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Legislative Document

No. 1004

H.P. 699

House of Representatives, March 19, 2015

**An Act To Provide Incentives To Foster Economic Growth and
Build Infrastructure in the State by Encouraging Visual Media
Production**

(EMERGENCY)

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative PICCHIOTTI of Fairfield.
Cosponsored by Senator WHITTEMORE of Somerset and
Representatives: BEAR of the Houlton Band of Maliseet Indians, FARRIN of Norridgewock,
NADEAU of Winslow, VEROW of Brewer, Senators: DAVIS of Piscataquis, LIBBY of
Androscoggin, MASON of Androscoggin, ROSEN of Hancock.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** this legislation fosters economic growth in the State by providing
4 incentives to film companies; and

5 **Whereas,** film production is especially amenable to incentives because it is highly
6 mobile, environmentally safe, capital and labor intensive and effective in promoting
7 tourism; and

8 **Whereas,** it is important that these incentives be made available quickly to
9 encourage film production companies to come to Maine as soon as possible, thus
10 benefiting the economy and people of Maine; and

11 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
12 the meaning of the Constitution of Maine and require the following legislation as
13 immediately necessary for the preservation of the public peace, health and safety; now,
14 therefore,

15 **Be it enacted by the People of the State of Maine as follows:**

16 **Sec. 1. 5 MRSA §13090-L, sub-§1,** as amended by PL 2009, c. 470, §1, is
17 further amended to read:

18 **1. Generally.** A visual media production company that intends to undertake a visual
19 media production in this State may apply to the department to have the production, or a
20 portion of the production, certified under subsection 3 for purposes of the visual media
21 production reimbursement pursuant to Title 36, chapter 919-A ~~and the credit under Title~~
22 ~~36, section 5219-Y.~~

23 **Sec. 2. 5 MRSA §13090-L, sub-§2-A, ¶F,** as enacted by PL 2009, c. 470, §1, is
24 amended to read:

25 F. "Visual media production expense" means an expense directly incurred in this
26 State for preproduction, production or postproduction work performed in this State of
27 a visual media production certified under this section. "Visual media production
28 expense" includes wages and salaries of individuals employed in the production on
29 which taxes have been paid or accrued if those wages do not exceed ~~\$50,000~~
30 \$250,000 per individual and payments to a temporary employee-leasing company, as
31 defined in Title 36, section 6901, subsection 3-A, and other contractual payments for
32 the services of individuals working in the State if those payments do not exceed
33 ~~\$50,000~~ \$250,000 per individual providing services in the production. "Visual media
34 production expense" includes the cost of construction; operations; editing and related
35 services; music, photography and film processing, including transferring film to tape
36 or a digital format; sound recording, mixing and synchronization; lighting, makeup,
37 wardrobe and accessories; transportation; food and lodging for cast and crew;
38 insurance and bonding; and the rental of facilities and equipment, including location
39 fees. "Visual media production expense" does not include expenses incurred in

1 marketing or advertising a visual media production or in printing or disseminating a
2 visual media production.

3 **Sec. 3. 5 MRSA §13090-L, sub-§§3 and 5**, as amended by PL 2009, c. 470, §1,
4 are further amended to read:

5 **3. Requirements for visual media production certificate.** Applications for a
6 visual media production certificate must be made on a form prescribed and furnished by
7 the department. The applicant must:

8 A. Provide the names of the principals involved in the visual media production and
9 contact information for them;

10 B. Provide a certificate of insurance for the visual media production;

11 C. Provide financial information that demonstrates that the visual media production
12 is fully financed and that at least \$75,000 of visual media production expense will be
13 incurred for the visual media production certified in accordance with this subsection;

14 D. Provide data demonstrating that the visual media production will benefit the
15 people of the State by increasing opportunities for employment and will strengthen
16 the economy of the State;

17 E. Agree to include, in the certified visual media production, an on-screen credit for
18 the State of Maine. The exact wording and size of that credit must be determined in
19 rules adopted by the Maine State Film Office and the department. The Maine State
20 Film Office or the department may, at its discretion, exempt visual media productions
21 from this requirement. Rules adopted pursuant to this paragraph are routine technical
22 rules as defined in chapter 375, subchapter 2-A;

23 F. Provide evidence that the visual media production company is not owned by,
24 affiliated with or controlled by, in whole or in part, a person that is in default on a
25 loan made by the State or a loan guaranteed by the State;

26 G. Provide any other information required by the department; ~~and~~

27 H. Provide a projected schedule for preproduction, production and postproduction of
28 the visual media production that shows that the production will begin within 60 days
29 after certification pursuant to this subsection; ~~and~~

30 I. Agree to pay an administrative fee of .2% of the amount of the visual media
31 production reimbursement allowed pursuant to Title 36, chapter 919-A, but at least
32 \$200 and no more than \$5,000, and as determined by the State Tax Assessor pursuant
33 to Title 36, section 6209, subsection 2-A. The administrative fee must be paid after
34 the visual media production company files the report required by subsection 4 and
35 before the visual media production company receives the visual media production
36 reimbursement.

37 To qualify for a visual media production certificate, a visual media production company
38 must demonstrate to the satisfaction of the commissioner that the visual media production
39 company has met, or will meet, the requirements of this subsection. If the department
40 determines that the applicant does not qualify for a visual media production certificate, it
41 must inform the applicant of that determination in writing within 4 weeks of receiving the

1 application. As soon as practicable, the department shall issue a visual media production
2 certificate for a visual media production that qualifies. The department shall include with
3 the certificate information regarding the ~~tax credit~~ report under subsection ~~4~~ 7 and
4 procedures for claiming reimbursement under Title 36, chapter 919-A ~~and the credit~~
5 ~~under Title 36, section 5219-Y.~~

6 **5. Department to provide information to State Tax Assessor.** The department
7 shall provide to the State Tax Assessor copies of the visual media production certificate
8 issued pursuant to subsection 3, together with any other information reasonably required
9 by the State Tax Assessor for the administration of visual media production
10 reimbursement under Title 36, chapter 919-A ~~and the credit under Title 36, section~~
11 ~~5219-Y.~~

12 **Sec. 4. 5 MRSA §13090-L, sub-§7,** as enacted by PL 2009, c. 470, §1, is
13 amended to read:

14 **7. Report.** The Maine State Film Office shall submit a report by January 15th
15 annually to the joint standing committee of the Legislature having jurisdiction over
16 taxation matters regarding the certification and reporting process pursuant to this section
17 and the visual media production ~~tax credit and~~ reimbursement activities pursuant to ~~Title~~
18 ~~36, section 5219-Y and~~ Title 36, chapter 919-A. The report must include a description of
19 any rule-making activity related to the implementation of the ~~credit and~~ reimbursement
20 activities, outreach efforts to visual media production companies, the number of
21 applications for the visual media production ~~credit and~~ tax reimbursement, the number of
22 ~~credits and~~ reimbursements granted, the revenue loss associated with the ~~credit and~~
23 reimbursement and the amount of visual media production expenses generated in the
24 State as a result of the ~~credit and~~ reimbursement.

25 **Sec. 5. 5 MRSA §13090-M, sub-§4, ¶E,** as enacted by PL 2011, c. 372, §1, is
26 amended to read:

27 E. A signed agreement with the department provides that the project or production
28 will not be the basis for a claim for ~~an income tax credit under Title 36, section~~
29 ~~5219-Y or~~ reimbursement under Title 36, chapter 919-A.

30 **Sec. 6. 36 MRSA §191, sub-§2, ¶MM,** as amended by PL 2009, c. 652, Pt. A,
31 §51, is further amended to read:

32 MM. The disclosure to an authorized representative of the Department of Economic
33 and Community Development of information required for the administration of the
34 ~~visual media production credit under section 5219-Y,~~ the employment tax increment
35 financing program under chapter 917, the visual media production reimbursement
36 program under chapter 919-A or the Pine Tree Development Zone program under
37 Title 30-A, chapter 206, subchapter 4;

38 **Sec. 7. 36 MRSA §5219-Y,** as amended by PL 2011, c. 240, §37, is repealed.

39 **Sec. 8. 36 MRSA §6901, sub-§1-A** is enacted to read:

1 **1-A. Below-the-line personnel.** "Below-the-line personnel" means nonstarring cast
2 members and the technical production and postproduction staff of a visual media
3 production company.

4 **Sec. 9. 36 MRSA §6901, sub-§2,** as amended by PL 2013, c. 546, §16, is further
5 amended to read:

6 **2. Certified production wages.** "Certified production wages" means wages subject
7 to withholding under section 5250, subsection 1 that are paid by a visual media
8 production company for work on a certified visual media production, an amount paid to a
9 temporary employee-leasing company for personal services rendered in this State by a
10 leased employee in connection with a certified visual media production, an amount paid
11 for the services of a performing artist working in the State in connection with a certified
12 visual media production and other contractual payments for the services of individuals
13 working in the State in connection with a certified visual media production. "Certified
14 production wages" includes only the first ~~\$50,000~~ \$250,000 paid to or with respect to a
15 particular individual for personal services rendered in connection with a particular
16 certified visual media production.

17 **Sec. 10. 36 MRSA §6901, sub-§3-B** is enacted to read:

18 **3-B. Extra.** "Extra" means a nonstarring cast member who appears in a nonspeaking
19 or nonsinging capacity, usually in the background, of a visual media production.

20 **Sec. 11. 36 MRSA §6902, sub-§1,** as amended by PL 2011, c. 240, §46, is
21 repealed and the following enacted in its place:

22 **1. Reimbursement of certified production wages.** A visual media production
23 company is allowed a reimbursement equal to 25% of certified production wages paid to
24 or with respect to below-the-line personnel who are residents of Maine and 15% of
25 certified production wages paid to or with respect to below-the-line personnel who are
26 not residents of Maine. To qualify for the reimbursement pursuant to this subsection:

27 A. At least 50% of the below-the-line personnel, not including extras, employed by
28 the visual media production company must be residents of Maine unless the visual
29 media production company certifies that a sufficient number of qualified residents of
30 Maine are not available to meet this requirement; and

31 B. The visual media production expenses, as defined in Title 5, section 13090-L,
32 subsection 2, paragraph F, must exceed 50% of the total production expenses, or at
33 least 50% of the total principle photography days must occur in Maine.

34 **Sec. 12. 36 MRSA §6902, sub-§1-A** is enacted to read:

35 **1-A. Reimbursement of nonwage visual media production expenses.** A visual
36 media production company is allowed a reimbursement equal to 25% of its nonwage
37 visual media production expenses incurred with respect to a certified visual media
38 production if the visual media production company has visual media production expenses
39 of \$30,000 or more with respect to that certified visual media production. For purposes of
40 this section, "nonwage visual media production expenses" means visual media production

1 expenses as defined in Title 5, section 13090-L, subsection 2-A, paragraph F, except that
2 "nonwage visual media production expenses" does not include certified production wages
3 or any amount that would be included in certified production wages but for the \$250,000
4 limit provided by section 6901, subsection 2.

5 A. At least 50% of the below-the-line personnel, not including extras, employed by
6 the visual media production company must be residents of Maine unless the visual
7 media production company certifies that a sufficient number of qualified residents of
8 Maine are not available to meet this requirement; and

9 B. The visual media production expenses, as defined in Title 5, section 13090-L,
10 subsection 2, paragraph F, must exceed 50% of the total production expenses, or at
11 least 50% of the total principle photography days must occur in Maine.

12 **Sec. 13. 36 MRSA §6902, sub-§2**, as amended by PL 2009, c. 470, §7, is further
13 amended to read:

14 **2. Procedure for reimbursement.** Within 6 weeks following submission of the
15 certified visual media production report pursuant to Title 5, section 13090-L, subsection
16 4, a visual media production company shall report to the State Tax Assessor that portion
17 of certified production wages and its nonwage visual media production expenses paid for
18 the certified visual media production, together with any additional information the
19 assessor may reasonably require. The assessor shall certify to the State Controller the
20 amounts to be transferred to the visual media production reimbursement account
21 established, maintained and administered by the State Controller from General Fund
22 undedicated revenue within the withholding tax category. The assessor shall pay those
23 amounts to each visual media production company within 90 days of the receipt by the
24 assessor of the visual media production company's ~~report~~ administrative fee, as
25 determined pursuant to subsection 2-A.

26 **Sec. 14. 36 MRSA §6902, sub-§2-A** is enacted to read:

27 **2-A. Determination of administrative fee.** The assessor shall determine the
28 amount of the administrative fee to be paid by the visual media production company. The
29 administrative fee is .2% of the reimbursement amount granted under this section, except
30 that it must be at least \$200 and no more than \$5,000. The assessor shall inform the
31 visual media production company of the amount of the administrative fee and the
32 requirement that the administrative fee be paid prior to payment of the reimbursement.

33 **Sec. 15. 36 MRSA §6902, sub-§4** is enacted to read:

34 **4. Limitation.** A taxpayer claiming a credit under section 5219-W is not eligible for
35 reimbursement pursuant to this section.

36 **Emergency clause.** In view of the emergency cited in the preamble, this
37 legislation takes effect when approved.

1 **SUMMARY**

2 This bill makes the following changes to the visual media production certification
3 process, reimbursement and credit:

4 1. It specifies that a visual media production expense must be for preproduction,
5 production and postproduction work performed in Maine;

6 2. It increases the cap on wages that can be included as a visual media production
7 expense from \$50,000 per individual to \$250,000 per individual;

8 3. It requires the applicant for visual media production certification to agree to pay
9 an administrative fee before being reimbursed. The administrative fee is .2% of the
10 reimbursement amount, except that the minimum amount of the fee may not be less than
11 \$200 and the maximum amount of the fee may not exceed \$5,000;

12 4. It specifies that the reimbursement for certified production wages is only for
13 wages paid to below-the-line personnel, which includes nonstarring cast members and the
14 technical production and postproduction staff of a visual media production company;

15 5. It increases the reimbursement rate from 12% to 25% of certified production
16 wages that are paid to Maine residents and from 10% to 15% for certified production
17 wages paid to non-Maine residents;

18 6. It repeals the certified visual media production tax credit and instead provides for
19 the reimbursement of 25% of nonwage visual media production expenses as long as the
20 company has at least \$30,000 in visual media production expenses from the certified
21 production;

22 7. It specifies that, in order to be eligible for either the certified production wage
23 reimbursement or the nonwage visual media production expense reimbursement, at least
24 50% of the below-the-line personnel, not including extras, must be Maine residents,
25 unless the company certifies that it cannot meet this requirement due to an insufficient
26 number of qualified Maine residents, and either the visual media production expenses
27 exceed 50% of the total production expenses or at least 50% of the total principle
28 photography days occur in Maine; and

29 8. It specifies that a person claiming the Pine Tree Development Zone tax credit is
30 not eligible to get the visual media production reimbursement.