

1 **SENATE FLOOR VERSION**

2 February 9, 2021

3 SENATE BILL NO. 214

By: Dugger

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5
6 An Act relating to the Incentive Evaluation Act;
7 amending Sections 3, 4 and 5, as amended by Section
8 1, Chapter 154, O.S.L. 2017, Chapter 184, O.S.L. 2015
9 (62 O.S. Supp. 2020, Sections 7003, 7004 and 7005),
10 which relate to Incentive Evaluation Commission;
11 modifying terms of certain Commissioners; modifying
12 date upon which terms begin; modifying frequency of,
13 and procedures related to, evaluation of incentives;
14 specifying certain content for scope of services
15 issued by the Commission; providing exception to
16 certain requirement; providing an effective date; and
17 declaring an emergency.

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

19 SECTION 1. AMENDATORY Section 3, Chapter 184, O.S.L.
20 2015 (62 O.S. Supp. 2020, Section 7003), is amended to read as
21 follows:

22 Section 7003. A. There is hereby established the Incentive
23 Evaluation Commission consisting of:

24 1. A certified public accountant appointed by the Oklahoma
Accountancy Board whose term shall expire on ~~June 30, 2019~~ December
31, 2025;

2. The president of the Oklahoma Professional Economic
Development Council or his or her designee who is also a member of

1 the Oklahoma Professional Economic Development Council who shall
2 serve during his or her term of office as president of the Oklahoma
3 Professional Economic Development Council;

4 3. An auditor who is employed as an internal auditor by a
5 company or who is employed by a private auditing firm appointed by
6 the Governor whose term shall expire on ~~June 30, 2019~~ December 31,
7 2025;

8 4. An economist from an Oklahoma college or university
9 appointed by the President Pro Tempore of the Oklahoma State Senate
10 whose term shall expire on ~~June 30, 2020~~ December 31, 2021;

11 5. A lay person who is not an elected official appointed by the
12 Speaker of the Oklahoma House of Representatives whose term shall
13 expire ~~June 30, 2020~~ December 31, 2021;

14 6. The ~~Chairman~~ Chair of the Oklahoma Tax Commission or his or
15 her designee who is also a member of the Oklahoma Tax Commission,
16 which shall be an ex officio and nonvoting position;

17 7. The Director of the Office of Management and Enterprise
18 Services or his or her designee who is an employee of the Office of
19 Management and Enterprise Services which shall be an ex officio and
20 nonvoting position; and

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

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

4 C. No person shall serve on the Commission or be appointed to
5 the Commission who is employed by a company that receives any
6 incentive or who holds a substantial interest in ownership in a
7 company that receives any incentive. As used in this subsection,
8 "substantial interest" shall mean the ownership, directly or
9 indirectly, of more than fifty percent (50%) of the equity interest
10 with voting rights for any lawfully recognized business entity.

11 D. No person shall be appointed to the Commission who at the
12 time of his or her appointment is an elected official. Any person
13 who is appointed to the Commission who subsequently becomes an
14 elected official during his or her term on the Commission shall be
15 required to vacate his or her position on the Commission.

16 E. The Office of Management and Enterprise Services shall
17 provide staff and administrative support to the Incentive Evaluation
18 Commission. The Oklahoma Department of Commerce and the Oklahoma
19 Tax Commission shall assist the Office of Management and Enterprise
20 Services as needed in providing staff and administrative support to
21 the Commission.

22 F. The Incentive Approval Committee is hereby created as a
23 subcommittee of the Incentive Evaluation Commission and shall
24 consist of the Director of the Office of Management and Enterprise

1 Services or his or her designee, the Secretary of Commerce or his or
2 her designee, and the Chairman of the Tax Commission or his or her
3 designee. It shall be the duty of the Committee to determine:

4 1. Upon initial application on a form approved by the
5 Committee, if an establishment is engaged in a basic industry as
6 defined in subdivision (b) of division (7) or in subdivisions (a)
7 through (n) of division (9) of subparagraph a of paragraph 1 of
8 subsection A of Section 3603 of Title 68 of the Oklahoma Statutes or
9 as otherwise provided by subsection C of Section 3603 of Title 68 of
10 the Oklahoma Statutes;

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

17 3. If employees of an establishment as defined in division (10)
18 of subparagraph a of paragraph 1 of subsection A of Section 3603 of
19 Title 68 of the Oklahoma Statutes meet the requirements to be
20 considered employed in new direct jobs as specified in paragraph 3
21 of subsection A of Section 3603 of Title 68 of the Oklahoma
22 Statutes.

23 G. For an establishment defined as a "basic industry" pursuant
24 to division (4) of subparagraph a of paragraph 1 of subsection A of

1 Section 3603 of Title 68 of the Oklahoma Statutes, the Incentive
2 Approval Committee shall consist of the members provided by
3 subsection A of this section and the Executive Director of the
4 Oklahoma Center for the Advancement of Science and Technology, or a
5 designee from the Center appointed by the Executive Director.

6 SECTION 2. AMENDATORY Section 4, Chapter 184, O.S.L.
7 2015 (62 O.S. Supp. 2020, Section 7004), is amended to read as
8 follows:

9 Section 7004. A. The Incentive Evaluation Commission shall
10 ensure that each incentive is evaluated at least once every ~~four (4)~~
11 eight (8) years unless the Commission determines that the incentive
12 is exempt from evaluation. The Commission may exempt from
13 evaluation any incentive that it concludes has a minimal fiscal
14 impact. The Commission shall determine a specific threshold amount
15 which shall be considered as a minimal fiscal impact for the current
16 evaluation cycle.

17 B. ~~By January 1, 2016, and by January 1 each year thereafter~~
18 For calendar years 2016 through 2021, the Incentive Evaluation
19 Commission shall develop a four-year schedule for evaluating
20 incentives. Beginning December 1, 2021, and each December 1 of all
21 subsequent years, the Commission shall develop a schedule of
22 incentives to be evaluated during the following calendar year. The
23 schedule for evaluating the incentives shall be developed so that
24 the incentives having the highest fiscal impact to the state revenue

1 system, including but not limited to the General Revenue Fund, shall
2 be evaluated before other incentives. Each schedule shall include a
3 list of all incentives in the state, including any it exempts from
4 evaluation. In determining whether a program is an incentive, the
5 Incentive Evaluation Commission may consider legislative intent and
6 may also consider whether the program is promoted as an incentive by
7 any state agency. For each incentive listed in the schedule, the
8 Commission shall attempt to identify the goal or goals of the
9 incentive.

10 C. Upon approval of the schedule, the Commission shall provide
11 the schedule to the Governor, President Pro Tempore of the Senate
12 and Speaker of the House of Representatives.

13 SECTION 3. AMENDATORY Section 5, Chapter 184, O.S.L.
14 2015, as amended by Section 1, Chapter 154, O.S.L. 2017 (62 O.S.
15 Supp. 2020, Section 7005), is amended to read as follows:

16 Section 7005. A. The Commission may contract with a private
17 company, nonprofit, or academic institution to assist with
18 evaluation of each incentive. The Commission shall develop a scope
19 of services for a request for proposals issued pursuant to The
20 Oklahoma Central Purchasing Act, Section 85.1 et seq. of Title 74 of
21 the Oklahoma Statutes, for professional services necessary to
22 complete incentive evaluations pursuant to the Incentive Evaluation
23 Act. The scope of services shall include a provision requiring the
24 contractor to provide at least one draft report on each incentive

1 prior to the issuance of the final report; provided, the contractor
2 may determine the timing and frequency of draft reports based on the
3 availability of information and the potential for draft reports to
4 assist the Commission in making a final recommendation. The cost of
5 such contract shall be paid by the Office of Management and
6 Enterprise Services. No recipient or potential recipient of an
7 incentive or representative of a recipient or potential recipient
8 shall contact the entity or individual with whom the Commission
9 contracts pursuant to this subsection unless the entity or
10 individual specifically requests information or documentation for
11 purposes of the incentive evaluation process; provided, this shall
12 not be construed to prevent participation in a public hearing
13 conducted pursuant to subsection B of this section.

14 B. By November 1 of each year beginning in 2016, the Commission
15 or the Commission's chosen contractor shall evaluate each incentive
16 scheduled for review that year. The Commission or the Commission's
17 chosen contractor shall conduct each incentive evaluation in
18 consultation with the Oklahoma Department of Commerce division of
19 Research and Economic Analysis Services using criteria developed
20 pursuant to subsection D of this section. Between October 1 and
21 November 30 of each year beginning in 2017, the Commission shall
22 hold at least one public meeting to review, allow for public
23 comment, and vote to approve, disapprove or modify each incentive
24 evaluation conducted that year. By December 15 of each year

1 beginning in 2016, the Commission shall provide the results of each
2 incentive evaluation in a written report to the Governor, President
3 Pro Tempore of the Senate and Speaker of the House of
4 Representatives. If the Commission votes to modify an incentive
5 evaluation as provided in this subsection, such modification and the
6 original evaluation shall be documented in the annual written
7 report. The report shall be made publicly available on the Oklahoma
8 Department of Commerce website, the Commission website and
9 documents.ok.gov.

10 C. Each evaluation shall include the following:

11 1. An estimate of the economic and fiscal impact of the
12 incentive. This estimate shall take into account the following
13 considerations in addition to other relevant factors:

14 a. the extent to which the incentive changes business
15 behavior,

16 b. the results of the incentive for the economy of
17 Oklahoma as a whole. This consideration includes both
18 positive direct and indirect impacts and any negative
19 effects on other Oklahoma businesses, and

20 c. a comparison to the results of other incentives or
21 other economic development strategies with similar
22 goals;

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

4 3. An assessment of whether the incentive is being administered
5 effectively;

6 4. An assessment of whether the incentive is achieving its
7 goals;

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

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

16 D. Evaluation criteria shall be developed for each incentive
17 evaluated by the Commission. Each incentive shall be evaluated
18 using criteria specific to the individual incentive. The criteria
19 shall be developed by the Commission through the administrative
20 rulemaking process pursuant to the Administrative Procedures Act,
21 Section 250 et seq. of Title 75 of the Oklahoma Statutes, and
22 codified in the administrative code of the Oklahoma Department of
23 Commerce.

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

8 SECTION 4. This act shall become effective July 1, 2021.

9 SECTION 5. It being immediately necessary for the preservation
10 of the public peace, health or safety, an emergency is hereby
11 declared to exist, by reason whereof this act shall take effect and
12 be in full force from and after its passage and approval.

13 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
14 February 9, 2021 - DO PASS
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