

Hall of the House of Representatives

86th General Assembly - Regular Session, 2007

Amendment Form

Subtitle of House Bill No. 2680

"AN ACT TO ESTABLISH FINANCIAL INCENTIVES FOR THE PRODUCTION AND POST-PRODUCTION OF DIGITAL CONTENT WITHIN THE STATE OF ARKANSAS."

Amendment No. 1 to House Bill No. 2680.

Amend House Bill No. 2680 as originally introduced:

Page 1, delete lines 9 through 14 and substitute the following:

"AN ACT TO PROVIDE FINANCIAL INCENTIVES FOR THE PRODUCTION AND POST-PRODUCTION OF FILM AND DIGITAL CONTENT IN THE STATE OF ARKANSAS; TO ESTABLISH AN ARKANSAS FUTURE FILMMAKER'S FUND; TO ESTABLISH A FILM INVESTMENT CREDIT FOR RESIDENTS OF ARKANSAS; TO PROVIDE FOR THE REGISTRATION OF FILM AND DIGITAL CONTENT PRODUCTION COMPANIES DOING BUSINESS IN THE STATE; AND FOR OTHER PURPOSES."

AND

Page 1, delete lines 17 through 20 and substitute the following:

"AN ACT TO ESTABLISH FINANCIAL INCENTIVES FOR THE PRODUCTION AND POST-PRODUCTION OF FILM AND DIGITAL-MEDIUM MOTION PICTURES WITHIN THE STATE OF ARKANSAS."

AND

Delete everything after the ENACTING clause and substitute the following:

"SECTION 1. Arkansas Code Title 15, Chapter 4 is amended to add an additional subchapter to read as follows:

15-4-3301. Title.

This subchapter shall be known and may be cited as the "Digital Content AND Film Industry Development Act of 2007".

15-4-3302. Legislative intent – Findings.

(a) It is the intent of the General Assembly to assist in cultivating the film industry by:

(1)(A) Declaring that the citizens of Arkansas shall be provided with the education, training, and financial tools to succeed in today's global economy.

(B) The economic landscape of the state and nation has moved from a manufacturing-based economy to an economy based on knowledge and



technology.

(C) To further cultivate the state's knowledge and technology based economy, the film and digital content industry in Arkansas shall be further developed;

(2) Providing the financial incentives needed to foster the long-term development of the digital medium and traditional film industry in Arkansas by:

(A) Recognizing that similar incentives in surrounding states have been a catalyst for unprecedented economic growth within those states;

(B) Recognizing that to create an effective mechanism for the sustained growth of the film industry in Arkansas will require the passage of modern legislation that establishes a film production incentive program that is not only competitive but also uniquely attractive to specific types of projects and production companies;

(C) Recognizing a successfully cultivated film industry will create a sector of high technology in Arkansas, a much needed infusion of capital into areas of the state that may be economically depressed, and offer high paying, knowledge-based and skilled labor employment opportunities to Arkansans; and

(D) Recognizing that the temporary revenue loss to seed the initial growth will be more than offset by the film and digital content industry's total value added to the Arkansas economy and direct offsets through the state and local taxes collected on economic activity generated by the industry;

(3) Allowing Arkansas to once again become competitive with surrounding states that offer financial incentives to the film and digital content production industry;

(4) Recognizing that currently there is a significant brain drain out of the state as creative talent native to Arkansas and those educated in our higher education system are forced to leave Arkansas to pursue careers in the film & digital content industry;

(5) Creating a vibrant film and digital content industry in Arkansas will be essential in order to retain Arkansas's highly educated and creative individuals who want to pursue a career in this field including without limitation:

(A) Individuals educated with a specific focus in the film and media entertainment industry;

(B) Graduates of the film school programs at Arkansas State University and the University of Central Arkansas; and

(C) Individuals who have been trained to a very high level of proficiency in digital technology, specifically participants of the nationally renowned EAST Initiative and My Community Program; and

(6)(A) Targeting film and digital content projects with budgets between seventy-five thousand dollars (\$75,000) and twenty million dollars (\$20,000,000) will allow Arkansas to take advantage of the federal tax incentive offered to American film projects of that size in the American Jobs Creation Act of 2004.

(B)(i) Establishing an incentive program that benefits film productions within the range specified in subdivision (a)(6)(A) of this section will allow Arkansas to be attractive to the overwhelming majority of films being produced every year.

(ii) The low threshold of seventy-five thousand dollars (\$75,000) for qualification will allow Arkansas to be uniquely attractive to low-budget films like documentaries and other independent projects.

(iii) It is important to note that these financial incentives are available to any qualifying projects but the vast majority of projects fall within the target range.

(iv) Aiming to develop and attract these size projects will provide Arkansans with a better opportunity to achieve steady employment in the fields of film and digital content production and post-production.

(v) It is essential to provide financial incentives for post-production projects, so as to further develop the entire film and digital content industry.

(b) The General Assembly finds that:

(1)(A) Arkansas's natural beauty and diverse topography provide a variety of excellent settings from which the film and digital content industry might choose locations for production.

(B) In addition, the low cost of living, low cost of labor, and easy accessibility make Arkansas a natural choice from a financial standpoint for potential production companies.

(C) With the implementation of an effective film incentive program, Arkansas will be a uniquely attractive location for the film and digital content industry.

(2)(A) Due to the exceptional qualities of the state in terms of natural settings, availability of labor, materials, climate, and hospitality of its people, several successful motion pictures have been filmed in Arkansas.

(B) One (1) of the major reasons these projects were produced in Arkansas was because of the Motion Picture Incentive Act of 1983, § 24-2-201, et seq., that was one (1) of the first incentives offered to the motion picture industry and allowed the state and motion picture industry to develop a strong partnership.

(3)(A) The multiplier effect of the infusion of capital resulting from the production of film and digital content serves to stimulate economic activity beyond that immediately apparent during production or post-production.

(B) Other economic activities that tend to come along with this industry include tourism, new local residents, new local industries, and marketing and advertising opportunities.

15-4-3303. Definitions.

As used in this subchapter:

(1) "Below-the-line employment" means employment in a state-certified production except for screenwriters, producers, directors, and principal actors;

(2)(A) "Film and digital content" means video images or other visual media entertainment content.

(B) "Film and digital content" includes without limitation:

(i) Any format of digital media created primarily for distribution or exhibition to the general public;

(ii) Any trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in either a product or a qualified production by any means and media in any digital media format, a film, or a videotape, if the program meets all the underlying criteria of a qualified production;

- (iii) Commercials;
- (iv) Documentaries;
- (v) Infomercials;
- (vi) Interactive games;
- (vii) Interactive television;
- (viii) Long-form;
- (ix) Mini-series;
- (x) Motion pictures;
- (xi) Music videos and interstitials television

programming;

- (xii) Series;
- (xiii) Specials; and
- (xiv) Video games;

(3) "Film Office" means the division of the Arkansas Department of Economic Development charged with the responsibility of promoting and assisting the digital content industry in Arkansas;

(4) "Financial institution" means any bank or savings and loan association in the state that is a member of the Federal Deposit Insurance Corporation;

(5)(A) "Post-production" means a final stage in the production of digital content occurring after the action has been filmed or videotaped and typically involving editing and the addition of soundtracks.

(B) "Post-production" includes without limitation, editing, music, soundtracks, special effects, and credits;

(6) "Post-production costs" means all expenditures clearly and demonstrably incurred in the state in the post-production phase of a state-certified production;

(7)(A) "Production" means the process of producing any type of entertainment content including without limitation:

(i) Any format of digital media created primarily for distribution or exhibition to the general public;

(ii) Any trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in either a product or a qualified production by any means and media in any digital media format, film, or videotape, if the program meets all the underlying criteria of a qualified production;

- (iii) Commercials;
- (iv) Documentaries;
- (v) Infomercials;
- (vi) Interactive games;
- (vii) Interactive television;
- (viii) Long-form;
- (ix) Mini-series;
- (x) Motion pictures;
- (xi) Music videos and interstitials television

programming,

- (xii) Series;
- (xiii) Specials; and
- (xiv) Video games.

(B) "Production" does not include:

(i) Any ongoing program created primarily as news reports, weather reports, or financial market reports; or

(ii) Any production containing any material or performance that is obscene;

(8) "Production company" means a corporation, partnership, limited liability company, or other business entity engaged in the business of producing qualified productions on a one-time or ongoing basis and qualified by the Secretary of the State to engage in business in the state;

(9)(A) "Qualified production costs" means all expenditures clearly and demonstrably incurred in the state in the development, preproduction, production, or post-production of a qualified production, including the costs of optioning or purchasing intellectual property including without limitation, books, scripts, music, or trademarks relating to the development or purchase of a script, screenplay, or format, if:

(i) The intellectual property was produced primarily in the state of Arkansas or the creator of the intellectual property is a resident of Arkansas;

(ii) At least seventy-five percent (75%) of the subsequent film or digital content is produced in the state of Arkansas; and

(iii) The production expenses or costs for the optioning or purchasing are less than twenty-five per cent (25%) of the production expenses or costs incurred in the state.

(B) "Qualified production costs" include all expenditures generally associated with optioning or purchasing intellectual property, including option money, agent fees and attorney fees relating to the transaction, but does not include any deferrals, deferments, royalties, profit participation or recourse or non-recourse loans that the eligible production company may negotiate in order to obtain the rights to the intellectual property.

(C) "Qualified production costs" does not include optioning or purchasing any intellectual property that does not expressly adhere to the guidelines established under this subchapter.

(D) "Qualified production costs" does not include:

(i) Media buys, promotional events or gifts, or public relations associated with the promotion or marketing of any qualified production;

(ii) Deferred, leveraged, or profit participation costs relating to any personnel associated with any aspects of the production, including without limitation, producer fees, director fees, talent fees and writer fees;

(iii) Costs relating to the transfer of the production tax credits; or

(iv) Any amounts paid to persons or businesses as a result of participation of the person or business in profits from the exploitation of the qualified production;

(10) "Resident" means a natural person and includes for the purpose of determining eligibility for the tax incentive under this subchapter any person domiciled in the State of Arkansas and any other person

who maintains a permanent place of abode within the state and spends in the aggregate at least six (6) months of the taxable year within the state; and

(11) "State-certified production" means a qualified production produced by an eligible production company that is:

(i) In compliance with rules promulgated under this subchapter;

(ii) Authorized by the Department of Economic Development to conduct business in this state, and

(iii) Has been approved by the department as qualifying for a production tax credit under this subchapter.

15-4-3304. Registration required.

(a) A production company that plans to operate within the State of Arkansas shall register with the Film Office before commencing production.

(b) Upon registration and signing a financial incentive agreement, the production company shall agree to include Arkansas's name in the production's credits, unless the state prefers not to be acknowledged.

15-4-3305. The Arkansas 20/20 Film Production Tax Credit.

(a) The incentive program under this section requires that a potentially eligible production company submits an application and a project plan to the Film Office before incurring production expenses or costs and before hiring new employees associated with the proposed production.

(b)(1) The Arkansas 20/20 Film Production Tax Credit is a strategic incentive to recruit significant film projects to Arkansas and to secure the extraordinary in-state capital investments associated with these projects.

(2) The tax credit under this section is created to alleviate certain financial impacts and to encourage a production company to maximize in-state expenditures with specific emphasis on the employment of Arkansas residents.

(c)(1) Upon approval of an application by the Department of Economic Development, a qualifying production company shall be eligible for an Arkansas income tax credit of twenty percent (20%) with no cap per production on all qualified production costs in connection with the production of the state-certified production.

(2) An additional credit of fifteen percent (15%) will be granted for payroll of below-the-line employees who are full time residents of Arkansas.

(d) To qualify for this credit, a production company shall spend at least seventy-five thousand dollars (\$75,000) within a six (6) month period in connection with the production of one (1) state-certified production as set forth in § 15-4-3303.

(e)(1)(A) This section does not create a per production limit on the amount of tax incentive credit.

(B) However, there is established an annual cap of ten million dollars (\$10,000,000) for all incentives under this subchapter.

(2) The incentives will be issued on a first-come first-serve basis.

(f)(1) A tax credit allowed under this section may be sold, assigned, or otherwise transferred, in whole or in part, to one (1) or more taxpayers, and the taxpayers may claim the credit only for an income year in which the

production company would have been eligible to claim the tax credit.

(2)(A) The tax credit shall not offset more than fifty percent (50%) of an taxpayer's state tax liability.

(B) However, any unused tax credits may be carried forward for three (3) years beyond the year in which the tax credits were earned or until exhausted, whichever occurs first.

(3)(A) The production company shall make application to the department for the sale of credits.

(B) Upon approval by the Department of Economic Development, any sale of tax credits through this incentive shall be fully documented by the Department of Economic Development and the documentation shall be transmitted to the Revenue Division of the Department of Finance and Administration.

(C) The buyer of the tax credit shall be subject to the same provisions for carry forward of the tax credits as the production company that originally earned the credits.

15-4-3306. The Arkansas 20/20 Post-Production Tax Credit.

(a) The Arkansas 20/20 Post-Production Tax Credit is offered to assist production companies with qualified post-production expenses or other costs incurred exclusively during post-production.

(b) The tax credit is created to alleviate certain financial impacts and to encourage the production company to maximize in-state expenditures with specific emphasis on the employment of Arkansas residents in the post-production phase.

(c)(1) Upon approval of the application by the Arkansas Department of Economic Development, a qualifying production company shall be eligible for an Arkansas income tax credit of twenty percent (20%) with no cap per production on all qualified production costs in connection with the post-production of a state-certified production.

(2) An additional credit of fifteen percent (15%) shall be granted for payroll of below-the-line employees who are full-time residents of Arkansas.

(d) To qualify for the tax credit under this section, a production company shall spend at least seventy-five thousand dollars (\$75,000) within a six-month period in connection with the production of one (1) state-certified production as set forth in § 15-4-3303.

(e)(1)(A) This section does not create a per production limit on the amount of tax incentive credit.

(B) However, there is established an annual cap of ten million dollars (\$10,000,000) for all incentives under this subchapter.

(2) The incentives will be issued on a first-come first-serve basis.

(f)(1) A tax credit allowed under this subsection may be sold, assigned, or otherwise transferred, in whole or in part, to one (1) or more tax payers, if the taxpayers may claim the credit only for an income year in which the production company would have been eligible to claim the tax credit.

(2)(A) The tax credit shall not offset more than fifty percent (50%) of an taxpayer's state tax liability.

(B) However, any unused tax credits may be carried forward for three (3) years beyond the year in which the tax credits were earned or

until exhausted, whichever occurs first.

(3)(A) The production company shall make application to the Department of Economic Development for the sale of credits.

(B) Upon approval by the Department of Economic Development, any sale of tax credits through this incentive shall be fully documented by the Department of Economic Development and the documentation shall be transmitted to the Revenue Division of the Department of Finance and Administration.

(C) The buyer of the tax credit shall be subject to the same provisions for carry forward of the tax credits as the production company that originally earned the credits.

15-4-3307. Resident film investment incentive.

(a) A resident of the State of Arkansas who makes an investment in a state-certified production shall be eligible for a personal state income tax credit.

(b)(1) The tax credit created in subsection (a) of this section may only be used for individual state income tax relief and only for an Arkansas taxpayer who has been a full-time resident of the State of Arkansas for two (2) or more years before the commencement of the state-certified production.

(2) An Arkansas resident who invests in a state certified production shall earn the tax credit at the time of the investment in the state-certified production.

(c) For a state-certified production approved by the Arkansas Department of Economic Development, if the total base investment is greater than one hundred thousand dollars (\$100,000), each taxpayer shall be allowed a tax credit of twenty percent (20%) of the investment made by the taxpayer.

(d) The tax credit created under subsection (a) of this section:

(1) Is not transferable; and

(2) Shall be:

(A) Allowed against the income tax for the taxable period in which the credit is earned; or

(B) Carried forward for not more than three (3) succeeding tax years.

(e) All tax credits earned under this section shall be subject to and reckoned against the annual cap for all incentives established in §§ 15-4-3305 and 15-4-3306.

15-4-3308. Arkansas Future Filmmaker's Fund.

(a)(1) There is established the "Arkansas Future Filmmaker's Fund".

(2) The Arkansas Future Filmmaker's Fund is an unincorporated association with the sole purpose of providing additional resources to the Film Office for education, training, marketing, and promotion associated with film and digital content production or post-production, or both that is performed in Arkansas.

(b)(1) The fund shall:

(A) File articles of organization with the office of the Secretary of State; and

(B) Provide all requisite information to qualify under the Internal Revenue Code as a 501(c)(3) corporation.

(2) The fund shall be created and perpetuated exclusively by funds from the private sector in Arkansas.

(3) Contributions to the fund shall qualify as charitable contributions under § 26-51-419 as a deduction from an individual's adjusted gross income, including Arkansas income tax under § 26-51-403(b).

15-4-3309. Application for tax incentive.

(a)(1) A production company that desires to take advantage of the tax incentives under this subchapter shall submit to the Department of Economic Development an application and provide an estimate of total expenditures to be made in Arkansas in connection with the production.

(2) The application and estimate of expenditures shall be filed with the Film Office and approved as eligible for the tax incentive under this subchapter before the commencement of production in Arkansas.

(b)(1) After each production company submits an application, the Department of Economic Development shall sign a financial incentive agreement with each eligible production company that qualifies under this subchapter and is approved by the Department of Economic Development.

(2) The financial incentive agreement shall:

(A) Be the primary document setting forth:

(i) The benefits to be received; and

(ii) The start and end dates of the project; and

(B) Serve as the primary source document when the Department of Finance and Administration audits the production company to verify compliance with this subchapter.

(3) The financial incentive agreement shall specify the:

(A) Effective date of the agreement;

(B) Terms of the agreement that shall be calculated from the date the agreement is signed by the production company and the Arkansas Department of Economic Development;

(C) Incentive the production company may qualify for;

(D) Investment threshold requirements necessary to qualify for eligibility;

(E) Eligible production company's responsibilities for certifying eligibility requirements; and

(F) Approved production company's responsibilities for failure to meet or maintain eligibility requirements.

(c) At the time the production company registers and provides the estimate of expenditures to the Film Office, the production company shall also designate a member or representative to work with the Film Office and the Revenue Division of the Department of Finance and Administration on the reporting of expenditures and on other information necessary to receive a tax incentive credit under this subchapter.

(d)(1) No later than ninety (90) days after the last production expenses or costs are incurred in the production of a qualified production, an eligible production company shall:

(A) Apply to the Department of Economic Development for a production tax credit certificate; and

(B) Provide with the application a final expenditure report providing the information as the Department of Economic Development may require concerning the amount of the company's production expenses or costs.

(2)(A) The final expenditure report shall include without limitation:

(i) To be eligible for the tax incentive under this subchapter, documentation that all payments including all payroll payments have been made from a checking account from any Arkansas financial institution;

(ii) Receipts showing direct cash payments by the production company to Arkansas vendors, businesses, or citizens hired as cast or crew, if the sum of the cash payments does not exceed forty percent (40%) of the total verifiable expenditures;

(iii) Receipts showing per diem expenditures by the cast or crew, or both for lodging; and

(iv) Other expenditure reports deemed necessary by the Revenue Division to ensure compliance with this subchapter.

(E) Payments for penalties or fines, payments to non-profit organizations, and payments to federal and state entities that do not pay State taxes are to be excluded from the final expenditure report.

(e)(1)(A) All qualifying payments for salaries or wages shall be eligible for the tax credits under this subchapter.

(B) However, all wage and salary payments shall be:

(i) Reported to the Revenue Division; and

(ii) Subject to state and local income taxes of the state of Arkansas.

(2)(A) The Arkansas employment credit entitles a state-certified production to an additional tax credit for employing full-time residents of Arkansas.

(B) The Arkansas employment credit grants an additional credit of fifteen percent (15%) for the aggregate payroll of salaries and wages to Arkansas residents who are employed in below-the-line employment positions of the state-certified production.

(C) The Arkansas employment tax credit shall only extend to below-the-line employment positions as defined in § 15-4-3303.

(D) Any salary for an employee whose salary is equal to or greater than one hundred fifty thousand dollars (\$150,000) shall be excluded from eligibility for either tax credit.

(f)(1) If a production company hires a payroll service company to handle the payroll of a production, the payroll payments otherwise allowable shall be allowed as eligible expenditures if:

(A) Payments made by the production company to the payroll service company are paid through an Arkansas financial institution account; and

(B) All eligible income payments to employees and independent contractors done through the payroll service company are subject to Arkansas state and local income taxes.

(2) Failure to file the expenditure report within ninety (90) days after the last production expenses or costs are incurred may result in a delay in the disbursement of the tax incentive benefit under §§ 15-4-3305 and 15-4-3306.

(g)(1) The final expenditure report and all qualified production costs shall be subject to an audit by an outside certified public accountant licensed in the State of Arkansas.

(2) The eligible production company shall be responsible for paying all fees associated with the audit and final certification.

(h)(1) If the Department of Economic Development determines that the

company is eligible to be issued a production tax credit certificate, the Department of Economic Development shall enter on the certificate the amount of production expenses or costs that has been established to the satisfaction of the Department of Economic Development, and the amount of the company's credit under this subchapter.

(2) The Department of Economic Development shall provide a copy of the certificate to the Department of Finance and Administration.

15-4-3310. Sexually explicit productions.

Qualified films do not include sexually explicit productions as defined in 18 U.S.C. § 2257, as it existed on January 1, 2007.

15-4-3311. Penalties.

(a) A production company that intends to apply for the tax incentives under § 15-4-3305 or § 15-4-3306, or both, but fails to comply with § 15-4-3304 may be enjoined from engaging in production activities in the State of Arkansas by any court of competent jurisdiction until the requirements of § 15-4-3304 are met.

(b) A production company that intends to apply for the tax incentives under § 15-4-3305 or § 15-4-3306, or both, but fails to comply with all provisions of this subchapter may be denied any future application for participation in the incentive program under this subchapter and shall be subject to penalty in accordance with applicable state or federal law or both.

15-4-3312. Sunset.

The opportunity for a tax incentive under § 15-4-3305 and § 15-4-3306 expires on June 30, 2017.

15-4-3313. Rules.

The Arkansas Department of Economic Development shall promulgate appropriate rules to implement the intent and purposes of this subchapter and to prevent abuse.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the incentives afforded by this subchapter to the digital content industry can serve to stimulate the economy of the area in which production and post-production is performed; and that the incentives have a multiplier effect, in terms of economic development, in the locality of the production and statewide; and that tax revenues generated by the activities of digital content production and post-production more than offset the revenue lost through the incentives provided by this subchapter. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

The Amendment was read
By: Representative Saunders
MGF/CDS - 03-23-2007 09:27
MGF597

Chief Clerk