I move to amend HB2980

Page ___________  Section ___________  Lines ___________

Of the printed Bill

Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____________________________

Amendment submitted by: David Dank

______________________________
Reading Clerk
An Act relating to revenue and taxation; enacting the Preserving Oklahoma’s Strategic Industries Incentive Act; stating legislative intent; defining terms; authorizing quarterly incentive payments to certain establishments; providing method for computation of incentive payment amount; prescribing application procedures; requiring Department of Commerce to make certain determinations; prescribing procedures related to approval of application and for payment of incentive amounts; requiring reports to be filed with the Oklahoma Department of Commerce; imposing time limit on filing of certain claims; requiring payroll verification; authorizing additional information requests; prescribing limit on duration of incentives and prescribing procedures related thereto; imposing duties on Oklahoma Tax Commission; providing for payment of incentives based on certain factors; creating the Preserving Oklahoma’s Strategic Industries Incentive Payment Fund; providing for sources of revenue; providing for expenditures from fund; providing for limit on liability based upon fund balance; requiring promulgation of rules by the Oklahoma Department of Commerce and the Oklahoma Tax Commission; prescribing penalties for false applications and false statements in related documents; providing for imposition of fines requiring repayment of incentive payments under certain conditions; providing for accrual of interest; prohibiting eligibility for certain credits or exemptions based upon receipt of incentive payments; requiring Oklahoma Department of Commerce to prepare report; requiring period preparation and submission of report; providing for codification;
providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4501 of Title 68, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Preserving Oklahoma’s Strategic Industries Incentive Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4502 of Title 68, unless there is created a duplication in numbering, reads as follows:

It is the intent of the Legislature that:

1. The State of Oklahoma provide a bridge incentive to preserve Oklahoma’s strategic industries through distressful economic periods through a policy of rewarding well-managed businesses that provide job growth within wealth-generating industries which have a period of underperformance over the previous three (3) calendar years, combined;

2. The Oklahoma Department of Commerce and the Oklahoma Tax Commission implement the provisions of this act and exercise all powers as authorized in this act. The exercise of powers conferred by this act shall be deemed and held to be the performance of essential public purposes; and
3. Nothing herein shall be construed to constitute a guarantee or assumption by the State of Oklahoma of any debt of any individual, company, corporation or association nor to authorize the credit of the State of Oklahoma to be given, pledged or loaned to any individual, company, corporation or association.

   SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4503 of Title 68, unless there is created a duplication in numbering, reads as follows:

   As used in the Preserving Oklahoma’s Strategic Industries Incentive Act:

   1. "Basic industry" means:

      a. a basic industry as defined under the 21st Century Quality Jobs Incentive Act in paragraph 1 of Section 3913 of Title 68 of the Oklahoma Statutes, and

      b. an industry that has had a three-year period of underperformance as defined by shift share analysis, which is the actual growth compared to the expected growth of the industry, determined by the Oklahoma Department of Commerce using Economic Modeling Specialist software or other appropriate techniques, and

      c. an industry that has had net employment loss over the same three-year period in the State of Oklahoma, and
d. if an industry has an out-of-state sales requirement as defined by subparagraph a of paragraph 1 of Section 3913 of Title 68 of the Oklahoma Statutes, that requirement will be reduced to twenty-five percent (25%) during the initial benefit rate period, and

e. if an industry has an out-of-state sales requirement as defined by subparagraph a of paragraph 1 of Section 3913 of Title 68 of the Oklahoma Statutes, that requirement must meet at least fifty percent (50%) in addition to ten (10) direct new jobs for the fulfillment net benefit rate to be achieved;

2. "Establishment" means any business, no matter what legal form, including, but not limited to, a sole proprietorship, partnership, corporation, or limited liability corporation;

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

4. "Estimated indirect state benefits" means the indirect new tax revenues projected by the Oklahoma Department of Commerce to accrue to the state, including, but not limited to, revenue generated from ancillary support jobs directly related to the establishment;
5. "Estimated direct state costs" means the costs projected by the Department 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;

6. "Estimated indirect state costs" means the costs projected by the Department to accrue to the state as a result of new indirect jobs. Such costs shall include, but not be limited to, costs enumerated in subparagraphs a, b, c and d of paragraph 5 of this subsection;

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

8. "Estimated net direct and indirect state benefits" means the estimated direct and indirect state benefits less the estimated direct and indirect state costs;

9. "Full-time employment" means employment of persons residing in this state and working for thirty (30) hours per week or more in this state, which has a minimum six-month duration during any twelve-month period;
10. "Gross taxable payroll" means wages, as defined in Section 2385.1 of Title 68 of the Oklahoma Statutes, for no more than fifty (50) new direct jobs;

11. "Initial net benefit rate" means the estimated net direct state benefits computed as a percentage of gross payroll; provided:
   a. the initial net benefit rate may be variable and shall not exceed five percent (5%), and
   b. in no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits; and

12. "Fulfillment net benefit rate" means the estimated net direct and indirect state benefits computed as:
   a. a percentage of gross payroll after the completion of the first twelve (12) quarters, or
   b. until the establishment reaches ten (10) new direct jobs and also meets the threshold for out-of-state sales, whichever occurs first, provided:
      (1) the fulfillment net benefit rate may be variable and shall not exceed ten percent (10%), and
      (2) in no event shall incentive payments, cumulatively, exceed the estimated net direct and indirect state benefits; and

13. "New direct job" means full-time employment which did not exist in this state prior to the date of approval, by the Oklahoma Department of Commerce, of an application made pursuant to this act.
A job shall be deemed to exist in this state prior to approval of an application if the activities and functions for which the particular job exists have been ongoing at anytime within six (6) months prior to such approval.

a. the fulfillment net benefit rate will be applied to a maximum of fifty (50) new direct jobs and shall only be applied after ten (10) new direct jobs have been created and the out-of-state sales threshold is met.

b. it will be the responsibility of the establishment to provide documentation satisfactory to the Oklahoma Department of Commerce regarding the out-of-state sales of the establishment.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4504 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. An establishment which meets the qualifications specified in the Preserving Oklahoma’s Strategic Industries Incentive Act may receive quarterly incentive payments for a five-year period from the Oklahoma Tax Commission pursuant to the provisions of this act, as verified by the Tax Commission, in an amount equal to:

1. The gross payroll multiplied by the initial net benefit rate until such time as the establishment creates ten (10) new direct jobs; or
2. The gross payroll multiplied by the fulfillment net benefit rate after such time as the establishment created and maintains ten (10) new direct jobs, and reaches the out-of-state sales requirement for the respective industry.

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. The establishment may apply for an effective date for a project, which shall not be more than twelve (12) months from the date the application is submitted to the Department.

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

1. Be engaged in a basic industry as defined in the Preserving Oklahoma’s Strategic Industries Act;

2. Will hire at least ten (10) and no more than fifty (50) full-time employees in this state within twelve (12) quarters of the date of application;

3. Will pay the individuals it employs in new direct jobs one hundred ten percent (110%) of the average county wage of small employers located in that county as that percentage is determined by the Oklahoma State Data Center based upon the most recent wage and
employment data from the Oklahoma Employment Security Commission for
the county in which the new direct jobs are located. For purposes
of this subparagraph, health care premiums paid by the applicant for
individuals in new direct jobs shall not be included in the
annualized wage;

4. Has a basic health benefit plan which, as determined by the
Department, meets the elements established under divisions (1)
through (7) of subparagraph b of paragraph 1 of subsection A of
Section 3603 of Title 68 of the Oklahoma Statutes and which will be
offered to individuals within twelve (12) months of employment in a
new direct job; or

5. Is not qualified for approval of an application for
incentive payments under the Small Employer Quality Jobs Incentive
Act, the Saving Quality Jobs Act, the Former Military Facility
Development Act, the Oklahoma Quality Jobs Program Act or the 21st
Century Quality Jobs Incentive Act.

D. The Oklahoma Department of Commerce shall determine if an
applicant is qualified to receive the incentive payment. Upon
qualifying the applicant, the Department shall notify the Tax
Commission and shall provide it with a copy of the contract and
approval which shall provide the number of persons employed by the
applicant upon the date of approval and the maximum total incentives
which may be paid to the applicant during the five-year period. The
Tax Commission may require the qualified establishment to submit
additional information as may be necessary to administer the provisions of this act. The approved establishment shall report to the Tax Commission quarterly to show its continued eligibility for incentive payments, as provided in Section 3905 of Title 68 of the Oklahoma Statutes. Establishments 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 incentive payments to be made for a five-year period as long as the establishment retains its eligibility and within the limitations of this act as it existed at the time of such approval.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4505 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. 1. Beginning with the first complete calendar quarter after the application of the establishment is approved by the Oklahoma Department of Commerce, the establishment shall begin filing quarterly reports with the Oklahoma Tax Commission that specify the actual number and individual gross taxable payroll of new direct jobs for the establishment and such other information as required by the Tax Commission. In no event shall the first claim for incentive payments be filed later than three (3) years from the start date designated by the Department. The Tax Commission shall verify the actual individual gross taxable payroll for new direct jobs. If the
Tax Commission is not able to provide such verification utilizing all available resources, the Tax Commission may request additional information from the establishment as may be necessary or may request the establishment to revise its reports.

The establishment shall continue filing such reports during the five-year incentive period or until it is no longer qualified to receive incentive payments. Such reports shall constitute a claim for quarterly incentive payments by the establishment.

2. Upon receipt of a report for the initial calendar quarter of the incentive period and for each subsequent calendar quarter thereafter, the Tax Commission shall determine if the establishment has met the following requirements:

   a. during the initial twelve (12) quarters of the contract or until the establishment creates ten (10) new direct jobs, paid the individuals it employed in new direct jobs an average annualized wage that exceeded the requirements of paragraph 3 of subsection C of Section 4 of this act, or

   b. after the establishment created ten (10) and no more than fifty (50) new direct jobs:

      (1) paid the individuals it employed in new direct jobs an average annualized wage which equaled or exceeded the requirements of paragraph 3 of subsection C of Section 4 of this act, and
created and/or maintained the minimum number of new direct jobs as specified in the Preserving Oklahoma’s Strategic Industries Act;

3. Upon determining that an establishment has met the requirements of paragraph 2 of this subsection for the initial calendar quarter of the incentive period, the Tax Commission shall issue a warrant to the establishment in an amount which shall be equal to either:

   a. the initial net benefit rate multiplied by the amount of gross taxable payroll of new direct jobs actually paid by the establishment during the initial twelve (12) quarters of the contract or until the establishment reaches ten (10) new direct jobs, whichever comes first, or

   b. the fulfillment net benefit rate multiplied by the amount of gross taxable payroll of new direct jobs actually paid by the establishment after it creates or maintains ten (10) new direct jobs provided that the Oklahoma Tax Commission has received notification from the Oklahoma Department of Commerce that the establishment has provided satisfactory documentation for the out-of-state sales requirement.

B. Except as provided in subsection C of this section, the quarterly incentive payment provided for in subsection A of this
section shall be allowed in each of the nineteen (19) subsequent calendar quarters.

C. 1. An establishment which does not meet the requirements of paragraph 2 of subsection A of this section within twelve (12) quarters of the date of its application shall be ineligible to receive any incentive payments pursuant to its application and approval.

2. An establishment which at any time during the nineteen (19) subsequent calendar quarters does not meet the requirements of paragraph 2 of subsection A of this section shall be ineligible to receive an incentive payment during the calendar quarter in which such requirements are not met.

3. An establishment which has met the requirements of paragraph 2 of subsection A of this section within twelve (12) quarters of the date of its application, but which at any time during the subsequent eight (8) quarters fails to meet the requirements of paragraph 2 of subsection A of this section in four (4) consecutive quarters, shall be ineligible to receive any further incentive payments pursuant to its application and approval.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4506 of Title 68, unless there is created a duplication in numbering, reads as follows:

There is hereby created within the State Treasury a special fund for the Oklahoma Tax Commission to be designated the "Preserving
Oklahoma’s Strategic Industries Incentive Payment Fund”. The Tax
Commission is hereby authorized and directed to withhold a portion
of the taxes levied and collected pursuant to Section 2355 of Title
68 of the Oklahoma Statutes for deposit into the fund. The amount
deposited shall equal the sum estimated by the Tax Commission to be
sufficient to pay incentive payments claimed pursuant to the
provisions of Section 4 of this act. All of the amounts deposited
in such fund shall be used and expended by the Tax Commission solely
for the purposes and in the amounts authorized by the Preserving
Oklahoma’s Strategic Industries Act. The liability of the State of
Oklahoma to make incentive payments under the Preserving Oklahoma’s
Strategic Industries Incentive Act shall be limited to the balance
contained in the fund created by this section.

SECTION 7. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 4507 of Title 68, unless there
is created a duplication in numbering, reads as follows:

The Oklahoma Department of Commerce and the Oklahoma Tax
Commission shall promulgate rules necessary to implement their
respective duties and responsibilities under the provisions of the
Preserving Oklahoma’s Strategic Industries Incentive Act.

SECTION 8. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 4508 of Title 68, unless there
is created a duplication in numbering, reads as follows:
Any person making an application, claim for payment or any report, return, statement, invoice, or other instrument or providing any other information pursuant to the provisions of this act who willfully makes a false or fraudulent application, claim, report, return, statement, invoice, or other instrument, or who willfully provides any false or fraudulent information, or any person who willfully aids or abets another in making such false or fraudulent application, claim, report, return, statement, invoice, or other instrument, or who willfully aids or abets another in providing any false or fraudulent information, upon conviction, shall be guilty of a misdemeanor. The fine for a violation of this provision shall not be less than One Thousand Dollars ($1,000.00) nor more than Fifty Thousand Dollars ($50,000.00). Any person convicted of a violation of this section shall be liable for the repayment of all incentive payments which were paid to the establishment. Interest shall be due on such payments at the rate of ten percent (10%) per annum.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4509 of Title 68, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of law, if a qualified establishment receives an incentive payment pursuant to the provisions of the Preserving Oklahoma’s Strategic Industries Incentive Act, neither the qualified establishment nor its contractors or subcontractors shall be eligible to receive the
credits or exemptions provided for in the following provisions of law in connection with the activity for which the incentive payment was received:

1. Paragraphs 16 and 17 of Section 1357 of Title 68 of the Oklahoma Statutes;

2. Paragraph 8 of Section 1359 of Title 68 of the Oklahoma Statutes;

3. Section 2357.4 of Title 68 of the Oklahoma Statutes;

4. Section 2-11-303 of Title 27A of the Oklahoma Statutes;

5. Section 2357.22 of Title 68 of the Oklahoma Statutes;

6. Section 2357.31 of Title 68 of the Oklahoma Statutes;

7. Section 54003 of Title 68 of the Oklahoma Statutes;

8. Section 54006 of Title 68 of the Oklahoma Statutes;

9. Section 625.1 of Title 36 of the Oklahoma Statutes; or

10. Subsections C and D of Section 2357.59 of Title 68 of the Oklahoma Statutes.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4510 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Department of Commerce shall prepare a report which shall include, but not be limited to, documentation of the new direct jobs created under this act and a fiscal analysis of the costs and benefits of the act to the state. The report shall be submitted to the President Pro Tempore of the Senate, the Speaker of
the House of Representatives and the Governor no later than January 1, 2014, and every three (3) years thereafter. The report may be used for the purpose of determining whether to continue or sunset the Preserving Oklahoma’s Strategic Industries Incentive Act.

SECTION 11. This act shall become effective July 1, 2012.

SECTION 12. 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.

53-2-9540 MAH 02/20/12