

1 ENGROSSED HOUSE
2 BILL NO. 2730

By: Piatt of the House

and

Mazzei of the Senate

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7 An Act relating to revenue and taxation; amending 68
8 O.S. 2001, Section 3603, as last amended by Section
9 61, Chapter 1, O.S.L. 2007 (68 O.S. Supp. 2007,
10 Section 3603), which relates to the Oklahoma Quality
11 Jobs Program Act; modifying certain definition;
12 providing an effective date; and declaring an
13 emergency.

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

15 SECTION 1. AMENDATORY 68 O.S. 2001, Section 3603, as
16 last amended by Section 61, Chapter 1, O.S.L. 2007 (68 O.S. Supp.
17 2007, Section 3603), is amended to read as follows:

18 Section 3603. A. As used in ~~Section 3601 et seq. of this title~~
19 the Oklahoma Quality Jobs Program Act:

20 1. a. "Basic industry" means:

- 21 (1) those manufacturing activities defined or
22 classified in the NAICS Manual under Industry
23 Sector Nos. 31, 32 and 33, Industry Group No.
24 5111 or Industry No. 11331,

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

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

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

17 (c) the exempt wholesale generator facility
18 sells to purchasers located outside the
19 state for consumption in activities located
20 outside the state at least ninety percent
21 (90%) of the total electrical energy output
22 which qualifies for the specialized
23 treatment provided by the Energy Policy Act
24 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. 51821, 518112, 52232, 56142
9 and 54191 or U.S. Industry Nos. 524291 and
10 551114,

11 (4) those professional, scientific and technical
12 service activities defined or classified in the
13 NAICS Manual under U.S. Industry Nos. 541710 and
14 541380,

15 (5) distribution centers for retail or wholesale
16 businesses defined or classified in the NAICS
17 Manual under Sector No. 42, if forty percent
18 (40%) or more of the inventory processed through
19 such warehouse is shipped out-of-state,

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

1 (7) (a) those air transportation activities defined
2 or classified in the NAICS Manual under
3 Industry Group No. 4811, if the following
4 facilities are located in this state:

5 (i) the corporate headquarters of an
6 establishment classified therein, and

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

22 (b) those air transportation activities defined
23 or classified in the NAICS Manual under
24 Industry Group No. 4811, if an establishment

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

12 (8) flight training services activities defined or
13 classified in the NAICS Manual under U.S.
14 Industry Group No. 611512, which for purposes of
15 this act shall include new direct jobs for which
16 gross payroll existed on or after January 1,
17 2003, as identified in the NAICS Manual,

18 (9) the following, if an establishment classified
19 therein has or will have within one (1) year
20 sales of at least seventy-five percent (75%) of
21 its total sales, as determined by the Incentive
22 Approval Committee pursuant to the provisions of
23 subsection B of this section, to out-of-state
24 customers or buyers, to in-state customers or

1 buyers if the product or service is resold by the
2 purchaser to an out-of-state customer or buyer
3 for ultimate use, or to the federal government:

4 (a) those transportation and warehousing
5 activities defined or classified in the
6 NAICS Manual under Industry Subsector No.
7 493, if not otherwise listed in this
8 paragraph, Industry Subsector No. 484 and
9 Industry Group Nos. 4884 through 4889,

10 (b) those passenger transportation activities
11 defined or classified in the NAICS Manual
12 under Industry Nos. 561510, 561520 and
13 561599,

14 (c) those freight or cargo transportation
15 activities defined or classified in the
16 NAICS Manual under Industry No. 541614,

17 (d) those insurance activities defined or
18 classified in the NAICS Manual under
19 Industry Group No. 5241,

20 (e) those mailing, reproduction, commercial art
21 and photography and stenographic service
22 activities defined or classified in the
23 NAICS Manual under U.S. Industry Nos.
24 541430, 541860, 541922, 561439 and 561492,

- 1 (f) those services to dwellings and other
2 buildings, as defined or classified in the
3 NAICS Manual under Industry Group No. 5617,
4 excluding U.S. Industry No. 561730,
- 5 (g) those equipment rental and leasing
6 activities defined or classified in the
7 NAICS Manual under Industry Group Nos. 5323
8 and 5324,
- 9 (h) those employment services defined or
10 classified in the NAICS Manual under
11 Industry Group No. 5613,
- 12 (i) those information technology and other
13 computer-related service activities defined
14 or classified in the NAICS Manual under
15 Industry Group Nos. 5112, 5182, 5191 and
16 5415,
- 17 (j) those business support service activities
18 defined or classified in the NAICS Manual
19 under U.S. Industry Nos. 561410 through
20 561439, Industry Group No. 5616 and Industry
21 No. 51911,
- 22 (k) those medical and diagnostic laboratory
23 activities defined or classified in the
24 NAICS Manual under Industry Group No. 6215,

- 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, Industry
5 Nos. 54131, 54133, 54136, 54137 and 54182,
6 and U.S. Industry No. 541990, if not
7 otherwise listed in this paragraph,
- 8 (m) those communication service activities
9 defined or classified in the NAICS Manual
10 under Industry Nos. 51741 and 51791,
- 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. 4244 and 4245,
- 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
24 described in U.S. Industry Nos. 524210 and

1 524292 in the NAICS Manual other than
2 processing of insurance claims shall not be
3 included for purposes of this subdivision,
4 and

5 (q) those agricultural activities classified in
6 the NAICS Manual under U.S. Industry Nos.
7 112120 and 112310;

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

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

23 b. An establishment described in subparagraph a of this
24 paragraph shall not be considered to be engaged in a

1 basic industry unless it offers, or will offer within
2 one hundred eighty (180) days of employment, a basic
3 health benefits plan to the individuals it employs in
4 new direct jobs in this state which is determined by
5 the Oklahoma Department of Commerce to consist of the
6 following elements or elements substantially
7 equivalent thereto:

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

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

- 18 a. beneficial ownership of more than fifty percent (50%)
19 in value and more than fifty percent (50%) in voting
20 power of the outstanding equity securities of the
21 transferred establishment, or
- 22 b. more than fifty percent (50%) in value of the assets
23 of an establishment.

1 A transferor shall be treated as related to a transferee if more
2 than fifty percent (50%) of the voting interests of the transferor
3 and transferee are owned, directly or indirectly, by the other or
4 are owned, directly or indirectly, by the same person or persons,
5 unless such transferred establishment has an outstanding class of
6 equity securities registered under Sections 12(b) or 15(d) of the
7 Securities Exchange Act of 1934, as amended, in which event the
8 transferor and transferee will be treated as unrelated; provided, an
9 establishment applying for the Oklahoma Quality Jobs Program Act as
10 a result of a change of control event is required to apply within
11 one hundred eighty (180) days of the change in control event to
12 qualify for consideration. An establishment entering the Oklahoma
13 Quality Jobs Program Act as the result of a change of control event
14 shall be required to maintain a level of new direct jobs as agreed
15 to in its contract with the Department of Commerce and to pay new
16 direct jobs an average annualized wage which equals or exceeds one
17 hundred twenty-five percent (125%) of the average county wage as
18 that percentage is determined by the Oklahoma State Data Center
19 based upon the most recent U.S. Department of Commerce data for the
20 county in which the new jobs are located. For purposes of this
21 paragraph, healthcare premiums paid by the applicant for individuals
22 in new direct jobs shall not be included in the annualized wage.
23 Such establishment entering the Quality Jobs Program Act as the
24 result of a change of control event shall be required to retain the

1 contracted average annualized wage and maintain the contracted
2 maintenance level of new direct jobs numbers as certified by the
3 Oklahoma Tax Commission. If the required average annualized wage or
4 the required new direct jobs numbers do not equal or exceed such
5 contracted level during any quarter, the quarterly incentive
6 payments shall not be made and shall not be resumed until such time
7 as such requirements are met. An establishment described in this
8 paragraph shall be required to repay all incentive payments received
9 under the Quality Jobs Program Act if the establishment is
10 determined by the Oklahoma Tax Commission to no longer have business
11 operations in the state within three (3) years from the beginning of
12 the calendar quarter for which the first incentive payment claim is
13 filed.

14 3. "New direct job":

15 a. means full-time-equivalent employment in this state in
16 an establishment which has qualified to receive an
17 incentive payment pursuant to the provisions of
18 Section 3601 et seq. of this title which employment
19 did not exist in this state prior to the date of
20 approval by the Department of the application of the
21 establishment pursuant to the provisions of Section
22 3604 of this title; provided, that if an application
23 of an establishment is approved by the Department of
24 Commerce after a change in control event and the

1 Director of the Department of Commerce determines that
2 the jobs located at such establishment are likely to
3 leave the state, "new direct job" shall include
4 employment that existed in this state prior to the
5 date of application which is retained in this state by
6 the new establishment following a change in control
7 event, if such job otherwise qualifies as a new direct
8 job, and

9 b. shall include full-time-equivalent employment in this
10 state of employees who are employed by an employment
11 agency or similar entity other than the establishment
12 which has qualified to receive an incentive payment
13 and who are leased or otherwise provided under
14 contract to the qualified establishment, if such job
15 did not exist in this state prior to the date of
16 approval by the Department of the application of the
17 establishment or the job otherwise qualifies as a new
18 direct job following a change in control event. A job
19 shall be deemed to exist in this state prior to
20 approval of an application if the activities and
21 functions for which the particular job exists have
22 been ongoing at any time within six (6) months prior
23 to such approval. With respect to establishments
24 defined in division (10) of subparagraph a of

1 paragraph 1 of this subsection, new direct jobs shall
2 be limited to those jobs directly comprising the
3 corporate headquarters of or directly relating to
4 administrative, financial, engineering, surveying,
5 geological or geophysical services performed by the
6 establishment. Under no circumstances shall
7 employment relating to drilling or field services be
8 considered new direct jobs;

9 4. "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 5. "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 6. "Estimated net direct state benefits" means the estimated
23 direct state benefits less the estimated direct state costs;

1 7. "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,
24

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

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-five
11 percent (85%) 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, and

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

1 (1) is, as of the date of application, receiving
2 incentive payments pursuant to the Oklahoma
3 Quality Jobs Program Act and has been receiving
4 such payments for at least one (1) year prior to
5 the date of application, and

6 (2) expands its operations in this state by creating
7 additional new direct jobs which pay average
8 annualized wages which equal or exceed one
9 hundred fifty percent (150%) of the average
10 annualized wages of new direct jobs on which
11 incentive payments were received during the
12 preceding calendar year.

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

19 8. "Gross payroll" means wages, as defined in Section 2385.1 of
20 this title for new direct jobs but does not mean wages paid to an
21 employee eligible for the SoonerCare program administered by the
22 Oklahoma Health Care Authority;

23 9. a. "Establishment" means any business or governmental
24 entity, no matter what legal form, including, but not

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

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

18 (2) the subunit is engaged in an activity or service
19 or produces a product which is demonstratively
20 independent and separate from the entity's other
21 activities, services or products and could be
22 conducted or produced in the absence of any other
23 activity, service or production of the entity,
24

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

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

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

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

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

3 10. "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 11. "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;

10 12. "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; and

13 13. "Effective date" means the date of approval of a contract
14 under which incentive payments will be made pursuant to the Oklahoma
15 Quality Jobs Program Act, which shall be the date the signed and
16 accepted incentive contract is received by the Department; provided,
17 an approved project may have a start date which is different from
18 the effective date.

19 B. The Incentive Approval Committee is hereby created and shall
20 consist of the Director of State Finance, the Director of the
21 Department and one member of the Oklahoma Tax Commission appointed
22 by the Tax Commission, or a designee from each agency approved by
23 such member. It shall be the duty of the Committee to determine:
24

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

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

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

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

23 SECTION 2. This act shall become effective July 1, 2008.
24

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

5 Passed the House of Representatives the 11th day of March, 2008.

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8 Presiding Officer of the House of
9 Representatives

10 Passed the Senate the ____ day of _____, 2008.

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13 Presiding Officer of the Senate

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