

1 **POST-FILM PRODUCTION INCENTIVES**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Jacob L. Anderegg**

5 House Sponsor: Michael E. Noel

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to motion picture incentives.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ allows the Governor's Office of Economic Development to provide motion picture
13 incentives for companies engaging in post-production work in Utah;
14 ▶ increases the amount of tax credits available for motion picture incentives;
15 Ŝ→ [→ ~~removes the cap on cash rebate incentives allowed for any one motion picture;~~] ← Ŝ and
16 ▶ defines terms.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

- 23 63N-8-101, as renumbered and amended by Laws of Utah 2015, Chapter 283
24 63N-8-102, as renumbered and amended by Laws of Utah 2015, Chapter 283
25 63N-8-103, as last amended by Laws of Utah 2016, Chapter 51
26 63N-8-104, as renumbered and amended by Laws of Utah 2015, Chapter 283
27 63N-8-105, as renumbered and amended by Laws of Utah 2015, Chapter 283

S.B. 185



28

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

30 Section 1. Section **63N-8-101** is amended to read:

31 **63N-8-101. Title -- Purpose.**

32 (1) This chapter is known as "Motion Picture Incentives."

33 (2) The Legislature finds that:

34 (a) the state's natural beauty, scenic wonders, and diverse topography provide a variety
35 of magnificent settings from which the motion picture industry can choose to film part or all of
36 major or independent motion pictures, made-for-television movies, and television series;

37 (b) the state has an abundance of resources, including a skilled and able workforce, the
38 required infrastructure, and a friendly and hospitable populace that have been instrumental in
39 the filming of hundreds of successful motion pictures and several television series; and

40 (c) further development of the motion picture industry in Utah is a state public purpose
41 that will significantly impact growth in the state's economy and contribute to the fiscal well
42 being of the state and its people.

43 (3) The purpose of this chapter is to:

44 (a) encourage the use of Utah as a site for the production of motion pictures, television
45 series, and made-for-television movies;

46 (b) provide financial incentives to the film industry so that Utah might compete
47 successfully with other states and countries for filming locations and post-production work;
48 and

49 (c) help develop a strong motion picture industry presence in the state that will
50 contribute substantially to improving the state's economy.

51 Section 2. Section **63N-8-102** is amended to read:

52 **63N-8-102. Definitions.**

53 As used in this chapter:

54 (1) "Digital media company" means a company engaged in the production of a digital
55 media project.

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

59 (3) "Dollars left in the state" means expenditures made in the state for a state-approved
60 production, including:

61 (a) an expenditure that is subject to:

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

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

65 and

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

68 (iv) a combination of Subsections (3)(a)(i), (ii), and (iii);

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

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

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

76 (5) "Motion picture company" means a company engaged in the production of:

77 (a) motion pictures;

78 (b) television series; or

79 (c) made-for-television movies.

80 (6) "Motion picture incentive" means either a cash rebate from the Motion Picture
81 Incentive Account or a refundable tax credit under Section [59-7-614.5](#) or [59-10-1108](#).

82 (7) "New state revenues" means:

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

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

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

89 (ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and

90 Information;

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

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

93 (v) a combination of Subsections (7)(b)(i), (ii), (iii), and (iv);

94 (c) incremental new state revenues generated as individual income taxes under Title

95 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, paid by

96 employees of the new digital media project as evidenced by payroll records from the digital

97 media company; or

98 (d) a combination of Subsections (7)(a), (b), and (c).

99 (8) "Payroll company" means a business entity that handles the payroll and becomes

100 the employer of record for the staff, cast, and crew of a motion picture production.

101 (9) "Post-production work" means work undertaken on a state-approved production
102 after filming or shooting is complete and includes film and video editing, sound editing, sound
103 mixing, computer graphics services, visual effects services, and animation services.

104 [~~(9)~~] (10) "Refundable tax credit" means a refundable motion picture tax credit
105 authorized under Section 63N-8-103 and claimed under Section 59-7-614.5 or 59-10-1108.

106 [~~(10)~~] (11) "Restricted account" means the Motion Picture Incentive Account created in
107 Section 63N-8-103.

108 [~~(11)~~] (12) "State-approved production" means a production, or post-production work,
109 under Subsections (2) and (5) that is:

110 (a) approved by the office and ratified by the board; and
111 (b) produced or carried out in the state by a motion picture company.

112 [~~(12)~~] (13) "Tax credit amount" means the amount the office lists as a tax credit on a
113 tax credit certificate for a taxable year.

114 [~~(13)~~] (14) "Tax credit certificate" means a certificate issued by the office that:
115 (a) lists the name of the applicant;
116 (b) lists the applicant's taxpayer identification number;
117 (c) lists the amount of tax credit that the office awards the applicant for the taxable
118 year; and
119 (d) may include other information as determined by the office.

120 Section 3. Section 63N-8-103 is amended to read:

121 **63N-8-103. Motion Picture Incentive Account created -- Cash rebate incentives --**

122 **Refundable tax credit incentives.**

123 (1) (a) There is created within the General Fund a restricted account known as the
124 Motion Picture Incentive Account, which the office shall use to provide cash rebate incentives
125 for state-approved productions by a motion picture company.

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

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

129 (d) The office shall:

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

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

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

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

137 (b) The motion picture company or digital media company shall provide the office with
138 a report identifying and documenting the dollars left in the state and new state revenues
139 generated by the motion picture company or digital media company for its state-approved
140 production, including any related tax returns by the motion picture company, payroll company,
141 digital media company, or loan-out corporation under Subsection (2)(d).

142 (c) For a motion picture company, an independent certified public accountant shall:

143 (i) review the report submitted by the motion picture company; and

144 (ii) attest to the accuracy and validity of the report, including the amount of dollars left
145 in the state.

146 (d) The motion picture company, digital media company, payroll company, or loan-out
147 corporation shall provide the office with a document that expressly directs and authorizes the
148 State Tax Commission to disclose the entity's tax returns and other information concerning the
149 entity that would otherwise be subject to confidentiality under Section 59-1-403 or Section
150 6103, Internal Revenue Code, to the office.

151 (e) The office shall submit the document described in Subsection (2)(d) to the State

152 Tax Commission.

153 (f) Upon receipt of the document described in Subsection (2)(d), the State Tax
154 Commission shall provide the office with the information requested by the office that the
155 motion picture company, digital media company, payroll company, or loan-out corporation
156 directed or authorized the State Tax Commission to provide to the office in the document
157 described in Subsection (2)(d).

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

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

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

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

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

167 (ii) based upon review of new state revenue, determine the amount of the incentive that
168 a digital media company is entitled to under its agreement with the office.

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

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

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

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

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

181 (l) A motion picture company or digital media company may claim a motion picture
182 tax credit on its tax return for the amount listed on the tax credit certificate issued by the office.

183 (m) A motion picture company or digital media company that claims a tax credit under
184 Subsection (2)(l) shall retain the tax credit certificate and all supporting documentation in
185 accordance with Subsection 63N-8-104(6).

186 (3) (a) Subject to Subsection (3)(b), the office may issue [\$6,793,700] \$11,800,000 in
187 tax credit certificates under this part in a fiscal year.

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

191 Section 4. Section 63N-8-104 is amended to read:

192 **63N-8-104. Motion picture incentives -- Standards to qualify for an incentive --
193 Limitations -- Content of agreement between office and motion picture company or
194 digital media company.**

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

198 (a) the standards that a motion picture company or digital media company must meet to
199 qualify for the motion picture incentive; and
200 (b) criteria for determining the amount of the incentive.

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

202 (a) an incentive may only be issued for a [state approved] state-approved production by
203 a motion picture company or digital media company;

204 (b) financing has been obtained and is in place for the production; and
205 (c) the economic impact of the production on the state represents new incremental
206 economic activity in the state as opposed to existing economic activity.

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

210 (4) The office may also consider giving preference to a production that stimulates
211 economic activity in rural areas of the state, engages in post-production work in the state, or
212 [that] has Utah content, such as recognizing that the production was made in the state or uses
213 Utah as Utah in the production.

214 (5) (a) The office, with advice from the board, may enter into an agreement with a
215 motion picture company or digital media company that meets the standards established under
216 this section and satisfies the other qualification requirements under this part.

217 (b) Subject to Subsection 63N-8-103(3), the office may commit or authorize a motion
218 picture incentive:

219 (i) to a motion picture company of up to 20% of the dollars left in the state by the
220 motion picture company, and a motion picture company can receive an additional 5%, not to
221 exceed 25% of the dollars left in the state by the motion picture company if the company
222 fulfills certain requirements determined by the office including:

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

224 (B) highlighting the state of Utah and the Utah Film Commission in the motion picture
225 credits; [or]

226 (C) engaging in post-production work in Utah; or

227 [~~(C)~~] (D) other promotion opportunities as agreed upon by the office and the motion
228 picture company; and

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

232 ~~S→ [t] ←S~~ (c) A cash rebate incentive from the Motion Picture Incentive Restricted
232a Account may

233 not exceed \$500,000 per state approved production for a motion picture project. ~~S→ [t~~

234 ~~—— [t] ←S~~ (d) ~~S→ [t~~(e) ~~←S~~ The office may not give a cash rebate incentive from the Motion
234a Picture

235 Incentive Restricted Account for a digital media project.

236 (6) The office shall ensure that the agreement entered into with a motion picture
237 company or digital media company under Subsection (5)(a):

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

240 (b) specifies:

241 (i) the nature of the incentive; and

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

245 (c) establishes the length of time over which the motion picture company or digital
246 media company may claim the motion picture incentive;
247 (d) requires the motion picture company or digital media company to retain records
248 supporting its claim for a motion picture incentive for at least four years after the motion
249 picture company or digital media company claims the incentive under this part; and
250 (e) requires the motion picture company or digital media company to submit to audits
251 for verification of the claimed motion picture incentive.

252 Section 5. Section **63N-8-105** is amended to read:

253 **63N-8-105. Annual report.**

254 The office shall include the following information in the annual written report described
255 in Section **63N-1-301**:

256 (1) the office's success in attracting within-the-state:
257 (a) production of television series, made-for-television movies, and motion pictures,
258 including feature films and independent films; and
259 (b) post-production work;
260 (2) the amount of incentive commitments made by the office under this part and the
261 period of time over which the incentives will be paid; and
262 (3) the economic impact on the state related to:
263 (a) dollars left in the state; and
264 (b) providing motion picture incentives under this part.

Legislative Review Note
Office of Legislative Research and General Counsel