

1 **SENATE FLOOR VERSION**

2 April 7, 2015

3 **AS AMENDED**

4 ENGROSSED HOUSE
5 BILL NO. 2182

6 By: Hickman, Brown, Bennett,
7 Montgomery, Dank, Sherrer,
8 Perryman, Ownbey, Hoskin,
9 McCullough, and Walker of
10 the House

11 and

12 Bingman and Brinkley of the
13 Senate

14 **[public finance - Incentive Evaluation Act -
15 codification - effective date]**

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

17 SECTION 1. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 7001 of Title 62, unless there
19 is created a duplication in numbering, reads as follows:

20 This act shall be known and may be cited as the "Incentive
21 Evaluation Act".

22 SECTION 2. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 7002 of Title 62, unless there
24 is created a duplication in numbering, reads as follows:

As used in this act, "incentive" means a tax credit, tax
exemption, tax deduction, tax expenditure, rebate, grant, or loan
that is intended to encourage businesses to locate, expand, invest,
or remain in Oklahoma, or to hire or retain employees in Oklahoma.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 7003 of Title 62, unless there
3 is created a duplication in numbering, reads as follows:

4 A. There is hereby established the Incentive Evaluation
5 Commission consisting of:

6 1. A certified public accountant appointed by the Oklahoma
7 Accountancy Board whose term shall expire on June 30, 2019;

8 2. The president of the Oklahoma Professional Economic
9 Development Council or his or her designee who is also a member of
10 the Oklahoma Professional Economic Development Council who shall
11 serve during his or her term of office as president of the Oklahoma
12 Professional Economic Development Council;

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

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;

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;

22 6. The Chairman of the Oklahoma Tax Commission or his or her
23 designee who is also a member of the Oklahoma Tax Commission, which
24 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. Any vacancy shall be filled by the
10 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 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 7004 of Title 62, unless there
16 is created a duplication in numbering, reads as follows:

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

24

1 B. By January 1, 2016, and by January 1 each year thereafter,
2 the Incentive Evaluation Commission shall develop a four-year
3 schedule for evaluating incentives. The schedule for evaluating the
4 incentives shall be developed so that the incentives having the
5 highest fiscal impact to the state revenue system, including but not
6 limited to the General Revenue Fund, shall be evaluated before other
7 incentives. Each schedule shall include a list of all incentives in
8 the state, including any it exempts from evaluation. In determining
9 whether a program is an incentive, the Incentive Evaluation
10 Commission may consider legislative intent and may also consider
11 whether the program is promoted as an incentive by any state agency.
12 For each incentive listed in the schedule, the Commission shall
13 attempt to identify the goal or goals of the 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 5. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 7005 of Title 62, unless there
19 is created a duplication in numbering, reads as follows:

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

1 Statutes, for professional services necessary to complete incentive
2 evaluations pursuant to the Incentive Evaluation Act. The cost of
3 such contract shall be paid by the Office of Management and
4 Enterprise Services. No recipient or potential recipient of an
5 incentive or representative of a recipient or potential recipient
6 shall contact the entity or individual with whom the Commission
7 contracts pursuant to this subsection unless the entity or
8 individual specifically requests information or documentation for
9 purposes of the incentive evaluation process; provided, this shall
10 not be construed to prevent participation in a public hearing
11 conducted pursuant to subsection B of this section.

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

1 Tempore of the Senate and Speaker of the House of Representatives.
2 The report shall be made publicly available on the Oklahoma
3 Department of Commerce 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;

24

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

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

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

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

22 SECTION 6. This act shall become effective November 1, 2015.

23 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
24 April 7, 2015 - DO PASS AS AMENDED