STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 210 By: Dahm

AS INTRODUCED

An Act relating to income tax; providing exemption for petroleum refinery placed in service after certain date; limiting exemption to certain tax years; stating requirements for qualification; requiring determination by the Oklahoma Tax Commission; requiring annual application; prohibiting subsequent exemption for establishments that fail to qualify; requiring the Commission to prescribe forms and promulgate rules; amending 68 O.S. 2021, Section 2357.4, which relates to tax credit for investments in qualified depreciable property and a net increase in full-time-equivalent employees; providing credit amount for certain property primarily engaged in the refining of petroleum; amending 68 O.S. 2021, Section 3603, which relate to the quality jobs program; adding net benefit rate limit for certain industry; updating statutory language; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.204A of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For tax years 2024 through 2034, revenues generated from the operation of a newly constructed establishment in this state placed in service after the effective date of this act, primarily engaged
in the refining of crude petroleum into refined petroleum classified in the NAICS Manual under Industry No. 324110 shall be exempt from the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes for the first five (5) years of operations.

B. To qualify for the exemption provided in subsection A of this section, an establishment shall meet the following requirements:

1. Employment of at least one hundred (100) full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, for the entire tax year;

2. Payment of wages or salaries at a wage that equals or exceeds the average wage requirements in the Oklahoma Quality Jobs Program Act, Section 3601 et seq. of Title 68 of the Oklahoma Statutes; and

3. Be primarily engaged in the processing of liquid fuel from crude oil or qualified fuels. No exemption shall be allowed for any refinery whose primary purpose is for use as a topping plant, asphalt plant, lube oil facility, or crude or product terminal.

C. Eligibility for an establishment pursuant to this section for each tax year shall be determined by the Oklahoma Tax Commission, upon the annual filing of an application provided by the Tax Commission stating that the establishment qualifies and containing information required by the Tax Commission.
D. An establishment that fails to qualify for the exemption in any of the first five (5) years of operations shall not be eligible for the exemption provided in this section in any subsequent tax year.

E. The Tax Commission shall prescribe forms and promulgate rules to administer the provisions of this section.

SECTION 2. AMENDATORY 68 O.S. 2021, Section 2357.4, is amended to read as follows:

Section 2357.4. A. Except as otherwise provided in subsection F of Section 3658 of this title and in subsections J and K of this section, for taxable years beginning after December 31, 1987, there shall be allowed a credit against the tax imposed by Section 2355 of this title for:

1. Investment in qualified depreciable property placed in service during those years for use in a manufacturing operation, as defined in Section 1352 of this title, which has received a manufacturer exemption permit pursuant to the provisions of Section 1359.2 of this title or a qualified aircraft maintenance or manufacturing facility as defined in Section 1357 of this title in this state or a qualified web search portal as defined in Section 1357 of this title; or

2. A net increase in the number of full-time-equivalent employees in a manufacturing operation, as defined in Section 1352 of this title, which has received a manufacturer exemption permit.
pursuant to the provisions of Section 1359.2 of this title or a qualified aircraft maintenance or manufacturing facility defined in Section 1357 of this title in this state or in a qualified web search portal as defined in Section 1357 of this title including employees engaged in support services.

B. Except as otherwise provided in subsection F of Section 3658 of this title and in subsections J and K of this section, for taxable years beginning after December 31, 1998, there shall be allowed a credit against the tax imposed by Section 2355 of this title for:

1. Investment in qualified depreciable property with a total cost equal to or greater than Forty Million Dollars ($40,000,000.00) within three (3) years from the date of initial qualifying expenditure and placed in service in this state during those years for use in the manufacture of products described by any Industry Number contained in Division D of Part I of the Standard Industrial Classification (SIC) Manual, latest revision; or

2. A net increase in the number of full-time-equivalent employees in this state engaged in the manufacture of any goods identified by any Industry Number contained in Division D of Part I of the Standard Industrial Classification (SIC) Manual, latest revision, if the total cost of qualified depreciable property placed in service by the business entity within the state equals or exceeds
Forty Million Dollars ($40,000,000.00) within three (3) years from the date of initial qualifying expenditure.

C. The business entity may claim the credit authorized by subsection B of this section for expenditures incurred or for a net increase in the number of full-time-equivalent employees after the business entity provides proof satisfactory to the Oklahoma Tax Commission that the conditions imposed pursuant to paragraph 1 or paragraph 2 of subsection B of this section have been satisfied.

D. If a business entity fails to expend the amount required by paragraph 1 or paragraph 2 of subsection B of this section within the time required, the business entity may not claim the credit authorized by subsection B of this section but shall be allowed to claim a credit pursuant to subsection A of this section if the requirements of subsection A of this section are met with respect to the investment in qualified depreciable property or net increase in the number of full-time-equivalent employees.

E. The credit provided for in subsection A of this section, if based upon investment in qualified depreciable property, shall not be allowed unless the investment in qualified depreciable property is at least Fifty Thousand Dollars ($50,000.00). The credit provided for in subsection A or B of this section shall not be allowed if the applicable investment is the direct cause of a decrease in the number of full-time-equivalent employees. Qualified property shall be limited to machinery, fixtures, equipment,
buildings or substantial improvements thereto, placed in service in this state during the taxable year. The taxable years for which the credit may be allowed if based upon investment in qualified depreciable property shall be measured from the year in which the qualified property is placed in service. If the credit provided for in subsection A or B of this section is calculated on the basis of the cost of the qualified property, the credit shall be allowed in each of the four (4) subsequent years. If the qualified property on which a credit has previously been allowed is acquired from a related party, the date such property is placed in service by the transferor shall be considered to be the date such property is placed in service by the transferee, for purposes of determining the aggregate number of years for which credit may be allowed.

F. The credit provided for in subsection A or B of this section, if based upon an increase in the number of full-time-equivalent employees, shall be allowed in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. In calculating the credit by the number of new employees, only those employees whose paid wages or salary were at least Seven Thousand Dollars ($7,000.00) during each year the credit is claimed shall be included in the calculation. Provided, that the first year a credit is claimed for a new employee, such employee may be included in the calculation notwithstanding paid wages of less than Seven Thousand Dollars ($7,000.00) if the employee was hired in
the last three quarters of the tax year, has wages or salary which will result in annual paid wages in excess of Seven Thousand Dollars ($7,000.00) and the taxpayer submits an affidavit stating that the employee’s position will be retained in the following tax year and will result in the payment of wages in excess of Seven Thousand Dollars ($7,000.00). The number of new employees shall be determined by comparing the monthly average number of full-time employees subject to Oklahoma income tax withholding for the final quarter of the taxable year with the corresponding period of the prior taxable year, as substantiated by such reports as may be required by the Tax Commission.

G. The credit allowed by subsection A of this section shall be the greater amount of either:

1. One percent (1%) of the cost of the qualified property in the year the property is placed in service; or

2. Five Hundred Dollars ($500.00) for each new employee. No credit shall be allowed in any taxable year for a net increase in the number of full-time-equivalent employees if such increase is a result of an investment in qualified depreciable property for which an income tax credit has been allowed as authorized by this section.

H. The credit allowed by subsection B of this section shall be the greater amount of either:

1. Two percent (2%) of the cost of the qualified property in the year the property is placed in service. Provided, for property
placed in service after the effective date of this act that is primarily engaged in the refining of crude petroleum into refined petroleum classified in the NAICS Manual under Industry No. 324110, the credit allowed shall be three percent (3%) of the cost of the qualified property; or

2. One Thousand Dollars ($1,000.00) for each new employee.

No credit shall be allowed in any taxable year for a net increase in the number of full-time-equivalent employees if such increase is a result of an investment in qualified depreciable property for which an income tax credit has been allowed as authorized by this section.

I. Except as provided by subsection G of Section 3658 of this title, any credits allowed but not used in any taxable year may be carried over in order as follows:

1. To each of the four (4) years following the year of qualification;

2. To the extent not used in those years in order to each of the fifteen (15) years following the initial five-year period;

3. If a C corporation that otherwise qualified for the credits under subsection A of this section subsequently changes its operating status to that of a pass-through entity which is being treated as the same entity for federal tax purposes, the credits will continue to be available as if the pass-through entity had
originally qualified for the credits subject to the limitations of this section;

4. To the extent not used in paragraphs 1 and 2 of this subsection, such credits from qualified depreciable property placed in service on or after January 1, 2000, may be utilized in any subsequent tax years after the initial twenty-year period; and

5. Provided, for tax years beginning on or after January 1, 2016, and ending on or before December 31, 2018, the amount of credits available as an offset in a taxable year shall be limited to the percentage calculated by the Tax Commission pursuant to the provisions of subsection L of this section.

J. No credit otherwise authorized by the provisions of this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2010, for which the credit would otherwise be allowable until the provisions of this subsection shall cease to be operative on July 1, 2012. Beginning July 1, 2012, the credit authorized by this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2010, according to the provisions of this section; provided, credits accrued during the period from July 1, 2010, through June 30, 2012, shall be limited to a period of two (2) taxable years. The credit shall be limited in each taxable year to fifty percent (50%) of the total amount of the accrued credit. Any tax credits which accrue during the period of July 1,
2010, through June 30, 2012, may not be claimed for any period prior to the taxable year beginning January 1, 2012. No credits which accrue during the period of July 1, 2010, through June 30, 2012, may be used to file an amended tax return for any taxable year prior to the taxable year beginning January 1, 2012.

K. Beginning January 1, 2017, except with respect to tax credits allowed from investment or job creation occurring prior to January 1, 2017, the credits authorized by this section shall not be allowed for investment or job creation in electric power generation by means of wind as described by the North American Industry Classification System, No. 221119.

L. For tax years beginning on or after January 1, 2016, and ending on or before December 31, 2018, the total amount of credits authorized by this section used to offset tax shall be adjusted annually to limit the annual amount of credits to Twenty-five Million Dollars ($25,000,000.00). The Tax Commission shall annually calculate and publish a percentage by which the credits authorized by this section shall be reduced so the total amount of credits used to offset tax does not exceed Twenty-five Million Dollars ($25,000,000.00) per year. The formula to be used for the percentage adjustment shall be Twenty-five Million Dollars ($25,000,000.00) divided by the credits used to offset tax in the second preceding year.
M. Pursuant to subsection L of this section, in the event the total tax credits authorized by this section exceed Twenty-five Million Dollars ($25,000,000.00) in any calendar year, the Tax Commission shall permit any excess over Twenty-five Million Dollars ($25,000,000.00) but shall factor such excess into the percentage adjustment formula for subsequent years.

SECTION 3. AMENDATORY 68 O.S. 2021, Section 3603, is amended to read as follows:

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

1. a. “Basic industry” means:

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

   (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 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 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 Nos. 112120 and 112310,
(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 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 this state, 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 Oklahoma 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 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 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,
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%), and

  h. with respect to a petroleum refinery establishment
placed in service after the effective date of this
act, defined or classified in the NAICS Manual under
U.S. Industry No. 324110, the net benefit rate shall not exceed six percent (6%).

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 the Oklahoma Quality Jobs Program Act, 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;


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 this state or whether or not the principal place of business of the business entity is located within the State of Oklahoma this state, 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 this state 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 this state, 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;


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;

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; and

19. “Proxy establishment” means a public trust which:
   a. is organized and existing under Section 176 of Title 60 of the Oklahoma Statutes for the benefit of a geographic area which includes a city or county or some combination thereof, and
   b. benefits a geographic area where new direct jobs which meet the requirements of the Oklahoma Quality Jobs Program Act are created by an establishment, other than the proxy establishment, which is a branch of the Armed Forces of the United States.

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

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 the eligibility of all applicants for the Oklahoma Quality Jobs Program Act, subject to the applicable requirements.

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