

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 745

By: Coleman

AS INTRODUCED

An Act relating to the Incentive Evaluation Commission; amending 62 O.S. 2021, Sections 7003, 7004, and 7005, which relate to the Incentive Evaluation Act; modifying terms of certain appointments to the Commission; modifying certain member of Commission; modifying required frequency of evaluation; limiting requirement to develop certain schedule to certain years; requiring development schedule for calendar year; requiring scope of services to include certain provision; providing exception to certain requirement to provide information; clarifying statutory language; updating statutory language; providing an effective date; 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 January 1, 2026 and not exceed 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 January 1, 2026 and not exceed 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 January 1, 2022  
14 and not exceed 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 January 1, 2022 and not exceed four  
18 (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  
24

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  
25

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  
25

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 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 2022, the Incentive Evaluation  
23 Commission shall develop a four-year schedule for evaluating  
24 incentives. By December 1 of each calendar year, the Commission

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

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

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

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

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

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

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

12 C. Each evaluation shall include the following:

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

- 16 a. the extent to which the incentive changes business  
17 behavior,
- 18 b. the results of the incentive for the economy of  
19 Oklahoma as a whole. This consideration includes both  
20 positive direct and indirect impacts and any negative  
21 effects on other Oklahoma businesses, and
- 22 c. a comparison to the results of other incentives or  
23 other economic development strategies with similar  
24 goals;

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

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

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

8           5. Recommendations for how ~~Oklahoma~~ the state can most  
9 effectively achieve the incentive's goals, including recommendations  
10 on whether the incentive should be retained, reconfigured, or  
11 repealed; and

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

17           D. Evaluation criteria shall be developed for each incentive  
18 evaluated by the Commission. Each incentive shall be evaluated  
19 using criteria specific to the individual incentive. The criteria  
20 shall be developed by the Commission through the administrative  
21 rulemaking process pursuant to the Administrative Procedures Act,  
22 Section 250 et seq. of Title 75 of the Oklahoma Statutes, and  
23 codified in the administrative code of the Oklahoma Department of  
24 Commerce.

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

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

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

13  
14 59-1-822 QD 1/18/2023 5:10:54 PM  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25