

**Special Meeting Minutes
Incentive Evaluation Commission
Feb. 25, 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 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
Kathy Pendarvis, OMES General Counsel
Beverly Hicks, OMES Recording Secretary
Joshua Goodman, Pew Charitable Trust
A. Chase Snodgrass, Constituent
Jon Chiappe, ODOC
Shawn Ashley, E-Capitol
Warren Vieth, Oklahoma Watch
Jamie Herrera, Commerce
Michael Howard, OMES
Jacob Charries, OMES
Kim Caplinger, OTRD
Mark Lash, Oklahoma Watch
Mark Thomas, OK Press Association
Jordan Russell, Speaker's Office

1. Call to order and establish a quorum (Secretary Doerflinger, acting chairman)

The meeting was called to order by Secretary Doerflinger at 2:02 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.

Secretary Doerflinger made known that a quorum shall be a majority of the voting members.

2. Open records, open meetings requirements (Kathy Pendarvis, OMES general counsel)

Ms. Pendarvis gave an overview of the Open Meetings Act (OMA). She informed based on *Section(s) 302 and 303, Title 25* of the Open Meetings Act, all meetings of public bodies shall be held at convenient times and places open to the public, providing advance public notice of time, place and subject matter.

In *Section 304.2*, a meeting occurs when a majority of members are personally together and conduct business. She cautioned against a majority of members gathering together outside of a meeting. If this occurs, business should never be discussed and best practice is for the group to disburse.

In *Section 306*, it prohibits taking action on any matter by phone, e-mail or at informal gatherings. Ms. Pendarvis cautioned about e-mails, clarifying to not select reply to all when generating an e-mail. When this occurs, case law suggests a meeting is occurring, which is outside the purview of the OMA, and implies a meeting took place without the public's knowledge. Instead, e-mail members individually or blind carbon copy (BCC) the members of the body.

The law states when you are gathered and have an open meeting, individual votes must be publically cast.

There are ramifications when violations of the Open Meetings Act occur. The violations can result in civil implications, such as invalidating an action taken, or worse, criminal penalties that can be in the form of a misdemeanor fine of \$500.00, or a year in the county jail. A criminal penalty would be imposed only if it was proven as an intentional violation of the OMA.

The Open Records Act (ORA), based on *Title 51*, states that public policy recognizes that all political power is inherent in the people. The people are vested with the inherent right to know and be fully informed about their government. All records shall be open to the public except those that are kept confidential. Confidential records are essentially limited to those created in an attorney/client privilege, records of what transpired in an executive session, personal records and some research records. Anything put in writing or anything handed to someone is considered an open record.

Prior to taking any action, personal notes to aid memory may be kept confidential. However, once an action is taken, the note(s) can be considered open record. Use caution when writing personal notes.

The law suggests that public body has certain designated person(s) authorized to release records of the public body. The clerk (OMES recording secretary) is the responsible person for the Incentive Evaluation Commission (IEC).

Finally, willful violators shall be guilty of misdemeanors punishable by a \$500.00 fine or up to a year in jail. Upon receiving an Open Records Request (ORR), give to the OMES recording secretary as soon as possible for proper handling.

3. Presentation on how states are evaluating economic incentives (Josh Goodman, Pew Charitable Trusts)

Mr. Goodman made known that Pew is a public charity that engages in research on a wide variety of policy topics at the local, state and federal levels. They don't take a position of whether incentives are good or bad, or a kind of particular incentive is good or bad. The focus of their research is on helping states measure for themselves the result of their incentives, to make them more effective and accountable.

The organization became interested in economic development incentives as a research topic, because of the importance to states' economies and states' budgets. In general, states spend billions of dollars a year on incentives, making them primary tools that most every state uses to create jobs, strengthen the economy and to attract new businesses.

Mr. Goodman expressed the importance of states having good information on their incentives. Details of incentives really matter. Incentives differ from one another in many subtle ways that can affect how effective they are. They differ in how they're targeted to a specific item, such as job creation or geographic location. They differ in how they're administered, in that some incentives are discretionary programs using a government agency that receives applications and decides which company should receive them. In other cases, companies apply for them on their taxes. They differ in how they affect the state budget; some are cash programs, such as grants and loans. Others are tax incentives that are through the tax code.

In 2014 the 'Business Incentives Initiative' was launched, with the idea to work with a select group of states to make progress on data related to incentives by collecting and analyzing good data. After releasing a Request for Proposals (RFP) to every governor in the country, Oklahoma was one of the six selected.

An important part of the business incentive initiatives is to bring together different stakeholders to discuss where and how states need to and can improve.

The group included a core team of executive officials comprised of legislators, business leaders, advocacy organizations and various others who have stake in either administering or using incentives and making them work well for the state.

It was determined Oklahoma lacked a reliable consistent process for measuring results of incentives. The legislation that created this commission is the outgrowth of those results. This is how Oklahoma can begin measuring the results of its incentives consistently, to make them more effective for both budget and economy.

Mr. Goodman gave examples of how other states handled this task. One, is to set a schedule where incentives will be reviewed on a cycle once every four years, to review incentives with similar goals at the same time, allowing a comparison of different incentives to one another to see how the individual programs are working together effectively. Another approach states have used is to ensure evaluations take place before any sunset or expiration dates on incentives.

Mr. Goodman expressed, in doing this research, the payoff is good for the state.

4. Discussion of Incentive Evaluation Commission responsibilities (Secretary Doerflinger)

Mr. Estus defined the commission's role, as to provide accurate information to policymakers to help them make good decisions. The legislation that was passed requires the following five things:

1. Help OMES hire an evaluator to do the work.
2. Set an evaluation schedule for every incentive in the state.
3. Set criteria to evaluate each incentive.
4. Attempt to determine the goals of the incentives.
5. Approve/deny the evaluations that have been conducted.

Mr. Estus provided the commissioners with an annual workflow sheet to help achieve the five goals. The first page of the document envisions the flow in a typical year. The next couple of pages show how it's envisioned this year. He pointed out the Legislature and the governor expect some evaluations in their hands for the next legislative session.

Mr. Estus explained, due to not enough time this year to start the process, he proposed an alternative shortened workflow for the year that omits a few steps. Given the commission's responsibility to provide information, he believes the goal of the law can be accomplished to get the evaluations in the hands of lawmakers with the condensed workflow.

Mr. Estus recommended the following three steps for next year to start in 2017:

1. Attempting to determine the goals of incentives.
2. Determine the minimal fiscal impact threshold for evaluating any incentives.
3. Placing evaluation criteria into administrative rules pursuant to the Incentive Evaluation Act and Administrative Procedures Act.

Mr. Estus pointed out the rulemaking process is lengthy in the course used to place criteria into agency rules. Due to time constraints, it's recommended to start the rulemaking

process for the 2017 evaluations. The commission will vote on criteria for each of the incentives that are evaluated this year. However, due to deadlines missed this year, they will not be placed into administrative rules until next year.

Mr. Estus proposed the commission approve the scope of work to hire an evaluator, which entails the next three months of going through the procurement process to bring an evaluator on board by the May meeting. During this process, the commission will receive help in developing an evaluation schedule for their consideration at the February meeting. Also, in May, the commission will approve a four-year schedule and, if hired, hear a preliminary presentation from the chosen evaluator.

The evaluator will work with the Office of Management and Enterprise Services (OMES), Oklahoma Department of Commerce (ODOC), Oklahoma Tax Commission (OTC) and the commission to begin developing criteria for those incentives the commission will evaluate this year. Once the criteria have been voted on at July's meeting, this will set the evaluator on course to do work for the rest of the year. Between when the evaluator is hired and the July meeting, the evaluator will work with the Tax Commission, Department of Commerce, OMES and other interested parties to gather data that will be necessary for these evaluations, as well as working on the 2017 criteria to get ahead.

From July to November the evaluator will continue gathering data, performing the evaluations and working on the criteria for the 2017 evaluations.

Two meetings will be held each year in November. At the first meeting of each year the commission will receive evaluations that were conducted during that current year, allowing for public comment on those evaluations before taking a voting.

The law provides for a comment period and the ability for any interested business group, advocate or the public to come before the commission and have a voice and provide feedback on the evaluations.

If the commission approves the evaluations, they will be published in a report that is delivered to the governor, speaker of the House and the Senate pro tem by December 15, and will be publically available on the OMES website for anyone's view.

At the second November meeting the commission will set forth next years' work by determining the minimal physical impact threshold, approve the evaluation criteria for the following year's evaluations, update the four-year schedule, approve the meeting schedule and address any unfinished business from the first November meeting.

Concluding the two business meetings in November, the three agencies referenced earlier will spend December putting the commission's work into a report, formally publishing the four-year evaluation schedule, and begin the placement of the criteria into the Department of Commerce's administrative rules.

Commissioner Cash explained the rulemaking process and reiterated Mr. Estus' comment on being behind on the traditional rulemaking process. She explained, since the deadline passed, they'll begin drafting rules in the spring, circulating them throughout the summer and will file with the governor's office at the end of the year in preparation for the 2017 spring rulemaking process, working with the Office of Management and Enterprise Services (OMES).

She made known that HB 2182 allows for the utilization of the Department of Commerce's rulemaking procedures, which will be the choice of method. She also noted the rules will be open for public comment and public hearings and will utilize the Administrative Procedures Act (APA) process.

Commissioner Cash said she learned early in the process that when it came to data sharing, Oklahoma is one of the more transparent states in the country. She distinguished this as a decade's long practice in proximity between the Department of Commerce, the Tax Commission and the Oklahoma Employment Security Commission (OESC). Recognizing tax confidentiality is key for all revenue departments, and is a rule that should be maintained, Oklahoma has a history of data exchange that helps audit certain programs and helps evaluators come up with the database they need.

Commissioner Cash made known it isn't necessary to create any type of waiver of confidentiality or release of taxpayer data, and that aggregate data will be satisfactory for the evaluator(s). In the past, the Tax Commission and policymakers attempted to evaluate tax credits for incentives and then chose deductions without always having the proper data necessary, noting there's been a bit of a stopgap in the data needed and gathered. The Tax Commission is not going to do an economic analysis, but rather will gather the data required to domino into any given program.

It is her hope when an evaluator is hired, all data necessary will be captured and it will allow an opportunity to build on that data in years to come, providing everyone with information needed. She reiterated when it comes to data sharing, Oklahoma is light years ahead of other states.

5. Discussion and possible action on 2016 meeting schedule (Secretary Doerflinger)

- **May 19**
- **July 14**
- **November 3**
- **November 17**

Mr. Brown made a motion to approve the 2016 special meeting dates. Mr. Roggow seconded the motion; the motion was amended by Mr. Johnson to change the date of November 17 to November 10. Mr. Roggow 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.

6. Discussion and possible action to approve scope of work for a request for proposals for professional services necessary to complete incentive evaluations pursuant to 62 O.S. § 7005 (Secretary Doerflinger)

Mr. Roggow made a motion to approve scope of work for a request for proposals for professional services necessary to complete incentive evaluations pursuant to 62 O.S. § 7005. 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.

7. Election of chair, vice-chair (Secretary Doerflinger)

Mr. Johnson made a motion to elect Mr. Roggow as chair. Mr. Brown 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.

Mr. Brown made a motion to elect Mr. Johnson as vice-chair. Mr. Denton seconded the motion, the motion passed and the following votes were recorded:

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

8. Adjourn (Chair)

There being no further business, Mr. Johnson made the motion to adjourn. Mr. Brown seconded the motion. Seeing no opposition, the meeting adjourned at 3:02 p.m.