An Act

ENROLLED HOUSE
BILL NO. 2182

By: Dank, Brown, Bennett, Montgomery, Sherrer, Perryman, Ownbey, Hoskin, McCullough, Walker, Hickman and Faught of the House

and

Bingman, Brinkley, Griffin and Jolley of the Senate

An Act relating to public finance; enacting the Incentive Evaluation Act; defining term; creating Incentive Evaluation Commission; providing for membership; prohibiting certain persons from serving on the Commission; requiring staff support; creating Incentive Approval Committee as subcommittee of Incentive Evaluation Commission; imposing duties upon Committee; imposing duties on Incentive Evaluation Commission; requiring development of schedule; requiring transmission of schedule to Governor, President Pro Tempore of the Oklahoma State Senate and the Speaker of the Oklahoma House of Representatives; authorizing contract; requiring scope of services request for proposal; prohibiting certain contact; prescribing procedures for evaluation of tax and related incentives; requiring report; prescribing content of evaluation; requiring criteria for evaluation; requiring compliance with Administrative Procedures Act; requiring information, records, data and analysis by governmental entities; providing for confidentiality of information; providing for codification; and providing an effective date.

SUBJECT: Public finance

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

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

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7002 of Title 62, unless there 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.

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

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;

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

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

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

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

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

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

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

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

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

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

E. The Office of Management and Enterprise Services shall provide staff and administrative support to the Incentive Evaluation Commission. The Oklahoma Department of Commerce and the Oklahoma Tax Commission shall assist the Office of Management and Enterprise Services as needed in providing staff and administrative support to the Commission.

F. The Incentive Approval Committee is hereby created as a subcommittee of the Incentive Evaluation Commission and shall consist of the Director of the Office of Management and Enterprise

Services or his or her designee, the Secretary of Commerce or his or her designee, and the Chairman of the Tax Commission or his or her designee. It shall be the duty of the Committee to determine:

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

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

3. If employees of an establishment as defined in division (10) of subparagraph a of paragraph 1 of subsection A of Section 3603 of Title 68 of the Oklahoma Statutes meet the requirements to be considered employed in new direct jobs as specified in paragraph 3 of subsection A of Section 3603 of Title 68 of the Oklahoma Statutes.

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

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7004 of Title 62, unless there is created a duplication in numbering, reads as follows:

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

B. By January 1, 2016, and by January 1 each year thereafter, the Incentive Evaluation Commission shall develop a four-year schedule for evaluating incentives. The schedule for evaluating the incentives shall be developed so that the incentives having the highest fiscal impact to the state revenue system, including but not limited to the General Revenue Fund, shall be evaluated before other incentives. Each schedule shall include a list of all incentives in the state, including any it exempts from evaluation. In determining whether a program is an incentive, the Incentive Evaluation Commission may consider legislative intent and may also consider whether the program is promoted as an incentive by any state agency. For each incentive listed in the schedule, the Commission shall attempt to identify the goal or goals of the incentive.

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

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7005 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. The Commission may contract with a private company, nonprofit, or academic institution to assist with evaluation of each incentive. The Commission shall develop a scope of services for a request for proposals issued pursuant to The Oklahoma Central Purchasing Act, Section 85.1 et seq. of Title 74 of the Oklahoma Statutes, for professional services necessary to complete incentive evaluations pursuant to the Incentive Evaluation Act. The cost of such contract shall be paid by the Office of Management and Enterprise Services. No recipient or potential recipient of an incentive or representative of a recipient or potential recipient shall contact the entity or individual with whom the Commission contracts pursuant to this subsection unless the entity or individual specifically requests information or documentation for purposes of the incentive evaluation process; provided, this shall not be construed to prevent participation in a public hearing conducted pursuant to subsection B of this section.

B. By November 1 of each year beginning in 2016, the Commission or the Commission's chosen contractor shall evaluate each incentive scheduled for review that year. The Commission or the Commission's chosen contractor shall conduct each incentive evaluation in consultation with the Oklahoma Department of Commerce division of

Research and Economic Analysis Services using criteria developed pursuant to subsection D of this section. Between November 1 and November 30 of each year beginning in 2016, the Commission shall hold at least one public meeting to review, allow for public comment, and vote to approve or disapprove each incentive evaluation conducted that year. By December 15 of each year beginning in 2016, the Commission shall provide the results of each incentive evaluation in a written report to the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives. The report shall be made publicly available on the Oklahoma Department of Commerce 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 can most effectively achieve the incentive's goals, including recommendations on whether the incentive should be retained, reconfigured or repealed; and

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

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

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

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

Passed the House of Representatives the 11th day of March, 2015.

Presiding Officer of the House
of Representatives

Passed the Senate the 21st day of April, 2015.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 22nd day of April, 2015, at 12:08 o'clock P M.

By: Audrey Caldwell

Approved by the Governor of the State of Oklahoma this 27th day of April, 2015, at 1:39 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 27th day of April, 2015, at 2:07 o'clock P. M.

By: Chris Benge