

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 ENGROSSED SENATE
5 BILL NO. 745

By: Coleman of the Senate

and

Hilbert of the House

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9 An Act relating to the Incentive Evaluation
10 Commission; amending 62 O.S. 2021, Sections 7003,
11 7004, and 7005, which relate to the Incentive
12 Evaluation Act; modifying terms of certain
13 appointments to the Commission; modifying certain
14 member of Commission; modifying required frequency of
15 evaluation; limiting requirement to develop certain
16 schedule to certain years; requiring development
17 schedule for calendar year; requiring scope of
18 services to include certain provision; providing
19 exception to certain requirement to provide
20 information; clarifying statutory language; updating
21 statutory language; providing an effective date; and
22 declaring an emergency.

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

SECTION 1. AMENDATORY 62 O.S. 2021, Section 7003, is
amended to read as follows:

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

1 1. A certified public accountant appointed by the Oklahoma
2 Accountancy Board whose term shall expire on ~~June 30, 2019~~ December
3 31, 2025;

4 2. The ~~president~~ Chair of the ~~Oklahoma Professional Economic~~
5 ~~Development Council~~ Select Oklahoma an Economic Development
6 Partnership, Inc. or his or her designee who is also a member of the
7 ~~Oklahoma Professional Economic Development Council~~ Select Oklahoma
8 an Economic Development Partnership, Inc. who shall serve during his
9 or her term of office as ~~president of the Oklahoma Professional~~
10 ~~Economic Development Council~~ Chair of Select Oklahoma an Economic
11 Development Partnership, Inc.;

12 3. An auditor who is employed as an internal auditor by a
13 company or who is employed by a private auditing firm appointed by
14 the Governor whose term shall expire on ~~June 30, 2019~~ December 31,
15 2025;

16 4. An economist from an Oklahoma college or university
17 appointed by the President Pro Tempore of the ~~Oklahoma State~~ Senate
18 whose term shall expire on ~~June 30, 2020~~ December 31, 2024;

19 5. A lay person who is not an elected official appointed by the
20 Speaker of the ~~Oklahoma~~ House of Representatives whose term shall
21 expire ~~June 30, 2020~~ December 31, 2024;

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

1 7. The Director of the Office of Management and Enterprise
2 Services or his or her designee who is an employee of the Office of
3 Management and Enterprise Services which shall be an ex officio and
4 nonvoting position; and

5 8. The ~~Oklahoma~~ Secretary of Commerce or his or her designee
6 who is an employee of the Oklahoma Department of Commerce which
7 shall be an ex officio and nonvoting position.

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

11 C. No person shall serve on the Commission or be appointed to
12 the Commission who is employed by a company that receives any
13 incentive or who holds a substantial interest in ownership in a
14 company that receives any incentive. As used in this subsection,
15 "substantial interest" shall mean the ownership, directly or
16 indirectly, of more than fifty percent (50%) of the equity interest
17 with voting rights for any lawfully recognized business entity.

18 D. No person shall be appointed to the Commission who at the
19 time of his or her appointment is an elected official. Any person
20 who is appointed to the Commission who subsequently becomes an
21 elected official during his or her term on the Commission shall be
22 required to vacate his or her position on the Commission.

23 E. The Office of Management and Enterprise Services shall
24 provide staff and administrative support to the Incentive Evaluation

1 Commission. The Oklahoma Department of Commerce and the Oklahoma
2 Tax Commission shall assist the Office of Management and Enterprise
3 Services as needed in providing staff and administrative support to
4 the Commission.

5 F. The Incentive Approval Committee is hereby created as a
6 subcommittee of the Incentive Evaluation Commission and shall
7 consist of the Director of the Office of Management and Enterprise
8 Services or his or her designee, the Secretary of Commerce or his or
9 her designee, and the Chairman of the Tax Commission or his or her
10 designee. It shall be the duty of the Committee to determine:

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

18 2. If an establishment would have been defined as a "basic
19 industry" prior to the amendments to Section 3603 of Title 68 of the
20 Oklahoma Statutes to convert from SIC Codes to NAICS Codes. If the
21 Committee so determines, the establishment shall be considered as a
22 "basic industry" for purposes of the Oklahoma Quality Jobs Program
23 Act; and
24

1 3. If employees of an establishment as defined in division (10)
2 of subparagraph a of paragraph 1 of subsection A of Section 3603 of
3 Title 68 of the Oklahoma Statutes meet the requirements to be
4 considered employed in new direct jobs as specified in paragraph 3
5 of subsection A of Section 3603 of Title 68 of the Oklahoma
6 Statutes.

7 G. For an establishment defined as a "basic industry" pursuant
8 to division (4) of subparagraph a of paragraph 1 of subsection A of
9 Section 3603 of Title 68 of the Oklahoma Statutes, the Incentive
10 Approval Committee shall consist of the members provided by
11 subsection A of this section and the Executive Director of the
12 Oklahoma Center for the Advancement of Science and Technology, or a
13 designee from the Center appointed by the Executive Director.

14 SECTION 2. AMENDATORY 62 O.S. 2021, Section 7004, is
15 amended to read as follows:

16 Section 7004. A. ~~The~~ For calendar years 2024 through 2027 and
17 every four (4) years thereafter, the Incentive Evaluation Commission
18 shall ensure that each incentive is evaluated ~~at least once every~~
19 ~~four (4) years~~ within the four-year evaluation period unless the
20 Commission determines that the incentive is exempt from evaluation.
21 The Commission may exempt from evaluation any incentive that it
22 concludes has a minimal fiscal impact. The Commission shall
23 determine a specific threshold amount which shall be considered as a
24 minimal fiscal impact for the current evaluation cycle. The

1 Commission may also conduct an expedited evaluation for any
2 incentive that has been evaluated at least two times from calendar
3 years 2016 through 2023 and has not had a material change to the
4 program since its prior evaluation. The expedited evaluation will
5 update the prior evaluation's financial and economic impact and
6 findings and recommendations.

7 B. ~~By January 1, 2016, and by January 1 each year thereafter~~
8 For calendar years 2016 through 2023, the Incentive Evaluation
9 Commission shall develop a four-year schedule for evaluating
10 incentives. ~~The schedule for evaluating the incentives shall be~~
11 ~~developed so that the incentives having the highest fiscal impact to~~
12 ~~the state revenue system, including but not limited to the General~~
13 ~~Revenue Fund, shall be evaluated before other incentives. The~~
14 development of the schedule for evaluating the incentives shall take
15 into consideration fiscal impacts to revenues of this state,
16 including but not limited to the General Revenue Fund, the
17 opportunity to group incentives with similar goals and objectives
18 for evaluation, and the ability to obtain sufficient data related to
19 the incentives for evaluation. Each schedule shall include a list
20 of all incentives in the state, including any it exempts from
21 evaluation. In determining whether a program is an incentive, the
22 Incentive Evaluation Commission may consider legislative intent and
23 may also consider whether the program is promoted as an incentive by
24 any state agency. For each incentive listed in the schedule, the

1 Commission shall attempt to identify the goal or goals of the
2 incentive.

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

6 SECTION 3. AMENDATORY 62 O.S. 2021, Section 7005, is
7 amended to read as follows:

8 Section 7005. A. The Commission may contract with a private
9 company, nonprofit, or academic institution to assist with
10 evaluation of each incentive. The Commission shall develop a scope
11 of services for a request for proposals issued pursuant to ~~The~~ the
12 Oklahoma Central Purchasing Act, Section 85.1 et seq. of Title 74 of
13 the Oklahoma Statutes, for professional services necessary to
14 complete incentive evaluations pursuant to the Incentive Evaluation
15 Act. The scope of services shall include a provision requiring the
16 contractor to provide at least one draft report for each incentive
17 prior to the issuance of the final report; provided, the contractor
18 may determine the timing and frequency of draft reports based on the
19 availability of information and the potential for draft reports to
20 assist the Commission in making a final recommendation. The cost of
21 such contract shall be paid by the Office of Management and
22 Enterprise Services. No recipient or potential recipient of an
23 incentive or representative of a recipient or potential recipient
24 shall contact the entity or individual with whom the Commission

1 contracts pursuant to this subsection unless the entity or
2 individual specifically requests information or documentation for
3 purposes of the incentive evaluation process; provided, this shall
4 not be construed to prevent participation in a public hearing
5 conducted pursuant to subsection B of this section.

6 B. By ~~November 1~~ October 1 of each year beginning in 2016
7 calendar year 2023, the Commission or the Commission's chosen
8 contractor shall evaluate each incentive scheduled for review that
9 year. The Commission or the Commission's chosen contractor shall
10 conduct each incentive evaluation in consultation with the Oklahoma
11 Department of Commerce division of Research and Economic Analysis
12 Services using criteria developed pursuant to subsection D of this
13 section. Between October 1 and November 30 of each year beginning
14 in 2017, the Commission shall hold at least one public meeting to
15 review, allow for public comment, and vote to approve, disapprove,
16 or modify each incentive evaluation conducted that year. By
17 December 15 of each year beginning in 2016, the Commission shall
18 provide the results of each incentive evaluation, a review of prior
19 Commission recommendations, and changes to statute or incentive
20 administration related to incentive evaluation recommendations in a
21 written report to the Governor, President Pro Tempore of the Senate,
22 and Speaker of the House of Representatives. If the Commission
23 votes to modify an incentive evaluation as provided in this
24 subsection, such modification and the original evaluation shall be

1 documented in the annual written report. The report shall be made
2 publicly available on the Oklahoma Department of Commerce website,
3 the Commission website, and documents.ok.gov.

4 C. Each evaluation shall include the following:

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

8 a. the extent to which the incentive changes business
9 behavior,

10 b. the results of the incentive for the economy of
11 Oklahoma as a whole. This consideration includes both
12 positive direct and indirect impacts and any negative
13 effects on other Oklahoma businesses, and

14 c. a comparison to the results of other incentives or
15 other economic development strategies with similar
16 goals;

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

20 3. An assessment of whether the incentive is being administered
21 effectively;

22 4. An assessment of whether the incentive is achieving its
23 goals;

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1 5. Recommendations for how ~~Oklahoma~~ the state can most
2 effectively achieve the incentive's goals, including recommendations
3 on whether the incentive should be retained, reconfigured, or
4 repealed; and

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

10 D. Evaluation criteria shall be developed for each incentive
11 evaluated by the Commission. Each incentive shall be evaluated
12 using criteria specific to the individual incentive. The criteria
13 shall be developed by the Commission through the administrative
14 rulemaking process pursuant to the Administrative Procedures Act,
15 Section 250 et seq. of Title 75 of the Oklahoma Statutes, and
16 codified in the administrative code of the Oklahoma Department of
17 Commerce.

18 E. At the request of the Incentive Evaluation Commission,
19 unless prohibited by the Oklahoma Constitution, Oklahoma Statutes,
20 or federal law, state agencies shall provide any records,
21 information, data, or data analysis necessary for the Commission or
22 contractors to effectively evaluate incentives. The Commission and
23 contractors shall not disclose or release any data received from
24 other state agencies, except as permitted under law.

1 SECTION 4. This act shall become effective July 1, 2023.

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

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7 COMMITTEE REPORT BY: COMMITTEE ON RURAL DEVELOPMENT, dated
8 04/11/2023 - DO PASS.

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