

MOTION PICTURE INCENTIVE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad R. Wilson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the motion picture incentives administered by the Governor's Office of Economic Development (GOED).

Highlighted Provisions:

This bill:

- ▶ amends definitions;
 - ▶ prohibits a cash rebate incentive from the Motion Picture Incentive Account for a digital media project;
 - ▶ amends the amount of tax credit certificates GOED may issue to a motion picture company or digital media company in a fiscal year;
 - ▶ provides that GOED may issue an additional \$5,000,000 in tax credit certificates in a fiscal year beginning on or after July 1, 2017, to a motion picture company whose state-approved project is the making of an episodic series in the state;
 - ▶ amends the criteria for determining the amount of an incentive;
 - ▶ provides that GOED review certain data in determining an incentive amount for a motion picture company or digital media project;
 - ▶ requires GOED to provide a comprehensive plan on the future of motion picture incentives in the state;
 - ▶ provides a sunset date for statutory provisions related to the comprehensive plan;
- and



28 ▶ makes technical changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **63I-2-263**, as last amended by Laws of Utah 2015, Chapters 182, 258, 283, 292, and

36 297

37 **63N-8-102**, as renumbered and amended by Laws of Utah 2015, Chapter 283

38 **63N-8-103**, as renumbered and amended by Laws of Utah 2015, Chapter 283

39 **63N-8-104**, as renumbered and amended by Laws of Utah 2015, Chapter 283

40 **63N-8-105**, as renumbered and amended by Laws of Utah 2015, Chapter 283



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

43 Section 1. Section **63I-2-263** is amended to read:

44 **63I-2-263. Repeal dates, Title 63A to Title 63N.**

45 (1) Section **63A-5-104.1** is repealed on January 1, 2016.

46 (2) Section **63C-9-501.1** is repealed on July 1, 2015.

47 (3) Title 63C, Chapter 15, Prison Relocation Commission, is repealed on January 1,

48 2016.

49 (4) Subsection **63N-3-103(1)(d)** is repealed on July 1, 2015.

50 (5) Subsections **63N-8-105(2)** and **(3)** are repealed on January 1, 2018.

51 ~~(5)~~ (6) Subsection **63N-12-208(3)** is repealed on January 1, 2016.

52 Section 2. Section **63N-8-102** is amended to read:

53 **63N-8-102. Definitions.**

54 As used in this chapter:

55 (1) "Digital media company" means a company engaged in the production of a digital

56 media project.

57 (2) "Digital media project" means all or part of a production of interactive

58 entertainment or animated production that is produced for distribution in commercial or

59 educational markets, [~~which shall include projects~~] including a project intended for Internet or
60 wireless distribution.

61 (3) "Dollars left in the state" means expenditures made in the state for a state-approved
62 production, including:

63 (a) an expenditure that is subject to:

64 (i) a corporate franchise or income tax under Title 59, Chapter 7, Corporate Franchise
65 and Income Taxes;

66 (ii) an individual income tax under Title 59, Chapter 10, Individual Income Tax Act;

67 [~~and~~]

68 (iii) a sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act,

69 notwithstanding any sales and use tax exemption allowed by law; or

70 (iv) a combination of Subsections (3)(a)(i), (ii), and (iii);

71 (b) payments made to a nonresident only to the extent of the income tax paid to the
72 state on the payments, the amount of per diems paid in the state, and other direct
73 reimbursements transacted in the state; and

74 (c) payments made to a payroll company or loan-out corporation that is registered to do
75 business in the state, only to the extent of the amount of withholding under Section [59-10-402](#).

76 (4) "Loan-out corporation" means a corporation owned by one or more artists that
77 provides services of the artists to a third party production company.

78 (5) "Motion picture company" means a company engaged in the production of:

79 (a) [~~motion pictures;~~] a motion picture; or

80 [~~(b) television series; or~~]

81 [~~(c) made-for-television movies.~~]

82 (b) an episodic series.

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

85 (7) "New state [~~revenues~~] revenue" means:

86 (a) incremental new state sales and use tax [~~revenues~~] revenue generated as a result of
87 a digital media project that a digital media company pays under Title 59, Chapter 12, Sales and
88 Use Tax Act;

89 (b) incremental new state tax [~~revenues~~] revenue that a digital media company pays as

90 a result of a digital media project under:

91 (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
92 (ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and
93 Information;

94 (iii) Title 59, Chapter 10, Part 2, Trusts and Estates;
95 (iv) Title 59, Chapter 10, Part 4, Withholding of Tax; or

96 (v) a combination of Subsections (7)(b)(i), (ii), (iii), and (iv);
97 (c) incremental new state [~~revenues~~] revenue generated as individual income taxes
98 under Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and
99 Information, paid by employees of the new digital media project as evidenced by payroll

100 records from the digital media company; or

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

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

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

106 (10) "Restricted account" means the Motion Picture Incentive Account created in
107 Section [63N-8-103](#).

108 (11) "State-approved production" means a production under Subsections (2) and (5)
109 that is:

110 (a) approved by the office and ratified by the board; and
111 (b) produced in the state by a motion picture company.

112 (12) "Tax credit amount" means the amount the office lists as a tax credit on a tax
113 credit certificate for a taxable year.

114 (13) "Tax credit certificate" means a certificate issued by the office that:

115 (a) lists the name of the applicant;
116 (b) lists the applicant's taxpayer identification number;
117 (c) lists the amount of tax credit that the office awards the applicant for the taxable

118 year; and

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

120 Section 3. Section **63N-8-103** is amended to read:

121 **63N-8-103. Motion Picture Incentive Account created -- Cash rebate incentives --**
122 **Refundable tax credit incentives.**

123 (1) (a) There is created within the General Fund a restricted account known as the
124 Motion Picture Incentive Account, which the office shall use to provide cash rebate incentives
125 for state-approved productions by a motion picture company, subject to legislative
126 appropriations and the unencumbered amount in the restricted account.

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

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

130 (d) The office shall:

131 (i) with the advice of the board, administer the restricted account; and

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

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

135 (f) The office may not give a cash rebate incentive from the Motion Picture Incentive
136 Account for a digital media project.

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

140 (b) The motion picture company or digital media company shall [~~provide the office~~
141 ~~with~~]:

142 (i) submit a report to the office identifying and documenting the dollars left in the state
143 or new state [~~revenues~~] revenue generated by the motion picture company or digital media
144 company [~~for its state-approved production, including any related tax returns by the motion~~
145 picture company, payroll company, digital media company, or loan-out corporation under
146 Subsection (2)(d).], including any documentation requested by the office; and

147 (ii) provide the office with a document that expressly directs and authorizes the State
148 Tax Commission to disclose the company's tax returns and other information concerning the
149 company that would otherwise be subject to confidentiality under Section [59-1-403](#) or Section
150 [6103](#), Internal Revenue Code.

151 (c) The office shall submit the document received under Subsection (2)(b)(ii) to the

152 State Tax Commission, which shall, upon receipt, provide the office with all information
 153 requested in the document received under Subsection (2)(b)(ii).

154 ~~[(e) For a]~~ (d) A motion picture company[;] or digital media company shall engage an
 155 independent certified public accountant [shall] who is a resident of Utah and holds a current
 156 valid license issued under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, to:

157 (i) review the report submitted by the [~~motion picture~~] company; and

158 (ii) attest to the accuracy and validity of the report, including the amount of dollars left
 159 in the state.

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

165 ~~[(e) The office shall submit the document described in Subsection (2)(d) to the State~~
 166 ~~Tax Commission.]~~

167 ~~[(f) Upon receipt of the document described in Subsection (2)(d), the State Tax~~
 168 ~~Commission shall provide the office with the information requested by the office that the~~
 169 ~~motion picture company, digital media company, payroll company, or loan-out corporation~~
 170 ~~directed or authorized the State Tax Commission to provide to the office in the document~~
 171 ~~described in Subsection (2)(d).]~~

172 ~~[(g)]~~ (e) ~~[Subject to Subsection (3), for a motion picture company the]~~ The office shall:

173 (i) review the report from the motion picture company or digital media company
 174 described in Subsection (2)(b) and verify that it was reviewed by an independent certified
 175 public accountant as described in Subsection (2)[~~(e)~~](d); [and]

176 (ii) based upon the certified public accountant's attestation under Subsection
 177 (2)[~~(e)~~](d), determine the amount of the incentive that the motion picture company or digital
 178 media company is entitled to receive under its agreement with the office[-];

179 ~~[(h) Subject to Subsection (3), for a digital media company, the office shall:]~~

180 ~~[(i) ensure the digital media project results in new state revenue; and]~~

181 ~~[(ii) based upon review of new state revenue, determine the amount of the incentive~~
 182 ~~that a digital media company is entitled to under its agreement with the office.]~~

183 ~~[(i) Subject to Subsection (3), if the incentive is in the form of a cash rebate, the office~~
 184 ~~shall]~~

185 (iii) if the incentive is in the form of a cash rebate, pay the incentive from the restricted
 186 account to the motion picture company, notwithstanding Subsections 51-5-3(23)(b) and
 187 63J-1-104[(4)(e)](2)(e); and

188 ~~[(j) If]~~ (iv) if the incentive is in the form of a refundable tax credit under Section
 189 59-7-614.5 or 59-10-1108, ~~[the office shall: (i)]~~ issue a tax credit certificate to the motion
 190 picture company or digital media company~~;~~ and ~~[(i)]~~ provide a duplicate copy of the tax
 191 credit certificate to the State Tax Commission.

192 ~~[(k)]~~ (f) A motion picture company or digital media company may not claim a motion
 193 picture tax credit under Section 59-7-614.5 or 59-10-1108 unless the motion picture company
 194 or digital media company has received a tax credit certificate for the claim issued by the office
 195 under Subsection (2)~~[(j)(i)]~~(e)(iv).

196 ~~[(l)]~~ (g) A motion picture company or digital media company may claim a motion
 197 picture tax credit on its tax return for the amount listed on the tax credit certificate issued by
 198 the office.

199 ~~[(m)]~~ (h) A motion picture company or digital media company that claims a tax credit
 200 under Subsection (2)~~[(l)]~~(g) shall retain the tax credit certificate and all supporting
 201 documentation in accordance with Subsection 63N-8-104[(6)](2).

202 (3) (a) Subject to Subsection (3)(b), the office may issue \$6,793,700 in tax credit
 203 certificates to a motion picture company or digital media company under this part in a fiscal
 204 year.

205 (b) (i) For a fiscal year beginning on or after July 1, 2017, the office may issue an
 206 additional \$5,000,000 in tax credit certificates under this part in a fiscal year to a motion
 207 picture company whose state-approved project is the making of an episodic series that has a
 208 minimum contract for six episodes with a budget of \$500,000 per episode to be spent in Utah.

209 (ii) A tax credit issued under this Subsection (3)(b) does not preclude the motion
 210 picture company from receiving tax credits under Subsection (3)(a) for the same state-approved
 211 project.

212 ~~[(b)]~~ (c) If the office does not issue tax credit certificates in a fiscal year totaling the
 213 amount authorized under Subsection (3)(a) or (b), ~~[(i)]~~ the office may carry over that amount for

214 issuance in subsequent fiscal years.

215 (d) All carry over amounts from authorized amounts under Subsection (3)(b) may only
216 be used for a state-approved project as outlined under Subsection (3)(b).

217 Section 4. Section **63N-8-104** is amended to read:

218 **63N-8-104. Motion picture incentives -- Standards to qualify for an incentive --**
219 **Limitations -- Content of agreement between office and motion picture company.**

220 (1) (a) The office, with advice from the board, may only enter into an agreement with a
221 motion picture company or digital media company that meets the standards established under
222 this section and satisfies the other qualification requirements under this part.

223 (b) Subject to Subsection 63N-8-103(3), the office may commit or authorize an
224 incentive of up to 20% of the dollars left in the state by the motion picture company or digital
225 media company.

226 (c) Subject to the provisions of Subsection (4)(b), a company may receive an additional
227 5%, not to exceed 25%, of the dollars left in the state by the motion picture company or digital
228 media company.

229 (2) The office shall ensure that the agreement entered into with a motion picture
230 company or digital media company under Subsection (1)(a):

231 (a) specifies the requirements for receiving an incentive under this part;

232 (b) specifies the maximum amount of the incentive that the motion picture company or
233 digital media company may earn for a taxable year and over the life of the production;

234 (c) establishes the length of time over which the motion picture company or digital
235 media company may claim the incentive;

236 (d) requires the motion picture company or digital media company to retain records
237 supporting the company's claim for an incentive for at least four years after the motion picture
238 company or digital media company claims the incentive under this part; and

239 (e) requires the motion picture company or digital media company to submit to audits
240 for verification of the claimed incentive.

241 (3) In order to qualify for an incentive, a motion picture company or digital media
242 company shall highlight the state of Utah and the Utah Film Commission in the motion picture
243 credits.

244 [(+)] (4) In addition to the requirements for receiving a motion picture incentive as set

245 forth in this part, the office, in accordance with Title 63G, Chapter 3, Utah Administrative
 246 Rulemaking Act, shall make rules establishing:

247 (a) the standards ~~[that a motion picture company or digital media company must meet~~
 248 ~~to qualify for the motion picture]~~ for receiving an incentive; and

249 (b) criteria for determining the amount of the incentive~~[-]~~, which may include a
 250 preference for:

251 (i) a family friendly production;

252 (ii) filming in an underutilized region of the state;

253 (iii) employing state residents as a significant portion of cast and crew;

254 (iv) a production made in a rural area of the state; or

255 (v) a production that features the state.

256 ~~[(2)]~~ (5) The office shall ensure that ~~[those]~~ the standards for receiving an incentive
 257 include the following:

258 (a) an incentive may only be issued for a ~~[state approved]~~ state-approved production by
 259 a motion picture company or digital media company;

260 (b) financing has been obtained and is in place for the production; and

261 (c) the economic impact of the production on the state represents new incremental
 262 economic activity in the state as opposed to existing economic activity.

263 ~~[(3) With respect to a digital media project, the office shall consider economic~~
 264 ~~modeling, including the costs and benefits of the digital media project to state and local~~
 265 ~~governments in determining the motion picture incentive amount.]~~

266 ~~[(4) The office may also consider giving preference to a production that stimulates~~
 267 ~~economic activity in rural areas of the state or that has Utah content, such as recognizing that~~
 268 ~~the production was made in the state or uses Utah as Utah in the production.]~~

269 ~~[(5) (a) The office, with advice from the board, may enter into an agreement with a~~
 270 ~~motion picture company or digital media company that meets the standards established under~~
 271 ~~this section and satisfies the other qualification requirements under this part.]~~

272 ~~[(b) Subject to Subsection 63N-8-103(3), the office may commit or authorize a motion~~
 273 ~~picture incentive:]~~

274 ~~[(i) to a motion picture company of up to 20% of the dollars left in the state by the~~
 275 ~~motion picture company, and a motion picture company can receive an additional 5%, not to~~

276 exceed 25% of the dollars left in the state by the motion picture company if the company
277 fulfills certain requirements determined by the office including:]

278 [~~(A) employing a significant percentage of cast and crew from Utah;~~]

279 [~~(B) highlighting the state of Utah and the Utah Film Commission in the motion
280 picture credits; or]~~

281 [~~(C) other promotion opportunities as agreed upon by the office and the motion picture
282 company; and]~~

283 [~~(ii) to a digital media company, if the incentive does not exceed 100% of the new state
284 revenue less the considerations under Subsection (3), but not to exceed 20% of the dollars left
285 in the state by the digital media company;]~~

286 [~~(c) A cash rebate incentive from the Motion Picture Incentive Restricted Account may
287 not exceed \$500,000 per state approved production for a motion picture project.]~~

288 [~~(d) The office may not give a cash rebate incentive from the Motion Picture Incentive
289 Restricted Account for a digital media project.]~~

290 [~~(6) The office shall ensure that the agreement entered into with a motion picture
291 company or digital media company under Subsection (5)(a):]~~

292 [~~(a) details the requirements that the motion picture company or digital media company
293 must meet to qualify for an incentive under this part;]~~

294 [~~(b) specifies:]~~

295 [~~(i) the nature of the incentive; and]~~

296 [~~(ii) the maximum amount of the motion picture incentive that the motion picture
297 company or digital media company may earn for a taxable year and over the life of the
298 production;]~~

299 [~~(c) establishes the length of time over which the motion picture company or digital
300 media company may claim the motion picture incentive;]~~

301 [~~(d) requires the motion picture company or digital media company to retain records
302 supporting its claim for a motion picture incentive for at least four years after the motion
303 picture company or digital media company claims the incentive under this part; and]~~

304 [~~(e) requires the motion picture company or digital media company to submit to audits
305 for verification of the claimed motion picture incentive.]~~

306 Section 5. Section **63N-8-105** is amended to read:

307 **63N-8-105. Annual report.**

308 (1) The office shall include the following information in the annual written report
309 described in Section [63N-1-301](#):

310 [~~(1)~~] (a) the office's success in attracting within-the-state production of television
311 series, made-for-television movies, and motion pictures, including feature films and
312 independent films;

313 [~~(2)~~] (b) the amount of incentive commitments made by the office under this part and
314 the period of time over which the incentives will be paid; and

315 [~~(3)~~] (c) the economic impact on the state related to:

316 [~~(a)~~] (i) dollars left in the state; and

317 [~~(b)~~] (ii) providing motion picture incentives under this part.

318 (2) On or before October 1, 2016, the office shall provide a written report to the
319 Economic Development and Workforce Services Interim Committee containing a
320 comprehensive plan for the future of motion picture incentives in the state, including:

321 (a) an effective strategy and recommendations for awarding and using motion picture
322 incentives;

323 (b) a clear assessment of the advantages and disadvantages for the state of the current
324 motion picture incentives program;

325 (c) specific recommendations on how the existing program of motion picture
326 incentives could, in a cost-effective way, be improved and better targeted at:

327 (i) economic development in the state, including the creation of new long-term jobs,
328 industry, and economic growth; and

329 (ii) positive branding and exposure for the state; and

330 (d) improved and effective metrics for annually reporting the results of the motion
331 picture incentives program as described in Subsection (1).

332 (3) As part of preparing the report described in Subsection (2), the office shall meet
333 with and receive the input of interested stakeholders, including:

334 (a) the Utah Film Commission;

335 (b) the Utah Office of Tourism;

336 (c) representatives of film, digital media, animation, and game development companies
337 in the state;

- 338 (d) representatives of higher education film, digital media, animation, and game
339 development programs in the state;
340 (e) the Motion Picture Association of America;
341 (f) the Office of the Legislative Fiscal Analyst; and
342 (g) the Governor's Office of Management and Budget.
-
-

Legislative Review Note
Office of Legislative Research and General Counsel