

1 **SENATE FLOOR VERSION**

2 February 27, 2019

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 200

6 By: Thompson

7 [rebates - Oklahoma Quick Action Closing Fund -
8 Compete With Canada Act - Oklahoma Film Enhancement
9 Rebate Program Revolving Fund - mechanism for payment
10 of certain rebates - ~~effective date~~ -
11 **emergency**]

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

13 SECTION 1. AMENDATORY 62 O.S. 2011, Section 48.2, as
14 last amended by Section 1, Chapter 144, O.S.L. 2018 (62 O.S. Supp.
15 2018, Section 48.2), is amended to read as follows:

16 Section 48.2. A. There is hereby created in the State Treasury
17 a revolving fund for the Oklahoma Department of Commerce to be
18 designated the Oklahoma Quick Action Closing Fund. The fund shall
19 be a continuing fund, not subject to fiscal year limitations and
20 shall consist of:

- 21 1. All monies apportioned or allocated to the fund pursuant to
22 law;
23 2. Any amounts appropriated by the Legislature to the fund;
24 3. Interest earned on the investment of money in the fund;

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

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

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

20 C. In order to qualify for any funds from the Oklahoma Quick
21 Action Closing Fund, the establishment making application shall be
22 engaged in a business activity described by a North American
23 Industry Classification System (NAICS) Code used to define
24 eligibility for incentive payments from the Oklahoma Quality Jobs

1 Program Act as defined in Section 3603 of Title 68 of the Oklahoma
2 Statutes or a business activity described by Section 3603 of Title
3 68 of the Oklahoma Statutes or be engaged in a "basic industry" used
4 to define eligibility for incentive payments from the 21st Century
5 Quality Jobs Incentive Act as prescribed by Section 3913 of Title 68
6 of the Oklahoma Statutes or a high impact production company which
7 has been approved for a rebate pursuant to the provisions of Section
8 3624 of Title 68 of the Oklahoma Statutes.

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

16 1. The number of jobs to be created by a new business
17 establishment;

18 2. The number of jobs to be retained by an existing business
19 establishment;

20 3. The average salary of jobs to be created by a new
21 establishment;

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

24

1 5. The total capital investment to be made by the business
2 establishment;

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

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

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

11 E. The Oklahoma Department of Commerce shall administer the
12 Oklahoma Quick Action Closing Fund, and expenditures from the fund
13 shall be recommended by the Director of the Oklahoma Department of
14 Commerce to the Governor after a thorough evaluation of selected
15 projects or facilities or after a rebate is approved for payment to
16 a high impact production company pursuant to the provisions of
17 Section 3624 of Title 68 of the Oklahoma Statutes. ~~The~~ Except for
18 rebates approved pursuant to the provisions of Section 3624 of Title
19 68 of the Oklahoma Statutes, the Director of the Oklahoma Department
20 of Commerce shall only recommend expenditures that the Director
21 determines are expected to result in a net economic benefit to the
22 state through the following:

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

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

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

5 4. Additional revenues in either ad valorem, income or sales
6 and use taxes.

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

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

24

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

5 1. The total amount of funds awarded;

6 2. The Except in the case of a rebate approved for payment to a
7 high impact production company pursuant to the provisions of Section
8 3624 of Title 68 of the Oklahoma Statutes, the performance
9 conditions that must be met to obtain the award, including, but not
10 limited to, net new employment in the state, average salary, and
11 total capital investment;

12 3. If appropriate, a baseline of current service and measure of
13 enhanced capability;

14 4. The methodology of validating performance;

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

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

22 I. The Department of Commerce shall make available on its
23 website or other website dedicated for this purpose a complete
24 disclosure of all payments made from the Oklahoma Quick Action

1 Closing Fund. The disclosure shall include a description of the
2 expenditures made by the business establishment with the payments
3 made from the fund. No proprietary information of the business
4 establishment shall be subject to the requirements of this
5 subsection.

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

10 1. The funds used for the capital improvement shall be deemed
11 to be held in trust for the benefit of the state and shall be
12 considered as a priority claim for purposes of federal bankruptcy
13 law; and

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

16 a. repay the state the money awarded to pay for the
17 capital improvement, with interest at the rate and
18 according to the other terms provided by the
19 agreement, and

20 b. share with the state a proportionate amount of any
21 profit realized from the sale.

22 K. If, as of the date certain provided in the agreement, the
23 award recipient has not used monies awarded for the intended
24 purposes, the recipient shall repay that amount and any related

1 interest to the state at the agreed rate and on the agreed terms and
2 any such amounts shall be deemed to be held in trust for the benefit
3 of the state and shall be considered as a priority claim for
4 purposes of federal bankruptcy law.

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

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

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

13 1. "Crew" means any person who works on preproduction,
14 principal photography, and postproduction, with the exception of
15 producers, principal cast, screenwriters, and the director. The
16 qualifying salary of producers, principal cast, screenwriters, and
17 the director, also known as "above-the-line personnel", may be
18 included as crew if the salaries are paid to loan-out corporations
19 and limited liability companies registered to do business in the
20 State of Oklahoma or the salaries are paid to Oklahoma-based above-
21 the-line personnel. The qualifying salary of above-the-line
22 personnel shall not comprise more than twenty-five percent (25%) of
23 total expenditures as defined in paragraph 2 of this section. For
24

1 purposes of this paragraph, "Oklahoma-based" means a company or
2 individual with an Oklahoma income tax requirement;

3 2. "Expenditure" or "production cost" includes but is not
4 limited to:

- 5 a. wages or salaries of persons who are
6 residents of this state and who have earned
7 income from working on a film in this state,
8 including payments to personal services
9 corporations with respect to the services of
10 qualified performing artists, as determined
11 under Section 62(a)(A) of the Internal
12 Revenue Code,
- 13 b. the cost of construction and operations,
14 wardrobe, accessories and related services,
- 15 c. the cost of photography, sound
16 synchronization, lighting and related
17 services,
- 18 d. the cost of editing and related services,
- 19 e. rental of facilities and equipment,
- 20 f. other direct costs of producing a film, and
- 21 g. the wages and salaries of persons who are
22 defined and registered as an Oklahoma
23 Expatriate by the Office of the Oklahoma Film
24 and Music Commission;

1 3. "Film" means a professional single media, multimedia program
2 or feature, which is not child pornography as defined in subsection
3 A of Section 1024.1 of Title 21 of the Oklahoma Statutes or obscene
4 material as defined in paragraph 1 of subsection B of Section 1024.1
5 of Title 21 of the Oklahoma Statutes, including, but not limited to,
6 national advertising messages that are broadcast on a national
7 affiliate or cable network, fixed on film or digital video, which
8 can be viewed or reproduced and which is exhibited in theaters,
9 licensed for exhibition by individual television stations, groups of
10 stations, networks, cable television stations or other means or
11 licensed for home viewing markets; and

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

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

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

22 Section 3624. A. There is hereby created the Oklahoma Film
23 Enhancement Rebate Program. A rebate in the amount of up to
24 seventeen percent (17%) of documented expenditures made in Oklahoma

1 directly attributable to the production of a film, television
2 production, or television commercial, as defined in Section 3623 of
3 this title, in this state, may be paid to the production company
4 responsible for the production. Provided, for documented
5 expenditures made after July 1, 2009, the rebate amount shall be
6 thirty-five percent (35%), except as provided in subsection B of
7 this section.

8 B. The amount of rebate paid to the production company as
9 provided for in subsection A of this section shall be increased by
10 an additional two percent (2%) of documented expenditures if a
11 production company spends at least Twenty Thousand Dollars
12 (\$20,000.00) for the use of music created by an Oklahoma resident
13 that is recorded in Oklahoma or for the cost of recording songs or
14 music in Oklahoma for use in the production.

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

18 D. To be eligible for a rebate payment:

19 1. The production company responsible for a film, television
20 production, or television commercial, as defined in Section 3623 of
21 this title, made in this state shall submit documentation to the
22 Office of the Oklahoma Film and Music Commission of the amount of
23 wages paid for employment in this state to residents of this state
24 directly relating to the production and the amount of other

1 production costs incurred in this state directly relating to the
2 production;

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

5 3. Except major studio productions, the production company
6 shall provide the name of the completion guarantor and a copy of the
7 bond guaranteeing the completion of the project or if a film has not
8 secured a completion bond, the production company shall provide
9 evidence that all Oklahoma crew and local vendors have been paid and
10 there are no liens against the production company pending in the
11 state;

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

15 5. The production company shall provide evidence of financing
16 for production prior to the commencement of principal photography;
17 and

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

23 E. A production company shall not be eligible to receive both a
24 rebate payment pursuant to the provisions of this act and an

1 exemption from sales taxes pursuant to the provisions of ~~paragraph~~
2 ~~21~~ paragraph 23 of Section 1357 of this title. If a production
3 company has received such an exemption from sales taxes and submits
4 a claim for rebate pursuant to the provisions of the Compete with
5 Canada Film Act, the company shall be required to fully repay the
6 amount of the exemption to the Tax Commission. A claim for a rebate
7 shall include documentation from the Tax Commission that repayment
8 has been made as required herein or shall include an affidavit from
9 the production company that the company has not received an
10 exemption from sales taxes pursuant to the provisions of paragraph
11 21 of Section 1357 of this title.

12 F. The Office shall approve or disapprove all claims for rebate
13 and shall notify the Tax Commission. The Tax Commission shall, upon
14 notification of approval from the Office of the Film and Music
15 Commission, issue payment for all approved claims from funds in the
16 Oklahoma Film Enhancement Rebate Program Revolving Fund created in
17 Section 3625 of this title. ~~Provided, no claims for rebate for~~
18 ~~expenditures made on or after July 1, 2009, shall be paid prior to~~
19 ~~July 1, 2010.~~ The Excluding any rebate payments to high impact
20 productions as provided for in subsection G of this section, the
21 amount of payments in any single fiscal year shall not exceed ~~Four~~
22 ~~Million Dollars (\$4,000,000.00)~~ Eight Million Dollars
23 (\$8,000,000.00). If the amount of approved claims exceeds the
24 amount specified in this subsection in a fiscal year, payments shall

1 be made in the order in which the claims are approved by the Office.
2 If an approved claim is not paid in whole or in part, the unpaid
3 claim or unpaid portion may be paid in the following fiscal year
4 subject to the limitations specified in this subsection.

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

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

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

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

19 a. by special appropriation to the Oklahoma Film
20 Enhancement Rebate Program Revolving Fund, if the
21 claim is approved during a regular or special session
22 of the Oklahoma Legislature, or

23 b. by payment from the Oklahoma Quick Action Closing Fund
24 pursuant to Section 48.2 of Title 62 of the Oklahoma

1 Statues, if the claim is approved when the Oklahoma
2 Legislature is not in session.

3 SECTION 4. AMENDATORY 68 O.S. 2011, Section 3625, as
4 amended by Section 568, Chapter 304, O.S.L. 2012 (68 O.S. Supp.
5 2018, Section 3625), is amended to read as follows:

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

21 B. The Oklahoma Tax Commission shall apportion, from the
22 revenues which would otherwise be apportioned to the General Revenue
23 Fund pursuant to subparagraph a of paragraph 1 of Section 2352 of
24 this title, an amount that the Commission estimates to be necessary

1 to pay the rebates provided by Section 3624 of this title to the
2 Oklahoma Film Enhancement Rebate Program Revolving Fund.

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

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

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

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

14 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
15 February 27, 2019 - DO PASS AS AMENDED
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