

SB 871

1 THE STATE SENATE
2 Monday, February 26, 2007

3 Senate Bill No. 871
4 As Amended

5 SENATE BILL NO. 871 - By: GUMM of the Senate and PETERSON (Ron) of
6 the House.

7 [revenue and taxation - modifying provisions relating to
8 Oklahoma Quality Jobs Program Act and Small Employer Quality
9 Jobs Incentive Act - effective date -
10 emergency]

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

12 SECTION 1. AMENDATORY 68 O.S. 2001, Section 3604, as
13 last amended by Section 32, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
14 2006, Section 3604), is amended to read as follows:

15 Section 3604. A. Except as otherwise provided in subsection I
16 of this section, an establishment which meets the qualifications
17 specified in the Oklahoma Quality Jobs Program Act may receive
18 quarterly incentive payments for a ten-year period from the Oklahoma
19 Tax Commission pursuant to the provisions of the Oklahoma Quality
20 Jobs Program Act in an amount which shall be equal to the net
21 benefit rate multiplied by the actual gross payroll of new direct
22 jobs for a calendar quarter as verified by the Oklahoma Employment
23 Security Commission.

24 B. In order to receive incentive payments, an establishment
25 shall apply to the Oklahoma Department of Commerce. The application

1 shall be on a form prescribed by the Department and shall contain
2 such information as may be required by the Department to determine
3 if the applicant is qualified. An establishment may apply for an
4 effective date for a project, which shall not be more than twenty-
5 four (24) months from the date the application is submitted to the
6 Department.

7 C. Except as otherwise provided by subsection D or E of this
8 section, in order to qualify to receive such payments, the
9 establishment applying shall be required to:

- 10 1. Be engaged in a basic industry;
- 11 2. Have an annual gross payroll for new direct jobs projected
12 by the Department to equal or exceed Two Million Five Hundred
13 Thousand Dollars (\$2,500,000.00) within three (3) years of the start
14 date; and
- 15 3. Have a number of full-time-equivalent employees residing in
16 this state and working an annual average of thirty (30) or more
17 hours per week in new direct jobs equal to or in excess of eighty
18 percent (80%) of the total number of new direct jobs.

19 D. In order to qualify to receive incentive payments as
20 authorized by the Oklahoma Quality Jobs Program Act, an
21 establishment engaged in an activity described under:

- 22 1. Industry Group Nos. 3111 through 3119 of the NAICS Manual
23 shall be required to:

1 a. have an annual gross payroll for new direct jobs
2 projected by the Department to equal or exceed One
3 Million Five Hundred Thousand Dollars (\$1,500,000.00)
4 within three (3) years of the start date and make, or
5 which will make within one (1) year, at least seventy-
6 five percent (75%) of its total sales, as determined
7 by the Incentive Approval Committee pursuant to the
8 provisions of subsection B of Section 3603 of this
9 title, to out-of-state customers or buyers, to in-
10 state customers or buyers if the product or service is
11 resold by the purchaser to an out-of-state customer or
12 buyer for ultimate use, or to the federal government,
13 unless the annual gross payroll equals or exceeds Two
14 Million Five Hundred Thousand Dollars (\$2,500,000.00)
15 in which case the requirements for purchase of output
16 provided by this subparagraph shall not apply, and

17 b. have a number of full-time-equivalent employees
18 working an average of twenty-five (25) or more hours
19 per week in new direct jobs equal to or in excess of
20 eighty percent (80%) of the total number of new direct
21 jobs; and

22 2. Division (4) of subparagraph a of paragraph 1 of subsection
23 A of Section 3603 of this title, shall be required to:

- 1 a. have an annual gross payroll for new direct jobs
2 projected by the Department to equal or exceed One
3 Million Five Hundred Thousand Dollars (\$1,500,000.00)
4 within three (3) years of the start date, and
5 b. have a number of full-time-equivalent employees
6 working an average of twenty-five (25) or more hours
7 per week in new direct jobs equal to or in excess of
8 eighty percent (80%) of the total number of new direct
9 jobs.

10 E. 1. An establishment which locates its principal business
11 activity within a site consisting of at least ten (10) acres which:

- 12 a. is a federal Superfund removal site,
13 b. is listed on the National Priorities List established
14 under Section 9605 of Title 42 of the United States
15 Code,
16 c. has been formally deferred to the state in lieu of
17 listing on the National Priorities List, or
18 d. has been determined by the Department of Environmental
19 Quality to be contaminated by any substance regulated
20 by a federal or state statute governing environmental
21 conditions for real property pursuant to an order of
22 the Department of Environmental Quality,

1 shall qualify for incentive payments irrespective of its actual
2 gross payroll or the number of full-time-equivalent employees
3 engaged in new direct jobs.

4 2. In order to qualify for the incentive payments pursuant to
5 this subsection, the establishment shall conduct the activity
6 resulting in at least fifty percent (50%) of its Oklahoma taxable
7 income or adjusted gross income, as determined under Section 2358 of
8 this title, whether from the sale of products or services or both
9 products and services, at the physical location which has been
10 determined not to comply with the federal or state statutes
11 described in this subsection with respect to environmental
12 conditions for real property. The establishment shall be subject to
13 all other requirements of the Oklahoma Quality Jobs Program Act
14 other than the exemptions provided by this subsection.

15 3. In order to qualify for the incentive payments pursuant to
16 this subsection, the entity shall obtain from the Department of
17 Environmental Quality a letter of concurrence that:

18 a. the site designated by the entity does meet one or
19 more of the requirements listed in paragraph 1 of this
20 subsection, and

21 b. the site is being or has been remediated to a level
22 which is consistent with the intended use of the
23 property.

1 In making its determination, the Department of Environmental
2 Quality may rely on existing data and information available to it,
3 but may also require the applying entity to provide additional data
4 and information as necessary.

5 4. If authorized by the Department of Environmental Quality
6 pursuant to paragraph 3 of this subsection, the entity may utilize a
7 remediated portion of the property for its intended purpose prior to
8 remediation of the remainder of the site, and shall qualify for
9 incentive payments based on employment associated with the portion
10 of the site.

11 F. Except as otherwise provided by subsection G of this
12 section, for applications submitted on and after the effective date
13 of this act, in order to qualify to receive incentive payments as
14 authorized by the Oklahoma Quality Jobs Program Act, in addition to
15 other qualifications specified herein, an establishment shall be
16 required to pay new direct jobs an average annualized wage which
17 equals or exceeds:

18 1. One hundred ten percent (110%) of the average county wage as
19 determined by the Oklahoma State Data Center based on the most
20 recent U.S. Department of Commerce data for the county in which the
21 new direct jobs are located. For purposes of this paragraph, health
22 care premiums paid by the applicant for individuals in new direct
23 jobs shall be included in the annualized wage; or

1 2. One hundred percent (100%) of the average county wage as
2 that percentage is determined by the Oklahoma State Data Center
3 based upon the most recent U.S. Department of Commerce data for the
4 county in which the new jobs are located. For purposes of this
5 paragraph, health care premiums paid by the applicant for
6 individuals in new direct jobs shall not be included in the
7 annualized wage.

8 Provided, no average wage requirement shall exceed Twenty-five
9 Thousand Dollars (\$25,000.00), in any county. This maximum wage
10 threshold shall be indexed and modified from time to time based on
11 the latest Consumer Price Index year-to-date percent change release
12 as of the date of the annual average county wage data release from
13 the Bureau of Economic Analysis of the U.S. Department of Commerce.

14 G. 1. As used in this subsection, "opportunity zone" means one
15 or more census tracts in which, according to the most recent federal
16 decennial census, at least thirty percent (30%) of the residents
17 have annual gross household incomes from all sources below the
18 poverty guidelines established by the U.S. Department of Health and
19 Human Services. An establishment which is otherwise qualified to
20 receive incentive payments and which locates its principal business
21 activity in an opportunity zone shall not be subject to the
22 requirements of subsection F of this section.

23 2. As used in this subsection:

1 a. "negative economic event" means:

2 (1) a man-made disaster or natural disaster as
3 defined in Section 683.3 of Title 63 of the
4 Oklahoma Statutes, resulting in the loss of a
5 significant number of jobs within a particular
6 county of this state, or

7 (2) an economic circumstance in which a significant
8 number of jobs within a particular county of this
9 state have been lost due to an establishment
10 changing its structure, consolidating with
11 another establishment, closing or moving all or
12 part of its operations out of this state, and

13 b. "significant number of jobs" means Local Area
14 Unemployment Statistics (LAUS) data, as determined by
15 the Bureau of Labor Statistics, for a county which are
16 equal to or in excess of five percent (5%) of the
17 total amount of Local Area Unemployment Statistics
18 (LAUS) data for that county for the calendar year, or
19 most recent twelve-month period in which employment is
20 measured, preceding the event.

21 An establishment which is otherwise qualified to receive incentive
22 payments and which locates in a county in which a negative economic
23 event has occurred within the eighteen-month period preceding the

1 start date shall not be subject to the requirements of subsection F
2 of this section; provided, an establishment shall not be eligible to
3 receive incentive payments based upon a negative economic event with
4 respect to jobs that are transferred from one county of this state
5 to another.

6 H. The Department shall determine if the applicant is qualified
7 to receive incentive payments.

8 I. If the applicant is determined to be qualified by the
9 Department and is not subject to the provisions of subparagraph d of
10 paragraph 6 of subsection A of Section 3603 of this title, the
11 Department shall conduct a cost/benefit analysis to determine the
12 estimated net direct state benefits and the net benefit rate
13 applicable for a ten-year period and to estimate the amount of gross
14 payroll for a ten-year period. In conducting such cost/benefit
15 analysis, the Department shall consider quantitative factors, such
16 as the anticipated level of new tax revenues to the state along with
17 the added cost to the state of providing services, and such other
18 criteria as deemed appropriate by the Department. In no event shall
19 incentive payments, cumulatively, exceed the estimated net direct
20 state benefits, except for applicants subject to the provisions of
21 subparagraph d of paragraph 6 of subsection A of Section 3603 of
22 this title.

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

18 K. A municipality with a population of less than one hundred
19 thousand (100,000) persons in which an establishment eligible to
20 receive quarterly incentive payments pursuant to the provisions of
21 this section is located may file a claim with the Tax Commission for
22 up to twenty-five percent (25%) of the amount of such payment. The
23 amount of such claim shall not exceed amounts paid by the

1 municipality for direct costs of municipal infrastructure
2 improvements to provide water and sewer service to the
3 establishment. Such claim shall not be approved by the Tax
4 Commission unless the municipality and the establishment have
5 entered into a written agreement for such claims to be filed by the
6 municipality prior to submission of the application of the
7 establishment pursuant to the provisions of this section. If such
8 claim is approved, the amount of the payment to the establishment
9 made pursuant to the provisions of Section 3606 of this title shall
10 be reduced by the amount of the approved claim by the municipality
11 and the Tax Commission shall issue a warrant to the municipality in
12 the amount of the approved claim in the same manner as warrants are
13 issued to qualifying establishments.

14 SECTION 2. AMENDATORY 68 O.S. 2001, Section 3606, as
15 last amended by Section 2, Chapter 282, O.S.L. 2006 (68 O.S. Supp.
16 2006, Section 3606), is amended to read as follows:

17 Section 3606. A. As soon as practicable after the end of a
18 calendar quarter for which an establishment has qualified to receive
19 an incentive payment, the establishment shall file a claim for the
20 payment with the Oklahoma Tax Commission and shall specify the
21 actual number and gross payroll of new direct jobs for the
22 establishment for the calendar quarter; provided, in no event shall
23 the first claim for incentive payments be filed later than three (3)

1 years from the start date designated by the Oklahoma Department of
2 Commerce. The Tax Commission shall verify the actual gross payroll
3 for new direct jobs for the establishment for such calendar quarter.
4 If the Tax Commission is not able to provide such verification
5 utilizing all available resources, the Tax Commission may request
6 such additional information from the establishment as may be
7 necessary or may request the establishment to revise its claim.

8 B. If the actual verified gross payroll for four (4)
9 consecutive calendar quarters does not equal or exceed the
10 applicable total required by Section 3604 of this title within three
11 (3) years of the start date, or does not equal or exceed the
12 applicable total required by Section 3604 of this title at any other
13 time during the ten-year period after the start date, the incentive
14 payments shall not be made and shall not be resumed until such time
15 as the actual verified gross payroll equals or exceeds the amounts
16 specified in Section 3604 of this title.

17 C. If the average annualized wage required for an establishment
18 locating its principal business activity in a municipality with a
19 population which exceeds sixty thousand (60,000) persons located
20 within a metropolitan statistical area with a population which
21 exceeds seven hundred thousand (700,000) persons, as determined by
22 the Oklahoma State Data Center based on the most recent U.S.
23 Department of Commerce data, the principal seat of government of

1 which is located in a high-employment county subject to the
2 provisions of subsection F of Section 3604 of this title, does not
3 equal or exceed the amount specified in paragraph 1 or 2 of
4 subsection F of Section 3604 of this title within three (3) years of
5 the date of the first incentive payment, the incentive payments
6 shall not be made and shall not be resumed until such time as such
7 requirements are met.

8 D. In no event shall incentive payments, cumulatively, exceed
9 the estimated net direct state benefits, except for establishments
10 subject to the provisions of subparagraph d of paragraph 6 of
11 subsection A of Section 3603 of this title.

12 E. An establishment that has qualified pursuant to Section 3604
13 of this title may receive payments only in accordance with the
14 provisions of the law under which it initially applied and was
15 approved. If an establishment that is receiving incentive payments
16 expands, it may apply for additional incentive payments based on the
17 gross payroll anticipated from the expansion only, pursuant to
18 Section 3604 of this title. Provided, an establishment which has
19 suffered an extraordinary adverse business circumstance, as
20 certified by the Incentive ~~Review~~ Approval Committee, may be allowed
21 to voluntarily withdraw from the Oklahoma Quality Jobs Program,
22 repay to the ~~Oklahoma~~ Tax Commission the total amount of incentive
23 payments received pursuant to the provisions of this section, plus

1 interest at the rate specified in Section 727.1 of Title 12 of the
2 Oklahoma Statutes, and reapply to the Department for a new incentive
3 contract if the establishment qualifies pursuant to the provisions
4 of the Oklahoma Quality Jobs Program Act. Any funds received by the
5 Tax Commission pursuant to the provisions of this subsection shall
6 be apportioned in the manner that income tax revenues are
7 apportioned.

8 F. An establishment that is receiving incentive payments may
9 not apply for additional incentive payments for any new projects
10 until twelve (12) quarters after receipt of the first incentive
11 payment, or until the establishment's actual verified gross payroll
12 for new direct jobs equals or exceeds Two Million Five Hundred
13 Thousand Dollars (\$2,500,000.00) during any four consecutive-
14 calendar-quarter period, whichever comes first. After meeting the
15 requirements of this subsection, an establishment may apply for
16 additional incentive payments based upon the gross payroll
17 anticipated from an expansion only.

18 G. As soon as practicable after verification of the actual
19 gross payroll as required by this section and except as otherwise
20 provided by subsection L of Section 3604 of this title, the Tax
21 Commission shall issue a warrant to the establishment in the amount
22 of the net benefit rate multiplied by the actual gross payroll as

1 determined pursuant to subsection A of this section for the calendar
2 quarter.

3 SECTION 3. AMENDATORY 68 O.S. 2001, Section 3904, as
4 last amended by Section 1, Chapter 256, O.S.L. 2006 (68 O.S. Supp.
5 2006, Section 3904), is amended to read as follows:

6 Section 3904. A. An establishment which meets the
7 qualifications specified in the Small Employer Quality Jobs
8 Incentive Act may receive quarterly incentive payments for a seven-
9 year period from the Oklahoma Tax Commission pursuant to the
10 provisions of the Small Employer Quality Jobs Incentive Act in an
11 amount equal to the net benefit rate multiplied by the actual gross
12 taxable payroll of new direct jobs as verified by the Tax
13 Commission.

14 B. In order to receive incentive payments, an establishment
15 shall apply to the Oklahoma Department of Commerce. The application
16 shall be on a form prescribed by the Department and shall contain
17 such information as may be required by the Department to determine
18 if the applicant is qualified. The establishment may apply for
19 payments to begin on a date certain specified in the application,
20 which shall not be more than twenty-four (24) months from the date
21 the application is submitted to the Department.

1 C. Before approving an application for incentive payments, the
2 Department must first determine that the applicant meets the
3 following requirements:

4 1. Be engaged in a basic industry;

5 2. Has no more than ninety full-time employees in this state on
6 the date of application nor an average of more than ninety full-time
7 employees in this state during the four calendar quarters
8 immediately preceding the date of application;

9 3. Has a projected minimum employment, as determined by the
10 Department, of new direct jobs within twelve (12) months of the date
11 of application as follows:

12 a. if the establishment is located in a municipality with
13 a population less than three thousand five hundred
14 (3,500) persons, as determined by the Oklahoma State
15 Data Center based on the most recent U.S. Department
16 of Commerce data, or if the establishment is located
17 in an unincorporated area and the largest municipality
18 within twenty (20) miles of the establishment is such
19 a municipality, five new direct jobs,

20 b. if the establishment is located in a municipality with
21 a population of three thousand five hundred (3,500)
22 persons or more but less than seven thousand (7,000)
23 persons, as determined by the Oklahoma State Data

1 Center based on the most recent U.S. Department of
2 Commerce data, or if the establishment is located in
3 an unincorporated area and the largest municipality
4 within twenty (20) miles of the establishment is such
5 a municipality, ten new direct jobs, and
6 c. if the establishment is located in a municipality with
7 a population of seven thousand (7,000) persons or
8 more, as determined by the Oklahoma State Data Center
9 based on the most recent U.S. Department of Commerce
10 data, or if the establishment is located in an
11 unincorporated area and the largest municipality
12 within twenty (20) miles of the establishment is such
13 a municipality, fifteen new direct jobs.

14 Provided, for an establishment engaged in software publishing as
15 defined or classified in the NAICS Manual under Industry Group No.
16 5112, data processing, hosting and related services as defined or
17 classified in the NAICS Manual under Industry Group No. 5182,
18 computer systems design and related services as defined or
19 classified in the NAICS Manual under Industry Group No. 5415,
20 scientific research and development services as defined or
21 classified in the NAICS Manual under Industry Group No. 5417,
22 medical and diagnostic laboratories as defined or classified in the
23 NAICS Manual under Industry Group No. 6215 or testing laboratories

1 as defined or classified in the NAICS Manual under U.S. Industry No.
2 541380, the projected minimum employment requirements of this
3 paragraph must be achieved within thirty-six (36) months of the date
4 of application;

5 4. Has or will have within twelve (12) months of the date of
6 application, as determined by the Department, sales of at least
7 seventy-five percent (75%) of its total sales to out-of-state
8 customers or buyers, to in-state customers or buyers if the product
9 or service is resold by the purchaser to an out-of-state customer or
10 buyer for ultimate use, or to the federal government, except that:

11 a. those establishments in the NAICS Manual under the
12 U.S. Industry No. 541710 or 541380 are excused from
13 the seventy-five percent (75%) out-of-state sales
14 requirement,

15 b. warehouses that serve as distribution centers for
16 retail or wholesale businesses shall be required to
17 distribute forty percent (40%) of inventory to out-of-
18 state locations, and

19 c. adjustment and collection services activities defined
20 or classified in the NAICS Manual under U.S. Industry
21 No. 561440 shall be required to have seventy-five
22 percent (75%) of loans to be serviced made by out-of-
23 state debtors;

1 5. Will pay the individuals it employs in new direct jobs an
2 average annualized wage which equals or exceeds:

3 a. one hundred twenty-five percent (125%) of the average
4 county wage as that percentage is determined by the
5 Oklahoma State Data Center based on the most recent
6 U.S. Department of Commerce data for the county in
7 which the new direct jobs are located. For purposes
8 of this subparagraph, health care premiums paid by the
9 applicant for individuals in new direct jobs shall be
10 included in the annualized wage, ~~or~~

11 b. one hundred ten percent (110%) of the average county
12 wage as that percentage is determined by the Oklahoma
13 State Data Center based upon the most recent U.S.
14 Department of Commerce data for the county in which
15 the new direct jobs are located. For purposes of this
16 subparagraph, health care premiums paid by the
17 applicant for individuals in new direct jobs shall not
18 be included in the annualized wage; or

19 c. one hundred percent (100%) of the average county wage,
20 excluding health care premiums paid by the applicant
21 for individuals in new direct jobs if the county in
22 which the new jobs are located has:

- 1 (1) according to the most recent annual determination
2 by the Oklahoma Employment Security Commission, a
3 county unemployment rate more than ten percent
4 (10%) higher than the state unemployment rate,
5 and
6 (2) according to the most recent ~~Federal Decennial~~
7 ~~Census~~ United States Census Bureau data, a county
8 ~~median household income fifteen percent (15%) or~~
9 ~~more below the federal poverty level~~ personal
10 poverty rate above fifteen percent (15%);

11 6. Has a basic health benefit plan which, as determined by the
12 Department, meets the elements established under divisions (1)
13 through (7) of subparagraph b of paragraph 1 of subsection A of
14 Section 3603 of this title and which will be offered to individuals
15 within twelve (12) months of employment in a new direct job;

16 7. Has not received incentive payments under the Oklahoma
17 Quality Jobs Program Act, the Saving Quality Jobs Act, or the Former
18 Military Facility Development Act; and

19 8. Is not qualified for approval of an application for
20 incentive payments under the Oklahoma Quality Jobs Program Act, the
21 Saving Quality Jobs Act, or the Former Military Facility Development
22 Act.

1 D. The Oklahoma Department of Commerce shall determine if an
2 applicant is qualified to receive the incentive payment. Upon
3 qualifying the applicant, the Department shall notify the Tax
4 Commission and shall provide it with a copy of the application, and
5 approval which shall provide the number of persons employed by the
6 applicant upon the date of approval and the maximum total incentives
7 which may be paid to the applicant during the seven-year period.
8 The Tax Commission may require the qualified establishment to submit
9 additional information as may be necessary to administer the
10 provisions of the Small Employer Quality Jobs Incentive Act. The
11 approved establishment shall report to the Tax Commission quarterly
12 to show its continued eligibility for incentive payments, as
13 provided in Section 3905 of this title. Establishments may be
14 audited by the Tax Commission to verify such eligibility. Once the
15 establishment is approved, an agreement shall be deemed to exist
16 between the establishment and the State of Oklahoma, requiring
17 incentive payments to be made for a seven-year period as long as the
18 establishment retains its eligibility and within the limitations of
19 the Small Employer Quality Jobs Incentive Act which existed at the
20 time of such approval. Any establishment which has been approved
21 for incentive payments prior to July 1, 2002, shall continue to
22 receive such payments pursuant to the laws as they existed prior to

1 July 1, 2002, for any period of time of the original five-year
2 period for such payments remaining after July 1, 2002.

3 SECTION 4. REPEALER 68 O.S. 2001, Section 3604, as last
4 amended by Section 1, Chapter 282, O.S.L. 2006 (68 O.S. Supp. 2006,
5 Section 3604), is hereby repealed.

6 SECTION 5. This act shall become effective July 1, 2007.

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

11 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-20-07 - DO PASS,
12 As Amended and Coauthored.