

1 ENGROSSED HOUSE
2 BILL NO. 2182

By: Hickman, Brown, Bennett,
Montgomery, Dank, Sherrer,
Perryman, Ownbey, Hoskin
and McCullough of the House

4 and

5 Bingman of the Senate

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9 An Act relating to public finance; enacting the
10 Incentive Evaluation Act; defining term; creating
11 Incentive Evaluation Commission; providing for
membership; prohibiting certain persons from serving
12 on the Commission; requiring staff support; creating
Incentive Approval Committee as subcommittee of
13 Incentive Evaluation Commission; imposing duties upon
Committee; imposing duties on Incentive Evaluation
14 Commission; requiring development of schedule;
requiring transmission of schedule to Governor,
15 President Pro Tempore of the Oklahoma State Senate
and the Speaker of the Oklahoma House of
16 Representatives; authorizing contract; requiring
scope of services request for proposal; prohibiting
17 certain contact; prescribing procedures for
evaluation of tax and related incentives; requiring
18 report; prescribing content of evaluation; requiring
criteria for evaluation; requiring compliance with
19 Administrative Procedures Act; requiring information,
records, data and analysis by governmental entities;
20 providing for confidentiality of information;
providing for codification; and providing an
effective date.

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23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:
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1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 7001 of Title 62, unless there
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Incentive
5 Evaluation Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 7002 of Title 62, unless there
8 is created a duplication in numbering, reads as follows:

9 As used in this act, "incentive" means a tax credit, tax
10 exemption, tax deduction, tax expenditure, rebate, grant, or loan
11 that is intended to encourage businesses to locate, expand, invest,
12 or remain in Oklahoma, or to hire or retain employees in Oklahoma.

13 SECTION 3. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 7003 of Title 62, unless there
15 is created a duplication in numbering, reads as follows:

16 A. There is hereby established the Incentive Evaluation
17 Commission consisting of:

- 18 1. A certified public accountant appointed by the Oklahoma
19 Accountancy Board whose term shall expire on June 30, 2019;
- 20 2. The president of the Oklahoma Professional Economic
21 Development Council or his or her designee who is also a member of
22 the Oklahoma Professional Economic Development Council who shall
23 serve during his or her term of office as president of the Oklahoma
24 Professional Economic Development Council;

1 3. An auditor who is employed as an internal auditor by a
2 company or who is employed by a private auditing firm appointed by
3 the Governor whose term shall expire on June 30, 2019;

4 4. An economist from an Oklahoma college or university
5 appointed by the President Pro Tempore of the Oklahoma State Senate
6 whose term shall expire on June 30, 2020;

7 5. A lay person who is not an elected official appointed by the
8 Speaker of the Oklahoma House of Representatives whose term shall
9 expire June 30, 2020;

10 6. The Chairman of the Oklahoma Tax Commission or his or her
11 designee who is also a member of the Oklahoma Tax Commission, which
12 shall be an ex officio and nonvoting position;

13 7. The Director of the Office of Management and Enterprise
14 Services or his or her designee who is an employee of the Office of
15 Management and Enterprise Services which shall be an ex officio and
16 nonvoting position; and

17 8. The Oklahoma Secretary of Commerce or his or her designee
18 who is an employee of the Oklahoma Department of Commerce which
19 shall be an ex officio and nonvoting position.

20 B. Thereafter persons shall be appointed for terms of four (4)
21 years beginning on July 1. Any vacancy shall be filled by the
22 appointing authority for the remainder of the unexpired term.

23 C. No person shall serve on the Commission or be appointed to
24 the Commission who is employed by a company that receives any

1 incentive or who holds a substantial interest in ownership in a
2 company that receives any incentive. As used in this subsection,
3 "substantial interest" shall mean the ownership, directly or
4 indirectly, of more than fifty percent (50%) of the equity interest
5 with voting rights for any lawfully recognized business entity.

6 D. No person shall be appointed to the Commission who at the
7 time of his or her appointment is an elected official. Any person
8 who is appointed to the Commission who subsequently becomes an
9 elected official during his or her term on the Commission shall be
10 required to vacate his or her position on the Commission.

11 E. The Office of Management and Enterprise Services shall
12 provide staff and administrative support to the Incentive Evaluation
13 Commission. The Oklahoma Department of Commerce and the Oklahoma
14 Tax Commission shall assist the Office of Management and Enterprise
15 Services as needed in providing staff and administrative support to
16 the Commission.

17 F. The Incentive Approval Committee is hereby created as a
18 subcommittee of the Incentive Evaluation Commission and shall
19 consist of the Director of the Office of Management and Enterprise
20 Services or his or her designee, the Secretary of Commerce or his or
21 her designee, and the Chairman of the Tax Commission or his or her
22 designee. It shall be the duty of the Committee to determine:

23 1. Upon initial application on a form approved by the
24 Committee, if an establishment is engaged in a basic industry as

1 defined in subdivision (b) of division (7) or in subdivisions (a)
2 through (n) of division (9) of subparagraph a of paragraph 1 of
3 subsection A of Section 3603 of Title 68 of the Oklahoma Statutes or
4 as otherwise provided by subsection C of Section 3603 of Title 68 of
5 the Oklahoma Statutes;

6 2. If an establishment would have been defined as a "basic
7 industry" prior to the amendments to Section 3603 of Title 68 of the
8 Oklahoma Statutes to convert from SIC Codes to NAICS Codes. If the
9 Committee so determines, the establishment shall be considered as a
10 "basic industry" for purposes of the Oklahoma Quality Jobs Program
11 Act; and

12 3. If employees of an establishment as defined in division (10)
13 of subparagraph a of paragraph 1 of subsection A of Section 3603 of
14 Title 68 of the Oklahoma Statutes meet the requirements to be
15 considered employed in new direct jobs as specified in paragraph 3
16 of subsection A of Section 3603 of Title 68 of the Oklahoma
17 Statutes.

18 G. For an establishment defined as a "basic industry" pursuant
19 to division (4) of subparagraph a of paragraph 1 of subsection A of
20 Section 3603 of Title 68 of the Oklahoma Statutes, the Incentive
21 Approval Committee shall consist of the members provided by
22 subsection A of this section and the Executive Director of the
23 Oklahoma Center for the Advancement of Science and Technology, or a
24 designee from the Center appointed by the Executive Director.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 7004 of Title 62, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The Incentive Evaluation Commission shall ensure that each
5 incentive is evaluated at least once every four (4) years unless the
6 Commission determines that the incentive is exempt from evaluation.
7 The Commission may exempt from evaluation any incentive that it
8 concludes has a minimal fiscal impact. The Commission shall
9 determine a specific threshold amount which shall be considered as a
10 minimal fiscal impact for the current evaluation cycle.

11 B. By January 1, 2016, and by January 1 each year thereafter,
12 the Incentive Evaluation Commission shall develop a four-year
13 schedule for evaluating incentives. The schedule for evaluating the
14 incentives shall be developed so that the incentives having the
15 highest fiscal impact to the state revenue system, including but not
16 limited to the General Revenue Fund, shall be evaluated before other
17 incentives. Each schedule shall include a list of all incentives in
18 the state, including any it exempts from evaluation. In determining
19 whether a program is an incentive, the Incentive Evaluation
20 Commission may consider legislative intent and may also consider
21 whether the program is promoted as an incentive by any state agency.
22 For each incentive listed in the schedule, the Commission shall
23 attempt to identify the goal or goals of the incentive.

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1 C. Upon approval of the schedule, the Commission shall provide
2 the schedule to the Governor, President Pro Tempore of the Senate
3 and Speaker of the House of Representatives.

4 SECTION 5. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 7005 of Title 62, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The Commission may contract with a private company,
8 nonprofit, or academic institution to assist with evaluation of each
9 incentive. The Commission shall develop a scope of services for a
10 request for proposals issued pursuant to The Oklahoma Central
11 Purchasing Act, Section 85.1 et seq. of Title 74 of the Oklahoma
12 Statutes, for professional services necessary to complete incentive
13 evaluations pursuant to the Incentive Evaluation Act. The cost of
14 such contract shall be paid by the Office of Management and
15 Enterprise Services. No recipient or potential recipient of an
16 incentive or representative of a recipient or potential recipient
17 shall contact the entity or individual with whom the Commission
18 contracts pursuant to this subsection unless the entity or
19 individual specifically requests information or documentation for
20 purposes of the incentive evaluation process; provided, this shall
21 not be construed to prevent participation in a public hearing
22 conducted pursuant to subsection B of this section.

23 B. By November 1 of each year beginning in 2016, the Commission
24 or the Commission's chosen contractor shall evaluate each incentive

1 | scheduled for review that year. The Commission or the Commission's
2 | chosen contractor shall conduct each incentive evaluation in
3 | consultation with the Oklahoma Department of Commerce division of
4 | Research and Economic Analysis Services using criteria developed
5 | pursuant to subsection D of this section. Between November 1 and
6 | November 30 of each year beginning in 2016, the Commission shall
7 | hold at least one public meeting to review, allow for public
8 | comment, and vote to approve or disapprove each incentive evaluation
9 | conducted that year. By December 15 of each year beginning in 2016,
10 | the Commission shall provide the results of each incentive
11 | evaluation in a written report to the Governor, President Pro
12 | Tempore of the Senate and Speaker of the House of Representatives.
13 | The report shall be made publicly available on the Oklahoma
14 | Department of Commerce website and *documents.ok.gov*.

15 | C. Each evaluation shall include the following:

16 | 1. An estimate of the economic and fiscal impact of the
17 | incentive. This estimate shall take into account the following
18 | considerations in addition to other relevant factors:

19 | a. the extent to which the incentive changes business
20 | behavior,

21 | b. the results of the incentive for the economy of
22 | Oklahoma as a whole. This consideration includes both
23 | positive direct and indirect impacts and any negative
24 | effects on other Oklahoma businesses, and

1 c. a comparison to the results of other incentives or
2 other economic development strategies with similar
3 goals;

4 2. An assessment of whether adequate protections are in place
5 to ensure the fiscal impact of the incentive does not increase
6 substantially beyond the state's expectations in future years;

7 3. An assessment of whether the incentive is being administered
8 effectively;

9 4. An assessment of whether the incentive is achieving its
10 goals;

11 5. Recommendations for how Oklahoma can most effectively
12 achieve the incentive's goals, including recommendations on whether
13 the incentive should be retained, reconfigured or repealed; and

14 6. Recommendations for any changes to state policy, rules, or
15 statutes that would allow the incentive to be more easily or
16 conclusively evaluated in the future. These recommendations may
17 include changes to collection, reporting and sharing of data, and
18 revisions or clarifications to the goal of the incentive.

19 D. Evaluation criteria shall be developed for each incentive
20 evaluated by the Commission. Each incentive shall be evaluated
21 using criteria specific to the individual incentive. The criteria
22 shall be developed through the administrative rulemaking process
23 pursuant to the Administrative Procedures Act, Section 250 et seq.

1 of Title 75 of the Oklahoma Statutes, and codified in the
2 administrative code of the Oklahoma Department of Commerce.

3 E. At the request of the Incentive Evaluation Commission, state
4 agencies shall provide any records, information, data, or data
5 analysis necessary for the Commission or contractors to effectively
6 evaluate incentives. The Commission and contractors shall not
7 disclose or release any data received from other state agencies,
8 except as permitted under law.

9 SECTION 6. This act shall become effective November 1, 2015.

10 Passed the House of Representatives the 11th day of March, 2015.

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Presiding Officer of the House
of Representatives

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Passed the Senate the ___ day of _____, 2015.

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Presiding Officer of the Senate

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