

ENROLLED SENATE
BILL NO. 668

By: Fisher, Henry, Milacek and
Shurden of the Senate

and

Roach, Smith (Dale), Tyler,
Phillips, Webb, Braddock,
Deutschendorf, Ingmire,
Liotta, Newport, O'Neal,
Perry, Pettigrew, Smith
(Hopper), Weaver, Wilt,
Adkins, Gilbert, Glover,
Hastings, Ostrander, Reese,
Satterfield, Thornbrugh,
and Weese of the House

An Act relating to economic development; amending
Section 3, Chapter 275, O.S.L. 1993, as last
amended by Section 5, Chapter 342, O.S.L. 1996 (68
O.S. Supp. 1996, Section 3603), Section 4, Chapter
275, O.S.L. 1993 (68 O.S. Supp. 1996, Section
3604), as last amended by Section 1 of Enrolled
House Bill No. 1518 of the 1st Session of the 46th
Oklahoma Legislature and Section 7, Chapter 275,
O.S.L. 1993, as last amended by Section 6, Chapter
342, O.S.L. 1996 (68 O.S. Supp. 1996, Section
3607), which relate to the Oklahoma Quality Jobs
Program Act; modifying definition of basic
industry; modifying establishments which may
qualify for incentive payments irrespective of
certain requirements; correcting statutory
reference; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 3, Chapter 275, O.S.L.
1993, as last amended by Section 5, Chapter 342, O.S.L. 1996 (68
O.S. Supp. 1996, Section 3603), is amended to read as follows:

Section 3603. A. As used in this act:

1. a. "Basic industry" means:

- (1) manufacturing, as defined or classified under Division D of the Standard Industrial Classification (SIC) Manual, latest version,
- (2) an activity related to electric services as described by Industry Number 4911 of Major Group 49, Division E of the Standard Industrial Classification (SIC) Manual, latest version, 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) administrative and auxiliary services that are assigned a one-digit auxiliary code in the SIC Manual, and are described therein as Central Administrative Offices, which means central centers that influence the environment in which data processing, customer service, credit accounting, telemarketing, claims processing and other administrative functions are accomplished,
- (4) Research, Development and Testing Laboratories,
- (5) an activity described by Industry Group Number 873 of Major Group 87, Division I of the Standard Industrial Classification (SIC) Manual, latest revision, Industry Numbers 8731, 8732, 8733 and 8734,
- (6) an activity related to research and development as described by Auxiliary Code Number 2 of the Standard Industrial Classification (SIC) Manual, latest revision,
- (7) warehouses which serve as distribution centers for retail or wholesale businesses, if seventy-five percent (75%) of the inventory processed through such warehouse is shipped out-of-state,
- (8) adjustment and collection services, as defined or classified under Industry Number 7322 of Major Group 73 of the Standard Industrial Classification (SIC) Manual, latest version, if seventy-five percent (75%) of the loans to be serviced were made by out-of-state debtors,
- (9) or 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) motor freight transportation and warehousing, as defined or classified under Major Group 42 of the SIC Manual, latest version,
 - (b) transportation by air, as defined or classified under Major Group 45 of the SIC Manual, latest version,
 - (c) arrangement of passenger transportation, as defined or classified under Industry Group 472 of the SIC Manual, latest version,
 - (d) arrangement of transportation of freight or cargo, as defined or classified under Industry Group 473 of the SIC Manual, latest version,
 - (e) insurance carriers, as defined or classified under Major Group 63 of the SIC Manual, latest version,
 - (f) mailing, reproduction, commercial art and photography and stenographic services, as defined or classified under Industry Group 733 of the SIC Manual, latest version,
 - (g) services to dwellings and other buildings, as defined or classified under Industry Group 734 of the SIC Manual, latest version,
 - (h) miscellaneous equipment rental and leasing, as defined or classified under Industry Group 735 of the SIC Manual, latest version,
 - (i) personnel supply services, as defined or classified under Industry Group 736 of the SIC Manual, latest version,
 - (j) computer programming, data processing and other computer-related services, as defined or classified under Industry Group 737 of the SIC Manual, latest version,
 - (k) miscellaneous business services, as defined or classified under Industry Group 738 of the SIC Manual, latest version,
 - (l) medical and dental laboratories, as defined or classified under Industry Group 807 of the SIC Manual, latest version,
 - (m) engineering and management services, as defined or classified under Major Group 87 of the SIC Manual, latest version,
 - (n) communication services, as defined or classified under Industrial Number 4899 of Major Group 48 of the SIC Manual, latest version, and
 - (o) refuse systems, as defined or classified under Industrial Number 4953 of Major Group 49 of the SIC Manual, latest version, provided that the establishment is primarily engaged in the capture and distribution of methane gas produced within a landfill.
- 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 the date it receives the first incentive payment pursuant to the provisions of Section 3601 et seq. of this title, 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 less than fifty percent (50%) of the premium shall be paid by the employer,
- (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. "New direct job" means full-time-equivalent employment in this state in an establishment which has qualified to receive an incentive payment pursuant to the provisions of Section 3601 et seq. of this title which did not exist in this state prior to the date of approval by the Department of Commerce of the application of the establishment pursuant to the provisions of Section 3604 of this title;

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

4. "Estimated direct state costs" means the costs projected by the Department of Commerce 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;

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

6. "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 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, and
- c. in no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits;

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

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

- (1) 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 Oklahoma Department of Commerce,
- (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 6 of this subsection, and
- (5) it is determined by the Department of Commerce that the entity will have a probable net gain in total employment within the incentive period.

b. The Oklahoma Department of Commerce may promulgate rules to further limit the circumstances under which a subunit may be considered an establishment. The Department of Commerce 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.

B. The Incentive Approval Committee is hereby created and shall consist of the Director of State Finance, the Director of the Department of Commerce and one member of the Oklahoma Tax Commission appointed by the Tax Commission. It shall be the duty of the Committee to determine, upon initial application on a form approved by the Committee, if an establishment is engaged in a basic industry as defined in subdivisions (a) through (o) of division (9) of subparagraph a of paragraph 1 of subsection A of this section or as otherwise provided by subsection C of this section.

C. For an establishment defined as a "basic industry" pursuant to division (5) or division (6) 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 President of the Oklahoma Center for the Advancement of Science and Technology.

SECTION 2. AMENDATORY Section 4, Chapter 275, O.S.L. 1993 (68 O.S. Supp. 1996, Section 3604), as last amended by Section 1 of Enrolled House Bill No. 1518 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 3604. A. An establishment which meets the qualifications specified in the Oklahoma Quality Jobs Program Act may receive quarterly incentive payments for a ten-year period from the Oklahoma Tax Commission pursuant to the provisions of the Oklahoma Quality Jobs Program Act in an amount which shall be equal to the net benefit rate multiplied by the actual gross payroll of new direct jobs for a calendar quarter as verified by the Oklahoma Employment Security Commission.

B. In order to receive incentive payments, an establishment shall apply to the Oklahoma Department of Commerce. The application shall be on a form prescribed by the Department and shall contain such information as may be required by the Department to determine if the applicant is qualified.

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

1. Be engaged in a basic industry;
2. Have an annual gross payroll for new direct jobs projected by the Department of Commerce to equal or exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00) within three (3) years of the anticipated date on which the establishment will receive its first incentive payment; and

3. Have a number of full-time employees working an average of twenty-five (25) or more hours per week in new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs.

D. In order to qualify to receive incentive payments as authorized by this act, an establishment engaged in an activity described under:

1. Any Industry Group Number under Major Group 20 of Division D of the Standard Industrial Classification (SIC) Manual shall be required to:

- a. have an annual gross payroll for new direct jobs projected by the Department of Commerce to equal or exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) within three (3) years of the anticipated date on which the establishment will receive its first incentive payment and make, or which will make within one (1) year, at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection B of Section 3603 of this title, to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government, unless the annual gross payroll equals or exceeds Two Million Five Hundred Thousand Dollars (\$2,500,000.00) in which case the requirements for purchase of output provided by this subparagraph shall not apply, and
- b. have a number of full-time employees working an average of twenty-five (25) or more hours per week in new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs;

2. Major Group 87 of the Standard Industrial Classification (SIC) Manual, as described in division (4) of subparagraph a of paragraph 1 of subsection A of Section 3603 of this title, shall be required to:

- a. have an annual gross payroll for new direct jobs projected by the Department of Commerce to equal or exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) within three (3) years of the anticipated date on which the establishment will receive its first incentive payment and makes, or which will make within one (1) year, at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection C of Section 3603 of this title, to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government, unless the annual gross payroll equals or exceeds Two Million Five Hundred Thousand Dollars (\$2,500,000.00) in which case the requirements for purchase of output provided by this subparagraph shall not apply, and
- b. have a number of full-time employees working an average of twenty-five (25) or more hours per week in new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs;

3. Auxiliary Code Number 2 of the Standard Industrial Classification (SIC) Manual, as described in division (5) of subparagraph a of paragraph 1 of subsection A of Section 3603 of this title, shall be required to:

- a. have an annual gross payroll for new direct jobs projected by the Department of Commerce to equal or exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) within three (3) years of the anticipated date on which the establishment will receive its first incentive payment, and
- b. have a number of full-time equivalent employees working an average of twenty-five (25) or more hours per week in new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs.

E. An establishment which locates its principal business activity on a site consisting of at least ten (10) acres which has been determined to be contaminated by any substance regulated by a federal or state statute governing environmental conditions for real property and which is a federal Superfund removal site, is listed on the National Priorities List established under Section 9605 of Title 42 of the United States Code or has been formally deferred to the state in lieu of listing on the National Priorities List, shall qualify for incentive payments irrespective of:

1. Its actual gross payroll; or
2. The number of full-time-equivalent employees engaged in new direct jobs.

In order to qualify for the incentive payments pursuant to this subsection, the establishment shall conduct the activity resulting in at least eighty percent (80%) of its total annual gross revenue, whether from the sale of products or services or both products and services, at the physical location which has been determined not to comply with the federal or state statutes described in this subsection with respect to environmental conditions for real property. The establishment shall be subject to all other requirements of the Oklahoma Quality Jobs Program Act other than the exemptions provided by this subsection.

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

G. If the applicant is determined to be qualified by the Department of Commerce, the Department shall conduct a cost/benefit analysis to determine the estimated net direct state benefits and the net benefit rate applicable for a ten-year period and to estimate the amount of gross payroll for a ten-year period. In conducting such cost/benefit analysis, the Department shall consider quantitative factors, such as the anticipated level of new tax revenues to the state along with the added cost to the state of providing services, and such other criteria as deemed appropriate by the Department. In no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits.

H. Upon approval of such an application, the Department shall notify the Oklahoma Tax Commission and shall provide it with a copy of the application and the results of the cost/benefit analysis. The Tax Commission may require the qualified establishment to submit such additional information as may be necessary to administer the provisions of this act. The approved establishment shall report to the Tax Commission periodically to show its continued eligibility for incentive payments, as provided in Section 3606 of this title. The establishment may be audited by the Tax Commission to verify such eligibility. Once the establishment is approved, an agreement shall be deemed to exist between the establishment and the State of Oklahoma, requiring the continued incentive payment to be made as long as the establishment retains its eligibility as defined in and established pursuant to this section and Sections 3603 and 3606 of this title and within the limitations contained in the Oklahoma Quality Jobs Program Act, which existed at the time of such approval.

SECTION 3. AMENDATORY Section 7, Chapter 275, O.S.L. 1993, as last amended by Section 6, Chapter 342, O.S.L. 1996 (68 O.S. Supp. 1996, Section 3607), is amended to read as follows:

Section 3607. Notwithstanding any other provision of law, if a qualified establishment receives an incentive payment pursuant to the provisions of this act, neither the qualified establishment nor its contractors or subcontractors shall be eligible to receive the credits or exemptions provided for in the following provisions of law in connection with the activity for which the incentive payment was received:

1. Paragraphs 14 and 15 of Section 1357 of this title;
2. Paragraph 8 of Section 1359 of this title;
3. Section 2357.4 of this title;
4. Section 2357.7 of this title;
5. Section 2-11-303 of Title 27A of the Oklahoma Statutes;
6. Section 2357.22 of this title;
7. Section 2357.31 of this title;
8. Section 54003 of this title;
9. Section 54006 of this title;
10. Section 625.1 of Title 36 of the Oklahoma Statutes; or
11. Subsections C and D of Section 2357.59 of this title.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.