

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

COMMITTEE SUBSTITUTE  
FOR

HOUSE BILL NO. 2131

By: McCall

COMMITTEE SUBSTITUTE

An Act relating to state government; creating the Oklahoma Tourism Development Act; stating legislative findings; defining terms; providing for creation of standards for applications for inducement to companies and their tourism attraction projects; providing application contents; directing the Executive Director of the Oklahoma Tourism and Recreation Department to review and preliminarily approve applications under certain conditions; requiring analyzation of data by consulting firm; directing applicant company to pay cost of consultant report; providing for creation of standards for preliminary and final approval; requiring review of consultant report; allowing for final approval under certain conditions; authorizing agreements between the Oklahoma Tourism and Recreation Department and the approved company with respect to the tourism project; providing for agreement provisions; requiring written consent to transfer or assign agreement; providing liability for certain payments to the Oklahoma Tax Commission; requiring the Executive Director provide copy of agreement to the Tax Commission; directing Tax Commission to provide inducement claim forms; providing sales tax credits for projects with certain costs; requiring proof of expenditures; limiting tax credit amount; limiting tax credit issuance to certain time period; providing exceptions; authorizing sales tax credit to be used for certain purpose; directing promulgation of rules; authorizing Tax Commission to obtain certain information; prohibiting granting of sales tax credit after certain date; providing exception; providing for codification; and providing an effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified  
3 in the Oklahoma Statutes as Section 2391 of Title 68, unless there  
4 is created a duplication in numbering, reads as follows:

5 This act shall be known and may be cited as the "Oklahoma  
6 Tourism Development Act".

7 SECTION 2. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 2392 of Title 68, unless there  
9 is created a duplication in numbering, reads as follows:

10 The Legislature hereby finds:

11 1. That the general welfare and material well-being of the  
12 citizens of the State of Oklahoma depend, in large measure, upon the  
13 development of tourism attractions in this state;

14 2. That it is in the best interests of the citizens of this  
15 state to induce the creation of new or the expansion of existing  
16 tourism attractions within this state in order to advance the public  
17 purposes of relieving unemployment by preserving and creating jobs  
18 that would not exist if not for the inducements to be offered by  
19 this state to approved companies, and by preserving and creating  
20 sources of tax revenues for the support of public services provided  
21 by this state;

22 3. That the authority prescribed by this act, and the purposes  
23 to be accomplished under the provisions of this act, are proper  
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1 governmental and public purposes for which public funds may be  
2 expended; and

3 4. That the inducement of the creation or expansion of tourism  
4 attraction projects is of paramount importance, mandating that the  
5 provisions of this act be liberally construed and applied in order  
6 to advance public purposes.

7 SECTION 3. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 2393 of Title 68, unless there  
9 is created a duplication in numbering, reads as follows:

10 As used in the Oklahoma Tourism Development Act:

11 1. "Agreement" means an agreement entered into pursuant to  
12 Section 6 of this act, by and between the Executive Director of the  
13 Oklahoma Tourism and Recreation Department and an approved company,  
14 with respect to a tourism attraction project;

15 2. "Approved company" means any eligible company that is  
16 seeking to undertake a tourism attraction project and is approved by  
17 the Executive Director pursuant to Sections 5 and 6 of this act;

18 3. "Approved costs" means:

- 19 a. obligations incurred for labor and to vendors,  
20 contractors, subcontractors, builders and suppliers in  
21 connection with the acquisition, construction,  
22 equipping and installation of a tourism attraction  
23 project,  
24

- b. the costs of acquiring real property or rights in real property in connection with a tourism attraction project, and any costs incidental thereto,
- c. the costs of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping and installation of a tourism attraction project which are not paid by the vendor, supplier or contractor, or otherwise provided,
- d. all costs of architectural and engineering services including, but not limited to, estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping and installation of a tourism attraction project,
- e. all costs required to be paid under the terms of any contract for the acquisition, construction, equipping and installation of a tourism attraction project,
- f. all costs required for the installation of utilities in connection with a tourism attraction project including, but not limited to, water, sewer, sewage treatment, gas, electricity and communications, and

1 including off-site construction of utility extensions  
2 paid for by the approved company, and

3 g. all other costs comparable with those described in  
4 this paragraph;

5 4. "Director" means the Executive Director of the Oklahoma  
6 Tourism and Recreation Department or the Executive Director's  
7 designated representative;

8 5. "Eligible company" means any corporation, limited liability  
9 company, partnership, sole proprietorship, business trust or any  
10 other entity, operating or intending to operate a tourism attraction  
11 project, whether owned or leased, within this state that meets the  
12 standards promulgated by the Executive Director pursuant to Section  
13 4 of this act;

14 6. "Final approval" means the action taken by the Executive  
15 Director authorizing the eligible company to receive inducements  
16 under Section 7 of this act;

17 7. "Increased state sales tax liability" means that portion of  
18 an approved company's reported state sales tax liability resulting  
19 from taxable sales of goods and services to its customers at the  
20 tourist attraction which exceeds the reported state sales tax  
21 liability for sales to its customers for the same month in the  
22 calendar year immediately preceding the certification;

23 8. "Inducements" means the sales tax credit as prescribed in  
24 Section 7 of this act;

1       9. "Preliminary approval" means the action taken by the  
2 Executive Director conditioned upon final approval by the Executive  
3 Director upon satisfaction by the eligible company of the  
4 requirements of this act;

5       10. a. "Tourism attraction" means:

- 6           (1) a cultural or historical site,
- 7           (2) a recreational or entertainment facility,
- 8           (3) an area of natural phenomena or scenic beauty,
- 9           (4) a theme park,
- 10          (5) an amusement or entertainment park,
- 11          (6) an indoor or outdoor play or music show,
- 12          (7) a botanical garden,
- 13          (8) a cultural or educational center, or
- 14          (9) a destination hotel whose location and amenities,  
15              including but not limited to upscale dining,  
16              recreation and entertainment, make the hotel  
17              itself a destination for tourists;

18       b. A tourism attraction shall not include:

- 19          (1) lodging facilities, unless:
  - 20              (a) the facilities constitute a portion of a
  - 21                  tourism attraction project and represent
  - 22                  less than fifty percent (50%) of the total
  - 23                  approved costs of the tourism attraction
  - 24                  project, or

(b) the lodging facilities are a part of a destination hotel,

(2) facilities that are primarily devoted to the retail sale of goods, unless the goods are created at the site of the tourism attraction project or if the sale of goods is incidental to the tourism attraction project,

(3) facilities that are not open to the general public,

(4) facilities that do not serve as a likely destination where individuals who are not residents of this state would remain overnight in commercial lodging at or near the tourism attraction project,

(5) facilities owned by the State of Oklahoma or a political subdivision of this state, or

(6) facilities established for the purpose of conducting legalized gambling. However, a facility regulated under the Oklahoma Horse Racing Act, Sections 200 through 209 of Title 3A of the Oklahoma Statutes, shall be a tourism attraction for purposes of this act for any approved project as outlined in subparagraph a of this paragraph or for an approved project

1 relating to pari-mutuel racing at the facility  
2 and not for establishing a casino or for offering  
3 casino-style gambling; and

4 11. "Tourism attraction project" or "project" means:

5 a. the acquisition, including the acquisition of real  
6 estate by leasehold interest with a minimum term of  
7 ten (10) years, construction and equipping of a  
8 tourism attraction, and

9 b. the construction and installation of improvements to  
10 facilities necessary or desirable for the acquisition,  
11 construction and installation of a tourism attraction,  
12 including, but not limited to:

13 (1) surveys, and

14 (2) installation of utilities, which may include:

15 (a) water, sewer, sewage treatment, gas,  
16 electricity, communications and similar  
17 facilities, and

18 (b) off-site construction of utility extensions  
19 to the boundaries of the real estate on  
20 which the facilities are located, all of  
21 which shall be used to improve the economic  
22 situation of the approved company in a  
23 manner that shall allow the approved company  
24 to attract tourists.



1       SECTION 4.       NEW LAW       A new section of law to be codified  
2 in the Oklahoma Statutes as Section 2394 of Title 68, unless there  
3 is created a duplication in numbering, reads as follows:

4       A.   The Executive Director of the Oklahoma Tourism and  
5 Recreation Department, with approval of the Oklahoma Tourism and  
6 Recreation Commission, shall establish standards for the making of  
7 applications for inducements to eligible companies and their tourism  
8 attraction projects by the promulgation of rules in accordance with  
9 the Administrative Procedures Act.

10       B.   With respect to each eligible company making an application  
11 to the Executive Director for inducements, and with respect to the  
12 tourism attraction described in the application, the Executive  
13 Director shall make inquiries and request materials of the applicant  
14 that shall include, but shall not be limited to:

15       1.   Marketing plans for the project that target individuals who  
16 are not residents of this state;

17       2.   A description and location of the project;

18       3.   Capital and other anticipated expenditures for the project  
19 that indicate that the total cost of the project shall exceed the  
20 minimum amount set forth in subsection C of this section and the  
21 anticipated sources of funding therefor;

22       4.   The anticipated employment and wages to be paid at the  
23 project;

1        5. Business plans which indicate the average number of days in  
2 a year in which the project will be in operation and open to the  
3 public, if applicable; and

4        6. The anticipated revenues and expenses generated by the  
5 project.

6        Based upon a review of these materials, if the Executive  
7 Director determines that the eligible company and the tourism  
8 attraction may reasonably be expected to satisfy the criteria for  
9 final approval in subsection C of this section, then the Executive  
10 Director may consider granting a preliminary approval of the  
11 eligible company and the tourism attraction project pursuant to  
12 subsection B of Section 5 of the Oklahoma Tourism Development Act.

13        C. For a tourism attraction project, after granting a  
14 preliminary approval, the Executive Director shall engage the  
15 services of a competent consulting firm which shall submit to the  
16 Executive Director a report analyzing the data made available by the  
17 eligible company and which shall collect and analyze additional  
18 information necessary to determine that, in the independent judgment  
19 of the consultant, the tourism attraction project will:

20        1. Attract at least twenty-five percent (25%) of its visitors  
21 from among persons who are not residents of this state;

22        2. Have costs in excess of Five Hundred Thousand Dollars  
23 (\$500,000.00);  
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1        3. Have a significant and positive economic impact on this  
2 state considering, among other factors, the extent to which the  
3 tourism attraction project will compete directly with existing  
4 tourism attractions in this state, and the extent to which the  
5 tourism attraction project will be revenue-neutral to the State of  
6 Oklahoma, meaning the amount by which increased tax revenues from  
7 the tourism attraction project will exceed the sales tax credit  
8 allowed pursuant to Section 7 of this act;

9        4. Produce sufficient revenues and public demand to be  
10 operating and open to the public on a regular and persistent basis;  
11 and

12        5. Not adversely affect existing employment in this state.

13        D. The eligible company shall pay for the cost of the  
14 consultant's report and shall cooperate with the consultant and  
15 provide all of the data that the consultant deems necessary to make  
16 a determination pursuant to this section.

17        SECTION 5.        NEW LAW        A new section of law to be codified  
18 in the Oklahoma Statutes as Section 2395 of Title 68, unless there  
19 is created a duplication in numbering, reads as follows:

20        A. The Executive Director of the Oklahoma Tourism and  
21 Recreation Department, with the approval of the Oklahoma Tourism and  
22 Recreation Commission, shall establish standards for preliminary  
23 approval and final approval of eligible companies and their projects  
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1 by the promulgation of rules in accordance with the Administrative  
2 Procedures Act.

3 B. The Executive Director may give preliminary approval by  
4 designating an eligible company as a preliminarily approved company  
5 and preliminarily authorizing the undertaking of the tourism  
6 attraction project.

7 C. The Executive Director shall review the report of the  
8 consultant prepared pursuant to subsection C of Section 4 of the  
9 Oklahoma Tourism Development Act and other information that has been  
10 made available to the Executive Director in order to assist the  
11 Executive Director in determining whether the tourism attraction  
12 project will further the purposes of this act.

13 D. The criteria for final approval of eligible companies and  
14 tourism attraction projects shall include, but shall not be limited  
15 to, the criteria set forth in subsection C of Section 4 of this act.

16 E. After a review of the relevant materials, the consultant's  
17 report, other information made available to the Executive Director,  
18 and completion of other inquiries, the Executive Director may give  
19 final approval to the eligible company's application for a tourism  
20 attraction project and may grant to the eligible company the status  
21 of an approved company. The decision reached by the Executive  
22 Director may be appealed by the eligible company to the Tourism and  
23 Recreation Commission. The decision of the Tourism and Recreation  
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1 Commission shall constitute the final administrative decision of the  
2 Oklahoma Tourism and Recreation Department.

3 SECTION 6. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 2396 of Title 68, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. Upon granting final approval, the Executive Director of the  
7 Oklahoma Tourism and Recreation Department may enter into an  
8 agreement with an approved company with respect to its tourism  
9 attraction project. The terms and provisions of each agreement  
10 shall include, but shall not be limited to:

11 1. The amount of approved costs, which shall be determined by  
12 negotiations between the Executive Director and the approved  
13 company;

14 2. A date certain by which the approved company shall have  
15 completed the tourism attraction project. Within three (3) months  
16 of the completion date, the approved company shall document the  
17 actual cost of the project through a certification of the costs by  
18 an independent certified public accountant acceptable to the  
19 Executive Director; and

20 3. The following provisions:

21 a. the term of the agreement shall be ten (10) years from  
22 the later of:

23 (1) the date of the final approval of the tourism  
24 attraction project, or

1 (2) the completion date specified in the agreement,  
2 if the completion date is within two (2) years of  
3 the date of the final approval of the tourism  
4 attraction project. However, the term of the  
5 agreement may be extended for up to two (2)  
6 additional years by the Executive Director, with  
7 the advice and consent of the Oklahoma Tax  
8 Commission, if the Executive Director determines  
9 that the failure to complete the tourism  
10 attraction project within two (2) years resulted  
11 from:

12 (a) unanticipated and unavoidable delay in the  
13 construction of the tourism attraction  
14 project,

15 (b) an original completion date for the tourism  
16 attraction project, as originally planned,  
17 which will be more than two (2) years from  
18 the date construction began, or

19 (c) a change in business structure resulting  
20 from a merger or acquisition,

21 b. in any tax year during which an agreement is in  
22 effect, if the amount of sales tax to be remitted by  
23 the approved company exceeds the sales tax credit  
24 available to the approved company, then the approved

1 company shall pay the excess to this state as sales  
2 tax,

3 c. within forty-five (45) days after the end of each  
4 calendar year the approved company shall supply the  
5 Executive Director with such reports and  
6 certifications as the Executive Director may request  
7 demonstrating to the satisfaction of the Executive  
8 Director that the approved company is in compliance  
9 with the provisions of the Oklahoma Tourism  
10 Development Act, and

11 d. the approved company shall not receive an inducement  
12 with respect to any calendar year if:

13 (1) in any calendar year following the fourth year of  
14 the agreement, the tourism attraction project  
15 fails to attract at least fifteen percent (15%)  
16 of its visitors from among persons who are not  
17 residents of this state, or

18 (2) in any calendar year following the first year of  
19 the project or the tourism attraction project is  
20 not operating and open to the public on a regular  
21 and consistent basis.

22 B. The agreement shall not be transferable or assignable by the  
23 approved company without the written consent of the Executive  
24 Director.

1 C. If the approved company utilizes inducements which are  
2 subsequently disallowed then the approved company will be liable for  
3 the payment to the Tax Commission of all taxes resulting from the  
4 disallowance of the inducements plus applicable penalties and  
5 interest.

6 D. The Executive Director shall provide a copy of each  
7 agreement entered into with an approved company to the Tax  
8 Commission.

9 SECTION 7. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 2397 of Title 68, unless there  
11 is created a duplication in numbering, reads as follows:

12 A. Upon receiving notification from the Executive Director of  
13 the Oklahoma Tourism and Recreation Department that an approved  
14 company has entered into a tourism project agreement and is entitled  
15 to the inducements provided by the Oklahoma Tourism Development Act,  
16 the Oklahoma Tax Commission shall provide the approved company with  
17 forms and instructions as necessary to claim those inducements.

18 B. An approved company whose agreement provides that it shall  
19 expend approved costs of more than Five Hundred Thousand Dollars  
20 (\$500,000.00) for a tourism attraction project but less than One  
21 Million Dollars (\$1,000,000.00) shall be entitled to a sales tax  
22 credit if the company certifies to the Tax Commission that it has  
23 expended at least the minimum amount in approved costs, and the  
24 Executive Director certifies that the approved company is in



1 compliance with this act. The Tax Commission shall then issue a tax  
2 credit memorandum to the approved company granting a sales tax  
3 credit in the amount of up to ten percent (10%) of the approved  
4 costs, but limited to the percent of the approved costs that will  
5 result in the project being revenue-neutral to the State of Oklahoma  
6 as determined by the Tax Commission. Subsequent requests for credit  
7 for additional certified approved costs in excess of the minimum  
8 amount for each project as listed in this subsection but less than  
9 One Million Dollars (\$1,000,000.00) shall result in a sales tax  
10 credit in the amount of up to ten percent (10%) of the approved  
11 costs, but limited to the percent of the approved costs that will  
12 result in the project being revenue-neutral to the State of Oklahoma  
13 as determined by the Tax Commission. Sales tax credits allowed  
14 pursuant to the provisions of this act shall not be transferable or  
15 assignable.

16 An approved company whose agreement provides that it shall  
17 expend approved costs in excess of One Million Dollars  
18 (\$1,000,000.00) shall be entitled to a sales tax credit if the  
19 company certifies to the Tax Commission that it has expended at  
20 least One Million Dollars (\$1,000,000.00) in approved costs and the  
21 Executive Director certifies that the approved company is in  
22 compliance with this act. The Tax Commission shall then issue a tax  
23 credit memorandum to the approved company granting a sales tax  
24 credit in the amount of up to twenty-five percent (25%) of the

1 approved costs, but limited to the percent of the approved costs  
2 that will result in the project being revenue-neutral to the State  
3 of Oklahoma as determined by the Tax Commission. The credit on all  
4 subsequent additional certified approved costs shall be in the  
5 amount of up to twenty-five percent (25%) of the costs, but limited  
6 to the percent of the approved costs that will result in the project  
7 being revenue-neutral to the State of Oklahoma as determined by the  
8 Tax Commission. The cumulative credits provided pursuant to this  
9 act shall not exceed Fifteen Million Dollars (\$15,000,000.00) per  
10 year.

11 The Tax Commission shall require proof of expenditures prior to  
12 issuing a tax credit memorandum to the approved company which may be  
13 satisfied by a report from an independent certified public  
14 accountant. Additional credit memoranda may be issued as the  
15 approved company certifies additional expenditures of approved  
16 costs.

17 No tax credit memorandum shall be issued for any approved costs  
18 expended after the expiration of two (2) years from the date the  
19 agreement was signed by the Executive Director and the approved  
20 company. However, the Executive Director, with the advice and  
21 consent of the Tax Commission, may authorize tax credits for  
22 approved costs expended up to four (4) years from the date the  
23 agreement was signed if the Executive Director determines that the  
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1 failure to complete the tourism attraction project within two (2)  
2 years resulted from:

3 1. Unanticipated and unavoidable delay in the construction of  
4 the tourism attraction;

5 2. An original completion date for the tourism attraction, as  
6 originally planned, which will be more than two (2) years from the  
7 date construction began; or

8 3. A change in business ownership or business structure  
9 resulting from a merger or acquisition.

10 C. A sales tax credit allowed pursuant to the provisions of  
11 this section may be used to offset a portion of the reported state  
12 sales tax liability of the approved company for all sales tax  
13 reporting periods following the issuance of the credit memorandum  
14 subject to the following limitations:

15 1. Only increased state sales tax liability may be offset by  
16 the issued credit;

17 2. An approved company whose agreement provides that it shall  
18 expend approved costs in excess of One Million Dollars  
19 (\$1,000,000.00) shall be entitled to use only ten percent (10%) of  
20 the amount of each issued credit to offset increased state sales tax  
21 liability during each calendar year, plus the amount of any unused  
22 credit carried forward from a prior calendar year, and an approved  
23 company whose agreement provides that it shall expend approved costs  
24 of more than the minimum amount for each project as listed in this

1 subsection but less than One Million Dollars (\$1,000,000.00) shall  
2 be entitled to use only twenty percent (20%) of the amount of each  
3 issued credit to offset increased state sales tax liability during  
4 each calendar year, plus the amount of any unused credit carried  
5 forward from a prior calendar year; and

6 3. All issued credit memoranda shall expire at the end of the  
7 month following the expiration of the agreement as provided in  
8 Section 6 of the Oklahoma Tourism Development Act.

9 The approved company shall have no obligation to refund or  
10 otherwise return any amount of this credit to the person from whom  
11 the sales tax was collected.

12 D. The Tax Commission shall promulgate rules as are necessary  
13 for the proper administration of the Oklahoma Tourism Development  
14 Act. The Tax Commission may also develop forms and instructions as  
15 necessary for an approved company to claim the sales tax credit  
16 provided by this act.

17 E. The Tax Commission shall have the authority to obtain any  
18 information necessary from the approved company and the Executive  
19 Director to verify that approved companies have received the proper  
20 amounts of tax credits as authorized by this act. The Oklahoma Tax  
21 Commission shall demand the repayment of any credits taken in excess  
22 of the credit allowed by this act.

23 F. No sales tax credit authorized by this section shall be  
24 granted on or after January 1, 2021. Notwithstanding the foregoing,

1 an approved company that has entered into a tourism attraction  
2 project agreement with the Tourism and Recreation Department  
3 pursuant to Section 6 of this act prior to January 1, 2021, shall  
4 continue to be entitled to claim any sales tax credit authorized by  
5 this section as contemplated by the tourism project agreement.

6 SECTION 8. This act shall become effective November 1, 2017.

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