

1 ENGROSSED SENATE
2 BILL NO. 745

By: Coleman of the Senate

3 and

4 Hilbert of the House

5
6 An Act relating to the Incentive Evaluation
7 Commission; amending 62 O.S. 2021, Sections 7003,
8 7004, and 7005, which relate to the Incentive
9 Evaluation Act; modifying terms of certain
10 appointments to the Commission; modifying certain
11 member of Commission; modifying required frequency of
12 evaluation; limiting requirement to develop certain
13 schedule to certain years; requiring development
14 schedule for calendar year; requiring scope of
15 services to include certain provision; providing
16 exception to certain requirement to provide
17 information; clarifying statutory language; updating
18 statutory language; providing an effective date; and
19 declaring an emergency.

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

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

23 Section 7003. A. There is hereby established the Incentive
24 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;

2. The ~~president~~ Chair of the ~~Oklahoma Professional Economic~~
~~Development Council~~ Select Oklahoma an Economic Development

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

7 3. An auditor who is employed as an internal auditor by a
8 company or who is employed by a private auditing firm appointed by
9 the Governor whose term shall expire on ~~June 30, 2019~~ December 31,
10 2025;

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

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

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

20 7. The Director of the Office of Management and Enterprise
21 Services or his or her designee who is an employee of the Office of
22 Management and Enterprise Services which shall be an ex officio and
23 nonvoting position; and
24

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
24

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 62 O.S. 2021, Section 7004, is
11 amended to read as follows:

12 Section 7004. A. ~~The~~ For calendar years 2024 through 2027 and
13 every four (4) years thereafter, the Incentive Evaluation Commission
14 shall ensure that each incentive is evaluated ~~at least once every~~
15 ~~four (4) years~~ within the four-year evaluation period unless the
16 Commission determines that the incentive is exempt from evaluation.
17 The Commission may exempt from evaluation any incentive that it
18 concludes has a minimal fiscal impact. The Commission shall
19 determine a specific threshold amount which shall be considered as a
20 minimal fiscal impact for the current evaluation cycle. The
21 Commission may also conduct an expedited evaluation for any
22 incentive that has been evaluated at least two times from calendar
23 years 2016 through 2023 and has not had a material change to the
24 program since its prior evaluation. The expedited evaluation will

1 update the prior evaluation's financial and economic impact and
2 findings and recommendations.

3 B. ~~By January 1, 2016, and by January 1 each year thereafter~~

4 For calendar years 2016 through 2023, the Incentive Evaluation

5 Commission shall develop a four-year schedule for evaluating

6 incentives. ~~The schedule for evaluating the incentives shall be~~

7 ~~developed so that the incentives having the highest fiscal impact to~~

8 ~~the state revenue system, including but not limited to the General~~

9 ~~Revenue Fund, shall be evaluated before other incentives. The~~

10 development of the schedule for evaluating the incentives shall take

11 into consideration fiscal impacts to revenues of this state,

12 including but not limited to the General Revenue Fund, the

13 opportunity to group incentives with similar goals and objectives

14 for evaluation, and the ability to obtain sufficient data related to

15 the incentives for evaluation. Each schedule shall include a list

16 of all incentives in the state, including any it exempts from

17 evaluation. In determining whether a program is an incentive, the

18 Incentive Evaluation Commission may consider legislative intent and

19 may also consider whether the program is promoted as an incentive by

20 any state agency. For each incentive listed in the schedule, the

21 Commission shall attempt to identify the goal or goals of the

22 incentive.

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

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

1 purposes of the incentive evaluation process; provided, this shall
2 not be construed to prevent participation in a public hearing
3 conducted pursuant to subsection B of this section.

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

publicly available on the Oklahoma Department of Commerce website,
the Commission website, and documents.ok.gov.

C. Each evaluation shall include the following:

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

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

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

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

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

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

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

5. Recommendations for how ~~Oklahoma~~ the state can most
effectively achieve the incentive's goals, including recommendations

1 on whether the incentive should be retained, reconfigured, or
2 repealed; and

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

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

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

23 SECTION 4. This act shall become effective July 1, 2023.
24

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

Passed the Senate the 14th day of March, 2023.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2023.

Presiding Officer of the House
of Representatives