ENGROSSED HOUSE
BILL NO. 2904

By: Roach, Tyler and Perry of the House

and

Williams of the Senate

An Act relating to economic development; amending 62 O.S. 2001, Section 859, which relates to notice for public hearings; modifying publication requirements for certain public hearings; amending 68 O.S. 2001, Section 2902, which relates to an exemption from ad valorem taxation for qualifying manufacturing concerns; modifying provisions related to date of construction or expansion and increased payroll requirement; providing for construction of certain statutory provisions; providing for noncodification; and declaring an emergency.

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

SECTION 1. AMENDATORY 62 O.S. 2001, Section 859, is amended to read as follows:

Section 859. A. Before the adoption of a project plan or subsequent amendments thereto, the governing body must hold two public hearings. The primary purpose of the first hearing will be to provide information and to answer questions. A representative of the city, town or county shall present the city, town or county's proposed plan or amendment thereto. The date of the second public hearing shall be ~~fixed~~ <u>announced</u> in the presence of the persons in attendance at the hearing, but such date shall be more than seven (7) days after the date of the first public hearing. The purpose of the second public hearing shall be to give any interested persons the opportunity to express their views on the proposed plan or amendment thereto.

B. Notice of the first public hearing shall be given once by publication in a newspaper with circulation in the city, town or

county. Such notice must be published no later than fourteen (14) days before the date of the public hearing. The notice shall include the following:

1. The time and place of the public hearing;

2. The boundaries of the proposed districts and proposed projects by legal description and by street location, if possible, accompanied by a sketch clearly delineating the area in detail as may be necessary to advise the reader of the particular land proposed to be included;

3. A statement that the first public hearing shall be for information and questions purposes only with persons being given the opportunity to be heard at the second public hearing before any votes are taken;

4. A description of the plan or amendment thereto and a location and time where the entire plan may be reviewed by any interested party; and

5. Such other matters as the city, town or county may deem appropriate.

C. ~~The~~ Notice of the second public hearing may be included in the publication notice provided for in subsection B of this section ~~shall apply to the second public hearing~~. Notice of the second public hearing shall be published in the same manner as the notice provided for in subsection B of this section if:

1. ~~Notice for both public hearings is not included in the notice of the first public hearing;~~

~~2.~~ The location, date and time of the second public hearing is changed after the notice of the first hearing has been published; or

~~3.~~ 2. The second public hearing is held more than fourteen (14) days ~~or more~~ after the first public hearing.

D. The provisions of this section shall not apply to the adoption of minor amendments as provided for in Section ~~9~~ 858 of this ~~act~~ title.

E. Technical irregularities in the form of the notice required by this section shall not result in the invalidation of any ordinance enacted or amended subsequent thereto, so long as the notice, as published, reasonably apprises interested parties as to the subject matter of the hearings and correctly describes the date, time and place of such hearings.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 2902, is amended to read as follows:

Section 2902. A. A qualifying manufacturing concern, as defined by Section 6B of Article X of the Oklahoma Constitution, and as further defined herein, shall be exempt from the levy of any ad valorem taxes upon new, expanded or acquired manufacturing facilities, including facilities engaged in research and development, for a period of five (5) years. Such facilities are hereby classified for the purposes of taxation as provided in Section 22 of Article X of the Oklahoma Constitution.

B. For purposes of this section, the following definitions shall apply:

1. "Manufacturing facilities" shall mean facilities engaged in the mechanical or chemical transformation of materials or substances into new products and shall include:

a. establishments which have received a manufacturer exemption permit pursuant to the provisions of Section 1359.2 of this title,

b. facilities, including repair and replacement parts, primarily engaged in aircraft repair, building and rebuilding whether or not on a factory basis,

c. establishments primarily engaged in computer services and data processing as defined under Industrial Group Numbers 7372 and 7373 of the SIC Manual, latest revision, and which derive at least fifty percent (50%) of their annual gross revenues from the sale of

a product or service to an out-of-state buyer or consumer, and as defined under Industrial Group Number 7374 of the SIC Manual, latest revision, which derive at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Tax Commission stating that the facility so qualifies and such other information as required by the Tax Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers, all sales to the federal government shall be considered to be an out-of-state buyer, or

d. establishments primarily engaged in distribution as defined under Industrial Group Number 4221, 4222, 4225 or 4226 or Major Group Number 50 or 51 of the SIC Manual, latest revision, and which were constructed with an initial capital investment of at least Five Million Dollars ($5,000,000.00) and which employ at least one hundred (100) full-time-equivalent employees, as certified by the Employment Security Commission. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Tax Commission, by annually filing an affidavit with the Tax Commission stating that the facility so qualifies and such other information as required by the Tax Commission. The exemption provided for in this subparagraph shall apply only to an establishment for which construction

of the facility has commenced prior to December 31, 2001.

Provided, eating and drinking places, as well as other retail establishments, except as otherwise provided in subsection E of this section, shall not qualify as manufacturing facilities for purposes of this section, nor shall centrally assessed properties;

2. For tax years beginning after December 31, 1992, "manufacturing facilities" shall mean those facilities as defined in paragraph 1 of this subsection for which the investment cost of the construction, acquisition or expansion of the manufacturing facility is Two Hundred Fifty Thousand Dollars ($250,000.00) or more;

3. "Facility" and "facilities" shall mean and include the land, buildings, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process; and

4. "Research and development" shall mean activities directly related to and conducted for the purpose of discovering, enhancing, increasing or improving future or existing products or processes or productivity.

C. For applications for a five-year exemption submitted after December 31, 1993, the following provisions shall apply:

1. A manufacturing concern shall be entitled to the exemption herein provided for each new manufacturing facility constructed, each existing manufacturing facility acquired and the expansion of existing manufacturing facilities on the same site, as such terms are defined by Section 6B of Article X of the Oklahoma Constitution and by this section;

2. Except as otherwise provided in paragraphs 5 and 6 of this subsection, no manufacturing concern shall receive more than one five-year exemption for any one manufacturing facility unless the expansion which qualifies the manufacturing facility for an additional five-year exemption meets the requirements of paragraph 4

of this subsection, provided the employment level established for any previous exemption is maintained;

3. Any exemption as to the expansion of an existing manufacturing facility shall be limited to the increase in ad valorem taxes directly attributable to the expansion;

4. Except as provided in paragraphs 5 and 6 of this subsection, all initial applications for any exemption for a new, acquired or expanded manufacturing facility shall be granted only if:

a. there is a net increase of Two Hundred Fifty Thousand Dollars ($250,000.00) or more in annualized payroll, or a net increase of Two Million Dollars ($2,000,000.00) or more in capital improvements while maintaining or increasing payroll. The Oklahoma Tax Commission shall verify all payroll information through the Oklahoma Employment Security Commission. Payroll shall be verified by the Oklahoma Tax Commission by using the average of the third and fourth quarter Oklahoma Employment Security Commission reports of the calendar year immediately preceding the year for which initial application is made for base-line payroll, and

b. the facility offers, or will offer within one hundred eighty (180) days of the date of employment, a basic health benefits plan to the full-time-equivalent employees of the facility, which is determined by the Department of Commerce to consist of the elements specified in subparagraph b of paragraph 1 of subsection A of Section 3603 of this title or elements substantially equivalent thereto.

For purposes of this section, calculation of the amount of increased payroll shall be measured from the start of initial construction or expansion to the completion of such construction or expansion or for

three (3) years from the start of initial construction or expansion, whichever occurs first. ~~The~~ For the facilities of any qualified manufacturing concern the construction or expansion of which began on or after January 1, 1996, and for which an application for the exemption authorized by this section was filed prior to the effective date of this act, the amount of increased payroll shall include payroll for full-time-equivalent employees in this state who are employed by an entity other than the facility which has previously or is currently qualified to receive an exemption pursuant to the provisions of this section and who are leased or otherwise provided to the facility, if such employment did not exist in this state prior to the start of initial construction or expansion of the facility. The manufacturing concern shall submit an affidavit to the Tax Commission, signed by an officer, stating that the construction, acquisition or expansion of the facility will result in a net increase in the annualized payroll as required by this paragraph and that full-time-equivalent employees of the facility are or will be offered a basic health benefits plan as required by this paragraph. If, after the completion of such construction or expansion or after three (3) years from the start of initial construction or expansion, whichever occurs first, the construction, acquisition or expansion has not resulted in a net increase in the amount of annualized payroll, if required, or any other qualification specified in this paragraph has not been met, the manufacturing concern shall pay an amount equal to the amount of any exemption granted, including penalties and interest thereon, to the county treasurer, who shall cause such amount to be remitted to the Tax Commission for deposit to the Ad Valorem Reimbursement Fund; provided, for facilities having previously qualified for an exemption under this section, if the total amount of capital improvements made to the facility during any five-year period is at least Ten Million Dollars ($10,000,000.00), the requirements for a

net increase in the amount of annualized payroll or for maintaining payroll and the requirements for increasing or maintaining payroll for previous years shall be deemed to have been met for purposes of this section for the entire five-year period of the exemption and payment to the county treasurer shall not be required. In such event, the facility shall continue to receive the exemption for the entire original five-year period;

5. Any new, acquired or expanded automotive final assembly manufacturing facility which does not meet the requirements of paragraph 4 of this subsection shall be granted an exemption only if all other requirements of this section are met and only if the investment cost of the construction, acquisition or expansion of the manufacturing facility is Three Hundred Million Dollars ($300,000,000.00) or more and the manufacturing facility retains an average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees in the year in which the exemption is initially granted and in each of the four (4) subsequent years only if an average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees is maintained in the subsequent year. Calculation of the number of employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit. As used in this paragraph, "expand" and "expansion" shall mean and include any increase to the size or scope of a facility as well as any renovation, restoration, replacement or remodeling of a facility which permits the manufacturing of a new or redesigned product; and

6. Any new, acquired or expanded manufacturing facility which does not meet the requirements of subparagraph a of paragraph 4 of this subsection shall be granted an exemption only if all other requirements of this section are met and only if:

a. the investment cost of the construction, acquisition or expansion of the manufacturing facility is Two

Hundred Million Dollars ($200,000,000.00) or more and such investment is made on or after July 1, 1997, and

b. the manufacturing facility retains employment of five hundred (500) or more full-time-equivalent employees in the year in which the exemption provided by this paragraph is granted and in each of the four (4) subsequent years only if employment of five hundred (500) or more full-time-equivalent employees is maintained in the subsequent year. Calculation of the number of employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit.

As used in this paragraph, "expand" and "expansion" shall mean and include any increase to the size or scope of a facility as well as any renovation, restoration, replacement or remodeling of a facility which permits the manufacturing of a new or redesigned product or a technological enhancement of the manufacturing process.

D. The five-year period of exemption from ad valorem taxes for any qualifying manufacturing facility property shall begin on January 1 following the initial qualifying use of the property in the manufacturing process.

E. 1. As used in this subsection:

a. "manufacturing facility" means:

(1) an establishment primarily engaged in distribution as defined under Industrial Group Number 5141 of the SIC Manual, latest revision, and which employs at least one hundred (100) full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, or

(2) a facility or establishment primarily engaged in property operation of a retail shopping center as defined under Industrial Group Number 6512 of the

SIC Manual, latest revision, and which the tenants of such facility or establishment, in the year immediately preceding the natural disaster, collected and remitted more than fifty percent (50%) of the total municipal sales tax revenue of the municipality in which the facility or establishment is located, and

b. "natural disaster" means the tornado or similar cyclonic winds occurring on May 3, 1999;

2. The five-year exemption provided for in this section shall apply to any manufacturing facility as defined in paragraph 1 of this subsection which facility has been damaged or destroyed by the natural disaster occurring on May 3, 1999. In order to qualify for this exemption:

a. the existing facility shall be repaired or rebuilt no later than May 3, 2001, to the same or similar condition as the facility existed prior to the damage or destruction, or the existing facility may be expanded,

b. the facility as defined in division (1) of subparagraph a of paragraph 1 of this subsection shall maintain at least ninety percent (90%) of the average level of full-time-equivalent employees in the year the facility begins operation after the occurrence of the natural disaster as compared to the year immediately before the natural disaster occurred. The tenants of the facility as defined in division (2) of subparagraph a of paragraph 1 of this subsection shall maintain at least seventy percent (70%) of the average level of full-time-equivalent employees in the year the facility begins operation after the occurrence of the natural disaster as compared to the year

immediately before the natural disaster occurred. The facility shall submit an affidavit to the Oklahoma Tax Commission, signed by an officer, setting forth the average level of full-time-equivalent employees in the year before the natural disaster and the year the facility reopened for business following the natural disaster. The number of full-time-equivalent employees shall be certified by the Oklahoma Employment Security Commission, and

c. the exemption shall be claimed no later than March 15, 2001.

F. Any person, firm or corporation claiming the exemption herein provided for shall file each year for which exemption is claimed, an application therefor with the county assessor of the county in which the new, expanded or acquired facility is located. The application shall be on a form or forms prescribed by the Tax Commission, and shall be filed before March 15, except as provided in Section 2902.1 of this title, of each year in which the facility desires to take the exemption or within thirty (30) days from and after receipt by such person, firm or corporation of notice of valuation increase, whichever is later. In a case where completion of the facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for that year. If such facility is found to be qualified for exemption, the ad valorem tax exemption provided for herein shall be granted for that entire year and shall apply to the ad valorem valuation as of January 1 of that given year. For applicants which qualify under the provisions of subparagraph b of paragraph 1 of subsection B of this section, the application shall include a copy of the affidavit and any other information required to be filed with the Tax Commission.

G. The application shall be examined by the county assessor and approved or rejected in the same manner as provided by law for approval or rejection of claims for homestead exemptions. The taxpayer shall have the same right of review by and appeal from the county board of equalization, in the same manner and subject to the same requirements as provided by law for review and appeals concerning homestead exemption claims. Approved applications shall be filed by the county assessor with the Tax Commission no later than June 15, except as provided in Section 2902.1 of this title, of the year in which the facility desires to take the exemption. Incomplete applications and applications filed after June 15 will be declared null and void by the Tax Commission. In the event that a taxpayer qualified to receive an exemption pursuant to the provisions of this section shall make payment of ad valorem taxes in excess of the amount due, the county treasurer shall have the authority to credit the taxpayer's real or personal property tax overpayment against current taxes due. The county treasurer may establish a schedule of up to five (5) years of credit to resolve the overpayment.

H. Nothing herein shall in any manner affect, alter or impair any law relating to the assessment of property, and all property, real or personal, which may be entitled to exemption hereunder shall be valued and assessed as is other like property and as provided by law. The valuation and assessment of property for which an exemption is granted hereunder shall be performed by the Tax Commission.

I. The Tax Commission shall have the authority and duty to prescribe forms and to promulgate rules as may be necessary to carry out and administer the terms and provisions of this section.

SECTION 3. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The provisions of Section 1 of this act shall be considered and construed to be a clarification of the law as it existed prior to the effective date of this act and shall not be considered or construed to be a change in the law as it existed prior to the effective date of this act.

SECTION 4. 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 House of Representatives the 25th day of February, 2002.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2002.

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Presiding Officer of the Senate