

EHB 1953

THE STATE SENATE
Monday, April 6, 2009

ENGROSSED

House Bill No. 1953

As Amended

ENGROSSED HOUSE BILL NO. 1953 - By: Benge, Jackson, Proctor, Sherrer, Jett, Shumate, Faught, Walker and Brown of the House and Bingman, Gumm, Ivester and Sparks of the Senate.

[energy - Oklahoma Quality Jobs Program Act - modifying definition - effective date]

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

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

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

1. a. "Basic industry" means:

- (1) those manufacturing activities defined or classified in the NAICS Manual under Industry Sector Nos. 31, 32 and 33, Industry Group No. 5111 or Industry No. 11331,
- (2) those electric power generation, transmission and distribution activities defined or classified in the NAICS Manual under U.S. Industry Nos. 221111 through 221122, if:

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

1 (d) the facility is constructed on or after July
2 1, 1996,

3 (3) those administrative and facilities support
4 service activities defined or classified in the
5 NAICS Manual under Industry Group Nos. 5611 and
6 5612, Industry Nos. 51821, 519130, 52232, 56142
7 and 54191 or U.S. Industry Nos. 524291 and
8 551114, ~~and~~ those other support activities for
9 air transportation defined or classified in the
10 NAICS Manual under Industry Group No. 488190, and
11 those support, repair and maintenance service
12 activities for the wind industry defined or
13 classified in the NAICS Manual under Industry
14 Group No. 811310,

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

19 (5) distribution centers for retail or wholesale
20 businesses defined or classified in the NAICS
21 Manual under Sector No. 42, if forty percent
22 (40%) or more of the inventory processed through
23 such warehouse is shipped out-of-state,

- 1 (6) those adjustment and collection service
2 activities defined or classified in the NAICS
3 Manual under U.S. Industry No. 561440, if
4 seventy-five percent (75%) of the loans to be
5 serviced were made by out-of-state debtors,
- 6 (7) (a) those air transportation activities defined
7 or classified in the NAICS Manual under
8 Industry Group No. 4811, if the following
9 facilities are located in this state:
- 10 (i) the corporate headquarters of an
11 establishment classified therein, and
12 (ii) a facility or facilities at which
13 reservations for transportation
14 provided by such an establishment are
15 processed, whether such services are
16 performed by employees of the
17 establishment, by employees of a
18 subsidiary of or other entity
19 affiliated with the establishment or by
20 employees of an entity with whom the
21 establishment has contracted for the
22 performance of such services; provided,
23 this provision shall not disqualify an

1 establishment which uses an out-of-
2 state entity or employees for some
3 reservations services, or

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

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

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,

- 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,

- 1 (i) those information technology and other
2 computer-related service activities defined
3 or classified in the NAICS Manual under
4 Industry Group Nos. 5112, 5182, 5191 and
5 5415,
- 6 (j) those business support service activities
7 defined or classified in the NAICS Manual
8 under U.S. Industry Nos. 561410 through
9 561439, Industry Group No. 5616 and Industry
10 No. 51911,
- 11 (k) those medical and diagnostic laboratory
12 activities defined or classified in the
13 NAICS Manual under Industry Group No. 6215,
- 14 (l) those professional, scientific and technical
15 service activities defined or classified in
16 the NAICS Manual under Industry Group Nos.
17 5412, 5414, 5415, 5416 and 5417, Industry
18 Nos. 54131, 54133, 54136, 54137 and 54182,
19 and U.S. Industry No. 541990, if not
20 otherwise listed in this paragraph,
- 21 (m) those communication service activities
22 defined or classified in the NAICS Manual
23 under Industry Nos. 51741 and 51791,

- 1 (n) those refuse systems activities defined or
2 classified in the NAICS Manual under
3 Industry Group No. 5622, provided that the
4 establishment is primarily engaged in the
5 capture and distribution of methane gas
6 produced within a landfill,
- 7 (o) general wholesale distribution of groceries,
8 defined or classified in the NAICS Manual
9 under Industry Group Nos. 4244 and 4245,
- 10 (p) those activities relating to processing of
11 insurance claims, defined or classified in
12 the NAICS Manual under U.S. Industry Nos.
13 524210 and 524292; provided, activities
14 described in U.S. Industry Nos. 524210 and
15 524292 in the NAICS Manual other than
16 processing of insurance claims shall not be
17 included for purposes of this subdivision,
- 18 (q) those agricultural activities classified in
19 the NAICS Manual under U.S. Industry Nos.
20 112120 and 112310, and
- 21 (r) those professional organization activities
22 classified in the NAICS Manual under U.S.
23 Industry No. 813920;

- 1 (10) those activities related to extraction of crude
2 petroleum and natural gas defined or classified
3 in the NAICS Manual under Industry Group No.
4 2111, subject to the limitations provided in
5 paragraph 3 of this subsection and paragraph 3 of
6 subsection B of this section,
- 7 (11) those activities performed by the federal
8 civilian workforce at a facility of the Federal
9 Aviation Administration located in this state if
10 the Director of the Department of Commerce
11 determines or is notified that the federal
12 government is soliciting proposals or otherwise
13 inviting states to compete for additional federal
14 civilian employment or expansion of federal
15 civilian employment at such facilities,
- 16 (12) those activities defined or classified in the
17 NAICS Manual under U.S. Industry No. 711211 (2007
18 version), ~~or~~
- 19 (13) those real estate or brokerage activities
20 classified in the NAICS Manual under U.S.
21 Industry No. 53120 for which at least seventy-
22 five percent (75%) of the establishment's
23 revenues are attributed to out-of-state sales and

1 at least seventy-five percent (75%) of the real
2 estate transactions generating those revenues are
3 attributed to real property located outside the
4 State of Oklahoma, and

5 (14) the net benefit rate shall equal five percent
6 (5%) for the following industries:

7 (a) Industry Group No. 333414 (solar energy
8 heating equipment manufacturing),

9 (b) Industry Group No. 333611 (wind powered
10 turbine generator set manufacturing),

11 (c) Industry Group No. 334413 (solar cells
12 manufacturing),

13 (d) Industry Group No. 221119 (solar electric
14 power generation or wind electric power
15 generation), and

16 (e) Industry Group No. 237130 (solar power
17 structure construction or wind power
18 structure construction).

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

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

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

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

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

21 A transferor shall be treated as related to a transferee if more
22 than fifty percent (50%) of the voting interests of the transferor
23 and transferee are owned, directly or indirectly, by the other or

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

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

12 3. "New direct job":

13 a. means full-time-equivalent employment in this state in
14 an establishment which has qualified to receive an
15 incentive payment pursuant to the provisions of
16 Section 3601 et seq. of this title which employment
17 did not exist in this state prior to the date of
18 approval by the Department of the application of the
19 establishment pursuant to the provisions of Section
20 3604 of this title and with respect to an
21 establishment qualifying for incentive payments
22 pursuant to division (12) of subparagraph a of
23 paragraph 1 of this subsection shall not include

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

1 leave the state, "new direct job" shall include
2 employment that existed in this state prior to the
3 date of application which is retained in this state by
4 the new establishment following a change in control
5 event, if such job otherwise qualifies as a new direct
6 job, and
7 b. shall include full-time-equivalent employment in this
8 state of employees who are employed by an employment
9 agency or similar entity other than the establishment
10 which has qualified to receive an incentive payment
11 and who are leased or otherwise provided under
12 contract to the qualified establishment, if such job
13 did not exist in this state prior to the date of
14 approval by the Department of the application of the
15 establishment or the job otherwise qualifies as a new
16 direct job following a change in control event. A job
17 shall be deemed to exist in this state prior to
18 approval of an application if the activities and
19 functions for which the particular job exists have
20 been ongoing at any time within six (6) months prior
21 to such approval. With respect to establishments
22 defined in division (10) of subparagraph a of
23 paragraph 1 of this subsection, new direct jobs shall

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

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

11 5. "Estimated direct state costs" means the costs projected by
12 the Department to accrue to the state as a result of new direct
13 jobs. Such costs shall include, but not be limited to:

- 14 a. the costs of education of new state resident children,
- 15 b. the costs of public health, public safety and
16 transportation services to be provided to new state
17 residents,
- 18 c. the costs of other state services to be provided to
19 new state residents, and
- 20 d. the costs of other state services;

21 6. "Estimated net direct state benefits" means the estimated
22 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,

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

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

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

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

19 9. a. "Establishment" means any business or governmental
20 entity, no matter what legal form, including, but not
21 limited to, a sole proprietorship; partnership;
22 limited liability company; corporation or combination
23 of corporations which have a central parent

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

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

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

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

1 the period of time within which such gain must be
2 demonstrated and a method for determining net gain in
3 total employment;

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

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

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

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

20 B. The Incentive Approval Committee is hereby created and shall
21 consist of the Director of State Finance, the Director of the
22 Department and one member of the Oklahoma Tax Commission appointed

1 by the Tax Commission, or a designee from each agency approved by
2 such member. It shall be the duty of the Committee to determine:

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

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

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

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

1 Technology, or a designee from the Center appointed by the Executive
2 Director.

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

4 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 3-31-09 - DO PASS,
5 As Amended and Coauthored.