

1                     **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                 STATE OF OKLAHOMA

3                                 1st Session of the 59th Legislature (2023)

4 HOUSE BILL 2866

                              By: Wallace of the House

5   and

6   **Coleman** of the Senate

7

8

9   AS INTRODUCED

10             An Act relating to revenue and taxation; amending 68  
11             O.S. 2021, Sections 2396 and 2397, which relates to  
12             the Oklahoma Tourism Development Act; modification on  
13             length of allowable term; increasing cumulative  
14             inducement cap amount; providing an effective date  
15             and declaring an emergency.

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

17             SECTION 1.            AMENDATORY            68 O.S. 2021, Section 2396, is  
18             amended to read as follows:

19             Section 2396.   A.   Upon granting final approval, the Executive  
20             Director of the Oklahoma Department of Commerce may enter into an  
21             agreement with an approved company with respect to its tourism  
22             attraction project.   The terms and provisions of each agreement  
23             shall include, but shall not be limited to:

24

1           1. The amount of approved costs, which shall be determined by  
2 negotiations between the Executive Director and the approved  
3 company;

4           2. A date certain by which the approved company shall have  
5 completed the tourism attraction project or an individual component  
6 or phase of the project if the tourism attraction project is an  
7 Entertainment District. Within three (3) months of the completion  
8 date of the whole or an individual component or phase of the  
9 project, the approved company shall document its actual costs of the  
10 project through a certification of the costs by an independent  
11 certified public accountant acceptable to the Executive Director;  
12 and

13           3. The following provisions:

14           a. the term of the agreement ~~shall~~ may be up to ten (10)  
15 years from the later of:

16           (1) the date of the final approval of the tourism  
17 attraction project, or

18           (2) the completion date specified in the agreement,  
19 if the completion date is within three (3) years  
20 of the date of the final approval of the tourism  
21 attraction project. However, the term of the  
22 agreement may be extended for up to two (2)  
23 additional years by the Executive Director, with  
24 the advice and consent of the Oklahoma Tax

1 Commission, if the Executive Director determines  
2 that the failure to complete the tourism  
3 attraction project within three (3) years  
4 resulted from:

5 (a) unanticipated and unavoidable delay in the  
6 construction of the tourism attraction  
7 project,

8 (b) an original completion date for the tourism  
9 attraction project, as originally planned,  
10 which will be more than three (3) years from  
11 the date construction began, or

12 (c) a change in business structure resulting  
13 from a merger or acquisition,

14 b. in any tax year during which an agreement is in  
15 effect, if the amount of sales tax to be remitted by  
16 the approved company or an Entertainment District  
17 Tenant Party, if applicable, exceeds the sales tax  
18 credit available to the approved company or  
19 Entertainment District Tenant Party, if applicable,  
20 then the approved company or Entertainment District  
21 Tenant Party, if applicable, shall pay the excess to  
22 this state as sales tax,

23 c. within forty-five (45) days after the end of each  
24 calendar year the approved company shall supply the

1 Executive Director with such reports and  
2 certifications as the Executive Director may request  
3 demonstrating to the satisfaction of the Executive  
4 Director that the approved company is in compliance  
5 with the provisions of the Oklahoma Tourism  
6 Development Act, and

7 d. the approved company or an Entertainment District  
8 Tenant Party, if applicable, shall not receive an  
9 inducement with respect to any calendar year if:

10 (1) with respect to any tourism attraction project  
11 that is not an Entertainment District in any  
12 calendar year following the fourth year of the  
13 agreement, the tourism attraction project fails  
14 to attract at least fifteen percent (15%) of its  
15 visitors from among persons who are not residents  
16 of this state, or

17 (2) in any calendar year following the first year of  
18 the project or the tourism attraction project is  
19 not operating and open to the public on a regular  
20 and consistent basis, which for a tourism  
21 attraction project that is an Entertainment  
22 District shall mean that a substantial portion of  
23 the Entertainment District is not operating and  
24

1 open to the public on a regular and consistent  
2 basis.

3 B. The agreement shall not be transferable or assignable by the  
4 approved company without the written consent of the Executive  
5 Director but, with respect to a tourism attraction project that is  
6 an Entertainment District, the approved company can elect to pass-  
7 through all or a portion of the sales tax credit to one or more  
8 Entertainment District Tenant Parties in accordance with Section  
9 2397 of this title.

10 C. If the approved company utilizes or receives inducements  
11 which are subsequently disallowed then the approved company will be  
12 liable for the payment to the Tax Commission of an amount equal to  
13 (i) all taxes resulting from the disallowance of the inducements  
14 plus applicable penalties and interest, whether owed by the approved  
15 company or an Entertainment District Tenant Party to which the  
16 credits have been passed-through in accordance with Section 2397 of  
17 this title, and/or (ii) all incentive payments previously received  
18 by the approved company, plus applicable penalties and interest.  
19 Only the approved company originally allowed a sales tax credit  
20 shall be held liable to make such payments and not any Entertainment  
21 District Tenant Party to whom the credit has been passed-through in  
22 accordance with Section 2397 of this title.

1 D. The Executive Director shall provide a copy of each  
2 agreement entered into with an approved company to the Tax  
3 Commission.

4 E. For a tourism attraction project that is an Entertainment  
5 District and anticipated to have multiple components or phases, the  
6 Executive Director may enter into more than one agreement with  
7 different approved companies for the different components or phases  
8 of the Entertainment District and such agreements may be entered  
9 into at different times as though the different components or phases  
10 of the Entertainment District are their own separate project. In  
11 such case, the Executive Director shall not be required to obtain a  
12 separate report (referred to in subsection C of Section 2394 of this  
13 title) for each individual component or phase of the Entertainment  
14 District, but only one report for the entire Entertainment District.

15 SECTION 2. AMENDATORY 68 O.S. 2021, Section 2397, is  
16 amended to read as follows:

17 Section 2397. A. Upon receiving notification from the  
18 Executive Director of the Oklahoma Department of Commerce that an  
19 approved company has entered into a tourism project agreement and is  
20 entitled to the inducements provided by the Oklahoma Tourism  
21 Development Act, the Oklahoma Tax Commission shall provide the  
22 approved company with forms and instructions as necessary to claim  
23 or receive or pass-through those inducements.

24

1 B. An approved company whose agreement provides that it shall  
2 expend approved costs of more than Five Hundred Thousand Dollars  
3 (\$500,000.00) for a tourism attraction project but less than One  
4 Million Dollars (\$1,000,000.00) shall be entitled to a sales tax  
5 credit if the company certifies to the Tax Commission that it has  
6 expended at least the minimum amount in approved costs, and the  
7 Executive Director certifies that the approved company is in  
8 compliance with the Oklahoma Tourism Development Act. The Tax  
9 Commission shall then issue a tax credit memorandum to the approved  
10 company granting a sales tax credit in the amount of up to ten  
11 percent (10%) of the approved costs, but limited to the percent of  
12 the approved costs that will result in the project being revenue-  
13 neutral to the State of Oklahoma as determined by the Oklahoma  
14 Department of Commerce. Subsequent requests for credit for  
15 additional certified approved costs in excess of the minimum amount  
16 for each project as listed in this subsection but less than One  
17 Million Dollars (\$1,000,000.00) shall result in a sales tax credit  
18 in the amount of up to ten percent (10%) of the approved costs, but  
19 limited to the percent of the approved costs that will result in the  
20 project being revenue-neutral to the State of Oklahoma as determined  
21 by the Oklahoma Department of Commerce. Sales tax credits allowed  
22 pursuant to the provisions of the Oklahoma Tourism Development Act  
23 shall not be transferable or assignable; provided that, with respect  
24 to a tourism attraction project that is an Entertainment District,

1 the approved company can elect to pass-through all or a portion of  
2 the sales tax credit to one or more Entertainment District Tenant  
3 Parties. The approved company and the Entertainment District Tenant  
4 Party shall jointly file a copy of the written credit pass-through  
5 agreement with the Oklahoma Tax Commission within thirty (30) days  
6 of the effective date of the agreement. Such filing of the  
7 agreement with the Oklahoma Tax Commission shall perfect such  
8 agreement. The written agreement shall contain the name, address  
9 and taxpayer identification number of the parties to the agreement,  
10 the amount of credit being passed-through, the month and year the  
11 credit was originally allowed to the approved company, the month and  
12 tax year or years for which the credit may be claimed, and a  
13 representation by the approved company that the approved company has  
14 neither claimed for its own behalf nor conveyed such credits to any  
15 other Entertainment District Tenant Party. The Tax Commission shall  
16 develop a standard form for use by an approved company and an  
17 Entertainment District Tenant Party demonstrating eligibility for  
18 the Entertainment District Tenant Party to utilize the sales tax  
19 credit. The Tax Commission shall develop a system to record and  
20 track the pass-through of the sales tax credit and certify the  
21 ownership of the sales tax credit and may promulgate rules to permit  
22 verification of the validity and timeliness of a sales tax credit  
23 claimed upon a sales tax return pursuant to this subsection but  
24 shall not promulgate any rules which unduly restrict or hinder the



1 pass-through of such sales tax credit to an Entertainment District  
2 Tenant Party.

3 An approved company whose agreement provides that it shall  
4 expend approved costs in excess of One Million Dollars  
5 (\$1,000,000.00) shall be entitled to a sales tax credit if the  
6 company certifies to the Tax Commission that it has expended at  
7 least One Million Dollars (\$1,000,000.00) in approved costs and the  
8 Executive Director certifies that the approved company is in  
9 compliance with the Oklahoma Tourism Development Act. The Tax  
10 Commission shall then issue a tax credit memorandum to the approved  
11 company granting a sales tax credit in the amount of up to twenty-  
12 five percent (25%) of the approved costs, but limited to the percent  
13 of the approved costs that will result in the project being revenue-  
14 neutral to the State of Oklahoma as determined by the Oklahoma  
15 Department of Commerce. The credit on all subsequent additional  
16 certified approved costs shall be in the amount of up to twenty-five  
17 percent (25%) of the costs, but limited to the percent of the  
18 approved costs that will result in the project being revenue-neutral  
19 to the State of Oklahoma as determined by the Oklahoma Department of  
20 Commerce. For a tourism attraction project that is an Entertainment  
21 District, an approved company may elect to receive an incentive  
22 payment based on sales tax collections of Entertainment District  
23 Tenant Parties rather than a sales tax credit. The incentive  
24 payment shall be in the amount of up to twenty-five percent (25%) of

1 the approved costs but limited to the percent of the approved costs  
2 that will result in the project being revenue-neutral to the State  
3 of Oklahoma as determined by the Oklahoma Department of Commerce;  
4 provided that, (A) in no event shall the incentive payments exceed  
5 the increased state sales tax liability of the approved company and  
6 the Entertainment District Tenant Parties that is actually received  
7 by the Tax Commission, and (B) the approved company shall be  
8 entitled to receive only ten percent (10%) of the incentive payment  
9 amount during each calendar year. The Tax Commission shall issue an  
10 incentive payment memorandum to the approved company granting a  
11 right to receive an incentive payment from the Tax Commission in the  
12 amount of up to twenty-five percent (25%) of the approved costs but  
13 limited to the percent of the approved costs that will result in the  
14 project being revenue-neutral to the State of Oklahoma as determined  
15 by the Oklahoma Department of Commerce. As soon as practicable  
16 after the end of each calendar year during the term of the  
17 agreement, the approved company shall file a claim for the incentive  
18 payment with the Tax Commission, and the Tax Commission shall be  
19 responsible for ensuring that the amount of the incentive payment  
20 claimed does not exceed the increased state sales tax liability of  
21 the approved company and the Entertainment District Tenant Parties  
22 that has been actually received by the Tax Commission, which may  
23 include accessing the Oklahoma sales tax returns of the  
24 Entertainment District Tenant Parties as permitted by this section.

1 The cumulative inducements provided pursuant to the Oklahoma  
2 Tourism Development Act shall not exceed ~~Fifteen Million Dollars~~  
3 ~~(\$15,000,000.00)~~ Thirty Million Dollars (\$30,000,000.00) per year.

4 The Tax Commission shall require proof of expenditures prior to  
5 issuing a tax credit memorandum or incentive payment memorandum to  
6 the approved company which may be satisfied by a report from an  
7 independent certified public accountant. Additional credit  
8 memoranda or incentive memoranda may be issued as the approved  
9 company certifies additional expenditures of approved costs.

10 No tax credit memorandum or incentive payment memorandum shall  
11 be issued for any approved costs expended after the expiration of  
12 three (3) years from the date the agreement was signed by the  
13 Executive Director and the approved company. However, the Executive  
14 Director, with the advice and consent of the Tax Commission, may  
15 authorize inducements for approved costs expended up to five (5)  
16 years from the date the agreement was signed if the Executive  
17 Director determines that the failure to complete the tourism  
18 attraction project within three (3) years resulted from:

19 1. Unanticipated and unavoidable delay in the construction of  
20 the tourism attraction;

21 2. An original completion date for the tourism attraction, as  
22 originally planned, which will be more than three (3) years from the  
23 date construction began; or

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1 3. A change in business ownership or business structure  
2 resulting from a merger or acquisition.

3 C. A sales tax credit allowed pursuant to the provisions of  
4 this section may be used to offset a portion of the reported state  
5 sales tax liability of the approved company or an Entertainment  
6 District Tenant Party, if applicable, for all sales tax reporting  
7 periods following the issuance of the credit memorandum subject to  
8 the following limitations:

9 1. Only increased state sales tax liability may be offset by  
10 the issued credit;

11 2. An approved company whose agreement provides that it shall  
12 expend approved costs in excess of One Million Dollars  
13 (\$1,000,000.00) or an Entertainment District Party, if applicable,  
14 shall be entitled to use only ten percent (10%) of the amount of  
15 each issued credit to offset increased state sales tax liability  
16 during each calendar year, plus the amount of any unused credit  
17 carried forward from a prior calendar year, and an approved company  
18 whose agreement provides that it shall expend approved costs of more  
19 than the minimum amount for each project as listed in this  
20 subsection but less than One Million Dollars (\$1,000,000.00) shall  
21 be entitled to use only twenty percent (20%) of the amount of each  
22 issued credit to offset increased state sales tax liability during  
23 each calendar year, plus the amount of any unused credit carried  
24 forward from a prior calendar year; and

1           3. All issued credit memoranda or incentive payment memorandum  
2 shall expire at the end of the month following the expiration of the  
3 agreement as provided in Section 2396 of this title.

4           The approved company or an Entertainment District Tenant Party,  
5 if applicable, shall have no obligation to refund or otherwise  
6 return any amount of this inducement to the person from whom the  
7 sales tax was collected.

8           D. The Tax Commission shall promulgate rules as are necessary  
9 for the proper administration of the Oklahoma Tourism Development  
10 Act. The Tax Commission may also develop forms and instructions as  
11 necessary for an approved company or Entertainment District Tenant  
12 Party, if applicable, to claim or receive or pass-through the  
13 inducements provided by the Oklahoma Tourism Development Act.

14           E. The Tax Commission shall have the authority to obtain any  
15 information necessary from or regarding the approved company or an  
16 Entertainment District Tenant Party, if applicable, and the  
17 Executive Director to verify that approved companies or an  
18 Entertainment District Tenant Party, if applicable, have received  
19 the proper amounts of inducements as authorized by the Oklahoma  
20 Tourism Development Act. The Oklahoma Tax Commission shall demand  
21 the repayment of any inducements taken or received in excess of the  
22 inducements allowed by this act.

23           F. No sales tax credit or incentive payment right authorized by  
24 this section shall be granted on or after January 1, 2026.

1 Notwithstanding the foregoing, an approved company that has entered  
2 into a tourism attraction project agreement with the Oklahoma  
3 Department of Commerce pursuant to Section 2396 of this title prior  
4 to January 1, 2026, shall continue to be entitled to claim or  
5 receive any inducements authorized by this section as contemplated  
6 by the tourism project agreement.

7 G. All currently approved tourism project agreements executed  
8 by the Oklahoma Tourism and Recreation Department are hereby  
9 transferred to the Oklahoma Department of Commerce upon the  
10 effective date of this act.

11 H. On the effective date of this act, all administrative rules  
12 promulgated by the Oklahoma Tourism and Recreation Department  
13 regarding the Oklahoma Tourism Development Act shall be transferred  
14 to and become a part of the administrative rules of the Oklahoma  
15 Department of Commerce. The Office of Administrative Rules in the  
16 Office of the Secretary of State shall provide adequate notice in  
17 the Oklahoma Register of the transferred rules and shall place the  
18 transferred rules under the Administrative Code section of the  
19 Oklahoma Department of Commerce. On the effective date of this act,  
20 any amendment, repeal or addition to the transferred rules shall be  
21 under the jurisdiction of the Oklahoma Department of Commerce, who  
22 shall have the authority to enact rules in order to carry out the  
23 provisions of the Oklahoma Tourism Development Act.

24 SECTION 3. This act shall become effective July 1, 2023.

1       SECTION 4. It being immediately necessary for the preservation  
2 of the public peace, health or safety, an emergency is hereby  
3 declared to exist, by reason whereof this act shall take effect and  
4 be in full force from and after its passage and approval.

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6 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated  
7 02/16/2023 - DO PASS, As Coauthored.

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