

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SUBCOMMITTEE RECOMMENDATION  
FOR

HOUSE BILL NO. 2700

By: Kendrix

SUBCOMMITTEE RECOMMENDATION

An Act relating to public finance; amending 62 O.S. 2021, Sections 7003, 7004 and 7005, which relate to the Incentive Evaluation Act; modifying references to terms of service; providing for schedule of review; imposing requirement with respect to scope of services; providing exception; modifying provisions related to release of information to the Incentive Evaluation Commission; and declaring an emergency.

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. A certified public accountant appointed by the Oklahoma Accountancy Board whose term shall ~~expire on June 30, 2019~~ begin on 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  
2 ~~the Oklahoma Professional Economic Development Council~~ Select  
3 Oklahoma, an Economic Development Partnership, Inc., who shall serve  
4 during his or her term of office as ~~president~~ chair of ~~the Oklahoma~~  
5 ~~Professional Economic Development Council~~ Select Oklahoma, an  
6 Economic 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~~ begin on  
10 December 31, 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~~ begin on 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~~ begin on December 21, 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.

21 The 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 schedule for evaluating the incentives shall be developed to take

11 into consideration the fiscal impact to the state revenue system

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

13 opportunity to group for evaluation incentives with similar goals

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



1 on the Oklahoma Department of Commerce website, the Commission  
2 website and documents.ok.gov.

3 C. Each evaluation shall include the following:

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

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

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

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

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

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

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

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 by the Commission through the administrative  
13 rulemaking process pursuant to the Administrative Procedures Act,  
14 Section 250 et seq. of Title 75 of the Oklahoma Statutes, and  
15 codified in the administrative code of the Oklahoma Department of  
16 Commerce.

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

SECTION 4. 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.

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