

**EHB 1810**

**THE STATE SENATE**  
**Monday, April 11, 2005**

**ENGROSSED**

**House Bill No. 1810**

**As Amended**

ENGROSSED HOUSE BILL NO. 1810 - By: ARMES and NANCE of the House and BASS of the Senate.

[ revenue and taxation - amending 68 O.S., Section 3603 - Oklahoma Quality Jobs Program Act - definitions - effective date - emergency ]

SECTION 1. AMENDATORY 68 O.S. 2001, Section 3603, as last amended by Section 1, Chapter 457, O.S.L. 2004 (68 O.S. Supp. 2004, 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 the NAICS Manual under U.S. Industry Nos. 221111 through 221122, if:

- 1 (a) an establishment engaged therein qualifies  
2 as an exempt wholesale generator as defined  
3 by 15 U.S.C., Section 79z-5a,  
4 (b) the exempt wholesale generator facility  
5 consumes from sources located within the  
6 state at least ninety percent (90%) of the  
7 total energy used to produce the electrical  
8 output which qualifies for the specialized  
9 treatment provided by the Energy Policy Act  
10 of 1992, P.L. 102-486, 106 Stat. 2776, as  
11 amended, and federal regulations adopted  
12 pursuant thereto,  
13 (c) the exempt wholesale generator facility  
14 sells to purchasers located outside the  
15 state for consumption in activities located  
16 outside the state at least ninety percent  
17 (90%) of the total electrical energy output  
18 which qualifies for the specialized  
19 treatment provided by the Energy Policy Act  
20 of 1992, P.L. 102-486, 106 Stat. 2776, as  
21 amended, and federal regulations adopted  
22 pursuant thereto, and

- 1 (d) the facility is constructed on or after July  
2 1, 1996,
- 3 (3) those administrative and facilities support  
4 service activities defined or classified in the  
5 NAICS Manual under Industry Group Nos. 5611 and  
6 5612, Industry Nos. 51821, 52232, 56142 and 54191  
7 or U.S. Industry Nos. 524291 and 551114,
- 8 (4) those professional, scientific and technical  
9 service activities defined or classified in the  
10 NAICS Manual under U.S. Industry Nos. 541710 and  
11 541380,
- 12 (5) warehouses which serve as distribution centers  
13 for retail or wholesale businesses, if forty  
14 percent (40%) of the inventory processed through  
15 such warehouse is shipped out-of-state,
- 16 (6) those adjustment and collection service  
17 activities defined or classified in the NAICS  
18 Manual under U.S. Industry No. 561440, if  
19 seventy-five percent (75%) of the loans to be  
20 serviced were made by out-of-state debtors,
- 21 (7) (a) those air transportation activities defined  
22 or classified in the NAICS Manual under

1 Industry Group No. 4811, if the following  
2 facilities are located in this state:

3 (i) the corporate headquarters of an  
4 establishment classified therein, and

5 (ii) a facility or facilities at which  
6 reservations for transportation  
7 provided by such an establishment are  
8 processed, whether such services are  
9 performed by employees of the  
10 establishment, by employees of a  
11 subsidiary of or other entity  
12 affiliated with the establishment or by  
13 employees of an entity with whom the  
14 establishment has contracted for the  
15 performance of such services; provided,  
16 this provision shall not disqualify an  
17 establishment which uses an out-of-  
18 state entity or employees for some  
19 reservations services, or

20 (b) those air transportation activities defined  
21 or classified in the NAICS Manual under  
22 Industry Group No. 4811, if an establishment  
23 classified therein has or will have within

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

11 (8) the following services and activities, which for  
12 purposes of this act shall include new direct  
13 jobs for which gross payroll existed on or after  
14 January 1, 2003, as identified in the NAICS  
15 Manual:

16 (a) Industry Group No. 541330, Engineering  
17 Services,

18 (b) Industry Group No. 541511, Custom Computer  
19 Programming Services,

20 (c) Industry Group No. 541512, Computer Systems  
21 Design Services,

22 (d) Industry Group No. 541513, Computer  
23 Facilities Management Services,

1                   (e) Industry Group No. 541519, Other Computer  
2                                   Related Services,

3                   (f) Industry Group No. 561210, Facilities  
4                                   Support Services, and

5                   (g) Industry Group No. 611512, Flight Training

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

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

22                   (b) those passenger transportation activities  
23                                   defined or classified in the NAICS Manual

1 under Industry Nos. 561510, 561520 and  
2 561599,  
3 (c) those freight or cargo transportation  
4 activities defined or classified in the  
5 NAICS Manual under Industry No. 541614,  
6 (d) those insurance activities defined or  
7 classified in the NAICS Manual under  
8 Industry Group No. 5241,  
9 (e) those mailing, reproduction, commercial art  
10 and photography and stenographic service  
11 activities defined or classified in the  
12 NAICS Manual under U.S. Industry Nos.  
13 541430, 541860, 541922, 561439 and 561492,  
14 (f) those services to dwellings and other  
15 buildings, as defined or classified in the  
16 NAICS Manual under Industry Group No. 5617,  
17 excluding U.S. Industry No. 561730,  
18 (g) those equipment rental and leasing  
19 activities defined or classified in the  
20 NAICS Manual under Industry Group Nos. 5323  
21 and 5324,

- 1 (h) those employment services defined or  
2 classified in the NAICS Manual under  
3 Industry Group No. 5613,
- 4 (i) those information technology and other  
5 computer-related service activities defined  
6 or classified in the NAICS Manual under  
7 Industry Group Nos. 5112, 5182, 5191 and  
8 5415,
- 9 (j) those business support service activities  
10 defined or classified in the NAICS Manual  
11 under U.S. Industry Nos. 561410 through  
12 561439, Industry Group No. 5616 and Industry  
13 No. 51911,
- 14 (k) those medical and diagnostic laboratory  
15 activities defined or classified in the  
16 NAICS Manual under Industry Group No. 6215,
- 17 (l) those professional, scientific and technical  
18 service activities defined or classified in  
19 the NAICS Manual under Industry Group Nos.  
20 5412, 5414, 5415, 5416 and 5417 and Industry  
21 Nos. 54131, 54133, 54136, 54137 and 54182,  
22 if not otherwise listed in this paragraph,

- 1 (m) those communication service activities  
2 defined or classified in the NAICS Manual  
3 under Industry Nos. 51741 and 51791,  
4 (n) those refuse systems activities defined or  
5 classified in the NAICS Manual under  
6 Industry Group No. 5622, provided that the  
7 establishment is primarily engaged in the  
8 capture and distribution of methane gas  
9 produced within a landfill,  
10 (o) general wholesale distribution of groceries,  
11 defined or classified in the NAICS Manual  
12 under Industry Group Nos. 4244 and 4245, and  
13 (p) those activities relating to processing of  
14 insurance claims, defined or classified in  
15 the NAICS Manual under U.S. Industry Nos.  
16 524210 and 524292; provided, activities  
17 described in U.S. Industry Nos. 524210 and  
18 524292 in the NAICS Manual other than  
19 processing of insurance claims shall not be  
20 included for purposes of this subdivision,  
21 or  
22 ~~(9)~~ (10) those activities related to extraction of crude  
23 petroleum and natural gas defined or classified

1 in the NAICS Manual under Industry Group No.  
2 2111, subject to the limitations provided in  
3 paragraph 2 of this subsection and paragraph 3  
4 of subsection B of this section.

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

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

1        2. "New direct job" means full-time-equivalent employment in  
2 this state in an establishment which has qualified to receive an  
3 incentive payment pursuant to the provisions of Section 3601 et seq.  
4 of this title which employment did not exist in this state prior to  
5 the date of approval by the Department of the application of the  
6 establishment pursuant to the provisions of Section 3604 of this  
7 title. "New direct job" shall include full-time-equivalent  
8 employment in this state of employees who are employed by an  
9 employment agency or similar entity other than the establishment  
10 which has qualified to receive an incentive payment and who are  
11 leased or otherwise provided under contract to the qualified  
12 establishment, if such job did not exist in this state prior to the  
13 date of approval by the Department of the application of the  
14 establishment. A job shall be deemed to exist in this state prior  
15 to approval of an application if the activities and functions for  
16 which the particular job exists have been ongoing at any time within  
17 six (6) months prior to such approval. With respect to  
18 establishments defined in division ~~(9)~~ (10) of subparagraph a of  
19 paragraph 1 of this subsection, new direct jobs shall be limited to  
20 those jobs directly comprising the corporate headquarters of or  
21 directly relating to administrative, financial, engineering,  
22 surveying, geological or geophysical services performed by the

1 establishment. Under no circumstances shall employment relating to  
2 drilling or field services be considered new direct jobs;

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

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

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

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

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

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

- 1           b.    the net benefit rate shall not exceed six percent (6%)  
2                    in connection with an establishment which is owned and  
3                    operated by an entity which has been awarded a United  
4                    States Department of Defense contract for which:
- 5                    (1)  bids were solicited and accepted by the United  
6                                States Department of Defense from facilities  
7                                located outside this state,  
8                    (2)  the term is or is renewable for not less than  
9                                twenty (20) years, and  
10                   (3)  the average annual salary, excluding benefits  
11                               which are not subject to Oklahoma income taxes,  
12                               for new direct jobs created as a direct result of  
13                               the awarding of the contract is projected by the  
14                               Department of Commerce to equal or exceed Forty  
15                               Thousand Dollars (\$40,000.00) within three (3)  
16                               years of the date of the first incentive payment,
- 17           c.    except as otherwise provided in subparagraph d of this  
18                    paragraph, in no event shall incentive payments,  
19                    cumulatively, exceed the estimated net direct state  
20                    benefits, and
- 21           d.    the net benefit rate shall be five percent (5%) for an  
22                    establishment locating:

- 1 (1) in an opportunity zone located in a high-  
2 employment county, as such terms are defined in  
3 subsection G of Section 3604 of this title, or  
4 (2) in a county in which:  
5 (a) the per capita personal income, as  
6 determined by the Department, is eighty  
7 percent (80%) or less of the statewide  
8 average per capita personal income,  
9 (b) the population has decreased over the  
10 previous ten (10) years, as determined by  
11 the State Data Center based on the most  
12 recent U.S. Department of Commerce data, or  
13 (c) the unemployment rate exceeds the lesser of  
14 five percent (5%) or two percentage points  
15 above the state average unemployment rate as  
16 certified by the Oklahoma Employment  
17 Security Commission;

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

20 8. a. "Establishment" means any business or governmental  
21 entity, no matter what legal form, including, but not  
22 limited to, a sole proprietorship; partnership;  
23 limited liability company; corporation or combination

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

- 11 (1) the entity must have a minimum payroll of Two  
12 Million Five Hundred Thousand Dollars  
13 (\$2,500,000.00) and the subunit must also have or  
14 will have a minimum payroll of Two Million Five  
15 Hundred Thousand 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,

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

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

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

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

1                   demonstrated and a method for determining net gain in  
2                   total employment;

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

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

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

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

18          1. Upon initial application on a form approved by the  
19 Committee, if an establishment is engaged in a basic industry as  
20 defined in subdivision (b) of division (7) or in subdivisions (a)  
21 through (p) of division ~~(8)~~ (9) of subparagraph a of paragraph 1 of  
22 subsection A of this section or as otherwise provided by subsection  
23 C of this section;

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

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

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

17           SECTION 2. This act shall become effective July 1, 2005.

18           SECTION 3. It being immediately necessary for the preservation  
19 of the public peace, health and safety, an emergency is hereby  
20 declared to exist, by reason whereof this act shall take effect and  
21 be in full force from and after its passage and approval.

22 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 4-5-05 - DO PASS,  
23 As Amended.