

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 COMMITTEE SUBSTITUTE

4 FOR

5 SENATE BILL NO. 200

6 By: Thompson

7 COMMITTEE SUBSTITUTE

8 An Act relating to rebates; amending 62 O.S. 2011,
9 Section 48.2, as last amended by Section 1, Chapter
10 144, O.S.L. 2018 (62 O.S. Supp. 2018, Section 48.2),
11 which relates to the Oklahoma Quick Action Closing
12 Fund; expanding purpose of Fund to include payments
13 of certain rebates to film and music productions;
14 modifying qualifications and criteria related to
15 Oklahoma Quick Action Closing Fund; deleting
16 terminaton date for fund; amending 68 O.S. 2011,
17 Sections 3623, 3624, as amended by Section 1, Chapter
18 121, O.S.L. 2017, 3625, as amended by Section 568,
19 Chapter 304, O.S.L. 2012 and 3626, as amended by
20 Section 1, Chapter 2, O.S.L. 2014 (68 O.S. Supp.
21 2018, Sections 3624, 3625 and 3626), which relate to
22 the Compete With Canada Act; modifying definitions;
23 updating reference; deleting obsolete language;
24 increasing limitation on payments from Oklahoma Film
Enhancement Rebate Program Revolving Fund and
providing exception thereto; authorizing Oklahoma
Film and Music Office to propose certain designation
for specified production; requiring approval of
designation by Cabinet Secretary; under certain
circumstances, exempting specified production from
certain limit on payments; establishing mechanism for
payment of certain rebates under specified
circumstances; modifying sources of deposit into
Oklahoma Film Enhancement Rebate Program Revolving
Fund; modifying termination date; providing an
effective date; and declaring an emergency.

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

2 SECTION 1. AMENDATORY 62 O.S. 2011, Section 48.2, as
3 last amended by Section 1, Chapter 144, O.S.L. 2018 (62 O.S. Supp.
4 2018, Section 48.2), is amended to read as follows:

5 Section 48.2. A. There is hereby created in the State Treasury
6 a revolving fund for the Oklahoma Department of Commerce to be
7 designated the Oklahoma Quick Action Closing Fund. The fund shall
8 be a continuing fund, not subject to fiscal year limitations and
9 shall consist of:

10 1. All monies apportioned or allocated to the fund pursuant to
11 law;

12 2. Any amounts appropriated by the Legislature to the fund;

13 3. Interest earned on the investment of money in the fund;

14 4. Gifts, grants, and other donations received for the fund;

15 and

16 5. Five percent (5%) of all funds paid by the Tax Commission to
17 establishments that execute contracts for payment of incentives
18 pursuant to the Oklahoma Quality Jobs Program Act and the 21st
19 Century Quality Jobs Incentive Act if the contract is executed on or
20 after the ~~effective date of this act~~ August 2, 2018.

21 B. All monies accruing to the credit of the fund are hereby
22 appropriated and may be budgeted and expended by the Governor for
23 the purposes of economic development and related infrastructure
24 development in instances in which expenditure of such funds would

1 likely be a determining factor in locating a high-impact business
2 project or facility in Oklahoma ~~or~~, in retaining such project or
3 facility within the state or for payment of rebates to a high impact
4 production pursuant to the Oklahoma Film Enhancement Rebate Program.
5 Expenditures from the fund shall be made upon warrants issued by the
6 State Treasurer against claims filed as prescribed by law with the
7 Director of the Office of Management and Enterprise Services for
8 approval and payment.

9 C. In order to qualify for any funds from the Oklahoma Quick
10 Action Closing Fund, the establishment making application shall be
11 engaged in a business activity described by a North American
12 Industry Classification System (NAICS) Code used to define
13 eligibility for incentive payments from the Oklahoma Quality Jobs
14 Program Act as defined in Section 3603 of Title 68 of the Oklahoma
15 Statutes or a business activity described by Section 3603 of Title
16 68 of the Oklahoma Statutes or be engaged in a "basic industry" used
17 to define eligibility for incentive payments from the 21st Century
18 Quality Jobs Incentive Act as prescribed by Section 3913 of Title 68
19 of the Oklahoma Statutes or a high impact production company which
20 has been approved for a rebate pursuant to the provisions of Section
21 3624 of Title 68 of the Oklahoma Statutes.

22 D. ~~The~~ Except in the case of a high impact production company
23 which has been approved for a rebate pursuant to the provisions of
24 Section 3624 of Title 68 of the Oklahoma Statutes, the Governor

1 shall not approve payments from the Oklahoma Quick Action Closing
2 Fund unless the Department of Commerce has conducted a complete
3 analysis of the potential impact of the applicant's business
4 activity which shall include, but not be limited to:

5 1. The number of jobs to be created by a new business
6 establishment;

7 2. The number of jobs to be retained by an existing business
8 establishment;

9 3. The average salary of jobs to be created by a new
10 establishment;

11 4. The average salary of jobs to be retained by an existing
12 business establishment;

13 5. The total capital investment to be made by the business
14 establishment;

15 6. The likelihood of other business establishments locating
16 within the same vicinity or within the state as a result of the
17 business activity to be conducted by the entity to receive payments
18 from the Oklahoma Quick Action Closing Fund;

19 7. The impact on the economy of the area or community in which
20 the business activity of the applicant is or will be conducted; and

21 8. Such other factors as the Governor and the Department of
22 Commerce determine to be relevant.

23 E. The Oklahoma Department of Commerce shall administer the
24 Oklahoma Quick Action Closing Fund, and expenditures from the fund

1 shall be recommended by the Director of the Oklahoma Department of
2 Commerce to the Governor after a thorough evaluation of selected
3 projects or facilities or after a rebate is approved for payment to
4 a high impact production company pursuant to the provisions of
5 Section 3624 of Title 68 of the Oklahoma Statutes. ~~The~~ Except for
6 rebates approved pursuant to the provisions of Section 3624 of Title
7 68 of the Oklahoma Statutes, the Director of the Oklahoma Department
8 of Commerce shall only recommend expenditures that the Director
9 determines are expected to result in a net economic benefit to the
10 state through the following:

11 1. The creation of new jobs which offer a basic health benefit
12 plan, as defined in the Oklahoma Quality Jobs Program Act;

13 2. The maintenance of existing jobs which are at a risk for
14 termination;

15 3. Investment in new real property, plant or equipment or in
16 the improvement or retooling of existing plant or equipment; or

17 4. Additional revenues in either ad valorem, income or sales
18 and use taxes.

19 F. The Oklahoma Department of Commerce shall develop rules for
20 the process of reviewing proposed expenditures from the Oklahoma
21 Quick Action Closing Fund and for the determination of whether or
22 not proposed expenditures meet the criteria identified in subsection
23 E of this section. Criteria shall include, but not be limited to,
24

1 requirements for economic impact, local participation in the
2 project, capital investment and average wage thresholds.

3 G. Upon receipt of an evaluation that recommends an expenditure
4 from the Oklahoma Quick Action Closing Fund from the Director of the
5 Oklahoma Department of Commerce, the Governor shall provide the
6 evaluation and recommendation to the President Pro Tempore of the
7 State Senate and the Speaker of the Oklahoma House of
8 Representatives before giving final approval for the expenditure on
9 the project. The Executive Office of the Governor shall recommend
10 final approval of an expenditure on a project pursuant to
11 consultation with the President Pro Tempore of the State Senate and
12 the Speaker of the Oklahoma House of Representatives.

13 H. Upon approval by the Governor, the Oklahoma Department of
14 Commerce shall enter into an agreement that sets forth the
15 conditions for payment of monies from the Oklahoma Quick Action
16 Closing Fund. The agreement must include:

- 17 1. The total amount of funds awarded;
- 18 2. The Except in the case of a rebate approved for payment to a
19 high impact production company pursuant to the provisions of Section
20 3624 of Title 68 of the Oklahoma Statutes, the performance
21 conditions that must be met to obtain the award, including, but not
22 limited to, net new employment in the state, average salary, and
23 total capital investment;

24

1 3. If appropriate, a baseline of current service and measure of
2 enhanced capability;

3 4. The methodology of validating performance;

4 5. The schedule of payments from the fund, and claw-back
5 provisions for failure to meet performance conditions; and

6 6. A requirement that no monies paid from the Oklahoma Quick
7 Action Closing Fund shall be used by a recipient or any other person
8 or entity for purposes of any political contribution to or on behalf
9 of any candidate or for the support of or opposition to any measure
10 including but not limited to an initiative petition or referendum.

11 I. The Department of Commerce shall make available on its
12 website or other website dedicated for this purpose a complete
13 disclosure of all payments made from the Oklahoma Quick Action
14 Closing Fund. The disclosure shall include a description of the
15 expenditures made by the business establishment with the payments
16 made from the fund. No proprietary information of the business
17 establishment shall be subject to the requirements of this
18 subsection.

19 J. If any or all of the amount to be awarded is used to build a
20 capital improvement, except in the case of an amount approved for
21 payment to a high impact production company pursuant to the
22 provisions of Section 3624 of Title 68 of the Oklahoma Statutes:

23 1. The funds used for the capital improvement shall be deemed
24 to be held in trust for the benefit of the state and shall be

1 considered as a priority claim for purposes of federal bankruptcy
2 law; and

3 2. If the capital improvement is sold, the recipient of the
4 award shall:

5 a. repay the state the money awarded to pay for the
6 capital improvement, with interest at the rate and
7 according to the other terms provided by the
8 agreement, and

9 b. share with the state a proportionate amount of any
10 profit realized from the sale.

11 K. If, as of the date certain provided in the agreement, the
12 award recipient has not used monies awarded for the intended
13 purposes, the recipient shall repay that amount and any related
14 interest to the state at the agreed rate and on the agreed terms and
15 any such amounts shall be deemed to be held in trust for the benefit
16 of the state and shall be considered as a priority claim for
17 purposes of federal bankruptcy law.

18 ~~L. The provisions of this act shall cease to have the force and~~
19 ~~effect of law on the July 1 date of the sixth fiscal year after the~~
20 ~~first fiscal year for which any funds are deposited to, appropriated~~
21 ~~to, apportioned to or otherwise transferred to the Oklahoma Quick~~
22 ~~Action Closing Fund.~~

23 SECTION 2. AMENDATORY 68 O.S. 2011, Section 3623, is
24 amended to read as follows:

1 Section 3623. As used in the Compete with Canada Film Act:

2 1. "Crew" means any person who works on preproduction,
3 principal photography, and postproduction, with the exception of
4 producers, principal cast, screenwriters, and the director. The
5 qualifying salary of producers, principal cast, screenwriters, and
6 the director, also known as "above-the-line personnel", may be
7 included as crew if the salaries are paid to loan-out corporations
8 and limited liability companies registered to do business in the
9 State of Oklahoma or the salaries are paid to Oklahoma-based above-
10 the-line personnel. The qualifying salary of above-the-line
11 personnel shall not comprise more than twenty-five percent (25%) of
12 total expenditures as defined in paragraph 2 of this section. For
13 purposes of this paragraph, "Oklahoma-based" means a company or
14 individual with an Oklahoma income tax requirement;

15 2. "Expenditure" or "production cost" includes but is not
16 limited to:

- 17 a. wages or salaries of persons who are
18 residents of this state and who have earned
19 income from working on a film in this state,
20 including payments to personal services
21 corporations with respect to the services of
22 qualified performing artists, as determined
23 under Section 62(a)(A) of the Internal
24 Revenue Code,

- 1 b. the cost of construction and operations,
2 wardrobe, accessories and related services,
3 c. the cost of photography, sound
4 synchronization, lighting and related
5 services,
6 d. the cost of editing and related services,
7 e. rental of facilities and equipment,
8 f. other direct costs of producing a film, and
9 g. the wages and salaries of persons who are
10 defined and registered as an Oklahoma
11 Expatriate by the Office of the Oklahoma Film
12 and Music Commission;

13 3. "Film" means a professional single media, multimedia program
14 or feature, which is not child pornography as defined in subsection
15 A of Section 1024.1 of Title 21 of the Oklahoma Statutes or obscene
16 material as defined in paragraph 1 of subsection B of Section 1024.1
17 of Title 21 of the Oklahoma Statutes, including, but not limited to,
18 national advertising messages that are broadcast on a national
19 affiliate or cable network, fixed on film or digital video, which
20 can be viewed or reproduced and which is exhibited in theaters,
21 licensed for exhibition by individual television stations, groups of
22 stations, networks, cable television stations or other means or
23 licensed for home viewing markets; ~~and~~

1 4. "High impact production" means a production for which total
2 expenditures or production costs are equal to or greater than Fifty
3 Million Dollars (\$50,000,000.00), with at least one-third (1/3) of
4 total costs deemed Oklahoma expenditures by the Office of the
5 Oklahoma Film and Music Commission; and

6 5. "Production company" means a person or company who produces
7 film for exhibition in theaters, on television or elsewhere.

8 SECTION 3. AMENDATORY 68 O.S. 2011, Section 3624, as
9 amended by Section 1, Chapter 121, O.S.L. 2017 (68 O.S. Supp. 2018,
10 Section 3624), is amended to read as follows:

11 Section 3624. A. There is hereby created the Oklahoma Film
12 Enhancement Rebate Program. A rebate in the amount of up to
13 seventeen percent (17%) of documented expenditures made in Oklahoma
14 directly attributable to the production of a film, television
15 production, or television commercial, as defined in Section 3623 of
16 this title, in this state, may be paid to the production company
17 responsible for the production. Provided, for documented
18 expenditures made after July 1, 2009, the rebate amount shall be
19 thirty-five percent (35%), except as provided in subsection B of
20 this section.

21 B. The amount of rebate paid to the production company as
22 provided for in subsection A of this section shall be increased by
23 an additional two percent (2%) of documented expenditures if a
24 production company spends at least Twenty Thousand Dollars

1 (\$20,000.00) for the use of music created by an Oklahoma resident
2 that is recorded in Oklahoma or for the cost of recording songs or
3 music in Oklahoma for use in the production.

4 C. The rebate program shall be administered by the Office of
5 the Oklahoma Film and Music Commission and the Oklahoma Tax
6 Commission, as provided in the Compete with Canada Film Act.

7 D. To be eligible for a rebate payment:

8 1. The production company responsible for a film, television
9 production, or television commercial, as defined in Section 3623 of
10 this title, made in this state shall submit documentation to the
11 Office of the Oklahoma Film and Music Commission of the amount of
12 wages paid for employment in this state to residents of this state
13 directly relating to the production and the amount of other
14 production costs incurred in this state directly relating to the
15 production;

16 2. The production company has filed or will file any Oklahoma
17 tax return or tax document which may be required by law;

18 3. Except major studio productions, the production company
19 shall provide the name of the completion guarantor and a copy of the
20 bond guaranteeing the completion of the project or if a film has not
21 secured a completion bond, the production company shall provide
22 evidence that all Oklahoma crew and local vendors have been paid and
23 there are no liens against the production company pending in the
24 state;

1 4. The minimum budget for the film shall be Fifty Thousand
2 Dollars (\$50,000.00) of which not less than Twenty-five Thousand
3 Dollars (\$25,000.00) shall be expended in this state;

4 5. The production company shall provide evidence of financing
5 for production prior to the commencement of principal photography;
6 and

7 6. The production company shall provide evidence of a
8 certificate of general liability insurance with a minimum coverage
9 of One Million Dollars (\$1,000,000.00) and a workers' compensation
10 policy pursuant to state law, which shall include coverage of
11 employer's liability.

12 E. A production company shall not be eligible to receive both a
13 rebate payment pursuant to the provisions of this act and an
14 exemption from sales taxes pursuant to the provisions of ~~paragraph~~
15 ~~21~~ paragraph 23 of Section 1357 of this title. If a production
16 company has received such an exemption from sales taxes and submits
17 a claim for rebate pursuant to the provisions of the Compete with
18 Canada Film Act, the company shall be required to fully repay the
19 amount of the exemption to the Tax Commission. A claim for a rebate
20 shall include documentation from the Tax Commission that repayment
21 has been made as required herein or shall include an affidavit from
22 the production company that the company has not received an
23 exemption from sales taxes pursuant to the provisions of paragraph
24 21 of Section 1357 of this title.

1 F. The Office shall approve or disapprove all claims for rebate
2 and shall notify the Tax Commission. The Tax Commission shall, upon
3 notification of approval from the Office of the Film and Music
4 Commission, issue payment for all approved claims from funds in the
5 Oklahoma Film Enhancement Rebate Program Revolving Fund created in
6 Section 3625 of this title. ~~Provided, no claims for rebate for~~
7 ~~expenditures made on or after July 1, 2009, shall be paid prior to~~
8 ~~July 1, 2010.~~ The Excluding any rebate payments to high impact
9 productions as provided for in subsection G of this section, the
10 amount of payments in any single fiscal year shall not exceed ~~Four~~
11 ~~Million Dollars (\$4,000,000.00)~~ Eight Million Dollars
12 (\$8,000,000.00). If the amount of approved claims exceeds the
13 amount specified in this subsection in a fiscal year, payments shall
14 be made in the order in which the claims are approved by the Office.
15 If an approved claim is not paid in whole or in part, the unpaid
16 claim or unpaid portion may be paid in the following fiscal year
17 subject to the limitations specified in this subsection.

18 G. 1. At the time the Office of the Film and Music Commission
19 issues a conditional prequalification for a production, such
20 prequalification may include a proposed designation as a high impact
21 production, as defined in Section 3623 of this title.

22 2. The proposed designation must be approved by the Cabinet
23 Secretary for Commerce and Tourism.

24

1 3. If the high impact production otherwise meets all of the
2 requirements of the Compete With Canada Act and the Office gives
3 final approval to rebate claims, such rebate claims shall not be
4 subject to the Eight Million Dollar (\$8,000,000.00) cap provided for
5 in subsection F of this section.

6 4. The payment of a rebate claim approved by the Office for a
7 production designated as a high impact production by the Cabinet
8 Secretary shall be made as follows:

9 a. by special appropriation to the Oklahoma Film
10 Enhancement Rebate Program Revolving Fund, if the
11 claim is approved during a regular or special session
12 of the Oklahoma Legislature, or

13 b. by payment from the Oklahoma Quick Action Closing Fund
14 pursuant to Section 48.2 of Title 62 of the Oklahoma
15 Statutes, if the claim is approved when the Oklahoma
16 Legislature is not in session.

17 SECTION 4. AMENDATORY 68 O.S. 2011, Section 3625, as
18 amended by Section 568, Chapter 304, O.S.L. 2012 (68 O.S. Supp.
19 2018, Section 3625), is amended to read as follows:

20 Section 3625. A. There is hereby created in the State Treasury
21 a revolving fund for the Oklahoma Tax Commission to be designated
22 the "Oklahoma Film Enhancement Rebate Program Revolving Fund". The
23 fund shall be a continuing fund, not subject to fiscal year
24 limitations, and shall consist of all monies received by the Tax

1 Commission which are specifically required by law to be deposited in
2 the fund, ~~and~~ any public or private donations, contributions, and
3 gifts received for the benefit of the fund and any amounts
4 appropriated by the Oklahoma Legislature. All monies accruing to
5 the credit of the fund are hereby appropriated and may be budgeted
6 and expended by the Tax Commission for the purpose of paying rebates
7 as provided in this act. Expenditures from the fund shall be made
8 upon warrants issued by the State Treasurer against claims filed as
9 prescribed by law with the Director of the Office of Management and
10 Enterprise Services for approval and payment.

11 B. The Oklahoma Tax Commission shall apportion, from the
12 revenues which would otherwise be apportioned to the General Revenue
13 Fund pursuant to subparagraph a of paragraph 1 of Section 2352 of
14 this title, an amount that the Commission estimates to be necessary
15 to pay the rebates provided by Section 3624 of this title to the
16 Oklahoma Film Enhancement Rebate Program Revolving Fund.

17 SECTION 5. AMENDATORY 68 O.S. 2011, Section 3626, as
18 amended by Section 1, Chapter 2, O.S.L. 2014 (68 O.S. Supp. 2018,
19 Section 3626), is amended to read as follows:

20 Section 3626. The provisions of the Compete with Canada Film
21 Act shall be terminated effective ~~July 1, 2024~~ July 1, 2027, and no
22 claim shall be paid thereafter.

23 SECTION 6. This act shall become effective July 1, 2019.
24

1 SECTION 7. 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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