

EHB 1605

THE STATE SENATE
Thursday, April 3, 2003

ENGROSSED

House Bill No. 1605

ENGROSSED HOUSE BILL NO. 1605 - By: ROGGOW of the House and MADDOX of the Senate.

An Act relating to economic development; amending 68 O.S. 2001, Section 3603, as amended by Section 1, Chapter 308, O.S.L. 2002 (68 O.S. Supp. 2002, Section 3603), which relates to the Oklahoma Quality Jobs Program Act; modifying definition related to North American Industry Classifications; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 3603, as amended by Section 1, Chapter 308, O.S.L. 2002 (68 O.S. Supp. 2002, Section 3603), is amended to read as follows:

Section 3603. A. As used in Section 3601 et seq. of this title:

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

1 the NAICS Manual under U.S. Industry Nos. 221111
2 through 221122, if:

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

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

15 (c) the exempt wholesale generator facility
16 sells to purchasers located outside the
17 state for consumption in activities located
18 outside the state at least ninety percent
19 (90%) of the total electrical energy output
20 which qualifies for the specialized
21 treatment provided by the Energy Policy Act
22 of 1992, P.L. 102-486, 106 Stat. 2776, as

1 amended, and federal regulations adopted
2 pursuant thereto, and
3 (d) the facility is constructed on or after July
4 1, 1996,
5 (3) those administrative and facilities support
6 service activities defined or classified in the
7 NAICS Manual under Industry Group Nos. 5611 and
8 5612, Industry Nos. 51421, 52232, 56142 and 54191
9 or U.S. Industry No. 524291,
10 (4) those professional, scientific and technical
11 service activities defined or classified in the
12 NAICS Manual under U.S. Industry Nos. 541710 and
13 541380,
14 (5) warehouses which serve as distribution centers
15 for retail or wholesale businesses, if seventy-
16 five percent (75%) of the inventory processed
17 through such warehouse is shipped out-of-state,
18 (6) those adjustment and collection service
19 activities defined or classified in the NAICS
20 Manual under U.S. Industry No. 561440, if
21 seventy-five percent (75%) of the loans to be
22 serviced were made by out-of-state debtors,

1 Industry Group No. 4811, if an establishment
2 classified therein has or will have within
3 one (1) year sales of at least seventy-five
4 percent (75%) of its total sales, as
5 determined by the Incentive Approval
6 Committee pursuant to the provisions of
7 subsection B of this section, to out-of-
8 state customers or buyers, to in-state
9 customers or buyers if the product or
10 service is resold by the purchaser to an
11 out-of-state customer or buyer for ultimate
12 use, or to the federal government,

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

- 1 (a) those transportation and warehousing
2 activities defined or classified in the
3 NAICS Manual under Industry Subsector No.
4 493, if not otherwise listed in this
5 paragraph, Industry Subsector No. 484 and
6 Industry Group Nos. 4884 through 4889,
- 7 (b) those passenger transportation activities
8 defined or classified in the NAICS Manual
9 under Industry Nos. 561510, 561520 and
10 561599,
- 11 (c) those freight or cargo transportation
12 activities defined or classified in the
13 NAICS Manual under Industry No. 541614,
- 14 (d) those insurance activities defined or
15 classified in the NAICS Manual under
16 Industry Group No. 5241,
- 17 (e) those mailing, reproduction, commercial art
18 and photography and stenographic service
19 activities defined or classified in the
20 NAICS Manual under U.S. Industry Nos.
21 541430, 541860, 541922, 561439 and 561492,
- 22 (f) those services to dwellings and other
23 buildings, as defined or classified in the

1 NAICS Manual under Industry Group No. 5617,
2 excluding U.S. Industry No. 561730,
3 (g) those equipment rental and leasing
4 activities defined or classified in the
5 NAICS Manual under Industry Group Nos. 5323
6 and 5324,
7 (h) those employment services defined or
8 classified in the NAICS Manual under
9 Industry Group No. 5613,
10 (i) those information technology and other
11 computer-related service activities defined
12 or classified in the NAICS Manual under
13 Industry Group Nos. 5112, 5141, 5142 and
14 5415,
15 (j) those business support service activities
16 defined or classified in the NAICS Manual
17 under U.S. Industry Nos. 561410 through
18 561439, Industry Group No. 5616 and Industry
19 No. 51411,
20 (k) those medical and dental laboratory
21 activities defined or classified in the
22 NAICS Manual under U.S. Industry No. 621511,

- 1 (l) those professional, scientific and technical
2 service activities defined or classified in
3 the NAICS Manual under Industry Group Nos.
4 5412, 5414, 5415, 5416 and 5417 and Industry
5 Nos. 54131, 54133, 54136, 54137, 54138 and
6 54182, if not otherwise listed in this
7 paragraph,
- 8 (m) those communication service activities
9 defined or classified in the NAICS Manual
10 under Industry Nos. 51334 and 51339,
- 11 (n) those refuse systems activities defined or
12 classified in the NAICS Manual under
13 Industry Group No. 5622, provided that the
14 establishment is primarily engaged in the
15 capture and distribution of methane gas
16 produced within a landfill,
- 17 (o) general wholesale distribution of groceries,
18 defined or classified in the NAICS Manual
19 under Industry Group Nos. 4224 and 4225, and
- 20 (p) those activities relating to processing of
21 insurance claims, defined or classified in
22 the NAICS Manual under U.S. Industry Nos.
23 524210 and 524292; provided, activities

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

6 (9) those activities related to extraction of crude
7 petroleum and natural gas defined or classified
8 in the NAICS Manual under Industry Group No.
9 2111, subject to the limitations provided in
10 paragraph 2 of this subsection and paragraph 3 of
11 subsection B of this section.

12 b. An establishment described in subparagraph a of this
13 paragraph shall not be considered to be engaged in a
14 basic industry unless it offers, or will offer within
15 one hundred eighty (180) days of the date it receives
16 the first incentive payment pursuant to the provisions
17 of Section 3601 et seq. of this title, a basic health
18 benefits plan to the individuals it employs in new
19 direct jobs in this state which is determined by the
20 Oklahoma Department of Commerce to consist of the
21 following elements or elements substantially
22 equivalent thereto:

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

9 2. "New direct job" means full-time-equivalent employment in
10 this state in an establishment which has qualified to receive an
11 incentive payment pursuant to the provisions of Section 3601 et seq.
12 of this title which employment did not exist in this state prior to
13 the date of approval by the Department of the application of the
14 establishment pursuant to the provisions of Section 3604 of this
15 title. "New direct job" shall include full-time-equivalent
16 employment in this state of employees who are employed by an entity
17 other than the establishment which has qualified to receive an
18 incentive payment and who are leased or otherwise provided to the
19 qualified establishment, if such employment did not exist in this
20 state prior to the date of approval by the Department of the
21 application of the establishment. A job shall be deemed to exist in
22 this state prior to approval of an application if the activities and
23 functions for which the particular job exists have been ongoing at

1 any time within six (6) months prior to such approval. With respect
2 to establishments defined in division (9) of subparagraph a of
3 paragraph 1 of this subsection, new direct jobs shall be limited to
4 those jobs directly comprising the corporate headquarters of or
5 directly relating to administrative, financial, engineering,
6 surveying, geological or geophysical services performed by the
7 establishment. Under no circumstances shall employment relating to
8 drilling or field services be considered new direct jobs;

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

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

- 15 a. the costs of education of new state resident children,
- 16 b. the costs of public health, public safety and
17 transportation services to be provided to new state
18 residents,
- 19 c. the costs of other state services to be provided to
20 new state residents, and
- 21 d. the costs of other state services;

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

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

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

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

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

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

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

22 c. except as otherwise provided in subparagraph d of this
23 paragraph, in no event shall incentive payments,

1 cumulatively, exceed the estimated net direct state
2 benefits, and

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

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

8 (2) in a county in which:

9 (a) the per capita personal income, as
10 determined by the Department, is eighty
11 percent (80%) or less of the statewide
12 average per capita personal income,

13 (b) the population has decreased over the
14 previous ten (10) years, as determined by
15 the State Data Center based on the most
16 recent U.S. Department of Commerce data, or

17 (c) the unemployment rate exceeds the lesser of
18 five percent (5%) or two percentage points
19 above the state average unemployment rate as
20 certified by the Oklahoma Employment
21 Security Commission;

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

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

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

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

20 b. The Department may promulgate rules to further limit
21 the circumstances under which a subunit may be
22 considered an establishment. The Department shall
23 promulgate rules to determine whether a subunit of an

1 entity achieves a net gain in total employment. The
2 Department shall establish criteria for determining
3 the period of time within which such gain must be
4 demonstrated and a method for determining net gain in
5 total employment;

6 9. "NAICS Manual" means any manual, book or other publication
7 containing the North American Industry Classification System, United
8 States, 1997, promulgated by the Office of Management and Budget of
9 the United States of America, ~~as such system may be revised from~~
10 ~~time to time~~ or the latest revised edition;

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

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

17 B. The Incentive Approval Committee is hereby created and shall
18 consist of the Director of State Finance, the Director of the
19 Department and one member of the Oklahoma Tax Commission appointed
20 by the Tax Commission. It shall be the duty of the Committee to
21 determine:

22 1. Upon initial application on a form approved by the
23 Committee, if an establishment is engaged in a basic industry as

1 defined in subdivision (b) of division (7) or in subdivisions (a)
2 through (p) of division (8) of subparagraph a of paragraph 1 of
3 subsection A of this section or as otherwise provided by subsection
4 C of this section;

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

10 3. If employees of an establishment as defined in division (9)
11 of subparagraph a of paragraph 1 of subsection A of this section
12 meet the requirements to be considered employed in new direct jobs
13 as specified in paragraph 2 of subsection A of this section.

14 C. For an establishment defined as a "basic industry" pursuant
15 to division (4) of subparagraph a of paragraph 1 of subsection A of
16 this section, the Incentive Approval Committee shall consist of the
17 members provided by subsection B of this section and the President
18 of the Oklahoma Center for the Advancement of Science and
19 Technology.

20 SECTION 2. It being immediately necessary for the preservation
21 of the public peace, health and safety, an emergency is hereby
22 declared to exist, by reason whereof this act shall take effect and
23 be in full force from and after its passage and approval.

1 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 4-1-03 - DO PASS.