

OK S 200, Enacted

Oklahoma

SUMMARY: Relates to the Quick Action Closing Fund; relates to rebates; relates to the Compete with Canada Act; modifies sources of deposit into the State Film Enhancement Rebate Program Revolving Fund.

Legislative History and Analysis

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status 01/08/2019 PREFILED.

02/04/2019 INTRODUCED.

02/05/2019 To SENATE Committee on FINANCE.

02/19/2019 From SENATE Committee on FINANCE: Do pass as substituted.

02/19/2019 Title Stricken.

02/19/2019 Emergency clause stricken.

02/19/2019 To SENATE Committee on APPROPRIATIONS.

02/27/2019 From SENATE Committee on APPROPRIATIONS: Do pass as substituted.

02/27/2019 Title Stricken.

03/12/2019 Amended on SENATE floor.

03/12/2019 Title restored.

03/12/2019 Passed SENATE. *****To HOUSE.

03/19/2019 To HOUSE Committee on APPROPRIATIONS AND BUDGET.

03/28/2019 From HOUSE Committee on APPROPRIATIONS AND BUDGET: Do pass.

04/25/2019 Amended on HOUSE floor.

04/25/2019 Passed HOUSE. *****To SENATE for concurrence.

05/01/2019 SENATE concurred in HOUSE amendments.

05/01/2019 Referred for Enrollment.

05/02/2019 *****To GOVERNOR.

05/07/2019 Signed by GOVERNOR.

05/08/2019 Chapter No. 313

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session: Oklahoma 1st Regular Session of the 57th Legislature cite: 2019 OK S 200

Enacted

May 7, 2019

Thompson

ENROLLED

SENATE BILL NO. 200

By: Thompson and Floyd of the Senate and

Dunnington, Fetgatter and Mize of the House

An Act relating to rebates; amending 62 O.S. 2011, Section 48.2, as last amended by Section 1, Chapter

144, O.S.L. 2018 (62 O.S. Supp. 2018, Section 48.2), which relates to the Oklahoma Quick Action Closing Fund; updating reference; expanding purpose of Fund to include payments of certain rebates to film and music productions and conforming language; modifying qualifications and criteria related to Oklahoma Quick Action Closing Fund; providing exceptions; deleting termination date; amending 68 O.S. 2011, Sections 3623, 3624, as amended by Section 1, Chapter 121, O.S.L. 2017, 3625, as amended by Section 568, Chapter 304, O.S.L. 2012 and 3626, as amended by Section 1, Chapter 2, O.S.L. 2014 (68 O.S. Supp. 2018, Sections 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 termination date for program; providing an effective date; and declaring an emergency.

SUBJECT: Film rebate administration procedures

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

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

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

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

2. Any amounts appropriated by the Legislature to the fund;
 3. Interest earned on the investment of money in the fund;
 4. Gifts, grants, and other donations received for the fund; and
 5. Five percent (5%) of all funds paid by the Tax Commission to establishments that execute contracts for payment of incentives pursuant to the Oklahoma Quality Jobs Program Act and the 21st Century Quality Jobs Incentive Act if the contract is executed on or after the ~~effective date of this act~~ **August 2, 2018**.
- B. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Governor for the purposes of economic development and related infrastructure development in instances in which expenditure of such funds would likely be a determining factor in locating a high-impact business project or facility in Oklahoma ~~or~~ , in retaining such project or facility within the state **or for payment of rebates to a high impact production pursuant to the Oklahoma Film Enhancement Rebate Program** . Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.
- C. In order to qualify for any funds from the Oklahoma Quick Action Closing Fund, the establishment making application shall be engaged in a business activity described by a North American Industry Classification System (NAICS) Code used to define eligibility for incentive payments from the Oklahoma Quality Jobs Program Act as defined in Section 3603 of Title 68 of the Oklahoma Statutes or a business activity described by Section 3603 of Title 68 of the Oklahoma Statutes or be engaged in a “basic industry” used to define eligibility for incentive payments from the 21st Century Quality Jobs Incentive Act as prescribed by Section 3913 of Title 68 of the Oklahoma Statutes **or a high impact production company which has been approved for a rebate pursuant to the provisions of Section 3624 of Title 68 of the Oklahoma Statutes** .
- D. ~~The~~ **Except in the case of a high impact production company which has been approved for a rebate pursuant to the provisions of Section 3624 of Title 68 of the Oklahoma Statutes, the** Governor shall not approve payments from the Oklahoma Quick Action Closing Fund unless the Department of Commerce has conducted a complete analysis of the potential impact of the applicant's business activity which shall include, but not be limited to:
1. The number of jobs to be created by a new business establishment;
 2. The number of jobs to be retained by an existing business establishment;
 3. The average salary of jobs to be created by a new establishment;
 4. The average salary of jobs to be retained by an existing business establishment;
 5. The total capital investment to be made by the business establishment;

6. The likelihood of other business establishments locating within the same vicinity or within the state as a result of the business activity to be conducted by the entity to receive payments from the Oklahoma Quick Action Closing Fund;
 7. The impact on the economy of the area or community in which the business activity of the applicant is or will be conducted; and
 8. Such other factors as the Governor and the Department of Commerce determine to be relevant.
- E. The Oklahoma Department of Commerce shall administer the Oklahoma Quick Action Closing Fund, and expenditures from the fund shall be recommended by the Director of the Oklahoma Department of Commerce to the Governor after a thorough evaluation of selected projects or facilities **or after a rebate is approved for payment to a high impact production company pursuant to the provisions of Section 3624 of Title 68 of the Oklahoma Statutes** . ~~The~~ **Except for rebates approved pursuant to the provisions of Section 3624 of Title 68 of the Oklahoma Statutes, the** Director of the Oklahoma Department of Commerce shall only recommend expenditures that the Director determines are expected to result in a net economic benefit to the state through the following:
1. The creation of new jobs which offer a basic health benefit plan, as defined in the Oklahoma Quality Jobs Program Act;
 2. The maintenance of existing jobs which are at a risk for termination;
 3. Investment in new real property, plant or equipment or in the improvement or retooling of existing plant or equipment; or
 4. Additional revenues in either ad valorem, income or sales and use taxes.
- F. The Oklahoma Department of Commerce shall develop rules for the process of reviewing proposed expenditures from the Oklahoma Quick Action Closing Fund and for the determination of whether or not proposed expenditures meet the criteria identified in subsection E of this section. Criteria shall include **, but not be limited to,** requirements for economic impact, local participation in the project, capital investment and average wage thresholds.
- G. Upon receipt of an evaluation that recommends an expenditure from the Oklahoma Quick Action Closing Fund from the Director of the Oklahoma Department of Commerce, the Governor shall provide the evaluation and recommendation to the President Pro Tempore of the State Senate and the Speaker of the Oklahoma House of Representatives before giving final approval for the expenditure on the project. The Executive Office of the Governor shall recommend final approval of an expenditure on a project pursuant to consultation with the President Pro Tempore of the State Senate and the Speaker of the Oklahoma House of Representatives.
- H. Upon approval by the Governor, the Oklahoma Department of Commerce shall enter into an agreement that sets forth the conditions for payment of monies from the Oklahoma Quick Action Closing Fund. The agreement must include:

1. The total amount of funds awarded;
 2. ~~The~~ ***Except in the case of a rebate approved for payment to a high impact production company pursuant to the provisions of Section 3624 of Title 68 of the Oklahoma Statutes, the*** performance conditions that must be met to obtain the award ~~—~~ including, but not limited to, net new employment in the state, average salary, and total capital investment;
 3. If appropriate, a baseline of current service and measure of enhanced capability;
 4. The methodology of validating performance;
 5. The schedule of payments from the fund, and claw-back provisions for failure to meet performance conditions; and
 6. A requirement that no monies paid from the Oklahoma Quick Action Closing Fund shall be used by a recipient or any other person or entity for purposes of any political contribution to or on behalf of any candidate or for the support of or opposition to any measure including but not limited to an initiative petition or referendum.
- I. The Department of Commerce shall make available on its website or other website dedicated for this purpose a complete disclosure of all payments made from the Oklahoma Quick Action Closing Fund. The disclosure shall include a description of the expenditures made by the business establishment with the payments made from the fund. No proprietary information of the business establishment shall be subject to the requirements of this subsection.
 - J. If any or all of the amount to be awarded is used to build a capital improvement, ***except in the case of an amount approved for payment to a high impact production company pursuant to the provisions of Section 3624 of Title 68 of the Oklahoma Statutes :***
 1. The funds used for the capital improvement shall be deemed to be held in trust for the benefit of the state and shall be considered as a priority claim for purposes of federal bankruptcy law; and
 2. If the capital improvement is sold, the recipient of the award shall:
 - a. repay the state the money awarded to pay for the capital improvement, with interest at the rate and according to the other terms provided by the agreement, and
 - b. share with the state a proportionate amount of any profit realized from the sale.
 - K. If, as of the date certain provided in the agreement, the award recipient has not used monies awarded for the intended purposes, the recipient shall repay that amount and any related interest to the state at the agreed rate and on the agreed terms and any such amounts shall be deemed to be held in trust for the benefit of the state and shall be considered as a priority claim for purposes of federal bankruptcy law.

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

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

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

1. "Crew" means any person who works on preproduction, principal photography, and postproduction, with the exception of producers, principal cast, screenwriters, and the director. The qualifying salary of producers, principal cast, screenwriters, and the director, also known as "above-the-line personnel", may be included as crew if the salaries are paid to loan-out corporations and limited liability companies registered to do business in the State of Oklahoma or the salaries are paid to Oklahoma-based above-the-line personnel. The qualifying salary of above-the-line personnel shall not comprise more than twenty-five percent (25%) of total expenditures as defined in paragraph 2 of this section. For purposes of this paragraph, "Oklahoma-based" means a company or individual with an Oklahoma income tax requirement;
2. "Expenditure" or "production cost" includes but is not limited to:
 - a. wages or salaries of persons who are residents of this state and who have earned income from working on a film in this state, including payments to personal services corporations with respect to the services of qualified performing artists, as determined under Section 62(a)(A) of the Internal Revenue Code,
 - b. the cost of construction and operations, wardrobe, accessories and related services,
 - c. the cost of photography, sound synchronization, lighting and related services,
 - d. the cost of editing and related services,
 - e. rental of facilities and equipment,
 - f. other direct costs of producing a film, and
 - g. the wages and salaries of persons who are defined and registered as an Oklahoma Expatriate by the Office of the Oklahoma Film and Music Commission;
3. "Film" means a professional single media, multimedia program or feature, which is not child pornography as defined in subsection A of Section 1024.1 of Title 21 of the Oklahoma Statutes or obscene material as defined in paragraph 1 of subsection B of Section 1024.1 of Title 21 of the Oklahoma Statutes, including, but not limited to, national advertising messages that are broadcast on a national affiliate or cable network, fixed on film or digital video, which can be viewed or reproduced and which is exhibited in theaters, licensed for exhibition by individual television stations, groups of stations, networks, cable television stations or other means or licensed for home viewing markets; ~~and~~

4. ***“High impact production” means a production for which total expenditures or production costs are equal to or greater than Fifty Million Dollars (\$50,000,000.00), with at least one-third (1/3) of total costs deemed Oklahoma expenditures by the Office of the Oklahoma Film and Music Commission; and***
5. “Production company” means a person or company who produces film for exhibition in theaters, on television or elsewhere.

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

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

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

C. The rebate program shall be administered by the Office of the Oklahoma Film and Music Commission and the Oklahoma Tax Commission, as provided in the Compete with Canada Film Act. D. To be eligible for a rebate payment:

1. The production company responsible for a film, television production, or television commercial, as defined in Section 3623 of this title, made in this state shall submit documentation to the Office of the Oklahoma Film and Music Commission of the amount of wages paid for employment in this state to residents of this state directly relating to the production and the amount of other production costs incurred in this state directly relating to the production;
2. The production company has filed or will file any Oklahoma tax return or tax document which may be required by law;
3. Except major studio productions, the production company shall provide the name of the completion guarantor and a copy of the bond guaranteeing the completion of the project or if a film has not secured a completion bond, the production company shall provide evidence that all Oklahoma crew and local vendors have been paid and there are no liens against the production company pending in the state;
4. The minimum budget for the film shall be Fifty Thousand Dollars (\$50,000.00) of which not less than Twenty five Thousand Dollars (\$25,000.00) shall be expended in this state;

5. The production company shall provide evidence of financing for production prior to the commencement of principal photography; and
 6. The production company shall provide evidence of a certificate of general liability insurance with a minimum coverage of One Million Dollars (\$1,000,000.00) and a workers' compensation policy pursuant to state law, which shall include coverage of employer's liability.
- E. A production company shall not be eligible to receive both a rebate payment pursuant to the provisions of this act and an exemption from sales taxes pursuant to the provisions of ~~paragraph 21~~ **paragraph 23** of Section 1357 of this title. If a production company has received such an exemption from sales taxes and submits a claim for rebate pursuant to the provisions of the Compete with Canada Film Act, the company shall be required to fully repay the amount of the exemption to the Tax Commission. A claim for a rebate shall include documentation from the Tax Commission that repayment has been made as required herein or shall include an affidavit from the production company that the company has not received an exemption from sales taxes pursuant to the provisions of paragraph 21 of Section 1357 of this title.
- F. The Office shall approve or disapprove all claims for rebate and shall notify the Tax Commission. The Tax Commission shall, upon notification of approval from the Office of the Film and Music Commission, issue payment for all approved claims from funds in the Oklahoma Film Enhancement Rebate Program Revolving Fund created in Section 3625 of this title. ~~Provided, no claims for rebate for expenditures made on or after July 1, 2009, shall be paid prior to July 1, 2010. The~~ **Excluding any rebate payments to high impact productions as provided for in subsection G of this section, the** amount of payments in any single fiscal year shall not exceed ~~Four Million Dollars (\$4,000,000.00)~~ **Eight Million Dollars (\$8,000,000.00)** . If the amount of approved claims exceeds the amount specified in this subsection in a fiscal year, payments shall be made in the order in which the claims are approved by the Office. If an approved claim is not paid in whole or in part, the unpaid claim or unpaid portion may be paid in the following fiscal year subject to the limitations specified in this subsection.
- G. **1. At the time the Office of the Film and Music Commission issues a conditional prequalification for a production, such prequalification may include a proposed designation as a high impact production, as defined in Section 3623 of this title.**
- 2. The proposed designation must be approved by the Cabinet Secretary for Commerce and Tourism.**
- 3. If the high impact production otherwise meets all of the requirements of the Compete With Canada Act and the Office gives final approval to rebate claims, such rebate claims shall not be subject to the Eight Million Dollar (\$8,000,000.00) cap provided for in subsection F of this section.**
- 4. The payment of a rebate claim approved by the Office for a production designated as a high impact production by the Cabinet Secretary may be made as follows:**

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

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

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

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

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

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

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

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

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