

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 1953

By: Bengé

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to energy; amending 68 O.S. 2001, Section 3603, as last
9 amended by Section 3, Chapter 406, O.S.L. 2008 (68 O.S. Supp. 2008, Section
10 3603), which relates to the Oklahoma Quality Jobs Program Act; modifying
11 definition; and providing an effective date.

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

13 SECTION 1. AMENDATORY 68 O.S. 2001, Section 3603, as last amended by Section 3,
14 Chapter 406, O.S.L. 2008 (68 O.S. Supp. 2008, Section 3603), is amended to read as follows:

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

16 1. a. "Basic industry" means:

- 17 (1) those manufacturing activities defined or classified in the NAICS Manual
18 under Industry Sector Nos. 31, 32 and 33, Industry Group No. 5111 or
19 Industry No. 11331,
20 (2) those electric power generation, transmission and distribution activities
21 defined or classified in the NAICS Manual under U.S. Industry Nos.
22 221111 through 221122, if:
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- 1 (a) an establishment engaged therein qualifies as an exempt wholesale
2 generator as defined by 15 U.S.C., Section 79z-5a,
3 (b) the exempt wholesale generator facility consumes from sources
4 located within the state at least ninety percent (90%) of the total
5 energy used to produce the electrical output which qualifies for the
6 specialized treatment provided by the Energy Policy Act of 1992,
7 P.L. 102-486, 106 Stat. 2776, as amended, and federal regulations
8 adopted pursuant thereto,
9 (c) the exempt wholesale generator facility sells to purchasers located
10 outside the state for consumption in activities located outside the
11 state at least ninety percent (90%) of the total electrical energy
12 output which qualifies for the specialized treatment provided by
13 the Energy Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, as
14 amended, and federal regulations adopted pursuant thereto, and
15 (d) the facility is constructed on or after July 1, 1996,
16 (3) those administrative and facilities support service activities defined or
17 classified in the NAICS Manual under Industry Group Nos. 5611 and
18 5612, Industry Nos. 51821, 519130, 52232, 56142 and 54191 or U.S.
19 Industry Nos. 524291 and 551114, ~~and~~ those other support activities for
20 air transportation defined or classified in the NAICS Manual under
21 Industry Group No. 488190, and those support, repair and maintenance
22 service activities for the wind industry defined or classified in the NAICS
23 Manual under Industry Group No. 811310,
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- 1 (4) those professional, scientific and technical service activities defined or
2 classified in the NAICS Manual under U.S. Industry Nos. 541710 and
3 541380,
- 4 (5) distribution centers for retail or wholesale businesses defined or classified
5 in the NAICS Manual under Sector No. 42, if forty percent (40%) or more
6 of the inventory processed through such warehouse is shipped out-of-state,
- 7 (6) those adjustment and collection service activities defined or classified in
8 the NAICS Manual under U.S. Industry No. 561440, if seventy-five
9 percent (75%) of the loans to be serviced were made by out-of-state
10 debtors,
- 11 (7) (a) those air transportation activities defined or classified in the
12 NAICS Manual under Industry Group No. 4811, if the following
13 facilities are located in this state:
- 14 (i) the corporate headquarters of an establishment classified
15 therein, and
- 16 (ii) a facility or facilities at which reservations for
17 transportation provided by such an establishment are
18 processed, whether such services are performed by
19 employees of the establishment, by employees of a
20 subsidiary of or other entity affiliated with the
21 establishment or by employees of an entity with whom the
22 establishment has contracted for the performance of such
23 services; provided, this provision shall not disqualify an
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1 establishment which uses an out-of-state entity or
2 employees for some reservations services, or

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

12 (8) flight training services activities defined or classified in the NAICS
13 Manual under U.S. Industry Group No. 611512, which for purposes of
14 Section 3601 et seq. of this title shall include new direct jobs for which
15 gross payroll existed on or after January 1, 2003, as identified in the
16 NAICS Manual,

17 (9) the following, if an establishment classified therein has or will have within
18 one (1) year sales of at least seventy-five percent (75%) of its total sales,
19 as determined by the Incentive Approval Committee pursuant to the
20 provisions of subsection B of this section, to out-of-state customers or
21 buyers, to in-state customers or buyers if the product or service is resold
22 by the purchaser to an out-of-state customer or buyer for ultimate use, or
23 to the federal government:
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- 1 (a) those transportation and warehousing activities defined or
2 classified in the NAICS Manual under Industry Subsector No. 493,
3 if not otherwise listed in this paragraph, Industry Subsector No.
4 484 and Industry Group Nos. 4884 through 4889,
- 5 (b) those passenger transportation activities defined or classified in the
6 NAICS Manual under Industry Nos. 561510, 561520 and 561599,
- 7 (c) those freight or cargo transportation activities defined or classified
8 in the NAICS Manual under Industry No. 541614,
- 9 (d) those insurance activities defined or classified in the NAICS
10 Manual under Industry Group No. 5241,
- 11 (e) those mailing, reproduction, commercial art and photography and
12 stenographic service activities defined or classified in the NAICS
13 Manual under U.S. Industry Nos. 541430, 541860, 541922,
14 561439 and 561492,
- 15 (f) those services to dwellings and other buildings, as defined or
16 classified in the NAICS Manual under Industry Group No. 5617,
17 excluding U.S. Industry No. 561730,
- 18 (g) those equipment rental and leasing activities defined or classified
19 in the NAICS Manual under Industry Group Nos. 5323 and 5324,
- 20 (h) those employment services defined or classified in the NAICS
21 Manual under Industry Group No. 5613,
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- 1 (i) those information technology and other computer-related service
2 activities defined or classified in the NAICS Manual under
3 Industry Group Nos. 5112, 5182, 5191 and 5415,
- 4 (j) those business support service activities defined or classified in the
5 NAICS Manual under U.S. Industry Nos. 561410 through 561439,
6 Industry Group No. 5616 and Industry No. 51911,
- 7 (k) those medical and diagnostic laboratory activities defined or
8 classified in the NAICS Manual under Industry Group No. 6215,
- 9 (l) those professional, scientific and technical service activities
10 defined or classified in the NAICS Manual under Industry Group
11 Nos. 5412, 5414, 5415, 5416 and 5417, Industry Nos. 54131,
12 54133, 54136, 54137 and 54182, and U.S. Industry No. 541990, if
13 not otherwise listed in this paragraph,
- 14 (m) those communication service activities defined or classified in the
15 NAICS Manual under Industry Nos. 51741 and 51791,
- 16 (n) those refuse systems activities defined or classified in the NAICS
17 Manual under Industry Group No. 5622, provided that the
18 establishment is primarily engaged in the capture and distribution
19 of methane gas produced within a landfill,
- 20 (o) general wholesale distribution of groceries, defined or classified in
21 the NAICS Manual under Industry Group Nos. 4244 and 4245,
- 22 (p) those activities relating to processing of insurance claims, defined
23 or classified in the NAICS Manual under U.S. Industry Nos.
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1 524210 and 524292; provided, activities described in U.S. Industry
2 Nos. 524210 and 524292 in the NAICS Manual other than
3 processing of insurance claims shall not be included for purposes
4 of this subdivision,

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

7 (r) those professional organization activities classified in the NAICS
8 Manual under U.S. Industry No. 813920;

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

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

19 (12) those activities defined or classified in the NAICS Manual under U.S.
20 Industry No. 711211 (2007 version), or

21 (13) those real estate or brokerage activities classified in the NAICS Manual
22 under U.S. Industry No. 53120 for which at least seventy-five percent
23 (75%) of the establishment's revenues are attributed to out-of-state sales
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1 and at least seventy-five percent (75%) of the real estate transactions
2 generating those revenues are attributed to real property located outside
3 the State of Oklahoma.

4 b. An establishment described in subparagraph a of this paragraph shall not be
5 considered to be engaged in a basic industry unless it offers, or will offer within
6 one hundred eighty (180) days of employment, a basic health benefits plan to the
7 individuals it employs in new direct jobs in this state which is determined by the
8 Oklahoma Department of Commerce to consist of the following elements or
9 elements substantially equivalent thereto:

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

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

- 20 a. beneficial ownership of more than fifty percent (50%) in value and more than
21 fifty percent (50%) in voting power of the outstanding equity securities of the
22 transferred establishment, or
23 b. more than fifty percent (50%) in value of the assets of an establishment.
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1 A transferor shall be treated as related to a transferee if more than fifty percent (50%) of the
2 voting interests of the transferor and transferee are owned, directly or indirectly, by the other or are
3 owned, directly or indirectly, by the same person or persons, unless such transferred establishment has
4 an outstanding class of equity securities registered under Sections 12(b) or 15(d) of the Securities
5 Exchange Act of 1934, as amended, in which event the transferor and transferee will be treated as
6 unrelated; provided, an establishment applying for the Oklahoma Quality Jobs Program Act as a result
7 of a change of control event is required to apply within one hundred eighty (180) days of the change in
8 control event to qualify for consideration. An establishment entering the Oklahoma Quality Jobs
9 Program Act as the result of a change of control event shall be required to maintain a level of new
10 direct jobs as agreed to in its contract with the Department of Commerce and to pay new direct jobs an
11 average annualized wage which equals or exceeds one hundred twenty-five percent (125%) of the
12 average county wage as that percentage is determined by the Oklahoma State Data Center based upon
13 the most recent U.S. Department of Commerce data for the county in which the new jobs are located.
14 For purposes of this paragraph, healthcare premiums paid by the applicant for individuals in new direct
15 jobs shall not be included in the annualized wage. Such establishment entering the Quality Jobs
16 Program Act as the result of a change of control event shall be required to retain the contracted average
17 annualized wage and maintain the contracted maintenance level of new direct jobs numbers as certified
18 by the Oklahoma Tax Commission. If the required average annualized wage or the required new direct
19 jobs numbers do not equal or exceed such contracted level during any quarter, the quarterly incentive
20 payments shall not be made and shall not be resumed until such time as such requirements are met. An
21 establishment described in this paragraph shall be required to repay all incentive payments received
22 under the Quality Jobs Program Act if the establishment is determined by the Oklahoma Tax
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1 Commission to no longer have business operations in the state within three (3) years from the
2 beginning of the calendar 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 establishment which
5 has qualified to receive an incentive payment pursuant to the provisions of
6 Section 3601 et seq. of this title which employment did not exist in this state prior
7 to the date of approval by the Department of the application of the establishment
8 pursuant to the provisions of Section 3604 of this title and with respect to an
9 establishment qualifying for incentive payments pursuant to division (12) of
10 subparagraph a of paragraph 1 of this subsection shall not include compensation
11 paid to an employee or independent contractor for an athletic contest conducted in
12 the state if the compensation is paid by an entity that does not have its principal
13 place of business in the state or that does not own real or personal property having
14 a market value of at least One Million Dollars (\$1,000,000.00) located in the
15 state, and the employees or independent contractors of such entity are
16 compensated to compete against the employees or independent contractors of an
17 establishment that qualifies for incentive payments pursuant to division (12) of
18 subparagraph a of paragraph 1 of this subsection and which is organized under
19 Oklahoma law or that is lawfully registered to do business in the state and which
20 does have its principal place of business located in the state and owns real or
21 personal property having a market value of at least One Million Dollars
22 (\$1,000,000.00) located in the state; provided, that if an application of an
23 establishment is approved by the Department of Commerce after a change in
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1 control event and the Director of the Department of Commerce determines that
2 the jobs located at such establishment are likely to leave the state, “new direct
3 job” shall include employment that existed in this state prior to the date of
4 application which is retained in this state by the new establishment following a
5 change in control event, if such job otherwise qualifies as a new direct job, and

6 b. shall include full-time-equivalent employment in this state of employees who are
7 employed by an employment agency or similar entity other than the establishment
8 which has qualified to receive an incentive payment and who are leased or
9 otherwise provided under contract to the qualified establishment, if such job did
10 not exist in this state prior to the date of approval by the Department of the
11 application of the establishment or the job otherwise qualifies as a new direct job
12 following a change in control event. A job shall be deemed to exist in this state
13 prior to approval of an application if the activities and functions for which the
14 particular job exists have been ongoing at any time within six (6) months prior to
15 such approval. With respect to establishments defined in division (10) of
16 subparagraph a of paragraph 1 of this subsection, new direct jobs shall be limited
17 to those jobs directly comprising the corporate headquarters of or directly relating
18 to administrative, financial, engineering, surveying, geological or geophysical
19 services performed by the establishment. Under no circumstances shall
20 employment relating to drilling or field services be considered new direct jobs;

21 4. “Estimated direct state benefits” means the tax revenues projected by the Department to
22 accrue to the state as a result of new direct jobs;
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1 5. "Estimated direct state costs" means the costs projected by the Department to accrue to the
2 state as a result of new direct jobs. Such costs shall include, but not be limited to:

- 3 a. the costs of education of new state resident children,
- 4 b. the costs of public health, public safety and transportation services to be provided
5 to new state residents,
- 6 c. the costs of other state services to be provided to new state residents, and
- 7 d. the costs of other state services;

8 6. "Estimated net direct state benefits" means the estimated direct state benefits less the
9 estimated direct state costs;

10 7. "Net benefit rate" means the estimated net direct state benefits computed as a percentage of
11 gross payroll; provided:

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

3 c. except as otherwise provided in subparagraph d of this paragraph, in no event
4 shall incentive payments, cumulatively, exceed the estimated net direct state
5 benefits,

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

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

9 (2) in a county in which:

10 (a) the per capita personal income, as determined by the Department,
11 is eighty-five percent (85%) or less of the statewide average per
12 capita personal income,

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

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

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

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

6 f. with respect to an establishment defined or classified in the NAICS Manual under
7 U.S. Industry No. 711211 (2007 version) or any establishment defined or
8 classified in the NAICS Manual as a U.S. Industry Number which is not included
9 within the definition of "basic industry" as such term is defined in this section on
10 April 17, 2008, the net benefit rate shall not exceed the highest rate of income tax
11 imposed upon the Oklahoma taxable income of individuals pursuant to
12 subparagraph (g) or subparagraph (h), as applicable, of paragraph 1 and
13 paragraph 2 of subsection B of Section 2355 of this title. Any change in such
14 highest rate of individual income tax imposed pursuant to the provisions of
15 Section 2355 of this title shall be applicable to the computation of incentive
16 payments to an establishment as described by this subparagraph and shall be
17 effective for purposes of incentive payments based on payroll paid by such
18 establishment on or after January 1 of any applicable year for which the net
19 benefit rate is modified as required by this subparagraph.

20 Incentive payments made pursuant to the provisions of this subparagraph shall be based upon
21 payroll associated with such new direct jobs. For purposes of this subparagraph, the amount of health
22 insurance premiums or other benefits paid by the establishment shall not be included for purposes of
23 computation of the average annualized wage;
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1 8. "Gross payroll" means wages, as defined in Section 2385.1 of this title for new direct jobs;

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

- 11 (1) within three (3) years of the first complete calendar quarter following the
12 start date, the entity must have a minimum payroll of Two Million Five
13 Hundred Thousand Dollars (\$2,500,000.00) and the subunit must also
14 have or will have a minimum payroll of Two Million Five Hundred
15 Thousand Dollars (\$2,500,000.00),
- 16 (2) the subunit is engaged in an activity or service or produces a product
17 which is demonstratively independent and separate from the entity's other
18 activities, services or products and could be conducted or produced in the
19 absence of any other activity, service or production of the entity,
- 20 (3) has an accounting system capable of tracking or facilitating an audit of the
21 subunit's payroll, expenses, revenue and production. Limited interunit
22 overlap of administrative and purchasing functions shall not disqualify a
23 subunit from consideration as an establishment by the Department,
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- 1 (4) the entity has not previously had a subunit determined to be an
2 establishment pursuant to this section; provided, the restriction set forth in
3 this division shall not apply to subunits which qualify pursuant to the
4 provisions of subparagraph b of paragraph 6 of this subsection, and
5 (5) it is determined by the Department that the entity will have a probable net
6 gain in total employment within the incentive period.

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

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

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

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

20 13. "Effective date" means the date of approval of a contract under which incentive payments
21 will be made pursuant to the Oklahoma Quality Jobs Program Act, which shall be the date the signed
22 and accepted incentive contract is received by the Department; provided, an approved project may
23 have a start date which is different from the effective date.
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1 B. The Incentive Approval Committee is hereby created and shall consist of the Director of
2 State Finance, the Director of the Department and one member of the Oklahoma Tax Commission
3 appointed by the Tax Commission, or a designee from each agency approved by such member. It shall
4 be the duty of the Committee to determine:

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

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

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

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

21 SECTION 2. This act shall become effective November 1, 2009.

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