

SB0171S01 compared with SB0171

~~{deleted text}~~ shows text that was in SB0171 but was deleted in SB0171S01.

Inserted text shows text that was not in SB0171 but was inserted into SB0171S01.

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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

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;
- ~~{ } →~~ increases the amount of tax credits available for motion picture incentives;
- ~~{ }~~ ▶ 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:

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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

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

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

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

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

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

(2) The Legislature finds that:

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

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

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

(3) The purpose of this chapter is to:

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

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

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

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

63N-8-102. Definitions.

As used in this chapter:

- (1) "Digital media company" means a company engaged in the production of a digital media project.
- (2) "Digital media project" means all or part of a production of interactive entertainment or animated production that is produced for distribution in commercial or educational markets, which shall include projects intended for Internet or wireless distribution.
- (3) "Dollars left in the state" means expenditures made in the state for a state-approved production, including:
 - (a) an expenditure that is subject to:
 - (i) a corporate franchise or income tax under Title 59, Chapter 7, Corporate Franchise and Income Taxes;
 - (ii) an individual income tax under Title 59, Chapter 10, Individual Income Tax Act; and
 - (iii) a sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act, notwithstanding any sales and use tax exemption allowed by law; or
 - (iv) a combination of Subsections (3)(a)(i), (ii), and (iii);
 - (b) payments made to a nonresident only to the extent of the income tax paid to the state on the payments, the amount of per diems paid in the state, and other direct reimbursements transacted in the state; and
 - (c) payments made to a payroll company or loan-out corporation that is registered to do business in the state, only to the extent of the amount of withholding under Section 59-10-402.
- (4) "Loan-out corporation" means a corporation owned by one or more artists that provides services of the artists to a third party production company.
- (5) "Motion picture company" means a company engaged in the production of:
 - (a) motion pictures;
 - (b) television series; or
 - (c) made-for-television movies.
- (6) "Motion picture incentive" means either a cash rebate from the Motion Picture Incentive Account or a refundable tax credit under Section 59-7-614.5 or 59-10-1108.

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(7) "New state revenues" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(12)~~ (13) "Tax credit amount" means the amount the office lists as a tax credit on a

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tax credit certificate for a taxable year.

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

- (a) lists the name of the applicant;
- (b) lists the applicant's taxpayer identification number;
- (c) lists the amount of tax credit that the office awards the applicant for the taxable

year; and

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

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

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

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

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

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

(d) The office shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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company; and

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

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

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

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

(3) (a) Subject to Subsection (3)(b), the office may issue ~~ff~~\$6,793,700~~f~~ ~~\$12,000,000~~ in tax credit certificates under this part in a fiscal year.

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

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

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

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

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

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

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

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

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

(c) the economic impact of the production on the state represents new incremental

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economic activity in the state as opposed to existing economic activity.

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

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

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

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

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

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

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

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

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

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

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

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

(6) The office shall ensure that the agreement entered into with a motion picture

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company or digital media company under Subsection (5)(a):

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

(b) specifies:

(i) the nature of the incentive; and

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

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

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

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

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

63N-8-105. Annual report.

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

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

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

(b) post-production work;

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

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

(a) dollars left in the state; and

(b) providing motion picture incentives under this part.