

1 ENGROSSED HOUSE
2 BILL NO. 1488

By: DeWitt, Sherrer, Dorman,
Hickman, Roan, Denney,
Walker and Fields of the
House

4 and

5 Justice of the Senate

6
7
8 An Act relating to revenue and taxation; amending 68
9 O.S. 2001, Section 3603, as last amended by Section
10 3, Chapter 406, O.S.L. 2008 (68 O.S. Supp. 2008,
11 Section 3603), which relates to the Oklahoma Quality
12 Jobs Program Act; modifying definition; and providing
13 an effective date.

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 3, Chapter 406, O.S.L. 2008 (68 O.S. Supp.
17 2008, Section 3603), is amended to read as follows:

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

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, 519130, 52232, 56142
9 and 54191 or U.S. Industry Nos. 524291 and
10 551114, ~~and~~ those other support activities for
11 air transportation defined or classified in the
12 NAICS Manual under Industry Group No. 488190, and
13 those support, repair and maintenance service
14 activities for the wind industry defined or
15 classified in the NAICS Manual under Industry
16 Group No. 811310,

17 (4) those professional, scientific and technical
18 service activities defined or classified in the
19 NAICS Manual under U.S. Industry Nos. 541710 and
20 541380,

21 (5) distribution centers for retail or wholesale
22 businesses defined or classified in the NAICS
23 Manual under Sector No. 42, if forty percent
24

1 (40%) or more of the inventory processed through
2 such warehouse is shipped out-of-state,

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

8 (7) (a) those air transportation activities defined
9 or classified in the NAICS Manual under
10 Industry Group No. 4811, if the following
11 facilities are located in this state:

12 (i) the corporate headquarters of an
13 establishment classified therein, and

14 (ii) a facility or facilities at which
15 reservations for transportation
16 provided by such an establishment are
17 processed, whether such services are
18 performed by employees of the
19 establishment, by employees of a
20 subsidiary of or other entity
21 affiliated with the establishment or by
22 employees of an entity with whom the
23 establishment has contracted for the
24 performance of such services; provided,

1 this provision shall not disqualify an
2 establishment which uses an out-of-
3 state entity or employees for some
4 reservations services, or

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

19 (8) flight training services activities defined or
20 classified in the NAICS Manual under U.S.
21 Industry Group No. 611512, which for purposes of
22 Section 3601 et seq. of this title shall include
23 new direct jobs for which gross payroll existed
24

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

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

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

19 (b) those passenger transportation activities
20 defined or classified in the NAICS Manual
21 under Industry Nos. 561510, 561520 and
22 561599,
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- 1 (c) those freight or cargo transportation
2 activities defined or classified in the
3 NAICS Manual under Industry No. 541614,
4 (d) those insurance activities defined or
5 classified in the NAICS Manual under
6 Industry Group No. 5241,
7 (e) those mailing, reproduction, commercial art
8 and photography and stenographic service
9 activities defined or classified in the
10 NAICS Manual under U.S. Industry Nos.
11 541430, 541860, 541922, 561439 and 561492,
12 (f) those services to dwellings and other
13 buildings, as defined or classified in the
14 NAICS Manual under Industry Group No. 5617,
15 excluding U.S. Industry No. 561730,
16 (g) those equipment rental and leasing
17 activities defined or classified in the
18 NAICS Manual under Industry Group Nos. 5323
19 and 5324,
20 (h) those employment services defined or
21 classified in the NAICS Manual under
22 Industry Group No. 5613,
23 (i) those information technology and other
24 computer-related service activities defined

1 or classified in the NAICS Manual under
2 Industry Group Nos. 5112, 5182, 5191 and
3 5415,

4 (j) those business support service activities
5 defined or classified in the NAICS Manual
6 under U.S. Industry Nos. 561410 through
7 561439, Industry Group No. 5616 and Industry
8 No. 51911,

9 (k) those medical and diagnostic laboratory
10 activities defined or classified in the
11 NAICS Manual under Industry Group No. 6215,

12 (l) those professional, scientific and technical
13 service activities defined or classified in
14 the NAICS Manual under Industry Group Nos.
15 5412, 5414, 5415, 5416 and 5417, Industry
16 Nos. 54131, 54133, 54136, 54137 and 54182,
17 and U.S. Industry No. 541990, if not
18 otherwise listed in this paragraph,

19 (m) those communication service activities
20 defined or classified in the NAICS Manual
21 under Industry Nos. 51741 and 51791,

22 (n) those refuse systems activities defined or
23 classified in the NAICS Manual under
24 Industry Group No. 5622, provided that the

1 establishment is primarily engaged in the
2 capture and distribution of methane gas
3 produced within a landfill,

4 (o) general wholesale distribution of groceries,
5 defined or classified in the NAICS Manual
6 under Industry Group Nos. 4244 and 4245,

7 (p) those activities relating to processing of
8 insurance claims, defined or classified in
9 the NAICS Manual under U.S. Industry Nos.
10 524210 and 524292; provided, activities
11 described in U.S. Industry Nos. 524210 and
12 524292 in the NAICS Manual other than

13 processing of insurance claims shall not be
14 included for purposes of this subdivision,

15 (q) those agricultural activities classified in
16 the NAICS Manual under U.S. Industry Nos.
17 112120 and 112310, and

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

21 (10) those activities related to extraction of crude
22 petroleum and natural gas defined or classified
23 in the NAICS Manual under Industry Group No.
24 2111, subject to the limitations provided in

1 paragraph 3 of this subsection and paragraph 3 of
2 subsection B of this section,

3 (11) those activities performed by the federal
4 civilian workforce at a facility of the Federal
5 Aviation Administration located in this state if
6 the Director of the Department of Commerce
7 determines or is notified that the federal
8 government is soliciting proposals or otherwise
9 inviting states to compete for additional federal
10 civilian employment or expansion of federal
11 civilian employment at such facilities,

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

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

24

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

- 10 (1) not more than fifty percent (50%) of the premium
11 shall be paid by the 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
19 unrelated establishments or unrelated persons, of either:

- 20 a. beneficial ownership of more than fifty percent (50%)
21 in value and more than fifty percent (50%) in voting
22 power of the outstanding equity securities of the
23 transferred establishment, or
24

1 b. more than fifty percent (50%) in value of the assets
2 of an establishment.

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

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

16 3. "New direct job":

- 17 a. means full-time-equivalent employment in this state in
18 an establishment which has qualified to receive an
19 incentive payment pursuant to the provisions of
20 Section 3601 et seq. of this title which employment
21 did not exist in this state prior to the date of
22 approval by the Department of the application of the
23 establishment pursuant to the provisions of Section
24 3604 of this title and with respect to an

1 establishment qualifying for incentive payments
2 pursuant to division (12) of subparagraph a of
3 paragraph 1 of this subsection shall not include
4 compensation paid to an employee or independent
5 contractor for an athletic contest conducted in the
6 state if the compensation is paid by an entity that
7 does not have its principal place of business in the
8 state or that does not own real or personal property
9 having a market value of at least One Million Dollars
10 (\$1,000,000.00) located in the state, and the
11 employees or independent contractors of such entity
12 are compensated to compete against the employees or
13 independent contractors of an establishment that
14 qualifies for incentive payments pursuant to division
15 (12) of subparagraph a of paragraph 1 of this
16 subsection and which is organized under Oklahoma law
17 or that is lawfully registered to do business in the
18 state and which does have its principal place of
19 business located in the state and owns real or
20 personal property having a market value of at least
21 One Million Dollars (\$1,000,000.00) located in the
22 state; provided, that if an application of an
23 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,

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, and

13 f. with respect to an establishment defined or classified
14 in the NAICS Manual under U.S. Industry No. 711211
15 (2007 version) or any establishment defined or
16 classified in the NAICS Manual as a U.S. Industry
17 Number which is not included within the definition of
18 "basic industry" as such term is defined in this
19 section on April 17, 2008, the net benefit rate shall
20 not exceed the highest rate of income tax imposed upon
21 the Oklahoma taxable income of individuals pursuant to
22 subparagraph (g) or subparagraph (h), as applicable,
23 of paragraph 1 and paragraph 2 of subsection B of
24 Section 2355 of this title. Any change in such

1 highest rate of individual income tax imposed pursuant
2 to the provisions of Section 2355 of this title shall
3 be applicable to the computation of incentive payments
4 to an establishment as described by this subparagraph
5 and shall be effective for purposes of incentive
6 payments based on payroll paid by such establishment
7 on or after January 1 of any applicable year for which
8 the net benefit rate is modified as required by this
9 subparagraph.

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

16 8. "Gross payroll" means wages, as defined in Section 2385.1 of
17 this title for new direct jobs;

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

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

8 (1) within three (3) years of the first complete
9 calendar quarter following the start date, the
10 entity must have a minimum payroll of Two Million
11 Five Hundred Thousand Dollars (\$2,500,000.00) and
12 the subunit must also have or will have a minimum
13 payroll of Two Million Five Hundred Thousand
14 Dollars (\$2,500,000.00),

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

21 (3) has an accounting system capable of tracking or
22 facilitating an audit of the subunit's payroll,
23 expenses, revenue and production. Limited
24 interunit overlap of administrative and

1 purchasing functions shall not disqualify a
2 subunit from consideration as an establishment by
3 the Department,

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

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

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

23 10. "NAICS Manual" means any manual, book or other publication
24 containing the North American Industry Classification System, United

1 States, 1997, promulgated by the Office of Management and Budget of
2 the United States of America, or the latest revised edition;

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

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

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

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

20 1. Upon initial application on a form approved by the
21 Committee, if an establishment is engaged in a basic industry as
22 defined in subdivision (b) of division (7) or in subdivisions (a)
23 through (p) of division (9) of subparagraph a of paragraph 1 of
24

1 subsection A of this section or as otherwise provided by subsection
2 C of this section;

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

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

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

19 SECTION 2. This act shall become effective November 1, 2009.
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1 Passed the House of Representatives the 10th day of March, 2009.

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4 Presiding Officer of the House of
Representatives

5
6 Passed the Senate the ____ day of _____, 2009.

7
8
9 Presiding Officer of the Senate