

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1062

By: Dunnington

6
7 COMMITTEE SUBSTITUTE

8 [rebates - Oklahoma Quick Action Closing Fund -

9 Compete with Canada Film Act - Oklahoma Film

10 Enhancement Rebate Program Revolving Fund -

11 effective date -

12 emergency]

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14
15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 62 O.S. 2011, Section 48.2, as
17 last amended by Section 1, Chapter 144, O.S.L. 2018 (62 O.S. Supp.
18 2018, Section 48.2), is amended to read as follows:

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

- 1 1. All monies apportioned or allocated to the fund pursuant to
2 law;
- 3 2. Any amounts appropriated by the Legislature to the fund;
- 4 3. Interest earned on the investment of money in the fund;
- 5 4. Gifts, grants, and other donations received for the fund;
- 6 and
- 7 5. Five percent (5%) of all funds paid by the Tax Commission to
8 establishments that execute contracts for payment of incentives
9 pursuant to the Oklahoma Quality Jobs Program Act and the 21st
10 Century Quality Jobs Incentive Act if the contract is executed on or
11 after ~~the effective date of this act~~ August 2, 2018.

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

24

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

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

21 1. The number of jobs to be created by a new business
22 establishment;

23 2. The number of jobs to be retained by an existing business
24 establishment;

1 3. The average salary of jobs to be created by a new
2 establishment;

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

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

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

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

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

15 E. The Oklahoma Department of Commerce shall administer the
16 Oklahoma Quick Action Closing Fund, and expenditures from the fund
17 shall be recommended by the Director of the Oklahoma Department of
18 Commerce to the Governor after a thorough evaluation of selected
19 projects or facilities or after a rebate is approved for payment to
20 a high-impact production company pursuant to the provisions of
21 Section 3624 of Title 68 of the Oklahoma Statutes. The Except for
22 rebates approved pursuant to the provisions of Section 3624 of Title
23 68 of the Oklahoma Statutes, the Director of the Oklahoma Department
24 of Commerce shall only recommend expenditures that the Director

1 determines are expected to result in a net economic benefit to the
2 state through the following:

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

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

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

9 4. Additional revenues in either ad valorem, income or sales
10 and use taxes.

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

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

1 final approval of an expenditure on a project pursuant to
2 consultation with the President Pro Tempore of the State Senate and
3 the Speaker of the Oklahoma House of Representatives.

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

8 1. The total amount of funds awarded;

9 2. ~~The~~ Except in the case of a rebate approved for payment to a
10 high-impact production company pursuant to the provisions of Section

11 3624 of Title 68 of the Oklahoma Statutes, the performance
12 conditions that must be met to obtain the award, including, but not
13 limited to, net new employment in the state, average salary, and
14 total capital investment;

15 3. If appropriate, a baseline of current service and measure of
16 enhanced capability;

17 4. The methodology of validating performance;

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

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

1 I. The Department of Commerce shall make available on its
2 website or other website dedicated for this purpose a complete
3 disclosure of all payments made from the Oklahoma Quick Action
4 Closing Fund. The disclosure shall include a description of the
5 expenditures made by the business establishment with the payments
6 made from the fund. No proprietary information of the business
7 establishment shall be subject to the requirements of this
8 subsection.

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

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

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

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

23 b. share with the state a proportionate amount of any
24 profit realized from the sale.

1 K. If, as of the date certain provided in the agreement, the
2 award recipient has not used monies awarded for the intended
3 purposes, the recipient shall repay that amount and any related
4 interest to the state at the agreed rate and on the agreed terms and
5 any such amounts shall be deemed to be held in trust for the benefit
6 of the state and shall be considered as a priority claim for
7 purposes of federal bankruptcy law.

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

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

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

16 1. "Crew" means any person who works on preproduction,
17 principal photography, and postproduction, with the exception of
18 producers, principal cast, screenwriters, and the director. The
19 qualifying salary of producers, principal cast, screenwriters, and
20 the director, also known as "above-the-line personnel", may be
21 included as crew if the salaries are paid to loan-out corporations
22 and limited liability companies registered to do business in the
23 State of Oklahoma or the salaries are paid to Oklahoma-based above-
24 the-line personnel. The qualifying salary of above-the-line

1 personnel shall not comprise more than twenty-five percent (25%) of
2 total expenditures as defined in paragraph 2 of this section. For
3 purposes of this paragraph, "Oklahoma-based" means a company or
4 individual with an Oklahoma income tax requirement;

5 2. "Expenditure" or "production cost" includes but is not
6 limited to:

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

1 Expatriate by the Office of the Oklahoma Film
2 and Music Commission;

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

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

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

21 SECTION 3. AMENDATORY 68 O.S. 2011, Section 3624, as
22 amended by Section 1, Chapter 121, O.S.L. 2017 (68 O.S. Supp. 2018,
23 Section 3624), is amended to read as follows:
24

1 Section 3624. A. There is hereby created the Oklahoma Film
2 Enhancement Rebate Program. A rebate in the amount of up to
3 seventeen percent (17%) of documented expenditures made in Oklahoma
4 directly attributable to the production of a film, television
5 production, or television commercial, as defined in Section 3623 of
6 this title, in this state, may be paid to the production company
7 responsible for the production. Provided, for documented
8 expenditures made after July 1, 2009, the rebate amount shall be
9 thirty-five percent (35%), except as provided in subsection B of
10 this section.

11 B. The amount of rebate paid to the production company as
12 provided for in subsection A of this section shall be increased by
13 an additional two percent (2%) of documented expenditures if a
14 production company spends at least Twenty Thousand Dollars
15 (\$20,000.00) for the use of music created by an Oklahoma resident
16 that is recorded in Oklahoma or for the cost of recording songs or
17 music in Oklahoma for use in the production.

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

21 D. To be eligible for a rebate payment:

22 1. The production company responsible for a film, television
23 production, or television commercial, as defined in Section 3623 of
24 this title, made in this state shall submit documentation to the

1 Office of the Oklahoma Film and Music Commission of the amount of
2 wages paid for employment in this state to residents of this state
3 directly relating to the production and the amount of other
4 production costs incurred in this state directly relating to the
5 production;

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

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

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

18 5. The production company shall provide evidence of financing
19 for production prior to the commencement of principal photography;
20 and

21 6. The production company shall provide evidence of a
22 certificate of general liability insurance with a minimum coverage
23 of One Million Dollars (\$1,000,000.00) and a workers' compensation
24

1 policy pursuant to state law, which shall include coverage of
2 employer's liability.

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

16 F. The Office shall approve or disapprove all claims for rebate
17 and shall notify the Tax Commission. The Tax Commission shall, upon
18 notification of approval from the Office of the Oklahoma Film and
19 Music Commission, issue payment for all approved claims from funds
20 in the Oklahoma Film Enhancement Rebate Program Revolving Fund
21 created in Section 3625 of this title. ~~Provided, no claims for~~
22 ~~rebate for expenditures made on or after July 1, 2009, shall be paid~~
23 ~~prior to July 1, 2010.~~ The Excluding any rebate payments to high-
24 impact productions as provided for in subsection G of this section,

1 the amount of payments in any single fiscal year shall not exceed
2 ~~Four Million Dollars (\$4,000,000.00)~~ Eight Million Dollars
3 (\$8,000,000.00). If the amount of approved claims exceeds the
4 amount specified in this subsection in a fiscal year, payments shall
5 be made in the order in which the claims are approved by the Office.
6 If an approved claim is not paid in whole or in part, the unpaid
7 claim or unpaid portion may be paid in the following fiscal year
8 subject to the limitations specified in this subsection.

9 G. 1. At the time the Office of the Oklahoma Film and Music
10 Commission issues a conditional prequalification for a production,
11 such prequalification may include a proposed designation as a high-
12 impact production, as defined in Section 3623 of this title.

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

15 3. If the high-impact production otherwise meets all of the
16 requirements of the Compete with Canada Film Act and the Office
17 gives final approval to rebate claims, such rebate claims shall not
18 be subject to the eight-million-dollar cap provided for in
19 subsection F of this section.

20 4. The payment of a rebate claim approved by the Office for a
21 production designated as a high-impact production by the Cabinet
22 Secretary shall be made as follows:

23 a. by special appropriation to the Oklahoma Film
24 Enhancement Rebate Program Revolving Fund, if the

1 claim is approved during a regular or special session
2 of the Oklahoma Legislature, or

3 b. by payment from the Oklahoma Quick Action Closing Fund
4 pursuant to Section 48.2 of Title 62 of the Oklahoma
5 Statutes, if the claim is approved when the Oklahoma
6 Legislature is not in session.

7 SECTION 4. AMENDATORY 68 O.S. 2011, Section 3625, as
8 amended by Section 568, Chapter 304, O.S.L. 2012 (68 O.S. Supp.
9 2018, Section 3625), is amended to read as follows:

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

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

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

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

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

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

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