

Senator Daniel W. Thatcher proposes the following substitute bill:

**MOTION PICTURE INCENTIVES AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel W. Thatcher**

House Sponsor: Eric K. Hutchings

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to motion picture incentives.

**Highlighted Provisions:**

This bill:

- ▶ allows the Governor's Office of Economic Development to provide motion picture incentives for companies engaging in post-production work in Utah;
- ▶ removes the cap on cash rebate incentives allowed for any one motion picture; and
- ▶ defines terms.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63N-8-101**, as renumbered and amended by Laws of Utah 2015, Chapter 283

**63N-8-102**, as renumbered and amended by Laws of Utah 2015, Chapter 283

**63N-8-103**, as last amended by Laws of Utah 2018, Chapter 469

**63N-8-104**, as renumbered and amended by Laws of Utah 2015, Chapter 283



26 **63N-8-105**, as renumbered and amended by Laws of Utah 2015, Chapter 283

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

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

30 **63N-8-101. Title -- Purpose.**

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

32 (2) The Legislature finds that:

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

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

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

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

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

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

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

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

51 **63N-8-102. Definitions.**

52 As used in this chapter:

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

55 (2) "Digital media project" means all or part of a production of interactive  
56 entertainment or animated production that is produced for distribution in commercial or

57 educational markets, which shall include projects intended for Internet or wireless distribution.

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

60 (a) an expenditure that is subject to:

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

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

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

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

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

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

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

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

76 (a) motion pictures;

77 (b) television series; or

78 (c) made-for-television movies.

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

81 (7) "New state revenues" means:

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

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

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

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

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

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

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

93 (c) incremental new state revenues generated as individual income taxes under Title  
94 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, paid by  
95 employees of the new digital media project as evidenced by payroll records from the digital  
96 media company; or

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

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

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

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

105 [~~10~~] (11) "Restricted account" means the Motion Picture Incentive Account created in  
106 Section 63N-8-103.

107 [~~11~~] (12) "State-approved production" means a production, or post-production work,  
108 under Subsections (2) and (5) that is:

109 (a) approved by the office and ratified by the board; and

110 (b) produced or carried out in the state by a motion picture company.

111 [~~12~~] (13) "Tax credit amount" means the amount the office lists as a tax credit on a  
112 tax credit certificate for a taxable year.

113 [~~13~~] (14) "Tax credit certificate" means a certificate issued by the office that:

114 (a) lists the name of the applicant;

115 (b) lists the applicant's taxpayer identification number;

116 (c) lists the amount of tax credit that the office awards the applicant for the taxable  
117 year; and

118 (d) may include other information as determined by the office.

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

120 **63N-8-103. Motion Picture Incentive Account created -- Cash rebate incentives --**  
121 **Refundable tax credit incentives.**

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

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

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

128 (d) The office shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

168 (i) Subject to Subsection (3), if the incentive is in the form of a cash rebate, the office  
169 shall pay the incentive from the restricted account to the motion picture company,  
170 notwithstanding Subsections 51-5-3(23)(b) and 63J-1-105(6).

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

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

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

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

180 (l) A motion picture company or digital media company may claim a motion picture

181 tax credit on its tax return for the amount listed on the tax credit certificate issued by the office.

182 (m) A motion picture company or digital media company that claims a tax credit under  
183 Subsection (2)(1) shall retain the tax credit certificate and all supporting documentation in  
184 accordance with Subsection 63N-8-104(6).

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

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

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

191 **63N-8-104. Motion picture incentives -- Standards to qualify for an incentive --**  
192 **Limitations -- Content of agreement between office and motion picture company or**  
193 **digital media company.**

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

197 (a) the standards that a motion picture company or digital media company must meet to  
198 qualify for the motion picture incentive; and

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

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

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

203 (b) financing has been obtained and is in place for the production; and

204 (c) the economic impact of the production on the state represents new incremental  
205 economic activity in the state as opposed to existing economic activity.

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

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

212 Utah as Utah in the production.

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

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

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

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

223 (B) highlighting the state of Utah and the Utah Film Commission in the motion picture  
224 credits; ~~or~~

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

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

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

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

233 ~~[(d)]~~ (c) The office may not give a cash rebate incentive from the Motion Picture  
234 Incentive Restricted Account for a digital media project.

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

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

239 (b) specifies:

240 (i) the nature of the incentive; and

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



243 production;

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

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

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

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

252 **63N-8-105. Annual report.**

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

255 (1) the office's success in attracting within-the-state;

256 (a) production of television series, made-for-television movies, and motion pictures,  
257 including feature films and independent films; and

258 (b) post-production work;

259 (2) the amount of incentive commitments made by the office under this part and the  
260 period of time over which the incentives will be paid; and

261 (3) the economic impact on the state related to:

262 (a) dollars left in the state; and

263 (b) providing motion picture incentives under this part.