

ENROLLED SENATE
BILL NO. 846

By: Fisher and Shedrick of the
Senate

and

McCorkell, Toure, Johnson
(Rob), Williams, Hamilton
(James) and Ross of the
House

An Act relating to economic development;
amending 61 O.S. 1991, Section 102, which
relates to the Public Competitive Bidding Act of
1974; amending Sections 1, 3 and 4, Chapter 275,
O.S.L. 1993 (68 O.S. Supp. 1993, Sections 3601,
3603 and 3604), which relate to the Oklahoma
Quality Jobs Program Act; amending Section 1 of
Enrolled House Bill No. 2176 of the 2nd Session
of the 44th Oklahoma Legislature, which relates
to sales tax levies for certain counties;
modifying references; providing for certain
warehouses to be defined as basic industry;
providing for components of certain basic health
benefits plan; modifying definition of
establishment; establishing certain criteria;
authorizing promulgation of rules; requiring
promulgation of rules; modifying reference with
respect to gross annual payroll determination;
modifying property included within scope of
expenditure for certain purposes; modifying
period of time for determination of certain
employment; modifying definition of public
construction contract; and declaring an
emergency.

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

SECTION 1. AMENDATORY Section 1, Chapter 275, O.S.L.
1993 (68 O.S. Supp. 1993, Section 3601), is amended to read as
follows:

Section 3601. ~~Sections 1 through 9 of this act~~ Section 3601 et
seq. of this title shall be known and may be cited as the "Oklahoma
Quality Jobs Program Act".

SECTION 2. AMENDATORY Section 3, Chapter 275, O.S.L.
1993 (68 O.S. Supp. 1993, Section 3603), is amended to read as
follows:

Section 3603. A. As used in this act:

1. a. "Basic industry" means manufacturing, as defined or
classified under Division D of the Standard Industrial
Classification (SIC) Manual, latest version, ~~and~~
administrative and auxiliary services that are ~~not~~
assigned a one-digit auxiliary code in the SIC Manual,
~~but are entitled and are~~ described therein as Central

Administrative Offices, which means central centers that influence the environment in which data processing, customer service, credit accounting, telemarketing, claims processing and other administrative functions are accomplished, ~~and;~~ Research, Development and Testing Laboratories, ~~;~~ warehouses which serve as distribution centers for retail or wholesale businesses, if seventy-five percent (75%) of the inventory processed through such warehouse is shipped out-of-state; or the following, if an establishment classified therein has or will have within one (1) year sales of at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection B of this section, to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government:

- ~~a.~~ (1) motor freight transportation and warehousing, as defined or classified under Major Group 42 of the SIC Manual, latest version,
- ~~b.~~ (2) transportation by air, as defined or classified under Major Group 45 of the SIC Manual, latest version,
- ~~c.~~ (3) arrangement of passenger transportation, as defined or classified under Industry Group 472 of the SIC Manual, latest version,
- ~~d.~~ (4) arrangement of transportation of freight or cargo, as defined or classified under Industry Group 473 of the SIC Manual, latest version,
- ~~e.~~ (5) insurance carriers, as defined or classified under Major Group 63 of the SIC Manual, latest version,
- ~~f.~~ (6) mailing, reproduction, commercial art and photography and stenographic services, as defined or classified under Industry Group 733 of the SIC Manual, latest version,
- ~~g.~~ (7) services to dwellings and other buildings, as defined or classified under Industry Group 734 of the SIC Manual, latest version,
- ~~h.~~ (8) miscellaneous equipment rental and leasing, as defined or classified under Industry Group 735 of the SIC Manual, latest version,
- ~~i.~~ (9) personnel supply services, as defined or classified under Industry Group 736 of the SIC Manual, latest version,
- ~~j.~~ (10) computer programming, data processing and other computer-related services, as defined or classified under Industry Group 737 of the SIC Manual, latest version,
- ~~k.~~ (11) miscellaneous business services, as defined or classified under Industry Group 738 of the SIC Manual, latest version,
- ~~l.~~ (12) medical and dental laboratories, as defined or classified under Industry Group 807 of the SIC Manual, latest version, and

~~m.~~ (13) engineering and management services, as defined or classified under Major Group 87 of the SIC Manual, latest version~~r.~~

provided, an

b. An establishment described in subparagraph a of this paragraph shall not be considered to be engaged in a basic industry unless it offers, or will offer within one hundred eighty (180) days of the date it receives the first incentive payment pursuant to the provisions of this act, a basic health benefits plan to the individuals it employs in new direct jobs in this state which meets the requirements of Section 6506 of Title 36 of the Oklahoma Statutes or which is certified by the Oklahoma Basic Health Benefits Board as being substantially equivalent to meeting such requirements is determined by the Oklahoma Department of Commerce to consist of the following elements or elements substantially equivalent thereto:

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

2. "New direct job" means full-time-equivalent employment in this state in an establishment which has qualified to receive an incentive payment pursuant to the provisions of this act which did not exist in this state prior to the date of approval by the Department of Commerce of the application of the establishment pursuant to the provisions of Section 4 3604 of this ~~act~~ title;

3. "Estimated direct state benefits" means the tax revenues projected by the Department of Commerce to accrue to the state as a result of new direct jobs;

4. "Estimated direct state costs" means the costs projected by the Department of Commerce to accrue to the state as a result of new direct jobs. Such costs shall include but not be limited to:

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

5. "Estimated net direct state benefits" means the estimated direct state benefits less the estimated direct state costs;

6. "Net benefit rate" means the estimated net direct state benefits computed as a percentage of gross payroll; provided, the net benefit rate may be variable and shall not exceed five percent (5%);

7. "Gross payroll" means wages for new direct jobs as defined in Section 1-218 of Title 40 of the Oklahoma Statutes; and

8. a. "Establishment" means any business or governmental entity, no matter what legal form, including, but not limited to, a sole proprietorship, partnership, corporation, federal agency, political subdivision of the State of Oklahoma, or trust authority, or combination thereof; provided, distinct, identifiable subunits of such entities may be determined to be an

establishment, for all purposes of this act, by the Oklahoma Department of Commerce subject to the following conditions:

- (1) the entity must have a minimum payroll of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) and the subunit must also have or will have a minimum payroll of Two Million Five Hundred Thousand Dollars (\$2,500,000.00),
- (2) the subunit is engaged in an activity or service or produces a product which is demonstratively independent and separate from the entity's other activities, services or products and could be conducted or produced in the absence of any other activity, service or production of the entity,
- (3) has an accounting system capable of tracking or facilitating an audit of the subunit's payroll, expenses, revenue and production. Limited interunit overlap of administrative and purchasing functions shall not disqualify a subunit from consideration as an establishment by the Oklahoma Department of Commerce,
- (4) the entity has not previously had a subunit determined to be an establishment pursuant to this section, and
- (5) it is determined by the Department of Commerce that the entity will have a probable net gain in total employment within the incentive period.

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

B. The Incentive Approval Committee is hereby created and shall consist of the Director of State Finance, the Director of the Department of Commerce and one member of the Oklahoma Tax Commission appointed by the Tax Commission. It shall be the duty of the Committee to determine, upon initial application on a form approved by the Committee, if an establishment is engaged in a basic industry as defined in ~~subparagraphs a through m~~ divisions (1) through (13) of subparagraph a of paragraph 1 of subsection A of this section.

SECTION 3. AMENDATORY Section 4, Chapter 275, O.S.L. 1993 (68 O.S. Supp. 1993, Section 3604), is amended to read as follows:

Section 3604. A. An establishment which meets the qualifications specified in this act may receive quarterly incentive payments for a ten-year period from the Oklahoma Tax Commission pursuant to the provisions of the Oklahoma Quality Jobs Program Act in an amount which shall be equal to the net benefit rate multiplied by the actual gross payroll of new direct jobs for a calendar quarter as verified by the Oklahoma Employment Security Commission.

B. In order to receive incentive payments, an establishment shall apply to the Oklahoma Department of Commerce. The application shall be on a form prescribed by the Department and shall contain such information as may be required by the Department to determine if the applicant is qualified.

C. In order to qualify to receive such payments, the establishment applying shall be required to:

1. Be engaged in a basic industry;
2. Have an annual gross payroll for new direct jobs projected by the Department of Commerce to equal or exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00) within three (3) years of the anticipated date of application on which the establishment will receive its first incentive payment; and
3. Have a number of full-time employees working an average of twenty-five (25) or more hours per week in new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs.

D. The Department shall determine if the applicant is qualified to receive incentive payments.

E. If the applicant is determined to be qualified by the Department of Commerce, the Department shall conduct a cost/benefit analysis to determine the estimated net direct state benefits and the net benefit rate applicable for a ten-year period and to estimate the amount of gross payroll for a ten-year period. In conducting such cost/benefit analysis, the Department shall consider quantitative factors, such as the anticipated level of new tax revenues to the state along with the added cost to the state of providing services, and such other criteria as deemed appropriate by the Department. In no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits.

F. Upon approval of such an application, the Department shall notify the Oklahoma Tax Commission and shall provide it with a copy of the application and the results of the cost/benefit analysis. The Tax Commission may require the qualified establishment to submit such additional information as may be necessary to administer the provisions of this act. The approved establishment shall report to the Tax Commission periodically to show its continued eligibility for incentive payments, as provided in Section ~~6 3606~~ of this ~~act~~ title. The establishment may be audited by the Tax Commission to verify such eligibility. Once the establishment is approved, an agreement shall be deemed to exist between the establishment and the State of Oklahoma, requiring the continued incentive payment to be made as long as the establishment retains its eligibility as defined in and established pursuant to this section and Sections ~~3 3603~~ and ~~6 3606~~ of ~~the Oklahoma Quality Jobs Program Act~~ this title and within the limitations contained in the Oklahoma Quality Jobs Program Act, which existed at the time of such approval.

SECTION 4. AMENDATORY Section 1 of Enrolled House Bill No. 2176 of the 2nd Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 1370.2A Notwithstanding the provisions of Section 1370 of this title, any county of this state with a population of more than three hundred thousand (300,000) according to the latest Federal Decennial Census may levy a sales tax of not to exceed one percent (1%) upon the gross proceeds or gross receipts derived from all sales or services in the county upon which a consumer's sales tax is levied by the state, ~~except as provided in subsection (F) of Section 1357 of this title,~~ subject to the following conditions:

1. The proceeds of such sales tax and the interest thereon shall be used solely for the purpose of acquisition and development of qualified manufacturing facilities, related machinery and equipment and any necessary infrastructure changes or improvements related to such facilities located within the county to be owned by the county, any municipality within the county or a public trust in which the county or municipality is a beneficiary. However, such

municipality or public trust shall hold such title for the use and benefit of the residents of the entire county in which the tax is levied and collected. The acceptance by the municipality or public trust of any title or tax proceeds shall be deemed an acceptance of this requirement. The board of county commissioners of any county that has approved the imposition of a sales tax pursuant to this section may not commence the collection of any such sales tax until a qualified manufacturing facility has signed an agreement to locate such facility within the county. As used in this paragraph, "qualified manufacturing facility" means a new or expanding facility primarily engaged in manufacturing, production and/or assembly of consumer or other products, whether or not on a factory basis, whose total cost of acquisition and construction exceeds the sum of Fifteen Million Dollars (\$15,000,000.00) and which ~~employs will~~ employ at least one thousand (1,000) new full-time-equivalent employees, as certified by the Employment Security Commission ~~upon~~ within three (3) years after the completion of the facility;

2. Before a sales tax may be levied by the county, the imposition of the tax shall first be approved by a majority of the registered voters of the county voting thereon at a special election called by resolution of the board of county commissioners in the manner provided by law for county elections;

3. The monies collected pursuant to the provisions of this section shall only be expended by the board of county commissioners to finance an amount not to exceed twenty-five percent (25%) of the total cost related to the acquisition and construction of the qualified manufacturing facility, related machinery and equipment and any necessary infrastructure changes or improvements directly related to such facility; and

4. Such sales tax can only be imposed for a period not to exceed three (3) years.

SECTION 5. AMENDATORY 61 O.S. 1991, Section 102, is amended to read as follows:

Section 102. When used in this act, unless the context clearly indicates otherwise, the following words and terms shall be construed as having the meanings ascribed to them in this section:

1. "Awarding public agency" means the public agency which solicits and receives sealed bids on a particular public construction contract;

2. "Bidding documents" means the bid notice, plans and specifications, bidding form, bidding instructions, special provisions and all other written instruments prepared by or on behalf of an awarding public agency for use by prospective bidders on a public construction contract;

3. "Public agency" means the State of Oklahoma, and any county, city, town, school district or other political subdivision of the state, any public trust, any public entity specifically created by the statutes of the State of Oklahoma or as a result of statutory authorization therefor, and any department, agency, board, bureau, commission, committee or authority of any of the foregoing public entities;

4. "Public construction contract" or "contract" means any contract, exceeding Seven Thousand Five Hundred Dollars (\$7,500.00) in amount, awarded by any public agency for the purpose of making any public improvements or constructing any public building or making repairs to the same except where the improvements, construction of any building or repairs to the same are improvements or buildings leased to a person or other legal entity exclusively for private and not for public use and no public tax revenues shall be expended on or for said ~~public construction~~ contract unless the

public tax revenues used for the project are authorized by a majority of the voters of the applicable public agency voting at an election held for that purpose and the public tax revenues do not exceed twenty-five percent (25%) of the total project cost. The amount of public tax dollars committed to the project will not exceed a fixed amount established by resolution of the governing body prior to or concurrent with approval of the project;

5. "Public improvement" means any beneficial or valuable change or addition, betterment, enhancement or amelioration of or upon any real property, or interest therein, belonging to a public agency, intended to enhance its value, beauty or utility or to adapt it to new or further purposes. The term does not include the direct purchase of materials, equipment or supplies by a public agency; and

6. "Retainage" means the difference between the amount earned by the contractor on a public construction contract, with the work being accepted by the public agency, and the amount paid on said contract by the public agency.

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

Passed the Senate the 28th day of March, 1994.

President of the Senate

Passed the House of Representatives the 28th day of March, 1994.

Speaker of the House of Representatives