

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

SENATE BILL 815

By: Bingman

AS INTRODUCED

An Act relating to economic incentives; amending 68 O.S. 2011, Section 3603, as last amended by Section 1, Chapter 332, O.S.L. 2014 (68 O.S. Supp. 2014, Section 3603), which relates to the Oklahoma Quality Jobs Program Act; modifying the membership and purpose of Incentive Approval Committee for specified circumstances; updating and conforming language; modifying and expanding membership of Committee into Incentive Evaluation Commission for specified purpose; requiring compliance with certain act; providing for administrative support and assistance from specified state entities; establishing duties of Commission; defining term; mandating timeline of, and conditions and requirements related to, specified duties; authorizing specified contract for services subject to certain act; making certain duty subject to certain act; specifying components of specified criteria; requiring public hearing for specified purposes; requiring issuance of specified report; and providing for an effective date.

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 1, Chapter 332, O.S.L. 2014 (68 O.S. Supp. 2014, Section 3603), is amended to read as follows:

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

3 1. a. "Basic industry" means:

- 4 (1) those manufacturing activities defined or
5 classified in the NAICS Manual under Industry
6 Sector Nos. 31, 32 and 33, Industry Group No.
7 5111 or Industry No. 11331,
8 (2) those electric power generation, transmission and
9 distribution activities defined or classified in
10 the NAICS Manual under U.S. Industry Nos. 221111
11 through 221122, if:

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

15 (b) the exempt wholesale generator facility
16 consumes from sources located within the
17 state at least ninety percent (90%) of the
18 total energy used to produce the electrical
19 output which qualifies for the specialized
20 treatment provided by the Energy Policy Act
21 of 1992, P.L. 102-486, 106 Stat. 2776, as
22 amended, and federal regulations adopted
23 pursuant thereto,
24

1 (c) the exempt wholesale generator facility
2 sells to purchasers located outside the
3 state for consumption in activities located
4 outside the state at least ninety percent
5 (90%) of the total electrical energy output
6 which qualifies for the specialized
7 treatment provided by the Energy Policy Act
8 of 1992, P.L. 102-486, 106 Stat. 2776, as
9 amended, and federal regulations adopted
10 pursuant thereto, and

11 (d) the facility is constructed on or after July
12 1, 1996,

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

- 1 (4) those professional, scientific and technical
2 service activities defined or classified in the
3 NAICS Manual under U.S. Industry Nos. 541710 and
4 541380,
- 5 (5) distribution centers for retail or wholesale
6 businesses defined or classified in the NAICS
7 Manual under Sector No. 42, if forty percent
8 (40%) or more of the inventory processed through
9 such warehouse is shipped out-of-state,
- 10 (6) those adjustment and collection service
11 activities defined or classified in the NAICS
12 Manual under U.S. Industry No. 561440, if
13 seventy-five percent (75%) of the loans to be
14 serviced were made by out-of-state debtors,
- 15 (7) (a) those air transportation activities defined
16 or classified in the NAICS Manual under
17 Industry Group No. 4811, if the following
18 facilities are located in this state:
- 19 (i) the corporate headquarters of an
20 establishment classified therein, and
- 21 (ii) a facility or facilities at which
22 reservations for transportation
23 provided by such an establishment are
24 processed, whether such services are

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

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

1 out-of-state customer or buyer for ultimate
2 use, or to the federal government,

3 (8) flight training services activities defined or
4 classified in the NAICS Manual under U.S.

5 Industry Group No. 611512, which for purposes of
6 the Oklahoma Quality Jobs Program Act shall
7 include new direct jobs for which gross payroll
8 existed on or after January 1, 2003, as
9 identified in the NAICS Manual,

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

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

1 484 and Industry Group Nos. 4884 through
2 4889,

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

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

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

12 (e) those services to dwellings and other
13 buildings, as defined or classified in the
14 NAICS Manual under Industry Group No. 5617,
15 excluding U.S. Industry Nos. 561730, 56171,
16 56172, 56174 and 56179,

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

20 (g) those information technology and other
21 computer-related service activities defined
22 or classified in the NAICS Manual under
23 Industry Group Nos. 5112, 5182, 5191 and
24 5415,

- 1 (h) those business support service activities
2 defined or classified in the NAICS Manual
3 under U.S. Industry Nos. 561410 through
4 561430, excluding 56143, and Industry No.
5 51911,
- 6 (i) those medical and diagnostic laboratory
7 activities defined or classified in the
8 NAICS Manual under Industry Group No. 6215,
- 9 (j) those professional, scientific and technical
1 0 service activities defined or classified in
1 1 the NAICS Manual under Industry Group Nos.
1 2 5412, 5414, 5415, 5416 and 5417, Industry
1 3 Nos. 54131, 54133, 54136 and 54137, and U.S.
1 4 Industry No. 541990, if not otherwise listed
1 5 in this paragraph,
- 1 6 (k) those communication service activities
1 7 defined or classified in the NAICS Manual
1 8 under Industry Nos. 51741 and 51791,
- 1 9 (l) those refuse systems activities defined or
2 0 classified in the NAICS Manual under
2 1 Industry Group No. 5622, provided that the
2 2 establishment is primarily engaged in the
2 3 capture and distribution of methane gas
2 4 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,

(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 petroleum, natural gas
or refined petroleum products, defined or
classified in the NAICS Manual under Industry
Group No. 2111, 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

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

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

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

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

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

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

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

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

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

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

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

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

11 3. "New direct job":

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

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

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

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

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

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

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

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

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

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

- 21 a. except as otherwise provided in this paragraph, the
22 net benefit rate may be variable and shall not exceed
23 five percent (5%),
24

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

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

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

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

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

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

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

4 (2) in a county in which:

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

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

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

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

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

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

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

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

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

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

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

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

- 22 9. a. "Establishment" means any business or governmental
23 entity, no matter what legal form, including, but not
24 limited to, a sole proprietorship; partnership;

1 limited liability company; corporation or combination
2 of corporations which have a central parent
3 corporation which makes corporate management decisions
4 such as those involving consolidation, acquisition,
5 merger or expansion; federal agency; political
6 subdivision of the State of Oklahoma; or trust
7 authority; provided, distinct, identifiable subunits
8 of such entities may be determined to be an
9 establishment, for all purposes of Section 3601 et
10 seq. of this title, by the Department subject to the
11 following conditions:

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

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

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

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

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

18 b. The Department may promulgate rules to further limit
19 the circumstances under which a subunit may be
20 considered an establishment. The Department shall
21 promulgate rules to determine whether a subunit of an
22 entity achieves a net gain in total employment. The
23 Department shall establish criteria for determining
24 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

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

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

- 17 a. established multiyear classified and unclassified
18 indefinite-delivery/indefinite-quantity federal
19 contract vehicles in excess of Fifty Million Dollars
20 (\$50,000,000.00),
- 21 b. current capability to sponsor and maintain personnel
22 security clearances and authorized by the federal
23 government to handle and perform classified work up to
24

1 the Top Secret Sensitive Compartmented Information
2 levels,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 B. The Incentive Approval Committee is hereby created and shall
22 be constituted as provided in this subsection.
23
24

1 1. a. For the purpose of implementing the provisions of the
2 Oklahoma Quality Jobs Program Act, the Committee shall consist of
3 the following members, or such member's designee:

4 (1) the Director of the Office of Management and
5 Enterprise Services, the

6 (2) the Executive Director of the Department and one
7 of Commerce,

8 (3) one member of the Oklahoma Tax Commission
9 appointed by the Tax Commission, or a designee
10 from each agency approved by such member, and

11 (4) for an establishment defined as a "basic
12 industry" pursuant to division (4) of
13 subparagraph a of paragraph 1 of subsection A of
14 this section, the Executive Director of the
15 Oklahoma Center for the Advancement of Science
16 and Technology.

17 b. It shall be the duty of the Committee to determine:

18 ~~1. Upon~~

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

provided by ~~subsection C of this section~~ division
4 of subparagraph a of paragraph 1 of this
subsection,

~~2. If~~

(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~~7,~~ and

~~3. If~~

(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~~

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

3 2. For the purpose of the evaluation of incentives, as provided
4 in paragraph 3 of this subsection, the Committee shall be known as
5 the Incentive Evaluation Commission, and shall consist of the
6 following seven (7) members, or such member's designee:

7 a. the members of the Incentive Approval Committee as
8 provided in divisions 1, 2 and 3 of subparagraph a of
9 paragraph 1 of this subsection,

10 b. the State Treasurer,

11 c. one individual appointed by the Pro Tempore of the
12 Oklahoma State Senate, who is an economist
13 representing a higher education institution in this
14 state, who shall serve a four-year term,

15 d. one individual appointed by the Speaker of the
16 Oklahoma House of Representatives, who is a layperson
17 holding no elective office, who shall serve a four-
18 year term, and

19 e. one individual appointed by the Governor who shall
20 represent an association of economic development
21 professionals who promote a competitive business
22 climate in this state.

23 The activities of the Commission shall be subject to the provisions
24 of the Open Meeting Act. The Office of Management and Enterprise

1 Services shall provide staff and administrative support to the
2 Incentive Evaluation Commission. The Oklahoma Department of
3 Commerce, Oklahoma Tax Commission and Office of the State Treasurer
4 shall assist the Office of Management and Enterprise Services as
5 needed in providing staff and administrative support.

6 3. It shall be the duty of the Commission to ensure that state
7 incentives are evaluated at least once during every four-year
8 period. For purposes of this section, "incentive" shall include any
9 provision related to generating economic or business activity
10 available to be used by a business entity in the form of a credit,
11 exemption, deduction or rebate pertaining to a state tax liability
12 of any kind; any grant, loan or financing program offered by the
13 state or a state-beneficiary public trust; or any program for
14 incentive payments from the state. The evaluation of incentives
15 shall be implemented as follows:

16 a. by January 1, 2016, the Commission shall:

17 (1) develop a list of all incentives subject to
18 evaluation,

19 (2) determine whether any incentives identified
20 pursuant to division (1) of this subparagraph
21 shall be exempt from evaluation due to minimal
22 fiscal impact,

23 (3) develop a four-year schedule for evaluation of
24 all incentives not exempt pursuant to division

1 (2) of this subparagraph; provided, such schedule
2 shall be reissued by January 1 of each year
3 following the initial year to reflect prior year
4 activity, and

5 (4) provide a copy of the schedule to the Governor,
6 President Pro Tempore of the Senate and Speaker
7 of the House of Representatives.

8 b. by November 1, 2016, and each year thereafter, the
9 Commission shall evaluate each incentive scheduled for
10 review during that year, subject to the following:

11 (1) the evaluation shall be completed in consultation
12 with the Oklahoma Department of Commerce Division
13 of Research and Economic Analysis Services,

14 (2) at the request of the Commission, state agencies
15 shall provide any records, information, data or
16 data analysis deemed necessary for the Commission
17 to effectively implement the provisions of this
18 paragraph. Neither the Commission, nor any
19 contractor retained pursuant to division 3 of
20 this subparagraph, shall disclose or release any
21 information received pursuant to this
22 subdivision, except as permitted by law,

23 (3) the Commission may contract with a private
24 company, nonprofit entity or academic institution

1 to assist with the incentive evaluation process.
2 Such contract shall be based on a scope of
3 services for a request for proposals developed by
4 the Commission and issued pursuant to the
5 Oklahoma Central Purchasing Act, Section 85.1 et
6 seq. of Title 74 of the Oklahoma Statutes, for
7 professional services necessary to complete
8 incentive evaluations pursuant to this paragraph.
9 The costs of such contract shall be paid by the
10 Office of Management and Enterprise Services,
11 (4) evaluation criteria shall be developed by the
12 Commission for each specific individual incentive
13 evaluated. Such criteria shall be adopted by
14 rule and subject to the Administrative Procedures
15 Act, Section 250 et seq. of Title 75 of the
16 Oklahoma Statutes, and codified in the
17 administrative code of the Oklahoma Department of
18 Commerce. The criteria shall also include, but
19 not be limited to:

- 20 (a) An estimate of the economic and fiscal
21 impact of the incentive, including:
22 i. the extent to which the incentive
23 changes business behavior,
24

1 ii. the results of the incentive for the
2 state economy, including both positive
3 direct and indirect impacts and any
4 negative effects on other Oklahoma
5 businesses, and

6 iii. a comparison to the results of other
7 incentives or other economic
8 development strategies with similar
9 goals,

10 (b) an assessment of the ability of the state to
11 accurately forecast the fiscal impact of the
12 incentive in future years,

13 (c) an assessment of the impact of the cost of
14 administering the incentive, both to the
15 state and the user,

16 (d) an assessment of whether or not the
17 incentive is achieving the intended goals,
18 as determined by the Commission,

19 (e) recommendations for how Oklahoma can most
20 effectively achieve the incentive's goals,
21 as determined by the Commission, including
22 recommendations regarding whether the
23 incentive should be retained, modified or
24 repealed, and

1 (f) recommendations for any changes to state
2 policy, rules or statutes that would allow
3 the incentive to be more easily or
4 conclusively evaluated in the future. These
5 recommendations may include, but shall not
6 be limited to, changes to collection,
7 reporting and sharing of data, and revisions
8 or clarifications to the goal of the
9 incentive.

10 c. by November 30, 2016, and each November 30 thereafter,
11 the Commission shall hold at least one public hearing
12 to review each incentive evaluation, allow for public
13 comment, and vote to approve or disapprove the
14 evaluation conducted during the current annual review
15 cycle of each incentive. Such public hearing shall be
16 held in compliance with the requirements of the Open
17 Meeting Act.

18 d. by December 31, 2016, and each December 31 thereafter,
19 the Commission shall issue a report including the
20 results of the evaluations completed during the
21 current annual review cycle to the Governor, President
22 Pro Tempore of the Senate, and Speaker of the House of
23 Representatives and shall make the report available on
24

1 the website of the Oklahoma Department of Commerce and
2 the official website of the State of Oklahoma.

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

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