

1                               **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2   STATE OF OKLAHOMA

3   1st Session of the 57th Legislature (2019)

4   ENGROSSED SENATE  
5   BILL NO. 200

  By: Thompson and Floyd of the  
  Senate

6   and

7   Dunnington of the House

8  
9  
10           An Act relating to rebates; amending 62 O.S. 2011,  
11           Section 48.2, as last amended by Section 1, Chapter  
12           144, O.S.L. 2018 (62 O.S. Supp. 2018, Section 48.2),  
13           which relates to the Oklahoma Quick Action Closing  
14           Fund; updating reference; expanding purpose of Fund  
15           to include payments of certain rebates to film and  
16           music productions and conforming language; modifying  
17           qualifications and criteria related to Oklahoma Quick  
18           Action Closing Fund; providing exceptions; deleting  
19           termination date; amending 68 O.S. 2011, Sections  
20           3623, 3624, as amended by Section 1, Chapter 121,  
21           O.S.L. 2017, 3625, as amended by Section 568, Chapter  
22           304, O.S.L. 2012 and 3626, as amended by Section 1,  
23           Chapter 2, O.S.L. 2014 (68 O.S. Supp. 2018, Sections  
24           3624, 3625 and 3626), which relate to the Compete  
          With Canada Act; defining term; updating reference;  
          deleting obsolete language; 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; extending

1 termination date for program; providing an effective  
2 date; and declaring an emergency.

3  
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. AMENDATORY 62 O.S. 2011, Section 48.2, as  
6 last amended by Section 1, Chapter 144, O.S.L. 2018 (62 O.S. Supp.  
7 2018, Section 48.2), is amended to read as follows:

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

13 1. All monies apportioned or allocated to the fund pursuant to  
14 law;

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

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

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

18 and

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

1 B. All monies accruing to the credit of the fund are hereby  
2 appropriated and may be budgeted and expended by the Governor for  
3 the purposes of economic development and related infrastructure  
4 development in instances in which expenditure of such funds would  
5 likely be a determining factor in locating a high-impact business  
6 project or facility in Oklahoma ~~or~~, in retaining such project or  
7 facility within the state or for payment of rebates to a high impact  
8 production pursuant to the Oklahoma Film Enhancement Rebate Program.  
9 Expenditures from the fund shall be made upon warrants issued by the  
10 State Treasurer against claims filed as prescribed by law with the  
11 Director of the Office of Management and Enterprise Services for  
12 approval and payment.

13 C. In order to qualify for any funds from the Oklahoma Quick  
14 Action Closing Fund, the establishment making application shall be  
15 engaged in a business activity described by a North American  
16 Industry Classification System (NAICS) Code used to define  
17 eligibility for incentive payments from the Oklahoma Quality Jobs  
18 Program Act as defined in Section 3603 of Title 68 of the Oklahoma  
19 Statutes or a business activity described by Section 3603 of Title  
20 68 of the Oklahoma Statutes or be engaged in a "basic industry" used  
21 to define eligibility for incentive payments from the 21st Century  
22 Quality Jobs Incentive Act as prescribed by Section 3913 of Title 68  
23 of the Oklahoma Statutes or a high impact production company which  
24

1 has been approved for a rebate pursuant to the provisions of Section  
2 3624 of Title 68 of the Oklahoma Statutes.

3 D. The Except in the case of a high impact production company  
4 which has been approved for a rebate pursuant to the provisions of  
5 Section 3624 of Title 68 of the Oklahoma Statutes, the Governor  
6 shall not approve payments from the Oklahoma Quick Action Closing  
7 Fund unless the Department of Commerce has conducted a complete  
8 analysis of the potential impact of the applicant's business  
9 activity which shall include, but not be limited to:

10 1. The number of jobs to be created by a new business  
11 establishment;

12 2. The number of jobs to be retained by an existing business  
13 establishment;

14 3. The average salary of jobs to be created by a new  
15 establishment;

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

18 5. The total capital investment to be made by the business  
19 establishment;

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

24

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

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

5 E. The Oklahoma Department of Commerce shall administer the  
6 Oklahoma Quick Action Closing Fund, and expenditures from the fund  
7 shall be recommended by the Director of the Oklahoma Department of  
8 Commerce to the Governor after a thorough evaluation of selected  
9 projects or facilities or after a rebate is approved for payment to  
10 a high impact production company pursuant to the provisions of  
11 Section 3624 of Title 68 of the Oklahoma Statutes. ~~The~~ Except for  
12 rebates approved pursuant to the provisions of Section 3624 of Title  
13 68 of the Oklahoma Statutes, the Director of the Oklahoma Department  
14 of Commerce shall only recommend expenditures that the Director  
15 determines are expected to result in a net economic benefit to the  
16 state through the following:

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

19 2. The maintenance of existing jobs which are at a risk for  
20 termination;

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

23 4. Additional revenues in either ad valorem, income or sales  
24 and use taxes.

1 F. The Oklahoma Department of Commerce shall develop rules for  
2 the process of reviewing proposed expenditures from the Oklahoma  
3 Quick Action Closing Fund and for the determination of whether or  
4 not proposed expenditures meet the criteria identified in subsection  
5 E of this section. Criteria shall include, but not be limited to,  
6 requirements for economic impact, local participation in the  
7 project, capital investment and average wage thresholds.

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

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

- 22 1. The total amount of funds awarded;
- 23 2. The Except in the case of a rebate approved for payment to a  
24 high impact production company pursuant to the provisions of Section

1 3624 of Title 68 of the Oklahoma Statutes, the performance  
2 conditions that must be met to obtain the award, including, but not  
3 limited to, net new employment in the state, average salary, and  
4 total capital investment;

5 3. If appropriate, a baseline of current service and measure of  
6 enhanced capability;

7 4. The methodology of validating performance;

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

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

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

23 J. If any or all of the amount to be awarded is used to build a  
24 capital improvement, except in the case of an amount approved for

1 payment to a high impact production company pursuant to the  
2 provisions of Section 3624 of Title 68 of the Oklahoma Statutes:

3 1. The funds used for the capital improvement shall be deemed  
4 to be held in trust for the benefit of the state and shall be  
5 considered as a priority claim for purposes of federal bankruptcy  
6 law; and

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

9 a. repay the state the money awarded to pay for the  
10 capital improvement, with interest at the rate and  
11 according to the other terms provided by the  
12 agreement, and

13 b. share with the state a proportionate amount of any  
14 profit realized from the sale.

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

22 ~~L. The provisions of this act shall cease to have the force and~~  
23 ~~effect of law on the July 1 date of the sixth fiscal year after the~~  
24 ~~first fiscal year for which any funds are deposited to, appropriated~~



1 ~~to, apportioned to or otherwise transferred to the Oklahoma Quick~~  
2 ~~Action Closing Fund.~~

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

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

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

19 2. "Expenditure" or "production cost" includes but is not  
20 limited to:

21 a. wages or salaries of persons who are  
22 residents of this state and who have earned  
23 income from working on a film in this state,  
24 including payments to personal services

1 corporations with respect to the services of  
2 qualified performing artists, as determined  
3 under Section 62(a)(A) of the Internal  
4 Revenue Code,

5 b. the cost of construction and operations,  
6 wardrobe, accessories and related services,

7 c. the cost of photography, sound  
8 synchronization, lighting and related  
9 services,

10 d. the cost of editing and related services,

11 e. rental of facilities and equipment,

12 f. other direct costs of producing a film, and

13 g. the wages and salaries of persons who are  
14 defined and registered as an Oklahoma  
15 Expatriate by the Office of the Oklahoma Film  
16 and Music Commission;

17 3. "Film" means a professional single media, multimedia program  
18 or feature, which is not child pornography as defined in subsection  
19 A of Section 1024.1 of Title 21 of the Oklahoma Statutes or obscene  
20 material as defined in paragraph 1 of subsection B of Section 1024.1  
21 of Title 21 of the Oklahoma Statutes, including, but not limited to,  
22 national advertising messages that are broadcast on a national  
23 affiliate or cable network, fixed on film or digital video, which  
24 can be viewed or reproduced and which is exhibited in theaters,

1 licensed for exhibition by individual television stations, groups of  
2 stations, networks, cable television stations or other means or  
3 licensed for home viewing markets; ~~and~~

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

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

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

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

24

1 B. The amount of rebate paid to the production company as  
2 provided for in subsection A of this section shall be increased by  
3 an additional two percent (2%) of documented expenditures if a  
4 production company spends at least Twenty Thousand Dollars  
5 (\$20,000.00) for the use of music created by an Oklahoma resident  
6 that is recorded in Oklahoma or for the cost of recording songs or  
7 music in Oklahoma for use in the production.

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

11 D. To be eligible for a rebate payment:

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

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

22 3. Except major studio productions, the production company  
23 shall provide the name of the completion guarantor and a copy of the  
24 bond guaranteeing the completion of the project or if a film has not

1 secured a completion bond, the production company shall provide  
2 evidence that all Oklahoma crew and local vendors have been paid and  
3 there are no liens against the production company pending in the  
4 state;

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

8 5. The production company shall provide evidence of financing  
9 for production prior to the commencement of principal photography;  
10 and

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

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

1 has been made as required herein or shall include an affidavit from  
2 the production company that the company has not received an  
3 exemption from sales taxes pursuant to the provisions of paragraph  
4 21 of Section 1357 of this title.

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

22 G. 1. At the time the Office of the Film and Music Commission  
23 issues a conditional prequalification for a production, such  
24

1 prequalification may include a proposed designation as a high impact  
2 production, as defined in Section 3623 of this title.

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

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

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

13 a. by special appropriation to the Oklahoma Film  
14 Enhancement Rebate Program Revolving Fund, if the  
15 claim is approved during a regular or special session  
16 of the Oklahoma Legislature, or

17 b. by payment from the Oklahoma Quick Action Closing Fund  
18 pursuant to Section 48.2 of Title 62 of the Oklahoma  
19 Statutes, if the claim is approved when the Oklahoma  
20 Legislature is not in session.

21 SECTION 4. AMENDATORY 68 O.S. 2011, Section 3625, as  
22 amended by Section 568, Chapter 304, O.S.L. 2012 (68 O.S. Supp.  
23 2018, Section 3625), is amended to read as follows:  
24

1 Section 3625. A. There is hereby created in the State Treasury  
2 a revolving fund for the Oklahoma Tax Commission to be designated  
3 the "Oklahoma Film Enhancement Rebate Program Revolving Fund". The  
4 fund shall be a continuing fund, not subject to fiscal year  
5 limitations, and shall consist of all monies received by the Tax  
6 Commission which are specifically required by law to be deposited in  
7 the fund, ~~and~~ any public or private donations, contributions, and  
8 gifts received for the benefit of the fund and any amounts  
9 appropriated by the Oklahoma Legislature. All monies accruing to  
10 the credit of the fund are hereby appropriated and may be budgeted  
11 and expended by the Tax Commission for the purpose of paying rebates  
12 as provided in this act. Expenditures from the fund shall be made  
13 upon warrants issued by the State Treasurer against claims filed as  
14 prescribed by law with the Director of the Office of Management and  
15 Enterprise Services for approval and payment.

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

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



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

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

5 SECTION 7. It being immediately necessary for the preservation  
6 of the public peace, health or safety, an emergency is hereby  
7 declared to exist, by reason whereof this act shall take effect and  
8 be in full force from and after its passage and approval.

9  
10 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated  
11 03/28/2019 - DO PASS.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24