

1 **MOTION PICTURE INCENTIVES AMENDMENTS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gregory H. Hughes**

5 Senate Sponsor: Wayne L. Niederhauser

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions of the Motion Picture Incentive Account regarding
10 definitions, the issuance of tax credit certificates, and the ceiling on incentives granted
11 to a motion picture company or digital media company.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ provides that money in the Motion Picture Incentive Account is nonlapsing;
- 15 ▶ modifies the definition of state-approved production and defines digital media
16 company, digital media project, and new state revenues;
- 17 ▶ provides that the Governor's Office of Economic Development may issue tax credit
18 certificates annually as incentives for motion picture productions and digital media
19 projects within the state;
- 20 ▶ provides for carryover of an amount of tax credit certificates equal to the amount
21 not issued by the office in a given fiscal year;
- 22 ▶ provides that the office shall make rules establishing criteria for determining the
23 amount of the incentive;
- 24 ▶ increases the ceiling on an incentive granted to a motion picture company from 20%
25 to up to 25% of the dollars left in the state by the company; and
- 26 ▶ makes certain technical changes.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **63J-1-602.4**, as enacted by Laws of Utah 2010, Chapter 265

34 **63M-1-1802**, as last amended by Laws of Utah 2010, Chapter 278

35 **63M-1-1803**, as last amended by Laws of Utah 2010, Chapters 151, 278 and last
36 amended by Coordination Clause, Laws of Utah 2010, Chapter 278

37 **63M-1-1804**, as last amended by Laws of Utah 2010, Chapter 278



39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **63J-1-602.4** is amended to read:

41 **63J-1-602.4. List of nonlapsing funds and accounts -- Title 61 through Title 63M.**

42 (1) The Utah Housing Opportunity Restricted Account created in Section 61-2-204.

43 (2) Funds paid to the Division of Real Estate for the cost of a criminal background
44 check for a mortgage loan license, as provided in Section 61-2c-202.

45 (3) Funds paid to the Division of Real Estate for the cost of a criminal background
46 check for principal broker, associate broker, and sales agent licenses, as provided in Section
47 61-2f-204.

48 (4) Certain funds donated to the Department of Human Services, as provided in
49 Section 62A-1-111.

50 (5) Certain funds donated to the Division of Child and Family Services, as provided in
51 Section 62A-4a-110.

52 (6) Appropriations to the Division of Services for People with Disabilities, as provided
53 in Section 62A-5-102.

54 (7) Certain donations to the Division of Substance Abuse and Mental Health, as
55 provided in Section 62A-15-103.

56 (8) Assessments for DUI violations that are forwarded to an account created by a
57 county treasurer, as provided in Section 62A-15-503.

- 58 (9) The Risk Management Fund created under Section 63A-4-201.
- 59 (10) The Child Welfare Parental Defense Fund created in Section 63A-11-203.
- 60 (11) The Constitutional Defense Restricted Account created in Section 63C-4-103.
- 61 (12) A portion of the funds appropriated to the Utah Seismic Safety Commission, as
62 provided in Section 63C-6-104.
- 63 (13) Funding for the Medical Education Program administered by the Medical
64 Education Council, as provided in Section 63C-8-102.
- 65 (14) Certain money payable for commission expenses of the Pete Suazo Utah Athletic
66 Commission, as provided under Section 63C-11-301.
- 67 (15) Funds collected for publishing the Division of Administrative Rules' publications,
68 as provided in Section 63G-3-402.
- 69 (16) Money received by the military installation development authority, as provided in
70 Section 63H-1-504.
- 71 (17) The appropriation to fund the Governor's Office of Economic Development's
72 Enterprise Zone Act, as provided in Section 63M-1-416.
- 73 (18) The Tourism Marketing Performance Account, as provided in Section
74 63M-1-1406.
- 75 (19) The Motion Picture Incentive Account created in Section 63M-1-1803.
- 76 [~~19~~] (20) Certain money in the Development for Disadvantaged Rural Communities
77 Restricted Account, as provided in Section 63M-1-2003.
- 78 [~~20~~] (21) Appropriations to the Utah Science Technology and Research Governing
79 Authority, created under Section 63M-2-301, as provided under Section 63M-2-302.
- 80 [~~21~~] (22) Certain money in the Rural Broadband Service Account, as provided in
81 Section 63M-1-2303.
- 82 Section 2. Section **63M-1-1802** is amended to read:
83 **63M-1-1802. Definitions.**
84 As used in this part:
85 (1) "Board" means the Governor's Office of Economic Development Board.

86 (2) "Digital media company" means a company engaged in the production of a digital
87 media project.

88 (3) "Digital media project" means all or part of a production of interactive
89 entertainment or animated production that is produced for distribution in commercial or
90 educational markets, which shall include projects intended for Internet or wireless distribution.

91 ~~(2)~~ (4) "Dollars left in the state" means expenditures made in the state for a
92 state-approved production, including:

93 (a) an expenditure that is subject to:

94 (i) a corporate franchise or income tax under Title 59, Chapter 7, Corporate Franchise
95 and Income Taxes;

96 (ii) an individual income tax under Title 59, Chapter 10, Individual Income Tax Act;
97 and

98 (iii) a sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act,
99 notwithstanding any sales and use tax exemption allowed by law; or

100 ~~(iv)~~ (iv) a combination of Subsections (4)(a)(i), (ii), and (iii);

101 (b) payments made to a nonresident only to the extent of the income tax paid to the
102 state on the payments, the amount of per diems paid in the state, and other direct
103 reimbursements transacted in the state; and

104 (c) payments made to a payroll company or loan-out corporation that is registered to do
105 business in the state, only to the extent of the amount of withholding under Section 59-10-402.

106 ~~(3)~~ (5) "Loan-out corporation" means a corporation owned by one or more artists that
107 provides services of the artists to a third party production company.

108 ~~(4)~~ (6) "Motion picture company" means a company engaged in the production of:

109 (a) motion pictures;

110 (b) television series; or

111 (c) made-for-television movies.

112 ~~(5)~~ (7) "Motion picture incentive" means either a cash rebate from the Motion Picture
113 Incentive Account or a refundable tax credit under Section 59-7-614.5 or 59-10-1108.

114 (8) "New state revenues" means:

115 (a) incremental new state sales and use tax revenues generated as a result of a digital
116 media project that a digital media company pays under Title 59, Chapter 12, Sales and Use Tax
117 Act;

118 (b) incremental new state tax revenues that a digital media company pays as a result of
119 a digital media project under:

120 (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

121 (ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and
122 Information;

123 (iii) Title 59, Chapter 10, Part 2, Trusts and Estates;

124 (iv) Title 59, Chapter 10, Part 4, Withholding of Tax; or

125 (v) a combination of Subsections (8)(b)(i), (ii), (iii), and (iv);

126 (c) incremental new state revenues generated as individual income taxes under Title
127 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, paid by
128 employees of the new digital media project as evidenced by payroll records from the digital
129 media company; or

130 (d) a combination of Subsections (8)(a), (b), and (c).

131 ~~[(6)]~~ (9) "Office" means the Governor's Office of Economic Development.

132 ~~[(7)]~~ (10) "Payroll company" means a business entity that handles the payroll and
133 becomes the employer of record for the staff, cast, and crew of a motion picture production.

134 ~~[(8)]~~ (11) "Refundable tax credit" means a refundable motion picture tax credit
135 authorized under Section 63M-1-1803 and claimed under Section 59-7-614.5 or 59-10-1108.

136 ~~[(9)]~~ (12) "Restricted account" means the Motion Picture Incentive Account created in
137 Section 63M-1-1803.

138 ~~[(10)]~~ (13) "State-approved production" means a ~~[motion picture, television series, or~~
139 ~~made-for-television movie]~~ production under Subsections (3) and (6) that is:

140 (a) approved by the ~~[administrator]~~ office and ratified by the board ~~[that is]; and~~

141 (b) produced in the state by a motion picture company.

142 ~~[(11)]~~ (14) "Tax credit amount" means the amount the office lists as a tax credit on a
143 tax credit certificate for a taxable year.

144 ~~[(12)]~~ (15) "Tax credit certificate" means a certificate issued by the office that:

- 145 (a) lists the name of the applicant;
- 146 (b) lists the applicant's taxpayer identification number;
- 147 (c) lists the amount of tax credit that the office awards the applicant for the taxable
148 year; and
- 149 (d) may include other information as determined by the office.

150 Section 3. Section **63M-1-1803** is amended to read:

151 **63M-1-1803. Motion Picture Incentive Account created -- Cash rebate incentives**
152 **-- Refundable tax credit incentives.**

153 (1) (a) There is created within the General Fund a restricted account known as the
154 Motion Picture Incentive Account, which the office shall ~~[be used]~~ use to provide cash rebate
155 incentives for~~[:]~~ state-approved productions by a motion picture company.

- 156 ~~[(i) within-the-state production of television series;]~~
- 157 ~~[(ii) made-for-television movies; and]~~
- 158 ~~[(iii) motion pictures, including feature films and independent films.]~~

159 (b) All interest generated from investment of money in the restricted account shall be
160 deposited in the restricted account.

161 (c) The restricted account shall consist of an annual appropriation by the Legislature.

162 (d) The office shall:

- 163 (i) with the advice of the board, administer the restricted account; and
- 164 (ii) make payments from the restricted account as required under this section.

165 ~~(e) The cost of administering the restricted account shall be paid from money in the~~
166 restricted account.

167 (2) (a) A motion picture company or digital media company seeking disbursement of
168 an incentive allowed under an agreement with the office shall follow the procedures and
169 requirements of this Subsection (2).

170 (b) ~~(f)~~ The motion picture company or digital media company shall provide the office
171 with a report identifying and documenting the dollars left in the state or new state revenues
172 generated by the motion picture company or digital media company for its state-approved
173 production, including any related tax returns by the motion picture company, payroll company,
174 digital media company, or loan-out corporation under Subsection (2)~~(c)~~(d).

175 ~~(ii) An~~ (c) For a motion picture company, an independent certified public accountant
176 shall:

177 ~~(A)~~ (i) review the report submitted by the motion picture company; and

178 ~~(B)~~ (ii) attest to the accuracy and validity of the report, including the amount of
179 dollars left in the state.

180 ~~(c)~~ (d) The motion picture company, digital media company, payroll company, or
181 loan-out corporation shall provide the office with a document that expressly directs and
182 authorizes the State Tax Commission to disclose the entity's tax returns and other information
183 concerning the entity that would otherwise be subject to confidentiality under Section 59-1-403
184 or Section 6103, Internal Revenue Code, to the office.

185 ~~(d)~~ (e) The office shall submit the document described in Subsection (2)~~(c)~~(d) to the
186 State Tax Commission.

187 ~~(e)~~ (f) Upon receipt of the document described in Subsection (2)~~(c)~~(d), the State
188 Tax Commission shall provide the office with the information requested by the office that the
189 motion picture company, digital media company, payroll company, or loan-out corporation
190 directed or authorized the State Tax Commission to provide to the office in the document
191 described in Subsection (2)~~(c)~~(d).

192 ~~(f)~~ (g) Subject to Subsection (3), for a motion picture company the office shall:

193 (i) review the report from the motion picture company described in Subsection (2)(b)
194 and verify that it was reviewed by an independent certified public accountant as described in
195 Subsection (2)(c); and

196 (ii) based upon the certified public accountant's attestation under Subsection
197 (2)~~(b)~~(c), determine the amount of the incentive that the motion picture company is entitled to

198 under its agreement with the office.

199 (h) Subject to Subsection (3), for a digital media company, the office shall:

200 (i) ensure the digital media project results in new state revenue; and

201 (ii) based upon review of new state revenue, determine the amount of the incentive that

202 a digital media company is entitled to under its agreement with the office.

203 ~~[(g)]~~ (i) Subject to Subsection (3), if the incentive is in the form of a cash rebate, the
204 office shall pay the incentive from the restricted account to the motion picture company,
205 notwithstanding Subsections 51-5-3(23)(b) and 63J-1-104(4)(c).

206 ~~[(h)]~~ (j) If the incentive is in the form of a refundable tax credit under Section
207 59-7-614.5 or 59-10-1108, the office shall:

208 (i) issue a tax credit certificate to the motion picture company or digital media
209 company; and

210 (ii) provide a duplicate copy of the tax credit certificate to the State Tax Commission.

211 ~~[(i)]~~ (k) A motion picture company or digital media company may not claim a motion
212 picture tax credit under Section 59-7-614.5 or 59-10-1108 unless the motion picture company
213 or digital media company has received a tax credit certificate for the claim issued by the office
214 under Subsection (2)~~[(h)]~~(j)(i).

215 ~~[(j)]~~ (l) A motion picture company or digital media company may claim a motion
216 picture tax credit on its tax return for the amount listed on the tax credit certificate issued by
217 the office.

218 ~~[(k)]~~ (m) A motion picture company or digital media company that claims a tax credit
219 under Subsection (2)~~[(j)]~~(l) shall retain the tax credit certificate and all supporting
220 documentation in accordance with Subsection 63M-1-1804~~[(5)(d)]~~(6).

221 (3) (a) Subject to Subsection (3)(b), the office may issue ~~[up to: (i) (A) \$7,793,700]~~
222 \$6,793,700 in tax credit certificates under this part in a fiscal year ~~[2009-10; and].~~

223 ~~[(B) \$7,793,700 in tax credit certificates under this part in fiscal year 2010-11; and]~~

224 ~~[(ii) \$2,206,300 in motion picture cash rebates under this part in a fiscal year.]~~

225 ~~[(b) If the total amount of tax credit certificates the office issues in a fiscal year is less~~

226 ~~than the amount of tax credit certificates the office may issue in that fiscal year under~~
 227 ~~Subsection (3)(a)(i)(A) or (B), the office may issue the remaining amount of tax credit~~
 228 ~~certificates in a fiscal year after the fiscal year for which there is a remaining amount of tax~~
 229 ~~credit certificates.]~~

230 ~~[(c) Notwithstanding any other provision of this part or Section 59-7-614.5 or~~
 231 ~~59-10-1108, beginning on July 1, 2011, the office may not issue a tax credit certificate unless:]~~

232 ~~[(i) the Legislature expressly provides funding in the office's budget for the office to~~
 233 ~~issue the tax credit certificate; or]~~

234 ~~[(ii) there is a remaining amount of tax credit that the office may issue in accordance~~
 235 ~~with Subsection (3)(b).]~~

236 (b) If the office does not issue tax credit certificates in a fiscal year totaling the amount
 237 authorized under Subsection (3)(a), it may carry over that amount for issuance in subsequent
 238 fiscal years.

239 Section 4. Section **63M-1-1804** is amended to read:

240 **63M-1-1804. Motion picture incentives -- Standards to qualify for an incentive --**
 241 **Limitations -- Content of agreement between office and motion picture company or**
 242 **digital media company.**

243 (1) In addition to the requirements for receiving a motion picture incentive as set forth
 244 in this part, the office, in accordance with Title 63G, Chapter 3, Utah Administrative
 245 Rulemaking Act, shall make rules establishing:

246 (a) the standards that a motion picture company or digital media company must meet to
 247 qualify for the motion picture incentive[;]; and

248 (b) criteria for determining the amount of the incentive.

249 (2) The office shall ensure that those standards include the following:

250 (a) an incentive may only be issued for a [~~within the state~~] state approved production
 251 [of:] by a motion picture company or digital media company;

252 ~~[(i) a television series;]~~

253 ~~[(ii) a made-for-television movie; or]~~

254 ~~[(iii) a motion picture, including feature films and independent films;]~~
255 (b) financing has been obtained and is in place for the production; and
256 (c) the economic impact of the production on the state represents new incremental
257 economic activity in the state as opposed to existing economic activity.

258 (3) With respect to a digital media project, the office shall consider economic
259 modeling, including the costs and benefits of the digital media project to state and local
260 governments in determining the motion picture incentive amount.

261 ~~[(3)]~~ (4) The office may also consider giving preference to a production that stimulates
262 economic activity in rural areas of the state or that has Utah content, such as recognizing that
263 the production was made in the state or uses Utah as Utah in the production.

264 ~~[(4)]~~ (5) (a) The office, with advice from the board, may enter into an agreement with a
265 motion picture company or digital media company that meets the standards established under
266 this section and satisfies the other qualification requirements under this part.

267 (b) Subject to Subsection 63M-1-1803(3), the office may commit or authorize a motion
268 picture incentive;

269 (i) to a motion picture company ~~[if that incentive does not exceed]~~ of up to 20% of the
270 dollars left in the state by the motion picture company~~[-]~~, and a motion picture company can
271 receive an additional 5%, not to exceed 25% of the dollars left in the state by the motion
272 picture company if the company fulfills certain requirements determined by the office
273 including:

274 (A) employing a significant percentage of cast and crew from Utah;

275 (B) highlighting the state of Utah and the Utah Film Commission in the motion picture
276 credits; or

277 (C) other promotion opportunities as agreed upon by the office and the motion picture
278 company; and

279 (ii) to a digital media company, if the incentive does not exceed 100% of the new state
280 revenue less the considerations under Subsection (3), but not to exceed 20% of the dollars left
281 in the state by the digital media company.

282 (c) A cash rebate incentive from the Motion Picture Incentive Restricted Account may
283 not exceed \$500,000 per state approved production for a motion picture project.

284 (d) The office may not give a cash rebate incentive from the Motion Picture Incentive
285 Restricted Account for a digital media project.

286 [~~5~~] (6) The office shall ensure that the agreement entered into with a motion picture
287 company or digital media company under Subsection [~~4~~] (5)(a):

288 (a) details the requirements that the motion picture company or digital media company
289 must meet to qualify for an incentive under this part;

290 (b) specifies:

291 (i) the nature of the incentive; and

292 (ii) the maximum amount of the motion picture incentive that the motion picture
293 company or digital media company may earn for a taxable year and over the life of the
294 production;

295 (c) establishes the length of time over which the motion picture company or digital
296 media company may claim the motion picture incentive;

297 (d) requires the motion picture company or digital media company to retain records
298 supporting its claim for a motion picture incentive for at least four years after the motion
299 picture company or digital media company claims the incentive under this part; and

300 (e) requires the motion picture company or digital media company to submit to audits
301 for verification of the claimed motion picture incentive.