

# HOUSE BILL No. 1234

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-33.

**Synopsis:** Film and media production rebate. Authorizes the Indiana destination development corporation (IDDC) to approve and issue a film and media production expenditure rebate (rebate) to a qualified applicant that proposes to make qualified production expenditures totaling: (1) in the case of certain productions, at least \$500,000; and (2) in the case of animation or music productions, at least \$100,000; in Indiana. Requires the IDDC to enter into an agreement with a qualified applicant for the rebate, and specifies the terms that must be in the agreement. Establishes the criteria for approving a rebate and the procedures for claiming a rebate. Provides that the IDDC may not issue a rebate to a qualified applicant after December 31, 2027. Provides that the total amount of rebates issued by the corporation may not exceed \$5,000,000 in a state fiscal year. Requires the IDDC to employ a film commissioner to supervise the rebate program. Provides duties for the film commissioner.

**Effective:** July 1, 2020.

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## Karickhoff

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January 13, 2020, read first time and referred to Committee on Ways and Means.

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Second Regular Session of the 121st General Assembly (2020)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

# HOUSE BILL No. 1234



A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 5-33-5-14 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2020]: **Sec. 14. (a) The corporation shall employ a film  
4 commissioner to supervise, direct, coordinate, and administer the  
5 film and media production expenditure rebate described in  
6 IC 5-33-7.**  
7 **(b) The film commissioner may do the following:**  
8 **(1) Request information from a qualified applicant (as defined  
9 in IC 5-33-7-3) as necessary to review and audit qualified  
10 media productions (as defined in IC 5-33-7-5) for which an  
11 application or claim for rebate under IC 5-33-7 has been  
12 submitted.**  
13 **(2) Employ or contract for accountants, consultants, and  
14 other professional personnel as necessary to assist the film  
15 commissioner with conducting reviews and audits of qualified  
16 media productions (as defined in IC 5-33-7-5) for which an  
17 application or claim for rebate under IC 5-33-7 has been**



1 submitted.

2 (3) Perform other duties as directed.

3 (c) The film commissioner may coordinate with approved  
4 postsecondary educational institutions (as defined in IC 21-7-13-6)  
5 to offer opportunities for work experience, including student  
6 internships, to students on productions for which an application for  
7 rebate under IC 5-33-7 has been submitted.

8 SECTION 2. IC 5-33-7 IS ADDED TO THE INDIANA CODE AS  
9 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
10 1, 2020]:

11 **Chapter 7. Indiana Film and Media Production Expenditure**  
12 **Rebate**

13 **Sec. 1.** As used in this chapter, "corporation" refers to the  
14 Indiana destination development corporation established by  
15 IC 5-33-3-1.

16 **Sec. 2.** As used in this chapter, "Film Indiana" refers to the  
17 program administered by the corporation that provides support  
18 for the film, television, commercial, and news media industries.

19 **Sec. 3.** As used in this chapter, "qualified applicant" means a  
20 person, corporation, partnership, limited liability partnership,  
21 limited liability company, or other entity that is engaged in the  
22 business of making a qualified media production in Indiana.

23 **Sec. 4.** As used in this chapter, "qualified Indiana resident"  
24 means an individual who:

25 (1) maintains a dwelling in Indiana as the individual's  
26 principal place of residence and is present in Indiana for not  
27 less than six (6) months during the year; and

28 (2) has signed a declaration of residency that certifies that the  
29 individual has maintained a dwelling in Indiana as the  
30 individual's principal place of residence for not less than six  
31 (6) months immediately preceding the production start date  
32 for the applicable qualified media production.

33 **Sec. 5. (a)** As used in this chapter, "qualified media production"  
34 refers to the following for which at least fifty percent (50%) of the  
35 total incurred expenses for production are qualified production  
36 expenditures:

37 (1) A feature length film, including an independent or studio  
38 production, or a documentary.

39 (2) A television episodic series, program, or feature.

40 (3) A digital media production that is intended for reasonable  
41 commercial exploitation.

42 (4) A music video, video game, or game show.



- 1 (5) An advertising message, except for political advertising,  
2 that is intended to be distributed in any media form.
- 3 (6) An educational media production, provided that the  
4 educational media production is not produced primarily for  
5 industrial or corporate purposes.
- 6 (7) Animation or music recorded in Indiana fixed on any  
7 delivery system, including film, videotape, computer disc,  
8 laser disc, or any digital format.
- 9 (b) The term does not include the following:
- 10 (1) Television coverage of:
- 11 (A) athletic events;
- 12 (B) news; or
- 13 (C) current events.
- 14 (2) Programs that include weather reports or financial reports  
15 as a material portion of the program.
- 16 (3) Talk shows in which a host interviews or talks with guests.
- 17 (4) Awards shows or gala productions.
- 18 (5) Any production that is intended to solicit donations, other  
19 than donations that are:
- 20 (A) deductible, in whole or in part, for federal income tax  
21 purposes; or
- 22 (B) solicited as funding for a project or business venture.
- 23 (6) Any political advertising message.
- 24 (7) A production produced primarily for industrial or  
25 corporate purposes.
- 26 (8) A production in any medium that is obscene (under the  
27 standard set forth in IC 35-49-2-1).
- 28 Sec. 6. (a) As used in this chapter, "qualified production  
29 expenditure" means any of the following expenses incurred in  
30 Indiana or expenditures in Indiana that are made in the direct  
31 production (including the direct preproduction and direct  
32 postproduction) of a qualified media production in Indiana:
- 33 (1) Acquisition costs for locations, facilities, offices, and  
34 equipment.
- 35 (2) Acquisition costs for sets, production props, wardrobes,  
36 special effects, and accessories.
- 37 (3) Expenditures for materials used to make and operate sets,  
38 production props, wardrobes, special effects, and accessories.
- 39 (4) Expenditures for photography, sound synchronization,  
40 film processing, digital imaging, lighting, and related services.
- 41 (5) Expenditures for editing, visual effects, sound mixing,  
42 composing, animation, music supervision, and related



- 1 services.
- 2 (6) Food and lodging.
- 3 (7) Expenditures for travel within Indiana at a rate that is not
- 4 more than the Internal Revenue Service standard mileage
- 5 rate used to calculate the deductible costs of operating an
- 6 automobile for business.
- 7 (8) Commercial airfare travel expenditures incurred to
- 8 transport cast members and crew members to and from
- 9 Indiana.
- 10 (9) Legal services, if purchased from an attorney admitted to
- 11 the Indiana bar.
- 12 (10) Accounting services, if purchased from a certified public
- 13 accountant licensed in Indiana.
- 14 (11) Shipping costs when originating from a location in
- 15 Indiana.
- 16 (12) Receiving costs when a shipment is received at a location
- 17 in Indiana.
- 18 (13) Any other production expenditure for which taxes are
- 19 assessed or imposed by the state.
- 20 (14) The total sum expended on wages, salaries, and benefits.
- 21 Expenses under this subdivision do not include expenses
- 22 described in subdivision (15) or (17).
- 23 (15) Expenditures for skilled workforce training of crew
- 24 members who are qualified Indiana residents.
- 25 (16) Financing fees, if the entity charging the fees is a financial
- 26 institution (as defined in IC 5-13-4-10) in Indiana.
- 27 (17) The payment of student internships, if the student who
- 28 receives the internship payment is enrolled at a state
- 29 educational institution (as defined in IC 21-7-13-32).
- 30 (18) Expenditures for acquisition of rights to a story or story
- 31 material and scripts.
- 32 (19) Acquisition costs and expenditures for:
- 33 (A) vehicles that are to be directly used as part of the
- 34 qualified media production; and
- 35 (B) the leasing or rental of vehicles.
- 36 (b) The term does not include the following expenses or
- 37 expenditures:
- 38 (1) Expenditures for tangible personal property acquired in
- 39 a transaction outside Indiana, even if the property is subject
- 40 to the use tax under IC 6-2.5-3.
- 41 (2) The payment of penalties or fines.
- 42 (3) The performance of services or the conveyance of property



1 in an in kind exchange.

2 (4) Any production expenditures for tangible personal  
3 property or services that are acquired from a business (or an  
4 agent of a business) that does not maintain a physical  
5 presence in Indiana.

6 (5) Expenditures for cellular telephone service.

7 (6) Marketing and advertising costs.

8 (7) Any expenses that are incurred after the qualified media  
9 production becomes commercially available to the general  
10 public.

11 (8) Airfare travel expenditures for private or chartered  
12 aircraft.

13 (9) Acquisition costs of vehicles that are not to be directly  
14 used as part of the qualified media production.

15 **Sec. 7. (a) Beginning January 1, 2021, and subject to subsection**  
16 **(c), a qualified applicant that proposes to incur or make qualified**  
17 **production expenditures totaling at least:**

18 (1) in the case of a qualified media production described in  
19 section 5(a)(1) through section 5(a)(6) of this chapter, five  
20 hundred thousand dollars (\$500,000); or

21 (2) in the case of a qualified media production described in  
22 section 5(a)(7) of this chapter, one hundred thousand dollars  
23 (\$100,000);

24 in Indiana may apply to the corporation for approval of a rebate  
25 from the corporation under this chapter. An application must be  
26 submitted before incurring or making the qualified production  
27 expenditures.

28 (b) The corporation shall prescribe the form of the application.

29 (c) In the case of a qualified media production described in  
30 section 5(a)(1) of this chapter, a qualified applicant must provide  
31 a confirmation that the qualified applicant is seeking a valid  
32 completion bond for the project.

33 **Sec. 8. A rebate approved by the corporation under this chapter**  
34 **is equal to the product of:**

35 (1) the amount of the applicant's qualified production  
36 expenditures in the taxable year, up to a maximum amount of  
37 five million dollars (\$5,000,000); multiplied by

38 (2) the percentage determined by the corporation under  
39 section 9 of this chapter.

40 **Sec. 9. (a) The corporation shall review an application**  
41 **submitted under section 7 of this chapter not later than thirty (30)**  
42 **days after the application is received.**



1           (b) An applicant for a rebate shall pay an application fee in an  
2 amount determined by the corporation at the time an application  
3 is submitted. Application fees must be used by the corporation  
4 toward paying the compensation of the film commissioner and any  
5 individuals employed or contracted by the film commissioner  
6 under IC 5-33-5-14(b).

7           (c) After receiving and reviewing an application, the  
8 corporation may enter into an agreement with the applicant for a  
9 rebate under this chapter if the corporation determines that:

10           (1) the applicant's proposed qualified media production:

11               (A) is economically viable; and

12               (B) will increase economic growth and job creation in  
13               Indiana; and

14           (2) the applicant's proposed qualified media production and  
15           qualified production expenditures otherwise satisfy the  
16           requirements of this chapter.

17           (d) The corporation shall consult with Film Indiana in making  
18 the decision to enter into an agreement with an applicant under  
19 subsection (c).

20           (e) If the corporation and an applicant enter into an agreement  
21 under this section, the agreement must contain at least the  
22 following provisions:

23           (1) The percentage to be used under section 8(2) of this  
24 chapter in determining the amount of the rebate. The  
25 percentage amount may not be more than:

26               (A) thirty-five percent (35%), in the case of qualified  
27               production expenditures for:

28                   (i) skilled workforce training described in section  
29                   6(a)(15) of this chapter; or

30                   (ii) the payment of student internships described in  
31                   section 6(a)(17) of this chapter;

32               (B) thirty percent (30%), in the case of qualified  
33               production expenditures for the payment of wages,  
34               salaries, and benefits described in section 6(a)(14) of this  
35               chapter; or

36               (C) twenty percent (20%), in the case of all other qualified  
37               production expenditures described in section 6(a) of this  
38               chapter.

39           (2) The following conditions that the applicant must satisfy  
40           before the applicant may claim the rebate:

41               (A) The applicant must certify that the applicant has not  
42               engaged in the production of obscene material (under the



- 1 standard set forth in IC 35-49-2-1).
- 2 (B) In the case of a qualified media production for which
- 3 an application for rebate is submitted before January 1,
- 4 2022, production must commence not later than one
- 5 hundred twenty (120) days after the applicant and the
- 6 corporation enter into an agreement.
- 7 (C) In the case of a qualified media production for which
- 8 an application for rebate is submitted after December 31,
- 9 2021, production must commence not later than ninety (90)
- 10 days after the applicant and the corporation enter into an
- 11 agreement.
- 12 (D) In the case of a qualified media production described
- 13 in section 5(a)(1) of this chapter, the applicant has obtained
- 14 a completion bond for the project.
- 15 (3) The following obligations of the applicant:
- 16 (A) The applicant must agree to comply with applicable
- 17 state and federal laws during the course of the production,
- 18 including:
- 19 (i) the federal Fair Labor Standards Act of 1938, as
- 20 amended (29 U.S.C. 201 et seq.);
- 21 (ii) the state minimum wage law under IC 22-2-2;
- 22 (iii) worker's compensation system requirements under
- 23 IC 22-3-5 and IC 22-3-7; and
- 24 (iv) unemployment compensation system requirements
- 25 under IC 22-4-1 through IC 22-4-39.5.
- 26 (B) The applicant must agree to place in the credits of the
- 27 qualified media production (if the production contains
- 28 credits):
- 29 (i) a statement indicating "filmed in Indiana"; and
- 30 (ii) the logo of Film Indiana.
- 31 (C) The applicant must agree to submit to Film Indiana a
- 32 viewable copy of the final qualified media production not
- 33 later than ten (10) days after the production is complete
- 34 and is commercially available to the general public.
- 35 (D) The applicant must agree to provide Film Indiana with
- 36 specified promotional material for the qualified media
- 37 production (such as photos, trailer scenes, and poster art).
- 38 In addition, the applicant must agree to convey to Film
- 39 Indiana a copyright license that permits Film Indiana to
- 40 use the promotional material for archival purposes,
- 41 government relations purposes, and marketing purposes.
- 42 (E) The applicant must agree to the review and audit of the





1 qualified production expenditures by the film  
2 commissioner. The film commissioner may determine  
3 whether the qualified production expenditures were  
4 reasonable.

5 **(4) The following consents to civil process and procedures in**  
6 **Indiana:**

7 **(A) The applicant must consent that the applicant (and any**  
8 **successor in interest in any part of the applicant) will be**  
9 **subject to the jurisdiction of Indiana courts.**

10 **(B) The applicant must consent that service of process in**  
11 **accordance with the Indiana Rules of Trial Procedure is**  
12 **proper service and subjects the applicant (and any**  
13 **successor in interest in any part of the applicant) to the**  
14 **jurisdiction of Indiana courts.**

15 **(C) The applicant must consent that any civil action**  
16 **related to the provisions of this chapter in which the**  
17 **applicant (or any successor in interest in any part of the**  
18 **applicant) is a party will be heard in an Indiana court.**

19 **(f) Not later than ten (10) days after the corporation and an**  
20 **applicant enter into an agreement under this section, the applicant**  
21 **shall pay a final administrative review fee to the corporation in an**  
22 **amount determined by the corporation. Final administrative**  
23 **review fees must be used by the corporation toward paying the**  
24 **compensation of the film commissioner and any individuals**  
25 **employed or contracted by the film commissioner under**  
26 **IC 5-33-5-14(b).**

27 **Sec. 10. (a) A rebate:**

28 **(1) may not be issued by the corporation before July 1, 2021;**  
29 **and**

30 **(2) may only be issued by the corporation after June 30, 2021,**  
31 **if the general assembly has appropriated funds for the**  
32 **purpose of paying rebates.**

33 **(b) If funds have not been appropriated and a rebate may not be**  
34 **issued, the corporation shall refund the application fee required**  
35 **under section 9(b) of this chapter and the final administrative**  
36 **review fee required under section 9(f) of this chapter.**

37 **Sec. 11. (a) A qualified applicant that has entered into an**  
38 **agreement with the corporation under section 9 of this chapter**  
39 **may file a claim for a rebate with the corporation as set forth**  
40 **under this section.**

41 **(b) A qualified applicant shall provide the corporation with any**  
42 **information necessary, including any information considered**



1 necessary by the film commissioner, to determine the qualified  
 2 applicant's compliance with the terms of the qualified applicant's  
 3 agreement with the corporation and the amount of the rebate to  
 4 which the qualified applicant is entitled under this chapter.

5 (c) A qualified applicant must also submit a digital copy of the  
 6 completed qualified media production with the qualified  
 7 applicant's claim for a rebate under this section.

8 (d) A rebate may not be issued by the corporation under this  
 9 section after December 31, 2027.

10 (e) The corporation may adopt guidelines and prescribe forms  
 11 necessary to implement this section.

12 **Sec. 12. (a)** A qualified applicant may assign the qualified  
 13 applicant's right to receive a rebate to which the qualified  
 14 applicant is entitled under this chapter.

15 (b) A right to receive a rebate that is assigned under this section  
 16 remains subject to the qualified applicant's agreement with the  
 17 corporation under section 9 of this chapter and the provisions of  
 18 this chapter.

19 (c) An assignment under this section must be in writing and  
 20 signed by contracting parties to the assignment.

21 (d) If the right to receive a rebate is assigned under this section,  
 22 the qualified applicant must report the assignment to the  
 23 corporation and provide the corporation with a copy of the written  
 24 assignment not later than ten (10) days after the assignment is  
 25 made.

26 **Sec. 13.** If an applicant (or any successor in interest in any part  
 27 of the applicant) fails to satisfy any condition of this chapter or any  
 28 condition or obligation in an agreement under section 9 of this  
 29 chapter, or if the conditions in section 10 of this chapter are not  
 30 satisfied, the corporation may take any of the following actions:

31 (1) Reject all or part of the applicant's (or the applicant's  
 32 successor's) claim for a rebate under this chapter.

33 (2) Rescind the issuance of a rebate to the applicant (or to the  
 34 applicant's successor) under this chapter.

35 (3) Recapture all or a part of the rebate issued to the  
 36 applicant (or to the applicant's successor) under this chapter.

37 **Sec. 14.** The total amount of rebates issued by the corporation  
 38 under this chapter may not exceed five million dollars (\$5,000,000)  
 39 in a state fiscal year.

40 **Sec. 15.** This chapter expires January 1, 2029.

