

1 **SENATE FLOOR VERSION**

2 April 10, 2023

3 ENGROSSED HOUSE  
4 BILL NO. 2866

By: Wallace and Sims of the  
House

5 and

6 Coleman of the Senate

7  
8  
9 An Act relating to revenue and taxation; amending 68  
10 O.S. 2021, Sections 2396 and 2397, which relate to  
11 the Oklahoma Tourism Development Act; modifying  
12 length of allowable term; increasing cumulative  
13 inducement cap amount; providing an effective date;  
14 and declaring an emergency.

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

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

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

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

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

10           3. The following provisions:

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

13           (1) the date of the final approval of the tourism  
14 attraction project, or

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

1 attraction project within three (3) years  
2 resulted from:

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

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

10 (c) a change in business structure resulting  
11 from a merger or acquisition,

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

21 c. within forty-five (45) days after the end of each  
22 calendar year the approved company shall supply the  
23 Executive Director with such reports and  
24 certifications as the Executive Director may request

1 demonstrating to the satisfaction of the Executive  
2 Director that the approved company is in compliance  
3 with the provisions of the Oklahoma Tourism  
4 Development Act, and

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

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

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

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

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

21 D. The Executive Director shall provide a copy of each  
22 agreement entered into with an approved company to the Tax  
23 Commission.

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

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

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

21 B. An approved company whose agreement provides that it shall  
22 expend approved costs of more than Five Hundred Thousand Dollars  
23 (\$500,000.00) for a tourism attraction project but less than One  
24 Million Dollars (\$1,000,000.00) shall be entitled to a sales tax

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

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

23 An approved company whose agreement provides that it shall  
24 expend approved costs in excess of One Million Dollars



1 (\$1,000,000.00) shall be entitled to a sales tax credit if the  
2 company certifies to the Tax Commission that it has expended at  
3 least One Million Dollars (\$1,000,000.00) in approved costs and the  
4 Executive Director certifies that the approved company is in  
5 compliance with the Oklahoma Tourism Development Act. The Tax  
6 Commission shall then issue a tax credit memorandum to the approved  
7 company granting a sales tax credit in the amount of up to twenty-  
8 five percent (25%) of the approved costs, but limited to the percent  
9 of the approved costs that will result in the project being revenue-  
10 neutral to the State of Oklahoma as determined by the Oklahoma  
11 Department of Commerce. The credit on all subsequent additional  
12 certified approved costs shall be in the amount of up to twenty-five  
13 percent (25%) of the costs, but limited to the percent of the  
14 approved costs that will result in the project being revenue-neutral  
15 to the State of Oklahoma as determined by the Oklahoma Department of  
16 Commerce. For a tourism attraction project that is an Entertainment  
17 District, an approved company may elect to receive an incentive  
18 payment based on sales tax collections of Entertainment District  
19 Tenant Parties rather than a sales tax credit. The incentive  
20 payment shall be in the amount of up to twenty-five percent (25%) of  
21 the approved costs but limited to the percent of the approved costs  
22 that will result in the project being revenue-neutral to the State  
23 of Oklahoma as determined by the Oklahoma Department of Commerce;  
24 provided that, (A) in no event shall the incentive payments exceed

1 the increased state sales tax liability of the approved company and  
2 the Entertainment District Tenant Parties that is actually received  
3 by the Tax Commission, and (B) the approved company shall be  
4 entitled to receive only ten percent (10%) of the incentive payment  
5 amount during each calendar year. The Tax Commission shall issue an  
6 incentive payment memorandum to the approved company granting a  
7 right to receive an incentive payment from the Tax Commission in the  
8 amount of up to twenty-five percent (25%) of the approved costs but  
9 limited to the percent of the approved costs that will result in the  
10 project being revenue-neutral to the State of Oklahoma as determined  
11 by the Oklahoma Department of Commerce. As soon as practicable  
12 after the end of each calendar year during the term of the  
13 agreement, the approved company shall file a claim for the incentive  
14 payment with the Tax Commission, and the Tax Commission shall be  
15 responsible for ensuring that the amount of the incentive payment  
16 claimed does not exceed the increased state sales tax liability of  
17 the approved company and the Entertainment District Tenant Parties  
18 that has been actually received by the Tax Commission, which may  
19 include accessing the Oklahoma sales tax returns of the  
20 Entertainment District Tenant Parties as permitted by this section.

21 The cumulative inducements provided pursuant to the Oklahoma  
22 Tourism Development Act shall not exceed ~~Fifteen Million Dollars~~  
23 ~~(\$15,000,000.00)~~ Thirty Million Dollars (\$30,000,000.00) per year.

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

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

16 1. Unanticipated and unavoidable delay in the construction of  
17 the tourism attraction;

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

21 3. A change in business ownership or business structure  
22 resulting from a merger or acquisition.

23 C. A sales tax credit allowed pursuant to the provisions of  
24 this section may be used to offset a portion of the reported state

1 sales tax liability of the approved company or an Entertainment  
2 District Tenant Party, if applicable, for all sales tax reporting  
3 periods following the issuance of the credit memorandum subject to  
4 the following limitations:

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

7 2. An approved company whose agreement provides that it shall  
8 expend approved costs in excess of One Million Dollars  
9 (\$1,000,000.00) or an Entertainment District Party, if applicable,  
10 shall be entitled to use only ten percent (10%) of the amount of  
11 each issued credit to offset increased state sales tax liability  
12 during each calendar year, plus the amount of any unused credit  
13 carried forward from a prior calendar year, and an approved company  
14 whose agreement provides that it shall expend approved costs of more  
15 than the minimum amount for each project as listed in this  
16 subsection but less than One Million Dollars (\$1,000,000.00) shall  
17 be entitled to use only twenty percent (20%) of the amount of each  
18 issued credit to offset increased state sales tax liability during  
19 each calendar year, plus the amount of any unused credit carried  
20 forward from a prior calendar year; and

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

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

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

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

20 F. No sales tax credit or incentive payment right authorized by  
21 this section shall be granted on or after January 1, 2026.  
22 Notwithstanding the foregoing, an approved company that has entered  
23 into a tourism attraction project agreement with the Oklahoma  
24 Department of Commerce pursuant to Section 2396 of this title prior

1 to January 1, 2026, shall continue to be entitled to claim or  
2 receive any inducements authorized by this section as contemplated  
3 by the tourism project agreement.

4 G. All currently approved tourism project agreements executed  
5 by the Oklahoma Tourism and Recreation Department are hereby  
6 transferred to the Oklahoma Department of Commerce upon ~~the~~  
7 ~~effective date of this act~~ November 1, 2021.

8 H. On ~~the effective date of this act~~ November 1, 2021, all  
9 administrative rules promulgated by the Oklahoma Tourism and  
10 Recreation Department regarding the Oklahoma Tourism Development Act  
11 shall be transferred to and become a part of the administrative  
12 rules of the Oklahoma Department of Commerce. The Office of  
13 Administrative Rules in the Office of the Secretary of State shall  
14 provide adequate notice in the Oklahoma Register of the transferred  
15 rules and shall place the transferred rules under the Administrative  
16 Code section of the Oklahoma Department of Commerce. On ~~the~~  
17 ~~effective date of this act~~ November 1, 2021, any amendment, repeal  
18 or addition to the transferred rules shall be under the jurisdiction  
19 of the Oklahoma Department of Commerce, who shall have the authority  
20 to enact rules in order to carry out the provisions of the Oklahoma  
21 Tourism Development Act.

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

23 SECTION 4. It being immediately necessary for the preservation  
24 of the public peace, health or safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.

3 COMMITTEE REPORT BY: COMMITTEE ON FINANCE  
4 April 10, 2023 - DO PASS

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