

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

SENATE BILL 214

By: Dugger

AS INTRODUCED

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

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

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

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

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

1        2. The president of the Oklahoma Professional Economic  
2 Development Council or his or her designee who is also a member of  
3 the Oklahoma Professional Economic Development Council who shall  
4 serve during his or her term of office as president of the Oklahoma  
5 Professional Economic Development Council;

6        3. An auditor who is employed as an internal auditor by a  
7 company or who is employed by a private auditing firm appointed by  
8 the Governor whose term shall expire on ~~June 30, 2019~~ December 31,  
9 2025;

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

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

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

19       7. The Director of the Office of Management and Enterprise  
20 Services or his or her designee who is an employee of the Office of  
21 Management and Enterprise Services which shall be an ex officio and  
22 nonvoting position; and  
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1        8. The Oklahoma Secretary of Commerce or his or her designee  
2 who is an employee of the Oklahoma Department of Commerce which  
3 shall be an ex officio and nonvoting position.

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

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

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

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

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

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

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

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

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

10 SECTION 2. AMENDATORY Section 4, Chapter 184, O.S.L.  
11 2015 (62 O.S. Supp. 2020, Section 7004), is amended to read as  
12 follows:

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

21 B. ~~By January 1, 2016, and by January 1 each year thereafter~~  
22 For calendar years 2016 through 2021, the Incentive Evaluation  
23 Commission shall develop a four-year schedule for evaluating  
24 incentives. Beginning December 1, 2021, and each December 1 of all

1 subsequent years, the Commission shall develop a schedule of  
2 incentives to be evaluated during the following calendar year. The  
3 schedule for evaluating the incentives shall be developed so that  
4 the incentives having the highest fiscal impact to the state revenue  
5 system, including but not limited to the General Revenue Fund, shall  
6 be evaluated before other incentives. Each schedule shall include a  
7 list of all incentives in the state, including any it exempts from  
8 evaluation. In determining whether a program is an incentive, the  
9 Incentive Evaluation Commission may consider legislative intent and  
10 may also consider whether the program is promoted as an incentive by  
11 any state agency. For each incentive listed in the schedule, the  
12 Commission shall attempt to identify the goal or goals of the  
13 incentive.

14 C. Upon approval of the schedule, the Commission shall provide  
15 the schedule to the Governor, President Pro Tempore of the Senate  
16 and Speaker of the House of Representatives.

17 SECTION 3. AMENDATORY Section 5, Chapter 184, O.S.L.  
18 2015, as amended by Section 1, Chapter 154, O.S.L. 2017 (62 O.S.  
19 Supp. 2020, Section 7005), is amended to read as follows:

20 Section 7005. A. The Commission may contract with a private  
21 company, nonprofit, or academic institution to assist with  
22 evaluation of each incentive. The Commission shall develop a scope  
23 of services for a request for proposals issued pursuant to The  
24 Oklahoma Central Purchasing Act, Section 85.1 et seq. of Title 74 of

1 the Oklahoma Statutes, for professional services necessary to  
2 complete incentive evaluations pursuant to the Incentive Evaluation  
3 Act. The scope of services shall include a provision requiring the  
4 contractor to provide at least one draft report on each incentive  
5 prior to the issuance of the final report; provided, the contractor  
6 may determine the timing and frequency of draft reports based on the  
7 availability of information and the potential for draft reports to  
8 assist the Commission in making a final recommendation. The cost of  
9 such contract shall be paid by the Office of Management and  
10 Enterprise Services. No recipient or potential recipient of an  
11 incentive or representative of a recipient or potential recipient  
12 shall contact the entity or individual with whom the Commission  
13 contracts pursuant to this subsection unless the entity or  
14 individual specifically requests information or documentation for  
15 purposes of the incentive evaluation process; provided, this shall  
16 not be construed to prevent participation in a public hearing  
17 conducted pursuant to subsection B of this section.

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

14 C. Each evaluation shall include the following:

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

- 18 a. the extent to which the incentive changes business  
19 behavior,
- 20 b. the results of the incentive for the economy of  
21 Oklahoma as a whole. This consideration includes both  
22 positive direct and indirect impacts and any negative  
23 effects on other Oklahoma businesses, and  
24



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 by the Commission through the administrative  
23 rulemaking process pursuant to the Administrative Procedures Act,  
24 Section 250 et seq. of Title 75 of the Oklahoma Statutes, and

1 codified in the administrative code of the Oklahoma Department of  
2 Commerce.

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

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

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

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