

SENATE BILL No. 377

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-33.

Synopsis: Film and media production incentives. Provides the following effective July 1, 2023: (1) Authorizes the Indiana destination development corporation (corporation) to employ a film commissioner. (2) Authorizes the corporation to establish a film and media production incentive program. Requires the corporation, in coordination with the office of management and budget, to provide a report to the interim study committee on fiscal policy concerning: (1) film and media production incentives offered in other states; and (2) a recommendation on the type of incentive that should be offered in Indiana.

Effective: Upon passage; July 1, 2023.

Busch

January 11, 2022, read first time and referred to Committee on Tax and Fiscal Policy.



Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

SENATE BILL No. 377

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, 2023]: **Sec. 14. The corporation may employ a film commissioner
4 and other necessary staff to perform duties as directed that relate
5 to a film and media production incentive program.**

6 SECTION 2. IC 5-33-7 IS ADDED TO THE INDIANA CODE AS
7 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2023]:

9 **Chapter 7. Indiana Film and Media Production Incentive
10 Program**

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

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

17 **Sec. 3. As used in this chapter, "program" refers to an Indiana**



1 film and media production incentive program established under
2 section 8 of this chapter.

3 Sec. 4. As used in this chapter, "qualified applicant" means a
4 person, corporation, partnership, limited liability partnership,
5 limited liability company, or other entity that is engaged in the
6 business of making a qualified media production in Indiana.

7 Sec. 5. As used in this chapter, "qualified Indiana resident"
8 means an individual who:

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

12 (2) has signed a declaration of residency that certifies that the
13 individual has maintained a dwelling in Indiana as the
14 individual's principal place of residence for not less than six
15 (6) months immediately preceding the production start date
16 for the applicable qualified media production.

17 Sec. 6. (a) As used in this chapter, "qualified media production"
18 refers to the following for which at least fifty percent (50%) of the
19 total incurred expenses for production are qualified production
20 expenditures:

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

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

24 (3) A digital media production that is intended for reasonable
25 commercial exploitation.

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

27 (5) An advertising message, except for political advertising,
28 that is intended to be distributed in any media form.

29 (6) An educational media production, provided that the
30 educational media production is not produced primarily for
31 industrial or corporate purposes.

32 (7) Animation or music recorded in Indiana fixed on any
33 delivery system, including film, videotape, computer disc,
34 laser disc, or any digital format.

35 (b) The term does not include the following:

36 (1) Television coverage of:

37 (A) athletic events;

38 (B) news; or

39 (C) current events.

40 (2) Programs that include weather reports or financial reports
41 as a material portion of the program.

42 (3) Talk shows in which a host interviews or talks with guests.



- 1 **(4) Awards shows or gala productions.**
 2 **(5) Any production that is intended to solicit donations, other**
 3 **than donations that are:**
 4 **(A) deductible, in whole or in part, for federal income tax**
 5 **purposes; or**
 6 **(B) solicited as funding for a project or business venture.**
 7 **(6) Any political advertising message.**
 8 **(7) A production produced primarily for industrial or**
 9 **corporate purposes.**
 10 **(8) A production in any medium that is obscene (under the**
 11 **standard set forth in IC 35-49-2-1).**
 12 **Sec. 7. (a) As used in this chapter, "qualified production**
 13 **expenditure" means any of the following expenses incurred in**
 14 **Indiana or expenditures in Indiana that are made in the direct**
 15 **production (including the direct preproduction and direct**
 16 **postproduction) of a qualified media production in Indiana:**
 17 **(1) Acquisition costs for locations, facilities, offices, and**
 18 **equipment.**
 19 **(2) Acquisition costs for sets, production props, wardrobes,**
 20 **special effects, and accessories.**
 21 **(3) Expenditures for materials used to make and operate sets,**
 22 **production props, wardrobes, special effects, and accessories.**
 23 **(4) Expenditures for photography, sound synchronization,**
 24 **film processing, digital imaging, lighting, and related services.**
 25 **(5) Expenditures for editing, visual effects, sound mixing,**
 26 **composing, animation, music supervision, and related**
 27 **services.**
 28 **(6) Food and lodging.**
 29 **(7) Expenditures for travel within Indiana at a rate that is not**
 30 **more than the Internal Revenue Service standard mileage**
 31 **rate used to calculate the deductible costs of operating an**
 32 **automobile for business.**
 33 **(8) Commercial airfare travel expenditures incurred to**
 34 **transport cast members and crew members to and from**
 35 **Indiana.**
 36 **(9) Legal services, if purchased from an attorney admitted to**
 37 **the Indiana bar.**
 38 **(10) Accounting services, if purchased from a certified public**
 39 **accountant licensed in Indiana.**
 40 **(11) Shipping costs when originating from a location in**
 41 **Indiana.**
 42 **(12) Receiving costs when a shipment is received at a location**



1 **in Indiana.**

2 **(13) Any other production expenditure for which taxes are**
 3 **assessed or imposed by the state.**

4 **(14) The total sum expended on wages, salaries, and benefits.**
 5 **Expenses under this subdivision do not include expenses**
 6 **described in subdivision (15) or (17).**

7 **(15) Expenditures for skilled workforce training of crew**
 8 **members who are qualified Indiana residents.**

9 **(16) Financing fees, if the entity charging the fees is a financial**
 10 **institution (as defined in IC 5-13-4-10) in Indiana.**

11 **(17) The payment of student internships, if the student who**
 12 **receives the internship payment is enrolled at a state**
 13 **educational institution (as defined in IC 21-7-13-32).**

14 **(18) Expenditures for acquisition of rights to a story or story**
 15 **material and scripts.**

16 **(19) Acquisition costs and expenditures for:**

17 **(A) vehicles that are to be directly used as part of the**
 18 **qualified media production; and**

19 **(B) the leasing or rental of vehicles.**

20 **(b) The term does not include the following expenses or**
 21 **expenditures:**

22 **(1) Expenditures for tangible personal property acquired in**
 23 **a transaction outside Indiana, even if the property is subject**
 24 **to the use tax under IC 6-2.5-3.**

25 **(2) The payment of penalties or fines.**

26 **(3) The performance of services or the conveyance of property**
 27 **in an in kind exchange.**

28 **(4) Any production expenditures for tangible personal**
 29 **property or services that are acquired from a business (or an**
 30 **agent of a business) that does not maintain a physical**
 31 **presence in Indiana.**

32 **(5) Expenditures for cellular telephone service.**

33 **(6) Marketing and advertising costs.**

34 **(7) Any expenses that are incurred after the qualified media**
 35 **production becomes commercially available to the general**
 36 **public.**

37 **(8) Airfare travel expenditures for private or chartered**
 38 **aircraft.**

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

41 **Sec. 8. (a) The corporation may establish an Indiana film and**
 42 **media production incentive program. Beginning July 1, 2023, and**



1 subject to subsection (c), a qualified applicant that proposes to
 2 incur or make qualified production expenditures totaling at least:

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

6 (2) in the case of a qualified media production described in
 7 section 6(a)(7) of this chapter, one hundred thousand dollars
 8 (\$100,000);

9 in Indiana may apply to the corporation for approval of an
 10 incentive under the program from the corporation under this
 11 chapter. An application must be submitted before incurring or
 12 making the qualified production expenditures.

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

14 (c) In the case of a qualified media production described in
 15 section 6(a)(1) of this chapter, a qualified applicant must provide
 16 a confirmation that the qualified applicant is seeking a valid
 17 completion bond for the project.

18 Sec. 9. (a) The corporation shall review an application
 19 submitted under section 8 of this chapter not later than thirty (30)
 20 days after the application is received.

21 (b) An applicant for an incentive under the program shall pay
 22 an application fee in an amount determined by the corporation at
 23 the time an application is submitted. Application fees must be used
 24 by the corporation toward paying the compensation of the film
 25 commissioner and any necessary staff employed by the corporation
 26 under IC 5-33-5-14.

27 (c) After receiving and reviewing an application, the
 28 corporation may enter into an agreement with the applicant for an
 29 incentive under the program under this chapter if the corporation
 30 determines that:

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

32 (A) is economically viable; and

33 (B) will increase economic growth and job creation in
 34 Indiana; and

35 (2) the applicant's proposed qualified media production and
 36 qualified production expenditures otherwise satisfy the
 37 requirements of this chapter.

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

41 (e) If the corporation and an applicant enter into an agreement
 42 under this section, the agreement must contain at least the



1 following provisions:

2 (1) The following conditions that the applicant must satisfy
3 before the applicant may claim an incentive under the
4 program:

5 (A) The applicant must certify that the applicant has not
6 engaged in the production of obscene material (under the
7 standard set forth in IC 35-49-2-1).

8 (B) In the case of a qualified media production for which
9 an application for an incentive under the program is
10 submitted before January 1, 2024, production must
11 commence not later than one hundred twenty (120) days
12 after the applicant and the corporation enter into an
13 agreement.

14 (C) In the case of a qualified media production for which
15 an application for an incentive under the program is
16 submitted after December 31, 2023, production must
17 commence not later than ninety (90) days after the
18 applicant and the corporation enter into an agreement.

19 (D) In the case of a qualified media production described
20 in section 6(a)(1) of this chapter, the applicant has obtained
21 a completion bond for the project.

22 (2) The following obligations of the applicant:

23 (A) The applicant must agree to comply with applicable
24 state and federal laws during the course of the production,
25 including:

26 (i) the federal Fair Labor Standards Act of 1938, as
27 amended (29 U.S.C. 201 et seq.);

28 (ii) the state minimum wage law under IC 22-2-2;

29 (iii) worker's compensation system requirements under
30 IC 22-3-5 and IC 22-3-7; and

31 (iv) unemployment compensation system requirements
32 under IC 22-4-1 through IC 22-4-39.5.

33 (B) The applicant must agree to place in the credits of the
34 qualified media production (if the production contains
35 credits):

36 (i) a statement indicating "filmed in Indiana"; and

37 (ii) the logo of Film Indiana.

38 (C) The applicant must agree to submit to Film Indiana a
39 viewable copy of the final qualified media production not
40 later than ten (10) days after the production is complete
41 and is commercially available to the general public.

42 (D) The applicant must agree to provide Film Indiana with



1 specified promotional material for the qualified media
 2 production (such as photos, trailer scenes, and poster art).
 3 In addition, the applicant must agree to convey to Film
 4 Indiana a copyright license that permits Film Indiana to
 5 use the promotional material for archival purposes,
 6 government relations purposes, and marketing purposes.
 7 (E) The applicant must agree to the review and audit of the
 8 qualified production expenditures by the film
 9 commissioner. The film commissioner may determine
 10 whether the qualified production expenditures were
 11 reasonable.

12 (3) The following consents to civil process and procedures in
 13 Indiana:

14 (A) The applicant must consent that the applicant (and any
 15 successor in interest in any part of the applicant) will be
 16 subject to the jurisdiction of Indiana courts.

17 (B) The applicant must consent that service of process in
 18 accordance with the Indiana Rules of Trial Procedure is
 19 proper service and subjects the applicant (and any
 20 successor in interest in any part of the applicant) to the
 21 jurisdiction of Indiana courts.

22 (C) The applicant must consent that any civil action
 23 related to the provisions of this chapter in which the
 24 applicant (or any successor in interest in any part of the
 25 applicant) is a party will be heard in an Indiana court.

26 (f) Not later than ten (10) days after the corporation and an
 27 applicant enter into an agreement under this section, the applicant
 28 shall pay a final administrative review fee to the corporation in an
 29 amount determined by the corporation. Final administrative
 30 review fees must be used by the corporation toward paying the
 31 compensation of the film commissioner and any necessary staff
 32 employed by the corporation under IC 5-33-5-14.

33 Sec. 10. Incentives under the program are subject to
 34 appropriations to the program by the general assembly. If funds
 35 have not been appropriated for the program by the general
 36 assembly, the corporation shall refund an applicant's application
 37 fees and final administrative review fees.

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

42 (b) A qualified applicant shall provide the corporation with any



1 information necessary, including any information considered
 2 necessary by the film commissioner, to determine the qualified
 3 applicant's compliance with the terms of the qualified applicant's
 4 agreement with the corporation and the incentive under the
 5 program to which the qualified applicant is entitled under this
 6 chapter.

7 (c) A qualified applicant must also submit a digital copy of the
 8 completed qualified media production with the qualified
 9 applicant's claim for an incentive under this section.

10 (d) An incentive under the program may not be issued by the
 11 corporation under this section after December 31, 2029.

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

14 **Sec. 12. (a)** A qualified applicant may assign the qualified
 15 applicant's right to receive an incentive under the program to
 16 which the qualified applicant is entitled under this chapter.

17 (b) A right to receive an incentive under the program that is
 18 assigned under this section remains subject to the qualified
 19 applicant's agreement with the corporation under section 9 of this
 20 chapter and the provisions of this chapter.

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

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

28 **Sec. 13.** If an applicant (or any successor in interest in any part
 29 of the applicant) fails to satisfy any condition of this chapter or any
 30 condition or obligation in an agreement under section 9 of this
 31 chapter, or if the conditions in section 11 of this chapter are not
 32 satisfied, the corporation may take any of the following actions:

33 (1) Reject all or part of the applicant's (or the applicant's
 34 successor's) claim for an incentive under this chapter.

35 (2) Rescind the issuance of an incentive under the program to
 36 the applicant (or to the applicant's successor) under this
 37 chapter.

38 (3) Recapture all or a part of the incentive under the program
 39 issued to the applicant (or to the applicant's successor) under
 40 this chapter.

41 **Sec. 14.** This chapter expires January 1, 2031.

42 SECTION 3. [EFFECTIVE UPON PASSAGE] (a) Before October



1 1, 2022, and subject to subsection (b), the Indiana destination
2 development corporation, in coordination with the office of
3 management and budget, shall prepare a detailed report
4 concerning film and media production incentives and provide the
5 report to the interim study committee on fiscal policy established
6 by IC 2-5-1.3-4. The report must be in an electronic format under
7 IC 5-14-6.

8 (b) The report required under subsection (a) must include at
9 least the following information:

10 (1) Information concerning film and media production
11 incentives offered in all other states.

12 (2) Information concerning the effectiveness of film and media
13 production incentives offered in all other states.

14 (3) A recommendation on the type of incentive Indiana should
15 offer in order to be competitive with other states, including:

16 (A) the amount of incentive that should be offered;

17 (B) the types of productions, including film and media, that
18 should be incentivized;

19 (C) the types of production expenditures that should be
20 considered qualified for purposes of an incentive;

21 (D) the minimum amount of expenditures that should be
22 required in order to be eligible for an incentive; and

23 (E) the maximum amount of incentives that should be
24 offered per state fiscal year.

25 (c) This SECTION expires July 1, 2024.

26 SECTION 4. An emergency is declared for this act.

