Amended Minutes
Special Meeting
Incentive Evaluation Commission
April 19, 2016
Oklahoma State Capitol
Rm. 419-C, 2:00 p.m.
Oklahoma City, Oklahoma

A meeting notice was filed with the secretary of state and agenda posted in accordance with the Open Meeting Act.

MEMBERS PRESENT:
Ron Brown, Layperson
Jim Denton, Auditor of Private Firm
Carlos Johnson, Certified Public Accountant
Cynthia Rogers, Economist
Lyle Roggow, President of the OK Professional Economic Development Council
Commissioner Cash, Ex Officio; Non-voting
Secretary Doerflinger, Ex Officio; Non-voting
Secretary Snodgrass, Ex Officio; Non-voting

MEMBERS ABSENT: None

STAFF/GUESTS:
John Estus, OMES Public Information Officer
Beverly Hicks, OMES Recording Secretary
Jay Moon, President/CEO, Mississippi Manufacturers Assoc.
Fred Morgan, President of the State Chamber of Oklahoma
David Blatt, Director, OK Policy Institute
Shawn Ashley, eCapitol
Mark Lash, Oklahoma Watch
Jamie Herrera, Commerce Department
Jon Chiappe, Commerce Department
Alisha Davidson, CSMIC

1. **Call to order and establish a quorum. [Lyle Roggow, chairman]**

The meeting was called to order by Chairman Roggow at 2:05 p.m. A roll call was taken and a quorum was established. He was advised that notice of the meeting was given and an agenda posted in accordance with the Open Meeting Act**.**

2. **Approval of minutes from the Feb. 25, 2016, meeting. [Lyle Roggow]**

The meeting minutes were amended at the request of Ms. Rogers, on item 7, with her last name corrected and by Mr. Denton, on item 4, third paragraph, to clarify the year of the following three steps mentioned in the sentence. Mr. Estus confirmed 2017 and that the sentence would be revised to finish with, "To start in 2017."

Mr. Brown moved to approve to amend the February meeting minutes. Mr. Johnson seconded the motion; the motion passed and the following votes were recorded:

Ron Brown, aye; Jim Denton, aye; Carlos Johnson, aye; Cynthia Rogers, aye; Lyle Roggow, aye.

3. **Presentation on best practices. [Jay Moon]**

Mr. Morgan, President of the State Chamber of Oklahoma, a business advocacy organization representing 1500 businesses statewide and employing 350,000 people, made known the State Chamber supports the legislation that created this commission. As a resource to the Commission, Mr. Morgan reached out to one of the country's leading experts to make the presentation at today's meeting.

Mr. Morgan introduced Mr. Moon, President and CEO of the Mississippi Manufacturers Association (MMA), representing more than 2200 associated manufacturer members. His list of credentials:

- More than 30 years' experience in economic development, including site development, business retention, strategic plan development, financial incentive creation and marketing.
- Prior to joining the MMA, he was deputy director, chief administrative officer and director for International Development with the Mississippi Developmental Authority, where he was in charge of developing many well-known national and international companies in Mississippi.
- Led successful efforts to locate a $1.5 billion dollar Nissan assembly facility, employing over 6,000 workers.
- Received consistent recognition for innovative business attractions and has been acknowledged by Site Selection Magazine as one of the top 10 economic development organizations in the U.S.
- Certified economic developer who serves on a board of directors of the National Association of Manufacturers, the largest manufacturing association in the U.S., representing more than 11,000 manufacturing companies.

- Past chair of the International Economic Development Council, the largest economic developmental organization in the world.
- Former dean instructor on politics and marketing incentives and ethics at the University of Oklahoma's Economic Development Institute, the nation's premier economic training developmental program for practicing economic developers.

Mr. Moon gave a presentation over information on business incentives and best practices used in developing, analyzing and reviewing. Stating that with the economy, markets and business changes, incentives must be reviewed and looked at in terms of how they're being applied today and/or whether they have the impact of what the Commission is looking for with regards to a community's economic goals and the goals of the state. The purpose is not as much focused on the business, but what can be derived in a community from the location of the business in that community.

Mr. Moon noted that Mississippi is well-known as an incentive state. His company has many incentives they developed over the years and continue to use. Some are general and could apply to manufacturing, research and development, and infrastructure. Some are specific for companies such as Continental Tire, a $1.45 billion dollar investment from a recent project they brought to their state, employing 2500 people. They have also incentivized projects with companies such as Toyota and Nissan. They developed incentives, including the Port and Harbor Revolving Loan Fund and the Economic Development Highway Act, that have enhanced the ability of their companies to be profitable and to survive the 21st century global marketplace.

Coming from an economic development world and working with manufacturers over the past years, Mr. Moon and his company, MMA, also looked at the non-traditional incentive areas, and how they can develop incentives that serve both new and existing businesses; keeping in mind the continuous issues of both types of businesses and the argument over who deserves the incentives more. By working on their tax policy over the past few years, a significant Workers' Compensation Reform was enacted which eliminated a 1.5 percent sales tax on energy used in manufacturing. They also executed two workforce development programs; one that made $20 million dollars' worth of private sector funds available to their community colleges, providing worker training to be used for existing businesses.

Recently a bill passed providing $10 million dollars this year and another $5 million in succeeding years on a closing fund for their governor to work with new businesses on their workforce development needs.

Mr. Moon talked about the challenges and new realities of the global marketplace and accelerated levels of technology growth and its impact on states, businesses, communities. He also spoke of the ability to react where incentives programs are involved. He went over some of the top factors companies are looking at in site locations, which are the availability of skilled labor, highway accessibility, occupation, construction cost, corporate tax rates, and state and local incentives.

He emphasized the importance of due diligence and doing homework on any company you work with to reduce risk on both sides. Start by investigating their track record and history.

Conduct an economic and fiscal impact analysis of your economic development projects to validate the company's economic value to the community and if an incentive deal can generate net benefits for the community. The rate of return and payback period should be the primary factors in awarding incentives.

In concluding, Mr. Moon shared how much incentives matter. Companies need, expect and want them. Play to your strengths. Companies are considering your area because you have something they want (land, real estate, labor, access, markets, suppliers, lifestyle). Don't be intimidated into incentive packages you can't afford or defend. Always build bridges with companies and consultants, even if you don't win the deal.

Secretary Snodgrass entered the meeting at 2:17 p.m.

4. Presentation on incentives. [David Blatt]

Mr. Blatt, executive director of the OK Policy Institute, an independent non-profit think tank based in Tulsa, Ok, provided information analysis and ideas around a broad set of public policy issues, guided by commitment to the fair and adequate funding to public services. He went over special points of interest, noting tax expenditures are exemptions, deductions, incentives, credits, etc. that allow taxes not to be paid when they otherwise would be. There are over 450 separate tax expenditures in Oklahoma law; together, their total estimated fiscal impact is at least $5.6 billion. The state has made important progress in recent years in increasing disclosure and scrutiny of tax expenditures. However, further progress could be made by further increasing disclosure, evaluating existing incentive programs, creating front-end evaluations of new incentives, and limiting fiscal exposure through financial caps and triggers.

He reviewed some of the basic principles and identified some of the concerns that people have with the use of tax breaks in public policy. Common arguments in favor are that they're instruments for accomplishing worthwhile public purposes and they are needed to encourage economic development, but at the same time Mr. Blatt said there are some recurring concerns or criticisms about tax expenditures that are worth keeping in mind.

1. <u>Hidden expenditures</u>. They are largely invisible. Unlike direct spending programs, they do not require annual appropriations or legislative review. In effect, they represent spending policies hidden in the tax code and administered by the Internal Revenue Service (IRS) or the OK Tax Commission (OTC). Traditionally it's been difficult or impossible to attain information on which companies and individuals claim tax breaks, and what amounts, due to taxpayer confidentiality. He noted that genuine progress has been made in recent years in that area.
2. <u>Efficiency</u>. While incentives are intended to get an individual business to do something it wouldn't otherwise do, it's often hard to establish whether a tax advantage makes a decisive difference in influencing behavior. State and local taxes are one consideration among many that influence decisions by individuals and businesses. It's determining how the tax incentive is an efficient use of taxpayer dollars.
3. <u>Accountability</u>. While tax incentive programs are genuinely created as a way to promote specific public rule, such as capital investment or the creation of high-paying

jobs, there are frequently weak accountability provisions to ensure that rules are met. Many incentive programs impose few annual requirements that companies must meet to qualify for benefits, with little ongoing monitoring or auditing, and rarely with oversight provisions or sanctions that can be imposed on companies that fail on commitments.

4. Travel. Tax and travel need to widely recognize principal. The tax policy shouldn't interfere with natural flow of capital for its most productive use. While this ideally will never be fully attainable, the practice offering preferential tax treatment to certain individuals, businesses and organizations rather than to others tends to substitute political choices from market decisions in the allocation of resources.
5. Equity. While certain tax expenditures, such as the expense deduction or earned income tax credit, provide preferential treatment to lower income individuals, many of the largest tax expenditures, such as deductions for home mortgage interest, pension contribution and college savings, primarily benefit upper middle class Americans.
6. Fiscal Impact. The total of tax expenditures for which the OK Tax Commission (OTC) was able to determine the cost exceeded $5.6 billion in 2008, not less than that year's total appropriated state budget. There's always a debate about which tax expenditures to consider if you look at all the ones in the OTC's bi-annual tax expenditure report.

5. Delivery of preliminary list of incentives subject to review. [Office of Management and Enterprise Services, Tax Commission, Commerce Department]

Chairman Roggow mentioned his appreciation for Ms. Herrera and those who took part in creating the book that each commissioner received at today's meeting.

Mr. Estus informed that the list of exemptions provided in the binder fall within the Commission's purview, and is one of the first of its kind in state government. Most information kept by various agencies in various reports has been consolidated for the Commission. The list is of several dozen incentives that meet the definition and the legislation that created the commission. The staff was asked by Chairman Roggow to include various fields in the report.

Mr. Estus drew attention to the estimated cost column, and the several fields that are blank or unknown, mentioning some of the costs could be attained quickly, or never be known; pointing out this is one of the problems with incentives.

He said one alternative approach to this is not an annual cost, but a four-year average, that will at some point in the future be presented by staff. He explained that many incentives can vary greatly in cost from year-to-year. He gave an example of the Economically At-Risk Well Rebate, where in one year there is a $2 million dollar cost, but the next year is reported as a $150 million dollar cost. It would be more useful to the commission to add a multi-year average. At some point in the future, staff would like to add that field for the commission's reference.

He also informed the Commission of the Sunset field which makes them aware if a particular incentive is set to expire, potentially influencing their decisions going forward.

Mr. Estus told the commissioners the list provided was meant for them to review and ask any questions of staff or, more importantly, discuss with their appointing authorities. At the next meeting the commission will be asked to vote on a schedule for review.

The legislation recommends that the costliest incentives be reviewed first. Mr. Estus mentioned that some incentives can be vague and could take up to a couple of years for review. The 'Quality Jobs Program' and the 'Investment of New Jobs Tax Credit' are good examples. Quality Jobs is one the biggest programs, providing great data that will take time to review. The Investment of New Jobs Tax Credit is another of the larger programs, where data is more challenging and something to be considered when working on developing a schedule. Mr. Estus mentioned, when developing the schedule, something the commission should consider is the quality of the data associated with the incentive. If an evaluator has been chosen by the May meeting, he'll be able to explain more on the need to have good data to meet deadlines. Some have great data and some not so great.

Mr. Estus said staff feels confident that the first 10 pages at the end of the list of the report are incentives that meet the definition of incentive in the law. He noted there are some fields in yellow and green that may meet the definition or may not, and would welcome the commission's input. Some are sales tax exemptions, some are very specific programs that may or may not meet the definition. He asked they familiarize themselves with definitions and discuss them with their appointing authorities.

6. Presentation on rulemaking process. [Tax Commission]

Commissioner Cash gave an overview on drafting rules and the process. House Bill (HB) 2182 has the rulemaking process tabbed to be housed at the Department of Commerce (DOC). The Commerce staff, Tax Commission and Office of Management and Enterprise Services (OMES) staff will work together on gathering their first drafts. When the evaluator has been hired, he'll provide feedback on what is appropriate and needed on the first round of rules. The rules will be a restatement of HB 2182, incorporating deadlines. It can be informative of the process and get the commission going in the right direction. Staff will work on the substance of language and then circulate to the Commission for review.

Commissioner Cash made known the presentation for the meeting was provided by the Secretary of State's Office, which is in charge of the rulemaking process.

She informed that the process begins with drafting of the rules, mentioned above. Next is the notification of intended action, which the Department of Commerce will file with the Secretary of State, the Governor's Office and Secretary Snodgrass. This will be the first public notification of the rules set to adopt and will be posted in the Oklahoma Registrar. Simultaneous to the notice of intended action countdown is the period of a minimum of 30 days for public commentary and input. This begins with the initial filing and will be posted in public places, including the Oklahoma Registrar. There will be a time period where the public has the opportunity to comment to the Director of Commerce. At the end of that period will be a public hearing presenting the rules, where the public is encouraged to come and comment. Once feedback from the governor's office, secretary of state and/or the public is received, the Commission can proceed to adoption. Commissioner Cash noted it's common to have errors, and the secretary of state will send a red-lined document, informing of what needs to be tweaked.

Staff will report back to the Commission on the details of the hearing. Once the rule has been adopted by the body, which will be officially done through Secretary Snodgrass, the rule will go to the legislature for review.

The goal for the Commission is to have it done by the deadline date of April 1, 2017. If the deadline is missed, then the legislative review process can be put behind another year. Achieving the goal date will give the legislature the option of approving or disapproving the rule(s) presented, or they can take no action. If they choose to take no action, the Commission would still have the opportunity to have the governor issue a declaration approving the rules. The rules can also be approved in an omnibus bill, a bill that encompasses several agency rules, or they can consider the rule(s) in a separate bill that would run as a standard bill, which would pass through both houses and be signed by the governor. Once the rules have been promulgated and approved, they have to be posted by July 17 and cannot take effect until 10 days subsequent to that posting. They need to be published in the Oklahoma Registrar, and will then have an effective date 10 days subsequent to that time.

7. Update on evaluator selection process. [Lyle Roggow]

Mr. Estus made known the process is going well. Out of the five steps in the process, step one is completed and the additional steps are a work in progress. He mentioned they had stronger than usual interest from the vendor community in this particular contract. They had more people participate in the education forum than they would for an average contract and received multiple responses to the solicitation; high quality responses and ideas.

Mr. Estus noted that the evaluations are blind evaluations. None of the evaluators know which firm has made the proposal. They judge the proposal on its merits and not who's making it. OMES has found this to be a more appropriate way to award these types of contracts, as it is really less about the firm and more about their solution to the problem. The contract method used to select the vendor is approved by the Office of Management and Enterprise Services (OMES), known as the 'Performance Information Procurement System' (PIPS). Rather than giving the vendor a very long, prescriptive list of all the things we want them to do, we ask them the question of how they would help us solve a problem that the legislation asked us to solve or how would they evaluate incentives in compliance with this legislation. The responses received were quite familiar with the legislation and had some great ideas.

Mr. Estus said interviews will be conducted the day after this meeting with multiple vendors. After the interview process, they'll combine the scoring from the first step, which includes reviewing their proposals and asking specific questions to determine the level of expertise on particular risk assessments that include political, financial and data risk, questioning where they see the biggest risks are with this endeavor. They will be asked for the cost and schedule to complete the objective. The first step has been completed and scored in those areas.

Tomorrow the selection committee, comprised of representatives from the Office of Management and Enterprise Services, the Commerce Department, the Tax Commission and the State Treasurer's Office, will meet face-to-face with the vendors. After the interviews, the interview scores will be combined with the project capability scores that were calculated in step one. At this point, a determination can be made as to which vendor(s) they want to enter in to contract negotiations with.

Mr. Estus believes after a few years of this process, the Commission will have an established pool of vendors they can use for these evaluations, with some who are experts in a particular type of incentive and some who are more emblematic of all trades. He wanted to make the commission aware there likely will be more vendors involved over the course of time.

After the proposals are narrowed down, contract negotiations begin and the final step is to sign a contract and issue a purchase order. The hope is to have it done and before the commission at the May meeting. The progress is tracking well and they anticipate securing a very capable vendor to work with commission.

Secretary Doerflinger exited the meeting at 3:18 p.m.

8. Discussion to determine whether to have working subcommittees. [Lyle Roggow]

It was determined at the next meeting Chairman Roggow will appoint three subcommittees (vendor, criteria and schedule) to work together in a cohesive manner.

9. Adjourn. [Lyle Roggow]

There being no further business, Mr. Brown made the motion to adjourn. Mr. Johnson seconded the motion. Seeing no opposition, the meeting adjourned at 3:40 p.m.