

**Representative Stephen G. Handy** proposes the following substitute bill:

**STATE FILM PRODUCTION INCENTIVES AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ronald M. Winterton**

House Sponsor: Stephen G. Handy

Cosponsor: Daniel W. Thatcher

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to motion picture incentives.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ allows the Governor's Office of Economic Opportunity to issue an additional amount of tax credit incentives each fiscal year only for rural film productions; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63N-8-102**, as last amended by Laws of Utah 2021, Chapter 282

**63N-8-103**, as last amended by Laws of Utah 2021, Chapters 282 and 436



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

Section 1. 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.

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

58 (7) "New state revenues" means:

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

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

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

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

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

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

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

70 (c) incremental new state revenues generated as individual income taxes under Title  
71 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, paid by  
72 employees of the new digital media project as evidenced by payroll records from the digital  
73 media company; or

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

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

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

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

81 (11) "Rural production" means a state-approved production in which at least 75% of  
82 the total number of production days occur within a county of the third, fourth, fifth, or sixth  
83 class.

84 [(H)] (12) "State-approved production" means a production under Subsections (2) and  
85 (5) that is:

86 (a) approved by the office and ratified by the GO Utah board; and

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

88 [~~(12)~~] (13) "Tax credit amount" means the amount the office lists as a tax credit on a  
89 tax credit certificate for a taxable year.

90 [~~(13)~~] (14) "Tax credit certificate" means a certificate issued by the office that:

91 (a) lists the name of the applicant;

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

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

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

96 Section 2. Section **63N-8-103** is amended to read:

97 **63N-8-103. Motion Picture Incentive Account created -- Cash rebate incentives --**  
98 **Refundable tax credit incentives.**

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

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

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

105 (d) The office shall:

106 (i) with the advice of the GO Utah board, administer the restricted account; and

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

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

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

113 (b) The motion picture company or digital media company shall provide the office with  
114 an incentive request form, provided by the office, identifying and documenting the dollars left  
115 in the state and new state revenues generated by the motion picture company or digital media  
116 company for state-approved production, including any related tax returns by the motion picture  
117 company, payroll company, digital media company, or loan-out corporation under Subsection

118 (2)(d).

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

120 (i) review the incentive request form submitted by the motion picture company; and

121 (ii) provide a report on the accuracy and validity of the incentive request form,

122 including the amount of dollars left in the state, in accordance with the agreed upon procedures  
123 established by the office by rule.

124 (d) The motion picture company, digital media company, payroll company, or loan-out  
125 corporation shall provide the office with a document that expressly directs and authorizes the  
126 State Tax Commission to disclose the entity's tax returns and other information concerning the  
127 entity that would otherwise be subject to confidentiality under Section 59-1-403 or Section  
128 6103, Internal Revenue Code, to the office.

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

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

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

137 (i) review the incentive request form from the motion picture company described in  
138 Subsection (2)(b) and verify that the incentive request form was reviewed by an independent  
139 certified public accountant as described in Subsection (2)(c); and

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

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

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

145 (ii) based upon review of new state revenues, determine the amount of the incentive  
146 that a digital media company is entitled to under the digital media company's agreement with  
147 the office.

148 (i) Subject to Subsection (3), if the incentive is in the form of a cash rebate, the office

149 shall pay the incentive from the restricted account to the motion picture company,  
150 notwithstanding Subsections 51-5-3(23)(b) and 63J-1-105(6).

151 (j) If the incentive is in the form of a refundable tax credit under Section 59-7-614.5 or  
152 59-10-1108, the office shall:

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

155 (ii) provide a digital record of the tax credit certificate to the State Tax Commission.

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

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

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

166 (3) (a) Subject to Subsections (3)(b) [~~and (c)~~] through (d), the office may issue  
167 \$6,793,700 in tax credit certificates under this part in each fiscal year.

168 (b) For the fiscal year ending June 30, 2022, the office may issue \$8,393,700 in tax  
169 credit certificates under this part.

170 (c) For a fiscal year beginning on or after July 1, 2022, in addition to the amount of tax  
171 credit certificates authorized under Subsection (3)(a), the office may issue \$12,000,000 in tax  
172 credit certificates under this part only for rural productions.

173 [~~(c)~~] (d) If the office does not issue tax credit certificates in a fiscal year totaling the  
174 amount authorized under Subsections (3)(a) [~~and (b)~~] through (c), the office may carry over  
175 that amount for issuance in subsequent fiscal years.