

**MOTION PICTURE INCENTIVES AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gregory H. Hughes**

Senate Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ provides that money in the Motion Picture Incentive Account is nonlapsing;
- ▶ modifies the definition of state-approved production;
- ▶ provides that the Governor's Office of Economic Development may issue tax credit certificates annually as incentives for motion picture productions within the state;
- ▶ provides for carryover of an amount of tax credit certificates equal to the amount not issued by the office in a given fiscal year;
- ▶ provides that the office shall make rules establishing criteria for determining the amount of the incentive;
- ▶ increases the ceiling on an incentive granted to a motion picture company from 20% to 30% of the dollars left in the state by the company; and
- ▶ makes certain technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **63J-1-602.4**, as enacted by Laws of Utah 2010, Chapter 265

32 **63M-1-1802**, as last amended by Laws of Utah 2010, Chapter 278

33 **63M-1-1803**, as last amended by Laws of Utah 2010, Chapters 151, 278 and last  
34 amended by Coordination Clause, Laws of Utah 2010, Chapter 278

35 **63M-1-1804**, as last amended by Laws of Utah 2010, Chapter 278



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

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

39 **63J-1-602.4. List of nonlapsing funds and accounts -- Title 61 through Title 63M.**

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

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

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

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

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

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

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

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

56 (9) The Risk Management Fund created under Section 63A-4-201.

57 (10) The Child Welfare Parental Defense Fund created in Section 63A-11-203.

58 (11) The Constitutional Defense Restricted Account created in Section 63C-4-103.

59 (12) A portion of the funds appropriated to the Utah Seismic Safety Commission, as  
60 provided in Section 63C-6-104.

61 (13) Funding for the Medical Education Program administered by the Medical  
62 Education Council, as provided in Section 63C-8-102.

63 (14) Certain money payable for commission expenses of the Pete Suazo Utah Athletic  
64 Commission, as provided under Section 63C-11-301.

65 (15) Funds collected for publishing the Division of Administrative Rules' publications,  
66 as provided in Section 63G-3-402.

67 (16) Money received by the military installation development authority, as provided in  
68 Section 63H-1-504.

69 (17) The appropriation to fund the Governor's Office of Economic Development's  
70 Enterprise Zone Act, as provided in Section 63M-1-416.

71 (18) The Tourism Marketing Performance Account, as provided in Section  
72 63M-1-1406.

73 (19) The Motion Picture Incentive Account created in Section 63M-1-1803.

74 [~~19~~] (20) Certain money in the Development for Disadvantaged Rural Communities  
75 Restricted Account, as provided in Section 63M-1-2003.

76 [~~20~~] (21) Appropriations to the Utah Science Technology and Research Governing  
77 Authority, created under Section 63M-2-301, as provided under Section 63M-2-302.

78 [~~21~~] (22) Certain money in the Rural Broadband Service Account, as provided in  
79 Section 63M-1-2303.

80 Section 2. Section **63M-1-1802** is amended to read:

81 **63M-1-1802. Definitions.**

82 As used in this part:

83 (1) "Board" means the Governor's Office of Economic Development Board.

84 (2) "Dollars left in the state" means expenditures made in the state for a state-approved  
85 production, including:

86 (a) an expenditure that is subject to:

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

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

90 and

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

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

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

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

100 (4) "Motion picture company" means a company engaged in the production of:

101 (a) motion pictures;

102 (b) television series; or

103 (c) made-for-television movies.

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

106 (6) "Office" means the Governor's Office of Economic Development.

107 (7) "Payroll company" means a business entity that handles the payroll and becomes  
108 the employer of record for the staff, cast, and crew of a motion picture production.

109 (8) "Refundable tax credit" means a refundable motion picture tax credit authorized  
110 under Section 63M-1-1803 and claimed under Section 59-7-614.5 or 59-10-1108.

111 (9) "Restricted account" means the Motion Picture Incentive Account created in  
112 Section 63M-1-1803.

113 (10) "State-approved production" means a [~~motion picture, television series, or~~  
114 ~~made-for-television movie~~] production under Subsection (4) that is:

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

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

117 (11) "Tax credit amount" means the amount the office lists as a tax credit on a tax  
118 credit certificate for a taxable year.

119 (12) "Tax credit certificate" means a certificate issued by the office that:

120 (a) lists the name of the applicant;

- 121 (b) lists the applicant's taxpayer identification number;
- 122 (c) lists the amount of tax credit that the office awards the applicant for the taxable
- 123 year; and
- 124 (d) may include other information as determined by the office.

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

126 **63M-1-1803. Motion Picture Incentive Account created -- Cash rebate incentives**  
 127 **-- Refundable tax credit incentives.**

128 (1) (a) There is created within the General Fund a restricted account known as the  
 129 Motion Picture Incentive Account, which the office shall ~~[be used]~~ use to provide cash rebate  
 130 incentives for~~[-]~~ state-approved productions.

131 ~~[(i) within-the-state production of television series;]~~

132 ~~[(ii) made-for-television movies; and]~~

133 ~~[(iii) motion pictures, including feature films and independent films.]~~

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

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

137 (d) The office shall:

138 (i) with the advice of the board, administer the restricted account; and

139 (ii) make payments from the restricted account as required under this section.

140 (e) The cost of administering the restricted account shall be paid from money in the  
 141 restricted account.

142 (2) (a) A motion picture company seeking disbursement of an incentive allowed under  
 143 an agreement with the office shall follow the procedures and requirements of this Subsection  
 144 (2).

145 (b) (i) The motion picture company shall provide the office with a report identifying  
 146 and documenting the dollars left in the state by the motion picture company for its  
 147 state-approved production, including any related tax returns by the motion picture company,  
 148 payroll company, or loan-out corporation under Subsection (2)(c).

149 (ii) An independent certified public accountant shall:

150 (A) review the report submitted by the motion picture company; and

151 (B) attest to the accuracy and validity of the report, including the amount of dollars left

152 in the state.

153 (c) The motion picture company, payroll company, or loan-out corporation shall  
154 provide the office with a document that expressly directs and authorizes the State Tax  
155 Commission to disclose the entity's tax returns and other information concerning the entity that  
156 would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal  
157 Revenue Code, to the office.

158 (d) The office shall submit the document described in Subsection (2)(c) to the State  
159 Tax Commission.

160 (e) Upon receipt of the document described in Subsection (2)(c), the State Tax  
161 Commission shall provide the office with the information requested by the office that the  
162 motion picture company, payroll company, or loan-out corporation directed or authorized the  
163 State Tax Commission to provide to the office in the document described in Subsection (2)(c).

164 (f) Subject to Subsection (3), the office shall:

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

167 (ii) based upon the certified public accountant's attestation under Subsection (2)(b),  
168 determine the amount of the incentive that the motion picture company is entitled to under its  
169 agreement with the office.

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

173 (h) If the incentive is in the form of a refundable tax credit under Section 59-7-614.5 or  
174 59-10-1108, the office shall:

175 (i) issue a tax credit certificate to the motion picture company; and

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

177 (i) A motion picture company may not claim a motion picture tax credit under Section  
178 59-7-614.5 or 59-10-1108 unless the motion picture company has received a tax credit  
179 certificate for the claim issued by the office under Subsection (2)(h)(i).

180 (j) A motion picture company may claim a motion picture tax credit on its tax return  
181 for the amount listed on the tax credit certificate issued by the office.

182 (k) A motion picture company that claims a tax credit under Subsection (2)(j) shall

183 retain the tax credit certificate in accordance with Subsection 63M-1-1804(5)(d).

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

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

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

188 [~~(b) If the total amount of tax credit certificates the office issues in a fiscal year is less  
189 than the amount of tax credit certificates the office may issue in that fiscal year under  
190 Subsection (3)(a)(i)(A) or (B), the office may issue the remaining amount of tax credit  
191 certificates in a fiscal year after the fiscal year for which there is a remaining amount of tax  
192 credit certificates.]~~

193 [~~(c) Notwithstanding any other provision of this part or Section 59-7-614.5 or  
194 59-10-1108, beginning on July 1, 2011, the office may not issue a tax credit certificate unless:]~~

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

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

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

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

203 **63M-1-1804. Motion picture incentives -- Standards to qualify for an incentive --**  
204 **Limitations -- Content of agreement between office and motion picture company.**

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

208 (a) the standards that a motion picture company must meet to qualify for the motion  
209 picture incentive[-]; and

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

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

212 (a) an incentive may only be issued for a within-the-state production of:

213 (i) a television series;

214 (ii) a made-for-television movie; or  
215 (iii) a motion picture, including feature films and independent films;  
216 (b) financing has been obtained and is in place for the production; and  
217 (c) the economic impact of the production on the state represents new incremental  
218 economic activity in the state as opposed to existing economic activity.

219 (3) The office may also consider giving preference to a production that stimulates  
220 economic activity in rural areas of the state or that has Utah content, such as recognizing that  
221 the production was made in the state or uses Utah as Utah in the production.

222 (4) (a) The office, with advice from the board, may enter into an agreement with a  
223 motion picture company that meets the standards established under this section and satisfies the  
224 other qualification requirements under this part.

225 (b) Subject to Subsection 63M-1-1803(3), the office may commit or authorize a motion  
226 picture incentive to a motion picture company if that incentive does not exceed [~~20%~~] 30% of  
227 the dollars left in the state by the motion picture company.

228 (c) A cash rebate incentive from the Motion Picture Incentive Restricted Account may  
229 not exceed \$500,000 per production.

230 (5) The office shall ensure that the agreement entered into with a motion picture  
231 company under Subsection (4)(a):

232 (a) details the requirements that the motion picture company must meet to qualify for  
233 an incentive under this part;

234 (b) specifies:

235 (i) the nature of the incentive; and

236 (ii) the maximum amount of the motion picture incentive that the motion picture  
237 company may earn for a taxable year and over the life of the production;

238 (c) establishes the length of time over which the motion picture company may claim  
239 the motion picture incentive;

240 (d) requires the motion picture company to retain records supporting its claim for a  
241 motion picture incentive for at least four years after the motion picture company claims the  
242 incentive under this part; and

243 (e) requires the motion picture company to submit to audits for verification of the  
244 claimed motion picture incentive.



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**Legislative Review Note**  
**as of 11-30-10 2:00 PM**

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 99

SHORT TITLE: Motion Picture Incentives Amendments

SPONSOR: Hughes, G.

2011 GENERAL SESSION, STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill could reduce the Education Fund by \$7,793,700 annually. Unused amounts are carried forward for use in subsequent years.

### STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue:			
Education Fund	\$0	(\$7,793,700)	(\$7,793,700)
Total Revenue	\$0	(\$7,793,700)	(\$7,793,700)
Expenditure	\$0	\$0	\$0
Net Impact, All Funds (Rev.-Exp.)	\$0	(\$7,793,700)	(\$7,793,700)
Net Impact, General/Education Funds	\$0	(\$7,793,700)	(\$7,793,700)

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill provides a refundable tax credit for film companies of up to 30 percent for each \$100,000 of in-state spending.