

SB 891

1 THE STATE SENATE
2 Monday, February 23, 2009

3 Senate Bill No. 891
4 As Amended

5 SENATE BILL NO. 891 - By: Gumm of the Senate and Carey of the House.

6 [revenue and taxation - Oklahoma Quality Jobs Program Act -
7 expanding definition - effective date -
8 emergency]

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

10 SECTION 1. AMENDATORY 68 O.S. 2001, Section 3603, as
11 last amended by Section 3, Chapter 406, O.S.L. 2008 (68 O.S. Supp.
12 2008, Section 3603), is amended to read as follows:

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

15 1. a. "Basic industry" means:

16 (1) those manufacturing activities defined or
17 classified in the NAICS Manual under Industry
18 Sector Nos. 31, 32 and 33, Industry Group No.
19 5111 or Industry No. 11331,

20 (2) those electric power generation, transmission and
21 distribution activities defined or classified in
22 the NAICS Manual under U.S. Industry Nos. 221111
23 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,
- 11 (4) those professional, scientific and technical
12 service activities defined or classified in the
13 NAICS Manual under U.S. Industry Nos. 541710 and
14 541380,
- 15 (5) distribution centers for retail or wholesale
16 businesses defined or classified in the NAICS
17 Manual under Sector No. 42, if forty percent
18 (40%) or more of the inventory processed through
19 such warehouse is shipped out-of-state,
- 20 (6) those adjustment and collection service
21 activities defined or classified in the NAICS
22 Manual under U.S. Industry No. 561440, if

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

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

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

22 (9) animal (except poultry) slaughtering activities
23 defined or classified in the NAICS Manual under

1 U.S. Industry Group No. 311611, and meat
2 processed from carcasses activities defined or
3 classified in the NAICS Manual under U.S.
4 Industry Group No. 311612, which for purposes of
5 Section 3601 et seq. of this title shall include
6 new direct jobs for which gross payroll existed
7 on or after June 1, 2007, as identified in the
8 NAICS Manual, notwithstanding the provisions of
9 subsections A and B of Section 3606 of this
10 title,

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

21 (a) those transportation and warehousing
22 activities defined or classified in the
23 NAICS Manual under Industry Subsector No.

1 493, if not otherwise listed in this
2 paragraph, Industry Subsector No. 484 and
3 Industry Group Nos. 4884 through 4889,
4 (b) those passenger transportation activities
5 defined or classified in the NAICS Manual
6 under Industry Nos. 561510, 561520 and
7 561599,
8 (c) those freight or cargo transportation
9 activities defined or classified in the
10 NAICS Manual under Industry No. 541614,
11 (d) those insurance activities defined or
12 classified in the NAICS Manual under
13 Industry Group No. 5241,
14 (e) those mailing, reproduction, commercial art
15 and photography and stenographic service
16 activities defined or classified in the
17 NAICS Manual under U.S. Industry Nos.
18 541430, 541860, 541922, 561439 and 561492,
19 (f) those services to dwellings and other
20 buildings, as defined or classified in the
21 NAICS Manual under Industry Group No. 5617,
22 excluding U.S. Industry No. 561730,

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

1 5412, 5414, 5415, 5416 and 5417, Industry
2 Nos. 54131, 54133, 54136, 54137 and 54182,
3 and U.S. Industry No. 541990, if not
4 otherwise listed in this paragraph,
5 (m) those communication service activities
6 defined or classified in the NAICS Manual
7 under Industry Nos. 51741 and 51791,
8 (n) those refuse systems activities defined or
9 classified in the NAICS Manual under
10 Industry Group No. 5622, provided that the
11 establishment is primarily engaged in the
12 capture and distribution of methane gas
13 produced within a landfill,
14 (o) general wholesale distribution of groceries,
15 defined or classified in the NAICS Manual
16 under Industry Group Nos. 4244 and 4245,
17 (p) those activities relating to processing of
18 insurance claims, defined or classified in
19 the NAICS Manual under U.S. Industry Nos.
20 524210 and 524292; provided, activities
21 described in U.S. Industry Nos. 524210 and
22 524292 in the NAICS Manual other than

1 processing of insurance claims shall not be
2 included for purposes of this subdivision,
3 (q) those agricultural activities classified in
4 the NAICS Manual under U.S. Industry Nos.
5 112120 and 112310, and
6 (r) those professional organization activities
7 classified in the NAICS Manual under U.S.
8 Industry No. 813920;
9 ~~(10)~~
10 (11) those activities related to extraction of crude
11 petroleum and natural gas defined or classified
12 in the NAICS Manual under Industry Group No.
13 2111, subject to the limitations provided in
14 paragraph 3 of this subsection and paragraph 3 of
15 subsection B of this section,
16 ~~(11)~~
17 (12) those activities performed by the federal
18 civilian workforce at a facility of the Federal
19 Aviation Administration located in this state if
20 the Director of the Department of Commerce
21 determines or is notified that the federal
22 government is soliciting proposals or otherwise
23 inviting states to compete for additional federal

1 civilian employment or expansion of federal
2 civilian employment at such facilities,

3 ~~(12)~~

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

7 ~~(13)~~

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

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

1 following elements or elements substantially
2 equivalent thereto:

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

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

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

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

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

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

10 3. "New direct job":

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

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

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

1 administrative, financial, engineering, surveying,
2 geological or geophysical services performed by the
3 establishment. Under no circumstances shall
4 employment relating to drilling or field services be
5 considered new direct jobs;

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

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

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

19 6. "Estimated net direct state benefits" means the estimated
20 direct state benefits less the estimated direct state costs;

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

- 1 a. except as otherwise provided in this paragraph, the
2 net benefit rate may be variable and shall not exceed
3 five percent (5%),
- 4 b. the net benefit rate shall not exceed six percent (6%)
5 in connection with an establishment which is owned and
6 operated by an entity which has been awarded a United
7 States Department of Defense contract for which:
8 (1) bids were solicited and accepted by the United
9 States Department of Defense from facilities
10 located outside this state,
11 (2) the term is or is renewable for not less than
12 twenty (20) years, and
13 (3) the average annual salary, excluding benefits
14 which are not subject to Oklahoma income taxes,
15 for new direct jobs created as a direct result of
16 the awarding of the contract is projected by the
17 Department of Commerce to equal or exceed Forty
18 Thousand Dollars (\$40,000.00) within three (3)
19 years of the date of the first incentive payment,
- 20 c. except as otherwise provided in subparagraph d of this
21 paragraph, in no event shall incentive payments,
22 cumulatively, exceed the estimated net direct state
23 benefits,

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

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

6 (2) in a county in which:

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

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

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

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

22 (1) is, as of the date of application, receiving
23 incentive payments pursuant to the Oklahoma

1 Quality Jobs Program Act and has been receiving
2 such payments for at least one (1) year prior to
3 the date of application, and
4 (2) expands its operations in this state by creating
5 additional new direct jobs which pay average
6 annualized wages which equal or exceed one
7 hundred fifty percent (150%) of the average
8 annualized wages of new direct jobs on which
9 incentive payments were received during the
10 preceding calendar year, and
11 f. with respect to an establishment defined or classified
12 in the NAICS Manual under U.S. Industry No. 711211
13 (2007 version) or any establishment defined or
14 classified in the NAICS Manual as a U.S. Industry
15 Number which is not included within the definition of
16 "basic industry" as such term is defined in this
17 section on April 17, 2008, the net benefit rate shall
18 not exceed the highest rate of income tax imposed upon
19 the Oklahoma taxable income of individuals pursuant to
20 subparagraph (g) or subparagraph (h), as applicable,
21 of paragraph 1 and paragraph 2 of subsection B of
22 Section 2355 of this title. Any change in such
23 highest rate of individual income tax imposed pursuant

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

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

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

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

1 interunit overlap of administrative and
2 purchasing functions shall not disqualify a
3 subunit from consideration as an establishment by
4 the Department,

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

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

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

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

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

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

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

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

22 1. Upon initial application on a form approved by the
23 Committee, if an establishment is engaged in a basic industry as

1 defined in subdivision (b) of division (7) or in subdivisions (a)
2 through (p) of division (9) of subparagraph a of paragraph 1 of
3 subsection A of this section or as otherwise provided by subsection
4 C of this section;

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

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

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

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

22 SECTION 3. It being immediately necessary for the preservation
23 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.
3 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-17-09 - DO PASS,
4 As Amended and Coauthored.