

HOUSE BILL NO. 120

INTRODUCED BY K. WILLIAMS

BY REQUEST OF THE DEPARTMENT OF COMMERCE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REENACTING THE BIG SKY ON THE BIG SCREEN ACT AND
6 MAKING PERMANENT THE AVAILABILITY AND USE OF TAX CREDITS; PROMOTING THE MOTION
7 PICTURE AND TELEVISION INDUSTRIES AND RELATED MEDIA IN MONTANA BY PROVIDING TAX
8 INCENTIVES FOR FILMING AND FOR DEVELOPING MAGAZINE ADVERTISING IN MONTANA; ALLOWING
9 A PRODUCTION COMPANY A TAX CREDIT FOR EMPLOYING MONTANA RESIDENTS; ALLOWING A
10 PRODUCTION COMPANY A TAX CREDIT FOR QUALIFYING EXPENDITURES MADE IN MONTANA;
11 REQUIRING A PRODUCTION COMPANY TO APPLY TO THE DEPARTMENT OF COMMERCE FOR STATE
12 CERTIFICATION OF A PRODUCTION TO QUALIFY FOR THE TAX CREDITS; REQUIRING AN APPLICATION
13 AND AN APPLICATION FEE FOR A PRODUCTION COMPANY TO CLAIM TAX CREDITS FOR A
14 STATE-CERTIFIED PRODUCTION; REQUIRING THAT THE APPLICATION FEE BE USED FOR
15 ADMINISTERING THE TAX CREDITS; PROVIDING A STATUTORY APPROPRIATION; PROVIDING
16 RULEMAKING AUTHORITY; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE
17 EFFECTIVE DATE ~~AND~~, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE."

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
20

21 NEW SECTION. Section 1. Short title. [Sections 1 through 10] may be cited as the "Big Sky on the
22 Big Screen Act".
23

24 NEW SECTION. Section 2. Purpose. (1) The purposes of [sections 1 through 10] are to enhance
25 Montana's economy by revitalizing and expanding the motion picture and television industries and related media
26 in Montana and to promote the growth of small businesses. The objectives of [sections 1 through 10] are to:

- 27 (a) renew interest in Montana as a premier location for the production of motion pictures, documentaries,
28 television programs and commercials, and magazine advertising;
- 29 (b) encourage the creation of jobs that pay well for Montana workers and university graduates;
- 30 (c) enhance the growth of Montana businesses that provide goods and services for these types of

1 productions; and

2 (d) help promote the tourism industry in Montana.

3 (2) The objectives in subsection (1) will best be achieved by offering tax incentives to production
4 companies for hiring Montana residents and for purchasing Montana goods and services.

5
6 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 10], unless the context requires
7 otherwise, the following definitions apply:

8 (1) "Compensation" means salary, wages, or other compensation, including related benefits paid to a
9 Montana resident.

10 (2) (a) "Production" means a nationally or regionally distributed feature-length film, short film,
11 documentary, television series or segment, television pilot, magazine advertising other than advertising for
12 tobacco products, or commercial made in Montana, in whole or in part, for theatrical, television, video, internet,
13 or other viewing.

14 (b) The term does not include the production of television coverage of news and athletic events or a film,
15 video, internet production, television series, magazine advertising, or commercial that:

16 (i) contains any obscene material or performance as described in 45-8-201(2); or

17 (ii) is produced in whole or in part with money received for tobacco product placement, advertisement,
18 or other tobacco use in the production.

19 (3) (a) "Production company" means a company engaged in the business of producing nationally or
20 regionally distributed productions.

21 (b) The term does not include a company owned, affiliated, or controlled by, in whole or in part, a
22 company or person that is in default on a loan made by this state or a loan guaranteed by this state or a company
23 or person that has filed for bankruptcy.

24 (4) (a) "Qualified expenditures" means expenditures in Montana made by a production company that are
25 directly related to a state-certified production. The term includes expenditures for lodging expenses, restaurant
26 and food expenses, location fees, lumber and construction materials, rental of production equipment and vehicles,
27 and supplies and materials that will be used in the production.

28 (b) The term does not include expenditures made for goods and services obtained out of state.

29 (5) "Resident" or "Montana resident", for the purpose of determining eligibility for the tax credit provided
30 under [section 7], has the meaning provided in 15-30-2101.

1 (6) "State-certified production" means a production certified by the department of commerce as provided
2 in [section 4] and produced by a production company that has a national or regional distribution plan, including
3 but not limited to a major theatrical exhibition, film festival, television network, cable television programming,
4 magazine advertising, or video or internet distribution.

5

6 **NEW SECTION. Section 4. Application for state certification -- approval -- revocation -- eligibility**

7 **for tax credits -- rules.** (1) A production company may not receive the tax credits allowed under [sections 7 and
8 8] unless the production has been certified by the department of commerce, as provided in this section, and has
9 applied to the department of revenue for the tax credits as provided in [section 6]. The certification by the
10 department of commerce must occur within 30 days after submission of the application under this section.

11 (2) An application, on a form provided by the department of commerce, must be submitted by the
12 production company to the department of commerce before the start of principal photography. The application
13 must include:

14 (a) the production company's name, primary home address, business address, telephone and fax
15 numbers, incorporation information, and federal tax identification number;

16 (b) the address and telephone and fax numbers of the production company's Montana office;

17 (c) the name of the line producer, unit production manager, or production accountant or the names of
18 all three;

19 (d) a statement that the applicant meets the definition of a production company under [section 3];

20 (e) the title of the production;

21 (f) the type of production;

22 (g) the proposed dates of production from preproduction to the start and completion of principal
23 photography;

24 (h) a copy or synopsis of the production script;

25 (i) a list of the production locations;

26 (j) a statement that the proposed production:

27 (i) does not contain any material or performance that would be considered obscene under 45-8-201(2);

28 or

29 (ii) will not receive any money for tobacco product placement, advertisement, or other tobacco use in the
30 production; and

1 (k) if the production is a feature-length film, a statement that the production will include a line in the
2 production's film credits that the production was filmed in Montana.

3 (3) The application must be signed by the manager, agent, president, vice president, or other person
4 authorized to represent the production company.

5 (4) (a) The department of commerce shall notify the applicant within 30 days of receipt of the application
6 as to whether the production qualifies as a state-certified production.

7 (b) (i) Subject to subsection (4)(b)(ii), if the department of commerce approves the application, the
8 department of commerce shall provide a certification number to the applicant and notify the department of
9 revenue of the approval and certification number.

10 (ii) If the production is a feature-length film, the production company and the department of commerce,
11 prior to the issuance of the certification number, shall enter into an agreement that the production company will
12 comply with the provisions of subsection (2)(k). The agreement may provide for remedies if the production
13 company violates the agreement.

14 (5) If the department of commerce determines that the production company has violated the provisions
15 of subsection (2)(d) or (2)(j), the department of commerce may revoke the state certification of the production.
16 If the department of commerce revokes the state certification, the department of commerce shall notify the
17 department of revenue. The production company has the right to a hearing under Title 2, chapter 4, part 6.

18 (6) The department of commerce shall prescribe rules, including a procedure for review of that
19 department's denial or revocation of state certification, necessary to carry out the provisions of this section.

20
21 **NEW SECTION. Section 5. Submission of costs.** Within 60 days of completion of principal
22 photography, the production company shall submit to the department a statement of all expenditures and
23 compensation paid to Montana residents.

24
25 **NEW SECTION. Section 6. Application for tax credit -- fee.** (1) To receive the tax credits under
26 [sections 7 and 8] for a state-certified production, a production company shall apply to the department on a form
27 prescribed by the department. The form must be accompanied by an application fee. The application must be
28 made and the fee paid at the time the production company files its tax return.

29 (2) The application fee is \$500.

30 (3) The fee must be deposited in the state special revenue account. The fee is statutorily appropriated,

1 as provided in 17-7-502, in equal amounts to the department of revenue and the department of commerce to
2 administer the provisions of [section 4 and sections 6 through 10].

3
4 **NEW SECTION. Section 7. Employment production tax credit.** (1) A production company that has
5 submitted an application for a tax credit and paid the fee as required under [section 6] is allowed a tax credit
6 against the taxes imposed by chapter 30 or 31 for the employment of residents of this state in connection with
7 a state-certified production in the state. Except as provided in subsection (4)(b), the credit is equal to credit
8 carryovers and the credit for the tax year.

9 (2) The aggregate of the credit allowed under this section for a production occurring in the production
10 company's tax year is equal to the sum of 14% of the first \$50,000 or less of actual compensation paid to each
11 Montana resident employed in connection with the state-certified production during the tax year.

12 (3) The taxpayer is required to provide to the department, on a form prescribed by the department, a list
13 of all cast and crew participating in the production and the amount of compensation paid to each Montana
14 resident. The form returned by the taxpayer must include the certification number provided for in [section 4].

15 (4) If the credit exceeds the taxpayer's tax liability, the taxpayer shall make a one-time election to claim
16 the credit for each state-certified production allowed under this section as follows:

17 (a) the credit may be refunded; or

18 (b) the credit may be carried forward against the taxes imposed by chapter 30 or 31 for the 4 succeeding
19 tax years.

20 (5) A C. corporation, an individual, an S. corporation, or a partnership qualifies for the credit under this
21 section. If the credit is claimed by an S. corporation or a partnership, the credit must be attributed to the
22 shareholders, partners, or members in the same proportion used to report income or loss for state tax purposes.

23 (6) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included
24 the amount of the compensation upon which the amount of the credit was computed as a deduction under
25 15-30-2131 or 15-31-114.

26 (7) If any application of this section is held invalid, this section applies to other situations or persons in
27 a manner that is not included in the invalid application.

28
29 **NEW SECTION. Section 8. Tax credit for qualified expenditures.** (1) A production company that has
30 submitted an application and paid the fee as required under [section 6] is allowed a tax credit against the taxes

1 imposed by chapter 30 or 31 for qualified expenditures in this state made in connection with a state-certified
2 production in the state. The credit allowed under this section is equal to 9% of the total qualified expenditures
3 incurred in connection with the state-certified production during the tax year.

4 (2) (a) The taxpayer is required to provide to the department, on a form prescribed by the department,
5 the amount of qualified expenditures. The form returned by the taxpayer must include the certification number
6 provided for in [section 4]. The taxpayer shall also provide other information required by the department to verify
7 the accuracy of the qualified expenditures.

8 (b) The taxpayer shall certify in writing to the department, under penalty of false swearing as provided
9 in 45-7-202, that the taxpayer has paid in full to each vendor in Montana for all goods and services purchased
10 by the taxpayer in connection with the state-certified production during the tax year. A credit under this section
11 may not be claimed unless the taxpayer has paid in full for all purchases of goods and services from Montana
12 vendors.

13 (3) The credit allowed under this section must be refunded if a taxpayer has tax liability less than the
14 amount of the credit.

15 (4) A C. corporation, an individual, an S. corporation, or a partnership qualifies for the credit under this
16 section. If the credit is claimed by an S. corporation or a partnership, the credit must be attributed to the
17 shareholders, partners, or members in the same proportion used to report income or loss for state tax purposes.

18 (5) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included
19 the amount of the qualified expenditure upon which the amount of the credit was computed as a deduction under
20 15-30-2131 or 15-31-114.

21
22 **NEW SECTION. Section 9. Denial of claim for credit -- recapture.** A taxpayer whose state-certified
23 production has been revoked as provided in [section 4(5)] may not claim the credits allowed under [sections 7
24 and 8]. If the department of commerce revokes the state certification of a production company after the production
25 company has taken a credit under [section 7 or 8], the production company shall refund the amount of any credits
26 taken. The taxpayer is subject to the penalty and interest provisions of this chapter.

27
28 **NEW SECTION. Section 10. Rules.** (1) The department of revenue shall adopt rules that are necessary
29 to implement and administer [sections 6 through 9] and this section. The department shall, in consultation with
30 the department of commerce, develop procedures for determining compensation paid to residents and qualified

1 expenditures for the credits allowed under [sections 7 and 8] and for taxpayer compliance with the provisions of
2 [section 4].

3 (2) The department and the department of commerce shall jointly adopt rules related to the definitions
4 in [section 3].

5

6 **Section 11.** Section 17-7-502, MCA, is amended to read:

7 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
8 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
9 need for a biennial legislative appropriation or budget amendment.

10 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
11 of the following provisions:

12 (a) The law containing the statutory authority must be listed in subsection (3).

13 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
14 appropriation is made as provided in this section.

15 (3) The following laws are the only laws containing statutory appropriations: 2-15-247; 2-17-105;
16 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310;
17 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; [section 6]; 15-35-108; 15-36-332; 15-37-117; 15-39-110;
18 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241;
19 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305;
20 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-1-327; 22-3-1004;
21 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-1-105;
22 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 53-1-109; 53-1-215; 53-2-208; 53-9-113;
23 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150;
24 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161;
25 85-20-1504; 85-20-1505; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

26 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
27 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
28 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
29 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
30 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory

1 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
 2 of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded
 3 liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and
 4 sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L.
 5 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under
 6 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the
 7 inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331
 8 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30,
 9 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec.
 10 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2),
 11 Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to secs. 3 and 5,
 12 Ch. 244, L. 2013, the inclusion of 22-1-327 is effective July 1, 2015, and terminates July 1, 2017; and pursuant
 13 to sec. 10, Ch. 413, L. 2013, the inclusion of 2-15-247, 39-1-105, 53-1-215, and 53-2-208 terminates June 30,
 14 2015.)"

15
 16 **NEW SECTION. Section 12. Codification instruction.** [Sections 1 through 10] are intended to be
 17 codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [sections
 18 1 through 10].

19
 20 **NEW SECTION. Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are
 21 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
 22 the part remains in effect in all valid applications that are severable from the invalid applications.

23
 24 **NEW SECTION. Section 14. Effective date.** [This act] is effective on passage and approval.

25
 26 **NEW SECTION. Section 15. Retroactive applicability.** [This act] applies retroactively, within the
 27 meaning of 1-2-109, to state productions eligible to be a certified state production as of January 1, 2015, and to
 28 tax years beginning after December 31, 2014.

29
 30 **NEW SECTION. SECTION 16. TERMINATION. [THIS ACT] TERMINATES DECEMBER 31, 2023.**

31 - END -