the
9 NAICS Manual under Industry Group No. 5617,
10 excluding U.S. Industry Nos. 561730, 56171,
11 56172, 56174, and 56179,
12 (f) those equipment rental and leasing
13 activities defined or classified in the
14 NAICS Manual under Industry Group No. 5324,
15 (g) those information technology and other
16 computer-related service activities defined
17 or classified in the NAICS Manual under
18 Industry Group Nos. 5112, 5182, 5191, and
19 5415,
20 (h) those business support service activities
21 defined or classified in the NAICS Manual
22 under U.S. Industry Nos. 561410 through
23 561430, excluding 56143, and Industry No.
24 51911,

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

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

7 (o) those agricultural activities classified in
8 the NAICS Manual under U.S. Industry Nos.
9 112120 and 112310,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Securities Exchange Act of 1934, as amended, in which event the
2 transferor and transferee will be treated as unrelated; provided, an
3 establishment applying for the Oklahoma Quality Jobs Program Act as
4 a result of a change-in-control event is required to apply within
5 one hundred eighty (180) days of the change-in-control event to
6 qualify for consideration. An establishment entering the Oklahoma
7 Quality Jobs Program Act as the result of a change-in-control event
8 shall be required to maintain a level of new direct jobs as agreed
9 to in its contract with the Oklahoma Department of Commerce and to
10 pay new direct jobs an average annualized wage which equals or
11 exceeds one hundred twenty-five percent (125%) of the average county
12 wage, for the county in which the new jobs are located, for
13 applications submitted by an establishment before January 1, 2024.
14 For applications submitted by an establishment on or after January
15 1, 2024, the establishment shall pay one hundred twenty-five percent
16 (125%) of the average county wage, for the county in which the new
17 jobs are located, or one hundred percent (100%) of the average state
18 wage for application submitted by an establishment on or after
19 January 1, 2024, whichever is greater, as that percentage is
20 determined by the Oklahoma Department of Commerce based upon the
21 most recent U.S. Department of Commerce data ~~for the county in which~~
22 ~~the new jobs are located.~~ For purposes of this paragraph,
23 healthcare premiums paid by the applicant for individuals in new
24 direct jobs shall not be included in the annualized wage. Such

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

16 3. "New direct job":

- 17 a. means full-time-equivalent employment in this state in
18 an establishment which has qualified to receive an
19 incentive payment pursuant to the provisions of the
20 Oklahoma Quality Jobs Program Act which employment did
21 not exist in this state prior to the date of approval
22 by the Department of the application of the
23 establishment pursuant to the provisions of Section
24 3604 of this title and with respect to an

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

1 Director of the Oklahoma Department of Commerce
2 determines that the jobs located at such establishment
3 are likely to leave the state, "new direct job" shall
4 include employment that existed in this state prior to
5 the date of application which is retained in this
6 state by the new establishment following a change in
7 control event, if such job otherwise qualifies as a
8 new direct job, and

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

1 paragraph 1 of this subsection, new direct jobs shall
2 be limited to those jobs directly comprising the
3 corporate headquarters of or directly relating to
4 manufacturing, maintenance, administrative, financial,
5 engineering, surveying, geological, or geophysical
6 services performed by the establishment. Under no
7 circumstances shall employment relating to field
8 services be considered new direct jobs;

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

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

- 15 a. the costs of education of new state resident children,
- 16 b. the costs of public health, public safety, and
17 transportation services to be provided to new state
18 residents,
- 19 c. the costs of other state services to be provided to
20 new state residents, and
- 21 d. the costs of other state services;

22 6. "Estimated net direct state benefits" means the estimated
23 direct state benefits less the estimated direct state costs;

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

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

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

10 (1) bids were solicited and accepted by the United
11 States Department of Defense from facilities
12 located outside this state,

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

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

23 c. except as otherwise provided in subparagraph d of this
24 paragraph, in no event shall incentive payments,

1 cumulatively, exceed the estimated net direct state
2 benefits,

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

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

8 (2) in a county in which:

9 (a) the per capita personal income, as
10 determined by the Department, is eighty-five
11 percent (85%) or less of the statewide
12 average per capita personal income,

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

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

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

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

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

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

1 highest rate of individual income tax imposed pursuant
2 to the provisions of Section 2355 of this title shall
3 be applicable to the computation of incentive payments
4 to an establishment as described by this subparagraph
5 and shall be effective for purposes of incentive
6 payments based on payroll paid by such establishment
7 on or after January 1 of any applicable year for which
8 the net benefit rate is modified as required by this
9 subparagraph, and

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

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

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

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

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

22 (2) the subunit is engaged in an activity or service
23 or produces a product which is demonstratively
24 independent and separate from the entity's other
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1 activities, services or products and could be
2 conducted or produced in the absence of any other
3 activity, service, or production of the entity,
4 (3) has an accounting system capable of tracking or
5 facilitating an audit of the subunit's payroll,
6 expenses, revenue, and production. Limited
7 interunit overlap of administrative and
8 purchasing functions shall not disqualify a
9 subunit from consideration as an establishment by
10 the Department,

11 (4) the entity has not previously had a subunit
12 determined to be an establishment pursuant to
13 this section; provided, the restriction set forth
14 in this division shall not apply to subunits
15 which qualify pursuant to the provisions of
16 subparagraph b of paragraph 7 of this subsection,
17 and

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

21 b. The Department may promulgate rules to further limit
22 the circumstances under which a subunit may be
23 considered an establishment. The Department shall
24 promulgate rules to determine whether a subunit of an

1 entity achieves a net gain in total employment. The
2 Department shall establish criteria for determining
3 the period of time within which such gain must be
4 demonstrated and a method for determining net gain in
5 total employment;

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

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

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

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

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

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

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

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

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

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

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

17 Should a prime contractor provide notice to the Department of
18 its intent not to apply for incentive for a qualified federal
19 contract or fails to qualify under the criteria above,
20 subcontractors in order of tier ranking as determined by the federal
21 contract verifier may assume the role of the prime and apply to
22 become a qualified federal contractor provided the entity meets the
23 same criteria above with the exception that notice of intent to
24 apply with the Department must be provided within sixty (60) days of

1 the prime's disqualification or one hundred eighty (180) days of the
2 award of its subcontract, whichever is later; and

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

4 a. is organized and existing under Section 176 of Title
5 60 of the Oklahoma Statutes for the benefit of a
6 geographic area which includes a city or county or
7 some combination thereof, and

8 b. benefits a geographic area where new direct jobs which
9 meet the requirements of the Oklahoma Quality Jobs
10 Program Act are created by an establishment, other
11 than the proxy establishment, which is a branch of the
12 Armed Forces of the United States.

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

1 publicly releasable by the branch of the Armed Forces of the United
2 States.

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

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

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

20 Section 3604. A. Except as otherwise provided in subsection I
21 or subsection L of this section, an establishment which meets the
22 qualifications specified in the Oklahoma Quality Jobs Program Act
23 may receive quarterly incentive payments for a ten-year period from
24 the Oklahoma Tax Commission pursuant to the provisions of the

1 Oklahoma Quality Jobs Program Act; provided, such an establishment
2 defined or classified in the NAICS Manual under U.S. Industry No.
3 711211 (2007 version) may receive quarterly incentive payments for a
4 fifteen-year period. The amount of such payments shall be equal to
5 the net benefit rate multiplied by the actual gross payroll of new
6 direct jobs for a calendar quarter as verified by the Oklahoma
7 Employment Security Commission.

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

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

- 19 1. Be engaged in a basic industry;
- 20 2. Have an annual gross payroll for new direct jobs projected
21 by the Department to equal or exceed Two Million Five Hundred
22 Thousand Dollars (\$2,500,000.00) within three (3) years of the first
23 complete calendar quarter following the start date; and

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

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

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

11 a. have an annual gross payroll for new direct jobs
12 projected by the Department to equal or exceed One
13 Million Five Hundred Thousand Dollars (\$1,500,000.00)
14 within three (3) years of the first complete calendar
15 quarter following the start date and make, or which
16 will make within one (1) year, at least seventy-five
17 percent (75%) of its total sales, as determined by the
18 Incentive Approval Committee pursuant to the
19 provisions of subsection B of Section 3603 of this
20 title, to out-of-state customers or buyers, to in-
21 state customers or buyers if the product or service is
22 resold by the purchaser to an out-of-state customer or
23 buyer for ultimate use, or to the federal government,
24 unless the annual gross payroll equals or exceeds Two

1 Million Five Hundred Thousand Dollars (\$2,500,000.00)
2 in which case the requirements for purchase of output
3 provided by this subparagraph shall not apply, and

- 4 b. have a number of full-time-equivalent employees
5 working an average of thirty (30) or more hours per
6 week in new direct jobs equal to or in excess of
7 eighty percent (80%) of the total number of new direct
8 jobs; and

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

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

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

- 23 a. is a federal Superfund removal site,

1 b. is listed on the National Priorities List established
2 under Section 9605 of Title 42 of the United States
3 Code,

4 c. has been formally deferred to the state in lieu of
5 listing on the National Priorities List, or

6 d. has been determined by the Department of Environmental
7 Quality to be contaminated by any substance regulated
8 by a federal or state statute governing environmental
9 conditions for real property pursuant to an order of
10 the Department of Environmental Quality,

11 shall qualify for incentive payments irrespective of its actual
12 gross payroll or the number of full-time-equivalent employees
13 engaged in new direct jobs.

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

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

4 a. the site designated by the entity does meet one or
5 more of the requirements listed in paragraph 1 of this
6 subsection, and

7 b. the site is being or has been remediated to a level
8 which is consistent with the intended use of the
9 property.

10 In making its determination, the Department of Environmental
11 Quality may rely on existing data and information available to it,
12 but may also require the applying entity to provide additional data
13 and information as necessary.

14 4. If authorized by the Department of Environmental Quality
15 pursuant to paragraph 3 of this subsection, the entity may utilize a
16 remediated portion of the property for its intended purpose prior to
17 remediation of the remainder of the site, and shall qualify for
18 incentive payments based on employment associated with the portion
19 of the site.

20 F. Except as otherwise provided by subsection G of this
21 section~~r~~:

22 1. ~~for~~ For applications submitted on and after June 4, 2003 and
23 before January 1, 2024, in order to qualify to receive incentive
24 payments as authorized by the Oklahoma Quality Jobs Program Act, in

1 addition to other qualifications specified herein, an establishment
2 shall be required to pay new direct jobs an average annualized wage
3 which equals or exceeds:

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

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

20 2. For applications submitted on and after January 1, 2024, in
21 order to qualify to receive incentive payments as authorized by the
22 Oklahoma Quality Jobs Program Act, in addition to other
23 qualifications specified herein, an establishment shall be required
24 to pay new direct jobs an average annualized wage which equals or

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

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

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

1 2. As used in this subsection:

2 a. "negative economic event" means:

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

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

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

22 An establishment which is otherwise qualified to receive
23 incentive payments and which locates in a county in which a negative
24 economic event has occurred within the eighteen-month period

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

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

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

1 applicants subject to the provisions of subparagraph d of paragraph
2 7 of subsection A of Section 3603 of this title.

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

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

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

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

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

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

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

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

- 22 1. Not exceed twenty-five hundredths of one percent (0.25%)
23 when annual qualified subcontract labor hours are less than Two
24 Hundred Thousand Dollars (\$200,000.00) or when annual qualified

1 subcontract labor is less than one percent (1%) of the annual total
2 qualified labor hours claimed;

3 2. Not be less than five-tenths of one percent (0.5%) when
4 subcontract goals are met with a minimum of Two Hundred Thousand
5 Dollars (\$200,000.00) of annual total qualified subcontractor labor
6 hours and these hours are a minimum of one percent (1%) of the
7 annual total qualified hours claimed;

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

13 4. Not be less than one and five-tenths percent (1.5%) when
14 subcontract goals are met with a minimum of Two Million Dollars
15 (\$2,000,000.00) of annual total qualified subcontractor labor hours
16 and these hours are a minimum of ten percent (10%) of the annual
17 total qualified hours claimed; and

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

23 C. In order to receive incentive payments, a qualified federal
24 contractor shall apply to the Oklahoma Department of Commerce within
25

1 one hundred eighty (180) days following the date of the award of a
2 qualified federal contract or award of a new qualified subcontract
3 under an existing qualified federal contract. The application shall
4 be on a form prescribed by the Department and shall contain such
5 information as may be required by the Department to determine if the
6 applicant is qualified. Once qualified by the Department, the
7 applicant shall submit qualified federal contracts to the federal
8 contract verifier. The federal contract verifier shall establish
9 with the applicant an information system(s) or contract(s) as may be
10 required to certify the total qualified labor hours, qualified labor
11 rates, and reimbursement through the qualified federal contract. A
12 qualified federal contractor may apply for an effective date for a
13 project, which shall not be more than twenty-four (24) months from
14 the date the application is submitted to the Department. No state
15 agency shall be required to make any payment to a qualified federal
16 contract verifier for any information needed by the agency to
17 perform any duty imposed upon it pursuant to the provisions of
18 Section 3601 et seq. of this title. All costs for the federal
19 contract verifier shall be reimbursed through value-added services
20 on the qualified federal contract or other mechanisms agreed to by
21 the federal contractor verifier and the federal contract performers.

22 D. In order to qualify to receive incentive payments as
23 authorized by the Oklahoma Quality Jobs Program Act, in addition to
24 other qualifications specified herein, a qualified federal

1 contractor shall be required to pay direct jobs an average
2 annualized wage which equals or exceeds:

3 1. For applications submitted before January 1, 2024:

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

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

20 2. For applications submitted on or after January 1, 2024, one
21 hundred percent (100%) of the average county wage for the county in
22 which the new direct jobs are located or one hundred percent (100%)
23 of the average state wage, whichever is greater, as determined by
24 the Department of Commerce based on the most recent U.S. Department

1 of Commerce data. For purposes of this paragraph, health care
2 premiums paid by the applicant for individuals in new direct jobs
3 shall not be included in the annualized wage.

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

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

19 E. The Department shall determine if the applicant is qualified
20 to receive incentive payments using information supplied to the
21 Department by the qualified federal contractor verifier. The NAICS
22 code or codes under which the federal government awarded the
23 qualified federal contract shall be used to determine the basic
24 industry for a qualified federal contractor. For federal contracts

1 awarded under NAICS codes not within the definition of basic
2 industry pursuant to paragraph 1 of subsection A of Section 3603 of
3 this title, the Department of Commerce, with the federal contract
4 verifier, may evaluate and utilize individual statement of work
5 items that would qualify within a basic industry definition.

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

1 cost/benefit analysis metrics as determined by the federal
2 contractor verifier and confirmed by the Department.

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

1 Quality Jobs Program Act, which existed at the time of such
2 approval.

3 H. For qualified federal contracts with periods of performance
4 exceeding two (2) years, if the actual annual verified gross
5 qualified labor hours for four (4) consecutive calendar quarters
6 does not equal or exceed Two Million Five Hundred Thousand Dollars
7 (\$2,500,000.00) within three (3) years of the start date, or does
8 not equal or exceed actual annual gross qualified labor hours of Two
9 Million Five Hundred Thousand Dollars (\$2,500,000.00) at any other
10 time during the ten-year period after the start date, the incentive
11 payments shall not be made and shall not be resumed until such time
12 as the actual annual qualified labor hours exceed Two Million Five
13 Hundred Thousand Dollars (\$2,500,000.00).

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

19 J. Before approving a quarterly incentive payment for a
20 qualified federal contract, the federal contract verifier must first
21 determine through the Department that neither the qualified federal
22 contractor nor the subcontractor are receiving 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 and is not
3 qualified for approval of an application for incentive payments
4 under the Oklahoma Quality Jobs Program Act, the Saving Quality Jobs
5 Act, the 21st Century Quality Jobs Incentive Act or the Former
6 Military Facility Development Act for the performance of the same
7 such services under the qualified federal contract. If the
8 qualified federal contractor or the subcontractor are receiving or
9 have an approved application for incentive payments under the
10 Oklahoma Quality Jobs Program Act, the Saving Quality Jobs Act, the
11 21st Century Quality Jobs Incentive Act or the Former Military
12 Facility Development Act for the performance of the same such
13 services under the qualified federal contract, each may choose to
14 defer in part or in entirety the other incentives for the qualified
15 federal contractor to receive the incentives pursuant to subsection
16 B of this section. The federal contract verifier shall confirm any
17 deferrals and ensure the total for all quality jobs incentive
18 payments on any individual does not exceed the total net benefit to
19 the state. Should neither the federal contractor nor the
20 subcontractor defer in part or in entirety their incentive payments
21 such that the total for all Quality Jobs incentive payments exceeds
22 the total net benefit to the state, the priority for incentive
23 payments shall go to the entity with the earliest recognized start
24

1 date ~~identified~~ identified within the current Department of
2 Commerce Quality Jobs contract.

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