

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 71

By: Allen of the Senate

and

Bennett of the House

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9 COMMITTEE SUBSTITUTE

10 An Act relating to the Oklahoma Quality Jobs Program
11 Act; amending 68 O.S. 2011, Section 3603, as last
12 amended by Section 1, Chapter 332, O.S.L. 2014 (68
13 O.S. Supp. 2014, Section 3603), which relates to
14 definitions; modifying definition; updating statutory
15 reference; and providing an effective date.

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

17 SECTION 1. AMENDATORY 68 O.S. 2011, Section 3603, as
18 last amended by Section 1, Chapter 332, O.S.L. 2014 (68 O.S. Supp.
19 2014, Section 3603), is amended to read as follows:

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

22 1. a. "Basic industry" means:

23 (1) those manufacturing activities defined or
24 classified in the NAICS Manual under Industry

1 Sector Nos. 31, 32 and 33, Industry Group No.
2 5111 or Industry No. 11331,

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

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

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

19 (c) the exempt wholesale generator facility
20 sells to purchasers located outside the
21 state for consumption in activities located
22 outside the state at least ninety percent
23 (90%) of the total electrical energy output
24 which qualifies for the specialized

1 treatment provided by the Energy Policy Act
2 of 1992, P.L. 102-486, 106 Stat. 2776, as
3 amended, and federal regulations adopted
4 pursuant thereto, and

5 (d) the facility is constructed on or after July
6 1, 1996,

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

19 (4) those professional, scientific and technical
20 service activities defined or classified in the
21 NAICS Manual under U.S. Industry Nos. 541710 and
22 541380,

23 (5) distribution centers for retail or wholesale
24 businesses defined or classified in the NAICS

1 Manual under Sector No. 42, if forty percent
2 (40%) or more of the inventory processed through
3 such warehouse is shipped out-of-state,

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

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

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

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

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

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

20 (8) flight training services activities defined or
21 classified in the NAICS Manual under U.S.
22 Industry Group No. 611512, which for purposes of
23 the Oklahoma Quality Jobs Program Act shall
24 include new direct jobs for which gross payroll

1 existed on or after January 1, 2003, as
2 identified in the NAICS Manual,

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

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

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

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

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

7 (o) those agricultural activities classified in
8 the NAICS Manual under U.S. Industry ~~No.~~
9 Nos. 112120 and 112310,

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

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

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

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

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

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

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

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

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

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

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

17 b. An establishment described in subparagraph a of this
18 paragraph shall not be considered to be engaged in a
19 basic industry unless it offers, or will offer within
20 one hundred eighty (180) days of employment, a basic
21 health benefits plan to the individuals it employs in
22 new direct jobs in this state which is determined by
23 the Oklahoma Department of Commerce to consist of the
24

1 following elements or elements substantially
2 equivalent thereto:

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

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

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

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

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

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

8 3. "New direct job":

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

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

1 b. shall include full-time-equivalent employment in this
2 state of employees who are employed by an employment
3 agency or similar entity other than the establishment
4 which has qualified to receive an incentive payment
5 and who are leased or otherwise provided under
6 contract to the qualified establishment, if such job
7 did not exist in this state prior to the date of
8 approval by the Department of the application of the
9 establishment or the job otherwise qualifies as a new
10 direct job following a change-in-control event. A job
11 shall be deemed to exist in this state prior to
12 approval of an application if the activities and
13 functions for which the particular job exists have
14 been ongoing at any time within six (6) months prior
15 to such approval. With respect to establishments
16 defined in division (10) of subparagraph a of
17 paragraph 1 of this subsection, new direct jobs shall
18 be limited to those jobs directly comprising the
19 corporate headquarters of or directly relating to
20 manufacturing, maintenance, administrative, financial,
21 engineering, surveying, geological or geophysical
22 services performed by the establishment. Under no
23 circumstances shall employment relating to field
24 services be considered new direct jobs;

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

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

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

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

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

- 18 a. except as otherwise provided in this paragraph, the
19 net benefit rate may be variable and shall not exceed
20 five percent (5%),
- 21 b. the net benefit rate shall not exceed six percent (6%)
22 in connection with an establishment which is owned and
23 operated by an entity which has been awarded a United
24 States Department of Defense contract for which:

- (1) 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:

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

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

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

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

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

22 (2) expands its operations in this state by creating
23 additional new direct jobs which pay average
24 annualized wages which equal or exceed one

1 hundred fifty percent (150%) of the average
2 annualized wages of new direct jobs on which
3 incentive payments were received during the
4 preceding calendar year,

5 f. with respect to an establishment defined or classified
6 in the NAICS Manual under U.S. Industry No. 711211
7 (2007 version) or any establishment defined or
8 classified in the NAICS Manual as a U.S. Industry
9 Number which is not included within the definition of
10 "basic industry" as such term is defined in this
11 section on April 17, 2008, the net benefit rate shall
12 not exceed the highest rate of income tax imposed upon
13 the Oklahoma taxable income of individuals pursuant to
14 subparagraph (g) or subparagraph (h), as applicable,
15 of paragraph 1 and paragraph 2 of subsection B of
16 Section 2355 of this title. Any change in such
17 highest rate of individual income tax imposed pursuant
18 to the provisions of Section 2355 of this title shall
19 be applicable to the computation of incentive payments
20 to an establishment as described by this subparagraph
21 and shall be effective for purposes of incentive
22 payments based on payroll paid by such establishment
23 on or after January 1 of any applicable year for which
24

1 the net benefit rate is modified as required by this
2 subparagraph, and

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

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

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

- 18 9. a. "Establishment" means any business or governmental
19 entity, no matter what legal form, including, but not
20 limited to, a sole proprietorship; partnership;
21 limited liability company; corporation or combination
22 of corporations which have a central parent
23 corporation which makes corporate management decisions
24 such as those involving consolidation, acquisition,

1 merger or expansion; federal agency; political
2 subdivision of the State of Oklahoma; or trust
3 authority; provided, distinct, identifiable subunits
4 of such entities may be determined to be an
5 establishment, for all purposes of ~~Section 3601 et~~
6 ~~seq. of this title~~ the Oklahoma Quality Jobs Program
7 Act, by the Department subject to the following
8 conditions:

- 9 (1) within three (3) years of the first complete
10 calendar quarter following the start date, the
11 entity must have a minimum payroll of Two Million
12 Five Hundred Thousand Dollars (\$2,500,000.00) and
13 the subunit must also have or will have a minimum
14 payroll of Two Million Five Hundred Thousand
15 Dollars (\$2,500,000.00),
- 16 (2) the subunit is engaged in an activity or service
17 or produces a product which is demonstratively
18 independent and separate from the entity's other
19 activities, services or products and could be
20 conducted or produced in the absence of any other
21 activity, service or production of the entity,
- 22 (3) has an accounting system capable of tracking or
23 facilitating an audit of the subunit's payroll,
24 expenses, revenue and production. Limited

1 interunit overlap of administrative and
2 purchasing functions shall not disqualify a
3 subunit from consideration as an establishment by
4 the Department,

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

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

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

24

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

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

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

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

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

24

- 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;

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~~ the Oklahoma Quality
5 Jobs Program Act are created by an establishment,
6 other than the proxy establishment, which is a branch
7 of the Armed Forces of the United States.

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

22 B. The Incentive Approval Committee is hereby created and shall
23 consist of the Director of the Office of Management and Enterprise
24 Services, the Director of the Department and one member of the

1 Oklahoma Tax Commission appointed by the Tax Commission, or a
2 designee from each agency approved by such member. It shall be the
3 duty of the Committee to determine:

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

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

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

19 C. For an establishment defined as a "basic industry" pursuant
20 to division (4) of subparagraph a of paragraph 1 of subsection A of
21 this section, the Incentive Approval Committee shall consist of the
22 members provided by subsection B of this section and the Executive
23 Director of the Oklahoma Center for the Advancement of Science and
24

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

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

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