

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

HOUSE BILL 2700

By: Kendrix

AS INTRODUCED

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, and serve a term of no more than four (4) years;

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

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, and serve a term of no more than four (4) years;

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, 2022,
14 and serve a term of no more than four (4) years;

15 5. A lay person who is not an elected official appointed by the
16 Speaker of the Oklahoma House of Representatives whose term shall
17 ~~expire June 30, 2020~~ begin on December 21, 2022, and serve a term of
18 no more than four (4) years;

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

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

3 8. The Oklahoma Secretary of Commerce or his or her designee
4 who is an employee of the Oklahoma Department of Commerce which
5 shall be an ex officio and nonvoting position.

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

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

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

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

1 Services as needed in providing staff and administrative support to
2 the Commission.

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

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

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

22 3. If employees of an establishment as defined in division (10)
23 of subparagraph a of paragraph 1 of subsection A of Section 3603 of
24 Title 68 of the Oklahoma Statutes meet the requirements to be

1 considered employed in new direct jobs as specified in paragraph 3
2 of subsection A of Section 3603 of Title 68 of the Oklahoma
3 Statutes.

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

11 SECTION 2. AMENDATORY 62 O.S. 2021, Section 7004, is
12 amended to read as follows:

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

21 B. ~~By January 1, 2016, and by January 1 each year thereafter,~~
22 For calendar years 2016 through 2022, the Incentive Evaluation
23 Commission shall develop a four-year schedule for evaluating
24 incentives. Beginning December 1, 2022, 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 62 O.S. 2021, Section 7005, is
18 amended to read as follows:

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

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

17 B. By November 1 of each year beginning in 2016, the Commission
18 or the Commission's chosen contractor shall evaluate each incentive
19 scheduled for review that year. The Commission or the Commission's
20 chosen contractor shall conduct each incentive evaluation in
21 consultation with the Oklahoma Department of Commerce division of
22 Research and Economic Analysis Services using criteria developed
23 pursuant to subsection D of this section. Between October 1 and
24 November 30 of each year beginning in 2017, the Commission shall

1 hold at least one public meeting to review, allow for public
2 comment, and vote to approve, disapprove or modify each incentive
3 evaluation conducted that year. By December 15 of each year
4 beginning in 2016, the Commission shall provide the results of each
5 incentive evaluation in a written report to the Governor, President
6 Pro Tempore of the Senate and Speaker of the House of
7 Representatives. If the Commission votes to modify an incentive
8 evaluation as provided in this subsection, such modification and the
9 original evaluation shall be documented in the annual written
10 report. The report shall be made publicly available on the Oklahoma
11 Department of Commerce website, the Commission website and
12 documents.ok.gov.

13 C. Each evaluation shall include the following:

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

- 17 a. the extent to which the incentive changes business
18 behavior,
- 19 b. the results of the incentive for the economy of
20 Oklahoma as a whole. This consideration includes both
21 positive direct and indirect impacts and any negative
22 effects on other Oklahoma businesses, and
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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. It being immediately necessary for the preservation
11 of the public peace, health or safety, an emergency is hereby
12 declared to exist, by reason whereof this act shall take effect and
13 be in full force from and after its passage and approval.

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