Oklahoma State Senate

Legislative Brief

August 2002

Pro-Business Legislation

Issue Background

Maintaining a pro-business climate in Oklahoma during a period of stock market decline, investor caution, corporate cut-backs, and state revenue shortfalls was a challenge for the Oklahoma Legislature.

Oklahoma's economy was not immune from the national economic downturn and suffered its share of corporate retrenchment, job cuts, and financial instability. Nevertheless, Oklahoma faired better than the nation on some key economic indicators:

- Oklahoma's unemployment rate has consistently been lower than the national unemployment rate and, even with major layoffs in Oklahoma City and Tulsa, that fact remains. June 2002 unemployment figures show Oklahoma's unemployment rate at 4.3%, compared to the nation's rate of 5.9%, which was also the lowest of any of the states bordering Oklahoma. (Bureau of Labor Statistics)

- Oklahoma's growth in Per Capita Personal Income (PCPI) outpaced the nation from the year 2000 to 2001. With a growth rate of 4.8%, Oklahoma had the third fastest growing PCPI in the nation, and outpaced the nation's growth rate of 2.7% and the 2.6% growth rate of Texas, a state with which we are often compared. This PCPI growth moved Oklahoma's ranking from 42nd to 40th in the nation. (Bureau of Economic Analysis)

- Oklahoma's high-technology industry grew by 2% in 2001, according to a report released by the American Electronics Association. This state growth rate was higher than the national growth rate of 1 percent. Total tech employment for the state reached 39,723. (*Cyberstates 2002: A State-by-State Overview of the High-Technology Industry*)

Declining state revenues limited the ability of the Legislature to act on all of the tax incentives and new programs proposed this session. In spite of this challenge, the Legislature successfully enacted several significant measures, which are summarized in this document, to address economic development and business concerns.

Summary of Actions

Small Business Measures:
SB 828 (Fisher / Roggow): Modifies the Small Employer Quality Jobs Incentive Act to make the following changes:

- Benefits are limited to jobs located in counties under 200,000 population or opportunity zones;
- A cost-benefit analysis is required to determine the amount of incentive payments;
- Payments are made quarterly (rather than annually) and for up to seven (rather than five) years;
- The number of new jobs is changed from ten to five (city under 3,500 population), ten (city from 3,500 to 7,000 population) or fifteen (city over 7,000 population);

- The wage threshold is changed from 150% of the county average wage, to be paid to at least 80% of the establishment's employees, to 125% of the county average wage (including health insurance benefits) or 110% of the county average wage (excluding health insurance benefits); and
- Health benefits must be provided within twelve months (rather than 90 days).

SB 828 also clarifies the benefits available under the Oklahoma Quality Jobs Program Act for insurance companies and includes oil and gas company jobs not related to field drilling. Effective 7-1-02.

SB 948 (Maddox/Plunk): Enacts the Oklahoma Small Business Regulatory Flexibility Act. The measure creates a mechanism for ensuring that the impact of state agency rules on small business is assessed and considered prior to adoption of rules. It also provides for the review of adopted state agency rules that have an adverse affect on small business. The bill establishes a Small Business Regulatory Review Committee within the Oklahoma Department of Commerce. Agencies are required to submit to the Committee, for its review and input, proposed rules that could adversely affect small business. For rules that are in place, an adversely affected small business may petition the state agency for a review of the rule. The agency must consider the petition and submit a written response of its determination to the Small Business Regulatory Review Committee within 60 days. State agencies are also authorized under certain circumstances to waive or reduce an administrative penalty or fine imposed by a statute or rule. In addition, the bill amends the Administrative Procedures Act by increasing from 20 days to 30 days the comment period during which interested parties may submit data and views prior to the agency hearing on a proposed rule or rule change. Effective 7-1-02

Health Care, Insurance, and Employee Benefits Measures

HB 2267 (Plunk/Mickle): Creates the Oklahoma Professional Employer Organization Act with the stated purpose of promoting the development of cost-effective methods of satisfying personnel requirements and providing employees with access to more employment benefits. Defines terms related to professional employer organizations. Requires such organizations to register with the State Insurance Commissioner and establishes a schedule of fees and net worth and bonding requirements. Establishes basis for contractual relationships, duties and responsibilities between parties. Effective 11-1-02.

HB 2350 (Liotta/Dunlap): Establishes the Employer Health Insurance Purchasing Group Act which allows small employers (employing 100 full-time employees or less) to band together to form a Health Insurance Purchasing Group (HIPG) to purchase a health benefits plan for their employees and for dependents of their employees. The HIPG must offer at least two types of plans to its members: one plan that must include all state-mandated benefits and one plan(plans) that does not include all or some of the state-mandated benefits. Policies that do not include all state-mandated benefits must include a notice to the insured to this effect. Authorizes the Insurance Commissioner to promulgate rules to implement the provisions of the act. Effective 11-1-02.

Rural Economy Measures:

SB 1442 (Kerr/Covey): Creates the Rural Economic Development Loan Act. The State Treasurer will administer a program under which financial institutions participating in the program will make reduced rate loans to finance qualified economic development projects in rural areas.

Participating financial institutions will pledge $3 million to $10 million to a fund. If an applicant applies for a rural economic development loan from a participating financial institution and the amount of the loan is greater than the amount that institution has pledged, other pledging financial institutions will provide the remaining amount from their pledges. Financial institutions must apply the usual standards for making loans to rural economic development loans, and loan packages may be developed by SBA-certified development companies or political subdivisions or agencies. Administrative expenses of the State Treasurer and loan developers may be paid from the fund.

A Review Board consisting of the State Auditor and Inspector, Lieutenant Governor, State Treasurer, State Banking Commissioner, Director of the Department of Commerce, President of the State Board of Agriculture, and the Chair of the Oklahoma Tax Commission, or their designees, is created to review and prioritize applications and certify the amount of payroll attributable to new jobs created by rural economic development loans.

A participating financial institution will receive an income tax credit equal to the amount of taxable income attributable to the loan, limited each year to an amount equal to 5% of the amount of annual payroll from any job created by the economic activity financed with the loan. (The previous version of the bill allowed an income tax deduction in the amount of monies actually paid to the fund.) The Tax Commission has estimated that the fiscal impact would be minimal. SB 1442 also contains an amendment clarifying that business incubator income distributed to partners or shareholders or members of a limited liability company receive the state income tax exemption. Effective January 1, 2003.

Technology Measures:
SB 1391 (Fisher/Rice): Enacts the Oklahoma Science and Technology Research and Development Act; reconstitutes board of directors for the Oklahoma Center for the Advancement of Science and Technology (OCAST) as the Oklahoma Science and Technology Research and Development Board; modifies membership, powers, and duties of board; establishes Oklahoma Institute of Technology within OCAST; creates trust fund for Institute; abolishes Oklahoma Futures. Effective 7-1-02.

Tax Incentives and Other Business Finance Measures:
Manufacuring
SB 840 (Mickle/Dunegan): Allows the five-year ad valorem tax exemption available to manufacturers to distribution facilities if the investment cost of the facility is $5 million or more, at least 100 persons are employed at the facility, employees are paid at least 150% of the minimum wage, and construction is begun prior to 12-31-02 and completed within three years. Effective 5-6-02.

SB 1451 (Hobson/Miller): Allows an income tax credit to Oklahoma manufacturers of advanced small wind turbines, in the amount of $25 per square foot of rotor swept area in 2003, $12.50 in 2004 and $6.25 in 2005. Credits may be carried forward up to 10 years and are transferable. The tax years for which the credit allowed last session for electricity generated with zero-emission facilities is allowed are changed from those beginning on or after 1-1-02 to those beginning on or after 1-1-03. Effective 1-1-02.

HB 1222 (Leist/Shurden): Modifies establishments qualifying for incentive payments under the Oklahoma Quality Jobs Program Act to allow more than one establishment locating on a single “brownfield” site to qualify. Effective 3-11-02.

HB 2245 (Benson/Helton): Creates the “Oklahoma Quality Jobs Incentive Leverage Act”, providing the following incentives:

- Creates an “advance incentive” funding model for existing economic development incentives. These incentives would accrue to the company over a span of up to ten years;

- Provides that businesses that meet a very high threshold for the amount and quality of new capital investment are eligible for “advance” funding of existing economic development incentives such as investment tax credits, property tax breaks, quality jobs payments, and sales tax credits on construction materials. Claims to the existing incentives are surrendered to claim the advance funding;

- Provides additional state incentives if a locality provides $5 million in local incentive match;

- Provides for the issuance of bonds by the Oklahoma Development Finance Authority, with benefits to any one business not exceeding $36 million;

- Provides that businesses that meet a high threshold for the amount and quality of new capital investment are eligible for half (7.2% of the projected investment) of the higher level of "advance" funding if the locality where they reside does not meet the $5 million local match requirement;

- Specifies requirements for a business to participate in the Quality Jobs Incentive Leverage Act, including:
  - § Must have at least $115 million in current payroll;
  - § The average annual salary must be a least $40,000;
  - § Plans to add to compensation and employment;
  - § Currently has at least $200 million in investment in the state;
  - § Has $50 million in plans for modernization and retooling;
  - § Has at least 1,550 employees;
  - § Meets the criteria to qualify for the Investment Tax Credit;
  - § Meets the criteria of SIC code 3011(tire manufacturing);
  - § Meets the criteria to qualify for Quality Jobs including health insurance;

- Provides that upon the calculation of the value of incentives a business is eligible for by the Department of Commerce and certification of the Department of Commerce's Incentive Approval Committee (Tax Commissioner, Secretary of Commerce and OSF Director) that business meets all the criteria to receive the advance funding of incentives, the Oklahoma Development Finance Authority will issue bonds in the amount determined by the Department of Commerce;

- Provides that the proceeds of that bond issue will fund the advance incentive package for an eligible business upon that business entering into a contract with the ODFA that provides economic benefits to the state of Oklahoma in the form of jobs and new investment in accordance with the act;

- Creates a special fund at the Oklahoma Development Finance Authority to receive funds for the payment of principal and interest of the bonds;

- Provides that incentive payments which would have been paid to the establishment will be deposited in the special ODFA fund. These funds will consist of the forfeited Quality Jobs payments and withholding taxes imposed on the employees of the eligible business;

Annual bond payments on a fifteen-year bond of the maximum benefit of $36 million will be approximately $3.4 million per year. The funds available to the special fund to cover principal and interest costs will exceed $7 million per year. HB 2245 also provides the following safeguards:

- If the business fails to meet investment targets, it is liable for the full amount of principal and interest on the bonds relative to the deficit in investment;

- The business must deliver a guaranty from itself or a third party that if employment at the business drops below a level necessary to generate enough withholding taxes to service the bond payments that such deficit is covered to service the bond payments;

- ODFA may use its Credit Enhancement Reserve Fund to obtain favorable credit features and further safeguard investments; and

- Apportionment of income tax withholding from wages of employees of the business is the final "backstop" for bond payment.

Effective 5-23-02.

Airline and space industries

SB 817 (Capps/Covey): Amends the tax credit allowed to investors in qualified space transportation vehicle providers enacted last session in SB 55. The bill makes changes in three areas: (1) to delete provisions allowing the state to recapture transferred tax credits from the transferee under certain conditions; (2) to clarify that the local commitment may be met by allowing use of property transferred to a state authority by a local government; and (3) to extend the time period for investments eligible for the tax credit. Effective 6-4-02.

SB 1282 (Fisher/Rice): Modifies the qualifications for aircraft maintenance facilities to receive the sales tax exemption on sales of aircraft engine repairs, modification, and replacement parts; sales of aircraft frame repairs and modification, aircraft interior modification, and paint; and sales of services employed in the repair, modification and replacement of parts of aircraft engines, aircraft frame and interior repair and modification, and paint. Effective 7-1-02.

HB 2315 (Roach/Henry): Changes provisions relating to the income tax credit allowed to investors in certain airlines to extend the investment period from 12-31-00 to 12-31-02 and to increase the amount of investment qualifying for the tax credit by $9 million. Language is also included as to legislative intent that monies derived from tax credit transfers are intended to be nonshareholder contributions to capital for purposes of the Internal Revenue Code. Effective 2-19-02.

Oil and gas/Coal

SB 947 (Crutchfield/Rice): Modifies gross production taxes on oil and gas production as follows:

- A three-tier tax system for gas production is established, similar to the system established for oil production in 1999. If the price of gas is $2.10 per mcf or more, the tax rate will be 7%; if the price of gas is $1.75 or more but less than $2.10, the tax rate will be 4%; and if the price of gas is less than $1.75, the tax rate will be 1%.

- The new system will be in place from 1-1-02 through 6-30-07.

- The duration of the exemptions for horizontal drilling and deep wells are extended. The exemption for horizontal drilling is changed from 24 months to 48 months and the exemption for deep wells is changed from 28 months to 48 months (wells of 15,000 feet or greater) or 60 months (wells of 17,500 feet or greater).

- The level at which the exemptions are not applicable is changed from $3.50 per MMBTU to $5.00 per mcf.

Effective 7-1-02.

SB 1302 (Crutchfield/Rice): Provides that the value of investment in property used exclusively by a small oil refinery that is used wholly as a facility, device or method for the desulphurization of gasoline or diesel fuel shall not be included in the capitalization used in the determination of fair market value of a small oil refinery. Application procedures are specified.
Effective 1-1-03.

HB 2073 (Rice/Dickerson): Modifies income tax credits allowed to producers and purchasers of Oklahoma coal to extend the period of time for which they may be granted, make all credits transferable, allow certain credits to non-corporate taxpayers, and allow a five-year carry forward period. Effective 5-6-02

Other

SB 1434 (Leftwich / Winchester): Modifies the Compete with Canada Film Act to change the definition of "film" and modify documentation which must be submitted with a rebate claim. Effective 7-1-02.

HB 2904 (Roach / Williams): Allows tax-exempt housing projects to be financed by public trusts; modifies procedures for notice and hearings under the Local Development Act; specifies that transfers of property from a transferor to a business entity owned by the transferor or a family member are not considered sales for purposes of lifting the property valuation cap; allow school districts to pay visual inspection costs from building funds (see HB 1863); modifies property of charitable or nonprofit organizations which may be exempt from ad valorem taxes; allows leased employees to be counted toward employment threshold for five-year ad valorem tax exemption for companies for which construction started on or after 1-1-96. Effective 90 days after sine die adjournment.

Workers' Compensation Measures:

SB 650 (Henry / Askins): Expands powers of CompSource Oklahoma by authorizing CompSource to require the production of records of employers insured with or applying for insurance with CompSource. Modifies premium adjustment requirements. Modifies persons required to approve administration expenses of the Multiple Injury Trust Fund. Effective 4-29-02.

HB 2370 (Gray / Henry): Renames the managing executive of CompSource Oklahoma from "State Insurance Fund Commissioner" to "CompSource Oklahoma President and Chief Executive Officer". Effective 4-11-02.

HB 2723 (Bonny / Herbert): Exempts certain employers and personnel service companies from payment of search fees for requests for claim information from the Workers' Compensation Court. Effective 11-1-02.

HB 2752 (Askins / Henry): Modifies procedures relating to premiums assessed against insurance companies, self-insured employers and group self-insurance associations for the purpose of funding the Multiple Injury Trust Fund. Creates a tax rebate for payors of assessment. Authorizes payors to admit tax rebate as asset for purposes of financial solvency regulation by the Insurance Department. Extends rulemaking authority to Insurance Commissioner as necessary. Creates the Workers' Compensation Assessment Rebate Fund from which rebates will be paid. Repeals tax credit language of HB 1003X. Effective 4-10-02

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