

1 STATE OF OKLAHOMA

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

3 SENATE BILL 200

By: Thompson

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5
6 AS INTRODUCED

7 An Act relating to rebates; amending 62 O.S. 2011,
8 Section 48.2, as last amended by Section 1, Chapter
9 144, O.S.L. 2018 (62 O.S. Supp. 2018, Section 48.2),
10 which relates to the Oklahoma Quick Action Closing
11 Fund; expanding purpose of Fund to include payments
12 of certain rebates to film and music productions;
13 modifying qualifications and criteria related to
14 Oklahoma Quick Action Closing Fund; amending 68 O.S.
15 2011, Sections 3623, 3624, as amended by Section 1,
16 Chapter 121, O.S.L. 2017 and 3625, as amended by
17 Section 568, Chapter 304, O.S.L. 2012 (68 O.S. Supp.
18 2018, Sections 3624 and 3625), which relate to the
19 Compete With Canada Act; modifying definitions;
20 updating reference; deleting obsolete language;
21 increasing limitation on payments from Oklahoma Film
22 Enhancement Rebate Program Revolving Fund and
23 providing exception thereto; authorizing Oklahoma
24 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; providing an effective date; and declaring an
emergency.

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

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

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

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

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

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

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

14 and

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

20 B. All monies accruing to the credit of the fund are hereby
21 appropriated and may be budgeted and expended by the Governor for
22 the purposes of economic development and related infrastructure
23 development in instances in which expenditure of such funds would
24 likely be a determining factor in locating a high-impact business

1 project or facility in Oklahoma ~~or~~, in retaining such project or
2 facility within the state or for payment of rebates to a high impact
3 production pursuant to the Oklahoma Film Enhancement Rebate Program.

4 Expenditures from the fund shall be made upon warrants issued by the
5 State Treasurer against claims filed as prescribed by law with the
6 Director of the Office of Management and Enterprise Services for
7 approval and payment.

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

21 D. ~~The~~ Except in the case of a high impact production company
22 which has been approved for a rebate pursuant to the provisions of
23 Section 3624 of Title 68 of the Oklahoma Statutes, the Governor
24 shall not approve payments from the Oklahoma Quick Action Closing

1 Fund unless the Department of Commerce has conducted a complete
2 analysis of the potential impact of the applicant's business
3 activity which shall include, but not be limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

18 F. The Oklahoma Department of Commerce shall develop rules for
19 the process of reviewing proposed expenditures from the Oklahoma
20 Quick Action Closing Fund and for the determination of whether or
21 not proposed expenditures meet the criteria identified in subsection
22 E of this section. Criteria shall include, but not be limited to,
23 requirements for economic impact, local participation in the
24 project, capital investment and average wage thresholds.

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

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

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

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

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

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

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

20 1. The funds used for the capital improvement shall be deemed
21 to be held in trust for the benefit of the state and shall be
22 considered as a priority claim for purposes of federal bankruptcy
23 law; and

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

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

7 b. share with the state a proportionate amount of any
8 profit realized from the sale.

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

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

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

23 Section 3623. As used in the Compete with Canada Film Act:
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1 1. "Crew" means any person who works on preproduction,
2 principal photography, and postproduction, with the exception of
3 producers, principal cast, screenwriters, and the director. The
4 qualifying salary of producers, principal cast, screenwriters, and
5 the director, also known as "above-the-line personnel", may be
6 included as crew if the salaries are paid to loan-out corporations
7 and limited liability companies registered to do business in the
8 State of Oklahoma or the salaries are paid to Oklahoma-based above-
9 the-line personnel. The qualifying salary of above-the-line
10 personnel shall not comprise more than twenty-five percent (25%) of
11 total expenditures as defined in paragraph 2 of this section. For
12 purposes of this paragraph, "Oklahoma-based" means a company or
13 individual with an Oklahoma income tax requirement;

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

- 16 a. wages or salaries of persons who are
17 residents of this state and who have earned
18 income from working on a film in this state,
19 including payments to personal services
20 corporations with respect to the services of
21 qualified performing artists, as determined
22 under Section 62(a)(A) of the Internal
23 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)~~ Ten Million Dollars
12 (\$10,000,000.00). 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.

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 Ten Million Dollar (\$10,000,000.00) 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. This act shall become effective July 1, 2019.

18 SECTION 6. It being immediately necessary for the preservation
19 of the public peace, health or safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval.

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