An Act

ENROLLED SENATE
BILL NO. 613

By: Brinkley and Mazzei of the Senate

and

McNiel and Hall of the House

An Act relating to revenue and taxation; amending 68 O.S. 2011, Sections 3603, as last amended by Section 23 of Enrolled House Bill No. 1455 of the 1st Session of the 54th Oklahoma Legislature, 3604 and 3606, as amended by Section 2, Chapter 308, O.S.L. 2012 (68 O.S. Supp. 2012, Section 3606), which relate to the Quality Jobs Program Act; updating references; modifying definition; requiring repayment of incentive payments under specified conditions; providing for waiting period before new or renewal application under specified conditions; amending 68 O.S. 2011, Section 3914, which relates to the 21st Century Quality Jobs Incentive Act; modifying wage requirement; excluding certain amounts from wage; setting maximum wage and providing for periodic modification; and providing an effective date.

SUBJECT: Tax incentives

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 3603, as last amended by Section 23 of Enrolled House Bill No. 1455 of the 1st Session of the 54th Oklahoma Legislature, is amended to read as follows:

Section 3603. A. As used in ~~Section 3601 et seq. of this title~~ the Oklahoma Quality Jobs Program Act:

1. a. "Basic industry" means:

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

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

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

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

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

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

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

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

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

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

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

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

(ii) a facility or facilities at which reservations for transportation provided by such an establishment are processed, whether such services are performed by employees of the establishment, by employees of a subsidiary of or other entity affiliated with the establishment or by employees of an entity with whom the establishment has contracted for the performance of such services; provided, this provision shall not disqualify an establishment which uses an out-of-state entity or employees for some reservations services, or

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

(8) flight training services activities defined or classified in the NAICS Manual under U.S. Industry Group No. 611512, which for purposes of ~~Section 3601 et seq. of this title~~ the Oklahoma Quality Jobs Program Act shall include new direct jobs for which gross payroll existed on or after January 1, 2003, as identified in the NAICS Manual,

(9) the following, if an establishment classified therein has or will have within one (1) year

sales of at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection B of this section, to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government:

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

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

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

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

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

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

(g) those information technology and other computer-related service activities defined or classified in the NAICS Manual under

Industry Group Nos. 5112, 5182, 5191 and 5415,

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

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

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

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

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

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

(n) those activities relating to processing of insurance claims, defined or classified in the NAICS Manual under U.S. Industry Nos. 524210 and 524292; provided, activities described in U.S. Industry Nos. 524210 and 524292 in the NAICS Manual other than

processing of insurance claims shall not be included for purposes of this subdivision,

(o) those agricultural activities classified in the NAICS Manual under U.S. Industry No. 112120,

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

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

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

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

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

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

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

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

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

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

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

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

(1) not more than fifty percent (50%) of the premium shall be paid by the employee,

(2) coverage for basic hospital care,

(3) coverage for physician care,

(4) coverage for mental health care,

(5) coverage for substance abuse treatment,

(6) coverage for prescription drugs, and

(7) coverage for prenatal care;

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

a. beneficial ownership of more than fifty percent (50%) in value and more than fifty percent (50%) in voting power of the outstanding equity securities of the transferred establishment, or

b. more than fifty percent (50%) in value of the assets of an establishment.

A transferor shall be treated as related to a transferee if more than fifty percent (50%) of the voting interests of the transferor and transferee are owned, directly or indirectly, by the other or are owned, directly or indirectly, by the same person or persons, unless such transferred establishment has an outstanding class of equity securities registered under Sections 12(b) or 15(d) of the Securities Exchange Act of 1934, as amended, in which event the transferor and transferee will be treated as unrelated; provided, an establishment applying for the Oklahoma Quality Jobs Program Act as a result of a change-in-control event is required to apply within one hundred eighty (180) days of the change-in-control event to qualify for consideration. An establishment entering the Oklahoma Quality Jobs Program Act as the result of a change-in-control event shall be required to maintain a level of new direct jobs as agreed to in its contract with the Oklahoma Department of Commerce and to pay new direct jobs an average annualized wage which equals or exceeds one hundred twenty-five percent (125%) of the average county wage as that percentage is determined by the Oklahoma Department of

Commerce based upon the most recent U.S. Department of Commerce data for the county in which the new jobs are located. For purposes of this paragraph, healthcare premiums paid by the applicant for individuals in new direct jobs shall not be included in the annualized wage. Such establishment entering the Oklahoma Quality Jobs Program Act as the result of a change-in-control event shall be required to retain the contracted average annualized wage and maintain the contracted maintenance level of new direct jobs numbers as certified by the Tax Commission. If the required average annualized wage or the required new direct jobs numbers do not equal or exceed such contracted level during any quarter, the quarterly incentive payments shall not be made and shall not be resumed until such time as such requirements are met. An establishment described in this paragraph shall be required to repay all incentive payments received under the Oklahoma Quality Jobs Program Act if the establishment is determined by the Oklahoma Tax Commission to no longer have business operations in the state within three (3) years from the beginning of the calendar quarter for which the first incentive payment claim is filed~~.~~;

3. "New direct job":

a. means full-time-equivalent employment in this state in an establishment which has qualified to receive an incentive payment pursuant to the provisions of ~~Section 3601 et seq. of this title~~ the Oklahoma Quality Jobs Program Act which employment did not exist in this state prior to the date of approval by the Department of the application of the establishment pursuant to the provisions of Section 3604 of this title and with respect to an establishment qualifying for incentive payments pursuant to division (12) of subparagraph a of paragraph 1 of this subsection shall not include compensation paid to an employee or independent contractor for an athletic contest conducted in the state if the compensation is paid by an entity that does not have its principal place of business in the state or that does not own real or personal property having a market value of at least One Million Dollars ($1,000,000.00) located in the state, and the employees or independent contractors of such entity are compensated to compete against the

employees or independent contractors of an establishment that qualifies for incentive payments pursuant to division (12) of subparagraph a of paragraph 1 of this subsection and which is organized under Oklahoma law or that is lawfully registered to do business in the state and which does have its principal place of business located in the state and owns real or personal property having a market value of at least One Million Dollars ($1,000,000.00) located in the state; provided, that if an application of an establishment is approved by the Oklahoma Department of Commerce after a change-in-control event and the Director of the Oklahoma Department of Commerce determines that the jobs located at such establishment are likely to leave the state, "new direct job" shall include employment that existed in this state prior to the date of application which is retained in this state by the new establishment following a change in control event, if such job otherwise qualifies as a new direct job, and

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

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

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

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

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

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

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

d. the costs of other state services;

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

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

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

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

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

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

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

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

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

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

(2) in a county in which:

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

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

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

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

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

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

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

g. the net benefit rate shall not exceed six percent (6%) in connection with an establishment which employs

United States military veterans in at least ten percent (10%) of its gross payroll. The net benefit rate for an establishment which employs United States military veterans in at least ten percent (10%) of its payroll shall not be lower than five percent (5%).

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

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

9. a. "Establishment" means any business or governmental entity, no matter what legal form, including, but not limited to, a sole proprietorship; partnership; limited liability company; corporation or combination of corporations which have a central parent corporation which makes corporate management decisions such as those involving consolidation, acquisition, merger or expansion; federal agency; political subdivision of the State of Oklahoma; or trust authority; provided, distinct, identifiable subunits of such entities may be determined to be an establishment, for all purposes of Section 3601 et seq. of this title, by the Department subject to the following conditions:

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

(2) the subunit is engaged in an activity or service or produces a product which is demonstratively independent and separate from the entity's other

activities, services or products and could be conducted or produced in the absence of any other activity, service or production of the entity,

(3) has an accounting system capable of tracking or facilitating an audit of the subunit's payroll, expenses, revenue and production. Limited interunit overlap of administrative and purchasing functions shall not disqualify a subunit from consideration as an establishment by the Department,

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

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

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

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

11. "Qualified federal contract" means a contract between an agency or instrumentality of the United States government, including but not limited to the Department of Defense or any branch of the

United States Armed Forces, but exclusive of any contract performed for the Federal Emergency Management Agency as a direct result of a natural disaster declared by the Governor or the President of the United States with respect to damage to property located in Oklahoma or loss of life or personal injury to persons in Oklahoma, and a lawfully recognized business entity, whether or not the business entity is organized under the laws of the State of Oklahoma or whether or not the principal place of business of the business entity is located within the State of Oklahoma, for the performance of services, including but not limited to testing, research, development, consulting or other services in a basic industry, if the contract involves the performance of such services performed on or after July 1, 2009, by the employees of the business entity within the State of Oklahoma or if the contract involves the performance of such services performed on or after July 1, 2009, by employees of a lawfully recognized business entity that is a subcontractor of the business entity with which the prime contract has been formed. A qualified federal contract described in this paragraph shall not qualify unless both the qualified federal contractor and any subcontractors originally involved in the work or added subsequently during the period of performance verify to the qualified federal contractor verifier that it offers, or will offer within one hundred eighty (180) days of employment of its respective employees, a basic health benefits plan as described in subparagraph b of paragraph 1 of this subsection to individuals who perform qualified labor hours in this state;

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

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

b. current capability to sponsor and maintain personnel security clearances and authorized by the federal government to handle and perform classified work up to

the Top Secret Sensitive Compartmented Information levels,

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

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

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

f. at least one hundred thousand (100,000) square feet of configurable laboratory and support space,

g. the direct access to restricted air space through a formalized memorandum of agreement with the Department of Defense,

h. at least five thousand (5,000) acres available for outdoor testing and training facilities, and

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

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

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

15. "Effective date" means the date of approval of a contract under which incentive payments will be made pursuant to the Oklahoma Quality Jobs Program Act, which shall be the date the signed and accepted incentive contract is received by the Department; provided,

an approved project may have a start date which is different from the effective date;

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

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

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

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

b. providing notice of intent to apply to the Department within one hundred eighty (180) days of July 1, 2010, or one hundred eighty (180) days of the date of the award of a qualified federal contract or award of a new qualified subcontract under an existing qualified federal contract, and

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

Should a prime contractor provide notice to the Department of its intent not to apply for incentive for a qualified federal contract or fails to qualify under the criteria above, subcontractors in order of tier ranking as determined by the federal contract verifier may assume the role of the prime and apply to become a qualified federal contractor provided the entity meets the same criteria above with the exception that notice of intent to

apply with the Department must be provided within sixty (60) days of the prime's disqualification or one hundred eighty (180) days of the award of its subcontract, whichever is later.

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

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

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

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

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

SECTION 2. AMENDATORY 68 O.S. 2011, Section 3604, is amended to read as follows:

Section 3604. A. Except as otherwise provided in subsection I of this section, an establishment which meets the qualifications

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

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

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

1. Be engaged in a basic industry;

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

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

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

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

a. have an annual gross payroll for new direct jobs projected by the Department to equal or exceed One Million Five Hundred Thousand Dollars ($1,500,000.00) within three (3) years of the first complete calendar quarter following the start date and make, or which will make within one (1) year, at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection B of Section 3603 of this title, to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government, unless the annual gross payroll equals or exceeds Two Million Five Hundred Thousand Dollars ($2,500,000.00) in which case the requirements for purchase of output provided by this subparagraph shall not apply, and

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

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

a. have an annual gross payroll for new direct jobs projected by the Department to equal or exceed One Million Five Hundred Thousand Dollars ($1,500,000.00) within three (3) years of the first complete calendar quarter following the start date, and

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

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

a. is a federal Superfund removal site,

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

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

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

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

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

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

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

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

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

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

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

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

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

Provided, no average wage requirement shall exceed Twenty-five Thousand Dollars ($25,000.00), in any county. This maximum wage threshold shall be indexed and modified from time to time based on

the latest Consumer Price Index year-to-date percent change release as of the date of the annual average county wage data release from the Bureau of Economic Analysis of the U.S. Department of Commerce.

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

2. As used in this subsection:

a. "negative economic event" means:

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

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

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

An establishment which is otherwise qualified to receive incentive payments and which locates in a county in which a negative

economic event has occurred within the eighteen-month period preceding the start date shall not be subject to the requirements of subsection F of this section; provided, an establishment shall not be eligible to receive incentive payments based upon a negative economic event with respect to jobs that are transferred from one county of this state to another.

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

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

J. Upon approval of such an application, the Department shall notify the Tax Commission and shall provide it with a copy of the contract and the results of the cost/benefit analysis. The Tax Commission may require the qualified establishment to submit such additional information as may be necessary to administer the provisions of the Oklahoma Quality Jobs Program Act. The approved establishment shall file quarterly claims with the Tax Commission and shall continue to file such quarterly claims during the ten-year incentive period to show its continued eligibility for incentive payments, as provided in Section 3606 of this title, or until it is no longer qualified to receive incentive payments. The establishment may be audited by the Tax Commission to verify such

eligibility. Once the establishment is approved, an agreement shall be deemed to exist between the establishment and the State of Oklahoma, requiring the continued incentive payment to be made as long as the establishment retains its eligibility as defined in and established pursuant to this section and Sections 3603 and 3606 of this title and within the limitations contained in the Oklahoma Quality Jobs Program Act, which existed at the time of such approval. An establishment described in this subsection shall be required to repay all incentive payments received under the Oklahoma Quality Jobs Program Act if the establishment is determined by the Oklahoma Tax Commission to no longer have business operations in the state within three (3) years from the beginning of the calendar quarter for which the first incentive payment claim is filed.

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

SECTION 3. AMENDATORY 68 O.S. 2011, Section 3606, as amended by Section 2, Chapter 308, O.S.L. 2012 (68 O.S. Supp. 2012, Section 3606), is amended to read as follows:

Section 3606. A. As soon as practicable after the end of the first complete calendar quarter following the start date, the establishment shall file a claim for the payment with the Oklahoma Tax Commission and shall specify the actual number and gross payroll

of new direct jobs for the establishment for the calendar quarter. The Tax Commission shall verify the actual gross payroll for new direct jobs for the establishment for such calendar quarter. If the Tax Commission is not able to provide such verification utilizing all available resources, the Tax Commission may request such additional information from the establishment as may be necessary or may request the establishment to revise its claim. An establishment may file for an extension of the initial filing date with the Oklahoma Department of Commerce. Any such extension shall be based solely upon an extraordinary adverse business circumstance which prevented the establishment from hiring the new direct jobs as projected. If an establishment fails to file claims as required by this section, it shall forfeit the right to receive any incentive payments after three (3) years from the start date. If an establishment has filed at least one ~~(1)~~ claim pursuant to this section but fails to file another claim within two (2) years of the most recent claim, the Tax Commission, after consulting with the Department of Commerce, may dismiss the establishment from the program, forfeiting the establishment's right to receive incentive payments based on that contract.

B. If the actual verified gross payroll for four (4) consecutive calendar quarters does not equal or exceed the applicable total required by Section 3604 of this title within three (3) years of the start date, or does not equal or exceed the applicable total required by Section 3604 of this title at any other time during the ten-year period after the start date or during the fifteen-year period after the start date for establishments defined or classified in the NAICS Manual under U.S. Industry No. 711211 (2007 version), the incentive payments shall not be made and shall not be resumed until such time as the actual verified gross payroll equals or exceeds the amounts specified in Section 3604 of this title. If an establishment fails to achieve the required gross payroll within three (3) years of the start date, the establishment shall not make a new or renewal application for incentive payments authorized pursuant to the Oklahoma Quality Jobs Program Act for a period of twelve (12) months from the last day of the last month of the three-year period during which the required gross payroll amount was not achieved.

C. If the average annualized wage required for an establishment does not equal or exceed the amount specified in paragraph 1 or 2 of

subsection F of Section 3604 of this title during any calendar quarter, the incentive payments shall not be made and shall not be resumed until such time as such requirements are met.

D. In no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits, except for establishments subject to the provisions of subparagraph d of paragraph 7 of subsection A of Section 3603 of this title.

E. An establishment that has qualified pursuant to Section 3604 of this title may receive payments only in accordance with the provisions of the law under which it initially applied and was approved. If an establishment that is receiving incentive payments expands, it may apply for additional incentive payments based on the gross payroll anticipated from the expansion only, pursuant to Section 3604 of this title. Provided, an establishment which has suffered an extraordinary adverse business circumstance, as certified by the Incentive Approval Committee, may be allowed to voluntarily withdraw from the Oklahoma Quality Jobs Program, repay to the Tax Commission the total amount of incentive payments received pursuant to the provisions of this section, plus interest at the rate specified in Section 727.1 of Title 12 of the Oklahoma Statutes, and reapply to the Department for a new incentive contract if the establishment qualifies pursuant to the provisions of the Oklahoma Quality Jobs Program Act. Any funds received by the Tax Commission pursuant to the provisions of this subsection shall be apportioned in the manner that income tax revenues are apportioned.

F. An establishment that is receiving incentive payments may not apply for additional incentive payments for any new projects until twelve (12) quarters after receipt of the first incentive payment, or until the establishment's actual verified gross payroll for new direct jobs equals or exceeds Two Million Five Hundred Thousand Dollars ($2,500,000.00) during any four consecutive-calendar-quarter period, whichever comes first. After meeting the requirements of this subsection, an establishment may apply for additional incentive payments based upon the gross payroll anticipated from an expansion only.

G. As soon as practicable after verification of the actual gross payroll as required by this section and except as otherwise provided by subsection K of Section 3604 of this title, the Tax

Commission shall issue a warrant to the establishment in the amount of the net benefit rate multiplied by the actual gross payroll as determined pursuant to subsection A of this section for the calendar quarter.

SECTION 4. AMENDATORY 68 O.S. 2011, Section 3914, is amended to read as follows:

Section 3914. A. An establishment which meets the qualifications specified in the 21st Century Quality Jobs Incentive Act may receive quarterly incentive payments for a ten-year period from the Oklahoma Tax Commission pursuant to the provisions of this act, as verified by the Tax Commission, in an amount equal to:

1. The gross payroll multiplied by the initial net benefit rate until such time as the establishment creates ten new direct jobs~~,~~; or

2. The gross payroll multiplied by the fulfillment net benefit rate after such time as the establishment created and maintains ten new direct jobs.

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

C. Before approving an application for incentive payments, the Department must first determine that the applicant meets the following requirements:

1. Be engaged in a basic industry as defined in the 21st Century Quality Jobs Incentive Act;

2. Will hire at least ten full-time employees in this state within twelve (12) quarters of the date of application;

3. Will pay the individuals it employs in new direct jobs an average annualized wage which equals or exceeds ~~the lower of three hundred percent (300%) of the average of Oklahoma county wages or~~ three hundred percent (300%) of the average county wage for the county in which the applicant is located as that percentage is determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data. For purposes of this paragraph, health care premiums paid by the applicant for individuals in new direct jobs shall not be included in the annualized wage. Provided, no average wage requirement shall exceed Ninety-four Thousand Dollars ($94,000.00) in any county. This maximum wage threshold shall be indexed and modified from time to time based on the latest Consumer Price Index year-to-date percent change release as of the date of the annual average county wage data release from the Bureau of Economic Analysis of the U.S. Department of Commerce;

4. Has a basic health benefit plan which, as determined by the Department, meets the elements established under divisions (1) through (7) of subparagraph b of paragraph 1 of subsection A of Section 3603 of Title 68 of the Oklahoma Statutes and which will be offered to individuals within twelve (12) months of employment in a new direct job;

5. Has not received incentive payments under the Small Employer Quality Jobs Program Act, the Saving Quality Jobs Act or the Former Military Facility Development Act; and

6. Is not qualified for approval of an application for incentive payments under the Small Employer Quality Jobs Program Act, the Saving Quality Jobs Act or the Former Military Facility Development Act.

D. The Oklahoma Department of Commerce shall determine if an applicant is qualified to receive the incentive payment. Upon qualifying the applicant, the Department shall notify the Tax Commission and shall provide it with a copy of the contract and approval which shall provide the number of persons employed by the applicant upon the date of approval and the maximum total incentives which may be paid to the applicant during the ten-year period. The Tax Commission may require the qualified establishment to submit additional information as may be necessary to administer the

provisions of this act. The approved establishment shall report to the Tax Commission quarterly to show its continued eligibility for incentive payments, as provided in Section 3905 of Title 68 of the Oklahoma Statutes. Establishments may be audited by the Tax Commission to verify such eligibility. Once the establishment is approved, an agreement shall be deemed to exist between the establishment and the State of Oklahoma, requiring incentive payments to be made for a ten-year period as long as the establishment retains its eligibility and within the limitations of this act as it existed at the time of such approval.

SECTION 5. This act shall become effective November 1, 2013.

Passed the Senate the 23rd day of May, 2013.

Presiding Officer of the Senate

Passed the House of Representatives the 24th day of May, 2013.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 24th day of May, 2013, at 10:18 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 29th day of May, 2013, at 4:12 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 29th day of May, 2013, at 5:25 o'clock P. M.

By: Chris Paris