

THE HOUSE OF REPRESENTATIVES
Wednesday, March 5, 2008

Committee Substitute for
House Bill No. 2730

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2730 - By: PIATT of the House.

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

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

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

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

6 1. a. "Basic industry" means:

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

- 1 (2) those electric power generation, transmission and distribution
2 activities defined or classified in the NAICS Manual under U.S.
3 Industry Nos. 221111 through 221122, if:
- 4 (a) an establishment engaged therein qualifies as an exempt
5 wholesale generator as defined by 15 U.S.C., Section 79z-
6 5a,
- 7 (b) the exempt wholesale generator facility consumes from
8 sources located within the state at least ninety percent
9 (90%) of the total energy used to produce the electrical
10 output which qualifies for the specialized treatment
11 provided by the Energy Policy Act of 1992, P.L. 102-486,
12 106 Stat. 2776, as amended, and federal regulations
13 adopted pursuant thereto,
- 14 (c) the exempt wholesale generator facility sells to
15 purchasers located outside the state for consumption in
16 activities located outside the state at least ninety percent
17 (90%) of the total electrical energy output which qualifies
18 for the specialized treatment provided by the Energy
19 Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, as
20 amended, and federal regulations adopted pursuant
21 thereto, and
- 22 (d) the facility is constructed on or after July 1, 1996,

- 1 (3) those administrative and facilities support service activities
2 defined or classified in the NAICS Manual under Industry
3 Group Nos. 5611 and 5612, Industry Nos. 51821, 518112, 52232,
4 56142 and 54191 or U.S. Industry Nos. 524291 and 551114,
5 (4) those professional, scientific and technical service activities
6 defined or classified in the NAICS Manual under U.S. Industry
7 Nos. 541710 and 541380,
8 (5) distribution centers for retail or wholesale businesses defined or
9 classified in the NAICS Manual under Sector No. 42, if forty
10 percent (40%) or more of the inventory processed through such
11 warehouse is shipped out-of-state,
12 (6) those adjustment and collection service activities defined or
13 classified in the NAICS Manual under U.S. Industry No.
14 561440, if seventy-five percent (75%) of the loans to be serviced
15 were made by out-of-state debtors,
16 (7) (a) those air transportation activities defined or classified in
17 the NAICS Manual under Industry Group No. 4811, if the
18 following facilities are located in this state:
19 (i) the corporate headquarters of an establishment
20 classified therein, and
21 (ii) a facility or facilities at which reservations for
22 transportation provided by such an establishment

1 are processed, whether such services are performed
2 by employees of the establishment, by employees of
3 a subsidiary of or other entity affiliated with the
4 establishment or by employees of an entity with
5 whom the establishment has contracted for the
6 performance of such services; provided, this
7 provision shall not disqualify an establishment
8 which uses an out-of-state entity or employees for
9 some reservations services, or

10 (b) those air transportation activities defined or classified in
11 the NAICS Manual under Industry Group No. 4811, if an
12 establishment classified therein has or will have within
13 one (1) year sales of at least seventy-five percent (75%) of
14 its total sales, as determined by the Incentive Approval
15 Committee pursuant to the provisions of subsection B of
16 this section, to out-of-state customers or buyers, to in-
17 state customers or buyers if the product or service is
18 resold by the purchaser to an out-of-state customer or
19 buyer for ultimate use, or to the federal government,

20 (8) flight training services activities defined or classified in the
21 NAICS Manual under U.S. Industry Group No. 611512, which
22 for purposes of this act shall include new direct jobs for which

1 gross payroll existed on or after January 1, 2003, as identified in
2 the NAICS Manual,

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

11 (a) those transportation and warehousing activities defined
12 or classified in the NAICS Manual under Industry
13 Subsector No. 493, if not otherwise listed in this
14 paragraph, Industry Subsector No. 484 and Industry
15 Group Nos. 4884 through 4889,

16 (b) those passenger transportation activities defined or
17 classified in the NAICS Manual under Industry Nos.
18 561510, 561520 and 561599,

19 (c) those freight or cargo transportation activities defined or
20 classified in the NAICS Manual under Industry No.
21 541614,

- 1 (d) those insurance activities defined or classified in the
2 NAICS Manual under Industry Group No. 5241,
- 3 (e) those mailing, reproduction, commercial art and
4 photography and stenographic service activities defined or
5 classified in the NAICS Manual under U.S. Industry Nos.
6 541430, 541860, 541922, 561439 and 561492,
- 7 (f) those services to dwellings and other buildings, as defined
8 or classified in the NAICS Manual under Industry Group
9 No. 5617, excluding U.S. Industry No. 561730,
- 10 (g) those equipment rental and leasing activities defined or
11 classified in the NAICS Manual under Industry Group
12 Nos. 5323 and 5324,
- 13 (h) those employment services defined or classified in the
14 NAICS Manual under Industry Group No. 5613,
- 15 (i) those information technology and other computer-related
16 service activities defined or classified in the NAICS
17 Manual under Industry Group Nos. 5112, 5182, 5191 and
18 5415,
- 19 (j) those business support service activities defined or
20 classified in the NAICS Manual under U.S. Industry Nos.
21 561410 through 561439, Industry Group No. 5616 and
22 Industry No. 51911,

- 1 (k) those medical and diagnostic laboratory activities defined
2 or classified in the NAICS Manual under Industry Group
3 No. 6215,
- 4 (l) those professional, scientific and technical service
5 activities defined or classified in the NAICS Manual
6 under Industry Group Nos. 5412, 5414, 5415, 5416 and
7 5417, Industry Nos. 54131, 54133, 54136, 54137 and
8 54182, and U.S. Industry No. 541990, if not otherwise
9 listed in this paragraph,
- 10 (m) those communication service activities defined or
11 classified in the NAICS Manual under Industry Nos.
12 51741 and 51791,
- 13 (n) those refuse systems activities defined or classified in the
14 NAICS Manual under Industry Group No. 5622, provided
15 that the establishment is primarily engaged in the
16 capture and distribution of methane gas produced within
17 a landfill,
- 18 (o) general wholesale distribution of groceries, defined or
19 classified in the NAICS Manual under Industry Group
20 Nos. 4244 and 4245,
- 21 (p) those activities relating to processing of insurance claims,
22 defined or classified in the NAICS Manual under U.S.

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

5 (q) those agricultural activities classified in the NAICS
6 Manual under U.S. Industry Nos. 112120 and 112310;
7 (10) those activities related to extraction of crude petroleum and
8 natural gas defined or classified in the NAICS Manual under
9 Industry Group No. 2111, subject to the limitations provided in
10 paragraph 2 of this subsection and paragraph 3 of subsection B
11 of this section, or

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

19 b. An establishment described in subparagraph a of this paragraph shall
20 not be considered to be engaged in a basic industry unless it offers, or
21 will offer within one hundred eighty (180) days of employment, a basic
22 health benefits plan to the individuals it employs in new direct jobs in

1 this state which is determined by the Oklahoma Department of
2 Commerce to consist of the following elements or elements
3 substantially equivalent thereto:

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

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

- 14 a. beneficial ownership of more than fifty percent (50%) in value and
15 more than fifty percent (50%) in voting power of the outstanding equity
16 securities of the transferred establishment, or
- 17 b. more than fifty percent (50%) in value of the assets of an
18 establishment.

19 A transferor shall be treated as related to a transferee if more than fifty percent
20 (50%) of the voting interests of the transferor and transferee are owned, directly or
21 indirectly, by the other or are owned, directly or indirectly, by the same person or
22 persons, unless such transferred establishment has an outstanding class of equity

1 securities registered under Sections 12(b) or 15(d) of the Securities Exchange Act of 1934,
2 as amended, in which event the transferor and transferee will be treated as unrelated;
3 provided, an establishment applying for the Oklahoma Quality Jobs Program Act as a
4 result of a change of control event is required to apply within one hundred eighty (180)
5 days of the change in control event to qualify for consideration. An establishment
6 entering the Oklahoma Quality Jobs Program Act as the result of a change of control
7 event shall be required to maintain a level of new direct jobs as agreed to in its contract
8 with the Department of Commerce and to pay new direct jobs an average annualized
9 wage which equals or exceeds one hundred twenty-five percent (125%) of the average
10 county wage as that percentage is determined by the Oklahoma State Data Center based
11 upon the most recent U.S. Department of Commerce data for the county in which the
12 new jobs are located. For purposes of this paragraph, healthcare premiums paid by the
13 applicant for individuals in new direct jobs shall not be included in the annualized wage.
14 Such establishment entering the Quality Jobs Program Act as the result of a change of
15 control event shall be required to retain the contracted average annualized wage and
16 maintain the contracted maintenance level of new direct jobs numbers as certified by the
17 Oklahoma Tax Commission. If the required average annualized wage or the required
18 new direct jobs numbers do not equal or exceed such contracted level during any quarter,
19 the quarterly incentive payments shall not be made and shall not be resumed until such
20 time as such requirements are met. An establishment described in this paragraph shall
21 be required to repay all incentive payments received under the Quality Jobs Program Act
22 if the establishment is determined by the Oklahoma Tax Commission to no longer have

1 business operations in the state within three (3) years from the beginning of the calendar
2 quarter for which the first incentive payment claim is filed.

3 3. “New direct job”:

4 a. means full-time-equivalent employment in this state in an
5 establishment which has qualified to receive an incentive payment
6 pursuant to the provisions of Section 3601 et seq. of this title which
7 employment did not exist in this state prior to the date of approval by
8 the Department of the application of the establishment pursuant to the
9 provisions of Section 3604 of this title; provided, that if an application
10 of an establishment is approved by the Department of Commerce after
11 a change in control event and the Director of the Department of
12 Commerce determines that the jobs located at such establishment are
13 likely to leave the state, “new direct job” shall include employment that
14 existed in this state prior to the date of application which is retained in
15 this state by the new establishment following a change in control
16 event, if such job otherwise qualifies as a new direct job, and

17 b. shall include full-time-equivalent employment in this state of
18 employees who are employed by an employment agency or similar
19 entity other than the establishment which has qualified to receive an
20 incentive payment and who are leased or otherwise provided under
21 contract to the qualified establishment, if such job did not exist in this
22 state prior to the date of approval by the Department of the application

1 of the establishment or the job otherwise qualifies as a new direct job
2 following a change in control event. A job shall be deemed to exist in
3 this state prior to approval of an application if the activities and
4 functions for which the particular job exists have been ongoing at any
5 time within six (6) months prior to such approval. With respect to
6 establishments defined in division (10) of subparagraph a of paragraph
7 1 of this subsection, new direct jobs shall be limited to those jobs
8 directly comprising the corporate headquarters of or directly relating
9 to administrative, financial, engineering, surveying, geological or
10 geophysical services performed by the establishment. Under no
11 circumstances shall employment relating to drilling or field services be
12 considered new direct jobs;

13 4. “Estimated direct state benefits” means the tax revenues projected by the
14 Department to accrue to the state as a result of new direct jobs;

15 5. “Estimated direct state costs” means the costs projected by the Department to
16 accrue to the state as a result of new direct jobs. Such costs shall include, but not be
17 limited to:

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

- 1 d. the costs of other state services;
- 2 6. “Estimated net direct state benefits” means the estimated direct state benefits
3 less the estimated direct state costs;
- 4 7. “Net benefit rate” means the estimated net direct state benefits computed as a
5 percentage of gross payroll; provided:
- 6 a. except as otherwise provided in this paragraph, the net benefit rate
7 may be variable and shall not exceed five percent (5%),
- 8 b. the net benefit rate shall not exceed six percent (6%) in connection
9 with an establishment which is owned and operated by an entity which
10 has been awarded a United States Department of Defense contract for
11 which:
- 12 (1) bids were solicited and accepted by the United States
13 Department of Defense from facilities located outside this state,
- 14 (2) the term is or is renewable for not less than twenty (20) years,
15 and
- 16 (3) the average annual salary, excluding benefits which are not
17 subject to Oklahoma income taxes, for new direct jobs created as
18 a direct result of the awarding of the contract is projected by the
19 Department of Commerce to equal or exceed Forty Thousand
20 Dollars (\$40,000.00) within three (3) years of the date of the first
21 incentive payment,

- 1 c. except as otherwise provided in subparagraph d of this paragraph, in
2 no event shall incentive payments, cumulatively, exceed the estimated
3 net direct state benefits,
- 4 d. the net benefit rate shall be five percent (5%) for an establishment
5 locating:
- 6 (1) in an opportunity zone located in a high-employment county, as
7 such terms are defined in subsection G of Section 3604 of this
8 title, or
- 9 (2) in a county in which:
- 10 (a) the per capita personal income, as determined by the
11 Department, is eighty-five percent (85%) or less of the
12 statewide average per capita personal income,
- 13 (b) the population has decreased over the previous ten (10)
14 years, as determined by the State Data Center based on
15 the most recent U.S. Department of Commerce data, or
- 16 (c) the unemployment rate exceeds the lesser of five percent
17 (5%) or two percentage points above the state average
18 unemployment rate as certified by the Oklahoma
19 Employment Security Commission, and
- 20 e. the net benefit rate shall not exceed six percent (6%) in connection
21 with an establishment which:

- 1 (1) is, as of the date of application, receiving incentive payments
2 pursuant to the Oklahoma Quality Jobs Program Act and has
3 been receiving such payments for at least one (1) year prior to
4 the date of application, and
- 5 (2) expands its operations in this state by creating additional new
6 direct jobs which pay average annualized wages which equal or
7 exceed one hundred fifty percent (150%) of the average
8 annualized wages of new direct jobs on which incentive
9 payments were received during the preceding calendar year.

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

15 8. “Gross payroll” means wages, as defined in Section 2385.1 of this title for new
16 direct jobs but does not mean wages paid to an employee eligible for the SoonerCare
17 program administered by the Oklahoma Health Care Authority;

- 18 9. a. “Establishment” means any business or governmental entity, no
19 matter what legal form, including, but not limited to, a sole
20 proprietorship; partnership; limited liability company; corporation or
21 combination of corporations which have a central parent corporation
22 which makes corporate management decisions such as those involving

1 consolidation, acquisition, merger or expansion; federal agency;
2 political subdivision of the State of Oklahoma; or trust authority;
3 provided, distinct, identifiable subunits of such entities may be
4 determined to be an establishment, for all purposes of Section 3601 et
5 seq. of this title, by the Department subject to the following conditions:

- 6 (1) the entity must have a minimum payroll of Two Million Five
7 Hundred Thousand Dollars (\$2,500,000.00) and the subunit
8 must also have or will have a minimum payroll of Two Million
9 Five Hundred Thousand Dollars (\$2,500,000.00),
- 10 (2) the subunit is engaged in an activity or service or produces a
11 product which is demonstratively independent and separate
12 from the entity's other activities, services or products and could
13 be conducted or produced in the absence of any other activity,
14 service or production of the entity,
- 15 (3) has an accounting system capable of tracking or facilitating an
16 audit of the subunit's payroll, expenses, revenue and production.
17 Limited interunit overlap of administrative and purchasing
18 functions shall not disqualify a subunit from consideration as an
19 establishment by the Department,
- 20 (4) the entity has not previously had a subunit determined to be an
21 establishment pursuant to this section; provided, the restriction
22 set forth in this division shall not apply to subunits which

1 qualify pursuant to the provisions of subparagraph b of
2 paragraph 6 of this subsection, and

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

6 b. The Department may promulgate rules to further limit the
7 circumstances under which a subunit may be considered an
8 establishment. The Department shall promulgate rules to determine
9 whether a subunit of an entity achieves a net gain in total
10 employment. The Department shall establish criteria for determining
11 the period of time within which such gain must be demonstrated and a
12 method for determining net gain in total employment;

13 10. "NAICS Manual" means any manual, book or other publication containing the
14 North American Industry Classification System, United States, 1997, promulgated by
15 the Office of Management and Budget of the United States of America, or the latest
16 revised edition;

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

20 12. "Start date" means the date on which an establishment may begin accruing
21 benefits for the creation of new direct jobs, which date shall be determined by the
22 Department; and

1 13. “Effective date” means the date of approval of a contract under which incentive
2 payments will be made pursuant to the Oklahoma Quality Jobs Program Act, which shall
3 be the date the signed and accepted incentive contract is received by the Department;
4 provided, an approved project may have a start date which is different from the effective
5 date.

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

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

14 2. If an establishment would have been defined as a “basic industry” prior to the
15 amendments to this section to convert from SIC Codes to NAICS Codes. If the
16 Committee so determines, the establishment shall be considered as a “basic industry” for
17 purposes of the Oklahoma Quality Jobs Program Act; and

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

21 C. For an establishment defined as a “basic industry” pursuant to division (4) of
22 subparagraph a of paragraph 1 of subsection A of this section, the Incentive Approval

1 Committee shall consist of the members provided by subsection B of this section and the
2 Executive Director of the Oklahoma Center for the Advancement of Science and
3 Technology, or a designee from the Center appointed by the Executive Director.

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

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

9 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND
10 FINANCIAL SERVICES, dated 03-04-08 - DO PASS, As Amended.