

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 200

By: Thompson and Floyd of the  
Senate

3  
4 and

Dunnington of the House  
5  
6

7 An Act relating to rebates; amending 62 O.S. 2011,  
8 Section 48.2, as last amended by Section 1, Chapter  
144, O.S.L. 2018 (62 O.S. Supp. 2018, Section 48.2),  
9 which relates to the Oklahoma Quick Action Closing  
Fund \* \* \* amending 68 O.S. 2011, Sections 3623,  
10 3624, as amended by Section 1, Chapter 121, O.S.L.  
2017, 3625, as amended by Section 568, Chapter 304,  
11 O.S.L. 2012 and 3626, as amended by Section 1,  
Chapter 2, O.S.L. 2014 (68 O.S. Supp. 2018, Sections  
12 3624, 3625 and 3626), which relate to the Compete  
With Canada Act \* \* \* modifying sources of deposit into  
13 Oklahoma Film Enhancement Rebate Program Revolving  
Fund \* \* \* providing an effective date; and declaring  
14 an emergency.

15  
16 AUTHORS: Add the following House Coauthors: Fetgatter and  
Mize  
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18 AMENDMENT NO. 1. Page 15, Section 3, line 8, delete the word  
19 "shall" and insert the word "may"  
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1 ENGROSSED SENATE  
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7 An Act relating to rebates; amending 62 O.S. 2011,  
8 Section 48.2, as last amended by Section 1, Chapter  
144, O.S.L. 2018 (62 O.S. Supp. 2018, Section 48.2),  
9 which relates to the Oklahoma Quick Action Closing  
10 Fund; updating reference; expanding purpose of Fund  
11 to include payments of certain rebates to film and  
12 music productions and conforming language; modifying  
13 qualifications and criteria related to Oklahoma Quick  
14 Action Closing Fund; providing exceptions; deleting  
15 termination date; amending 68 O.S. 2011, Sections  
16 3623, 3624, as amended by Section 1, Chapter 121,  
17 O.S.L. 2017, 3625, as amended by Section 568, Chapter  
304, O.S.L. 2012 and 3626, as amended by Section 1,  
18 Chapter 2, O.S.L. 2014 (68 O.S. Supp. 2018, Sections  
19 3624, 3625 and 3626), which relate to the Compete  
20 With Canada Act; defining term; updating reference;  
21 deleting obsolete language; increasing limitation on  
22 payments from Oklahoma Film Enhancement Rebate  
23 Program Revolving Fund and providing exception  
24 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  
termination date for program; providing an effective  
date; and declaring an emergency.

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~~ August 2, 2018.

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

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;

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  
24

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:  
24

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,  
24

- 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

