

## CHAPTER 39

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**GOVERNMENT - STATE**


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## SENATE BILL 18-103

BY SENATOR(S) Todd and Smallwood, Donovan, Court, Crowder, Fields, Kefalas, Kerr, Lambert, Martinez Humenik, Merrifield, Moreno, Tate;  
also REPRESENTATIVE(S) Kraft-Tharp and Leonard, Winter, Herod, Hooton, McLachlan, Melton, Michaelson Jenet, Pettersen, Roberts, Rosenthal, Salazar.

## AN ACT

**CONCERNING THE ISSUANCE OF PERFORMANCE-BASED INCENTIVES FOR FILM PRODUCTION ACTIVITIES IN THE STATE.**

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

**SECTION 1.** In Colorado Revised Statutes, 24-48.5-114, **amend** (4) as follows:

**24-48.5-114. Film, television, and media - definitions.** As used in this section and sections 24-48.5-115 and 24-48.5-116, unless the context otherwise requires:

(4) "Originates" means the production company has been a resident of the state or registered with the secretary of state for at least twelve consecutive months AND, AS OF THE DATE OF APPLYING FOR A PERFORMANCE-BASED INCENTIVE AS SPECIFIED IN SECTION 24-48.5-116, HAS ENGAGED IN PRODUCTION ACTIVITIES IN THE STATE FOR OTHER PROJECTS IN THE PAST TWELVE CONSECUTIVE MONTHS; **except that, if the production company creates a business entity for the sole purpose of conducting production activities in the state, then such business entity need not be registered with the secretary of state for twelve consecutive months, but the ~~owner~~ MANAGER of the business entity must be a resident of the state for at least twelve consecutive months AS OF THE DATE OF APPLYING FOR A PERFORMANCE-BASED INCENTIVE AS SPECIFIED IN SECTION 24-48.5-115. FOR PURPOSES OF THIS SUBSECTION (4), "MANAGER OF THE BUSINESS ENTITY" MEANS A MANAGER WITH DECISION-MAKING AUTHORITY TO MAKE FINANCIAL OR LEGAL COMMITMENTS ON BEHALF OF THE PRODUCTION OR BUSINESS.**

**SECTION 2.** In Colorado Revised Statutes, 24-48.5-116, **amend** (2) as follows:

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*Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

**24-48.5-116. Film, television, and media - performance-based incentive for film production in Colorado - Colorado office of film, television, and media operational account cash fund - creation - definition.** (2) (a) In order for a production company to claim a performance-based incentive for production activities in Colorado pursuant to this section, the production company shall apply to the office, in a manner to be determined by the office, prior to beginning production activities in the state FOR THE PROJECT FOR WHICH THE PRODUCTION COMPANY IS SEEKING A PERFORMANCE-BASED INCENTIVE. The application ~~shall~~ MUST include a statement of intent by the production company to produce a film in Colorado for which the production company will be eligible to receive the incentive. The production company shall submit, in conjunction with the application, any documentation necessary to demonstrate that:

(I) The production company's projected qualified local expenditures will satisfy the expenditures specified in ~~paragraph (a) or (b) of subsection (1)~~ SUBSECTIONS (1)(a) AND (1)(b) of this section, as applicable; AND

(II) IF THE PRODUCTION COMPANY SEEKS AN INCENTIVE SPECIFIED IN SUBSECTION (1)(a) OF THIS SECTION, THE PRODUCTION COMPANY MEETS THE DEFINITION OF "ORIGINATES" SET FORTH IN SECTION 24-48.5-114(4), INCLUDING COPIES OF INCOME TAX FORMS, PROOF OF VOTER REGISTRATION, OR COPIES OF UTILITY BILLS, TO PROVIDE DOCUMENTARY EVIDENCE THAT AS OF THE DATE OF APPLYING FOR A PERFORMANCE-BASED INCENTIVE:

(A) THE PRODUCTION COMPANY ENGAGED IN PRODUCTION ACTIVITIES IN THE STATE FOR OTHER PROJECTS IN THE PAST TWELVE CONSECUTIVE MONTHS; OR

(B) IF THE PRODUCTION COMPANY CREATED A BUSINESS ENTITY FOR THE SOLE PURPOSE OF CONDUCTING PRODUCTION ACTIVITIES IN THE STATE, THE MANAGER OF THE BUSINESS ENTITY IS A RESIDENT IN THE STATE FOR THE PAST TWELVE CONSECUTIVE MONTHS.

(b) The office shall review each application submitted by a production company before the production company begins work on a film in Colorado. Based on the information provided in the production company's application, the office shall make an initial determination of whether the production company will be eligible to receive a performance-based incentive and estimate the amount of the incentive that will be due to the production company. The office, with approval of the Colorado economic development commission created in section 24-46-102, shall grant conditional written approval to a production company that, based on the information provided by the production company and based on an analysis of such information by the office and the Colorado economic development commission, will satisfy the requirements of this section and be eligible to claim an incentive. THE OFFICE SHALL NOT ISSUE A PERFORMANCE-BASED INCENTIVE TO A PRODUCTION COMPANY UNTIL THE PRODUCTION COMPANY AND THE OFFICE HAVE ENTERED INTO A CONTRACT IN ACCORDANCE WITH THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF THIS TITLE 24.

(c) (I) Upon completion of production activities in Colorado, a production company that received conditional approval for a performance-based incentive from the office shall retain a certified public accountant to review and report in writing,

and in accordance with professional standards, regarding the accuracy of the financial documents that detail the expenses incurred in the course of the film production activities in Colorado. ~~IF THE CERTIFIED PUBLIC ACCOUNTANT'S WRITTEN REPORT SHALL INCLUDE DOCUMENTATION OF THE PRODUCTION COMPANY'S ACTUAL EXPENDITURES, INCLUDING ITS ACTUAL QUALIFIED LOCAL EXPENDITURES, AND ANY DOCUMENTATION NECESSARY TO SHOW THAT THE PRODUCTION COMPANY EMPLOYED A WORKFORCE FOR THE IN-STATE PRODUCTION ACTIVITIES MADE UP OF AT LEAST FIFTY PERCENT COLORADO RESIDENTS. WHEN THE PRODUCTION COMPANY PROVIDES A COPY OF THE CERTIFIED PUBLIC ACCOUNTANT'S WRITTEN REPORT AND THE PRODUCTION COMPANY CERTIFIES IN WRITING TO THE OFFICE THAT THE AMOUNT OF THE PRODUCTION COMPANY'S ACTUAL QUALIFIED LOCAL EXPENDITURES EQUALS OR EXCEEDS THE MINIMUM TOTAL AMOUNT OF THE PRODUCTION COMPANY'S QUALIFIED LOCAL EXPENDITURES AS SPECIFIED IN SUBSECTION (1) OF THIS SECTION, THE OFFICE SHALL CONDUCT A REVIEW OF THE CERTIFIED PUBLIC ACCOUNTANT'S WRITTEN REPORT TO ENSURE THE REQUIREMENTS OF THIS SECTION ARE MET. IF THE OFFICE IS SATISFIED THAT THE REQUIREMENTS OF THIS SECTION ARE MET, AND THE OFFICE CONFIRMS THAT THE CERTIFIED PUBLIC ACCOUNTANT WHO PROVIDED THE WRITTEN REPORT IS FROM THE LIST DESCRIBED IN SUBSECTION (2)(c)(II)(C) OF THIS SECTION, THEN THE OFFICE MAY ISSUE AN INCENTIVE TO THE PRODUCTION COMPANY.~~

(II) (A) For purposes of this ~~paragraph (c)~~ SUBSECTION (2)(c), "certified public accountant" means a certified public accountant licenced to practice in this state or a certified public accounting firm that is registered in this state.

(B) Any services of a certified public accountant provided to meet the requirements of this ~~paragraph (c)~~ SUBSECTION (2)(c) shall be performed in Colorado.

(C) THE OFFICE SHALL DEVELOP A LIST OF CERTIFIED PUBLIC ACCOUNTANTS THAT MEET THE REQUIREMENTS OF THIS SECTION. SUCH LIST MUST BE MADE AVAILABLE TO ALL PRODUCTION COMPANIES AND MUST BE POSTED ON THE OFFICE OF ECONOMIC DEVELOPMENT'S WEBSITE.

(d) The office shall develop procedures for the administration of this section, including application guidelines for production companies applying to receive a performance-based incentive and for the office to issue payment of the incentives pursuant to this section.

(e) IF A PERFORMANCE-BASED INCENTIVE IS ERRONEOUSLY OR IMPROPERLY ISSUED TO A PRODUCTION COMPANY FOR ANY REASON, INCLUDING FOR INELIGIBILITY, OVERPAYMENT, OR IMPROPER PAYMENT, THE OFFICE SHALL ENGAGE THE SERVICES OF THE ATTORNEY GENERAL TO RECOVER FROM THE PRODUCTION COMPANY ANY AMOUNT OF THE PERFORMANCE-BASED INCENTIVE THAT WAS ERRONEOUSLY OR IMPROPERLY ISSUED. THE STATE TREASURER SHALL CREDIT ANY SUCH RECOVERED PERFORMANCE-BASED INCENTIVES TO THE FUND.

**SECTION 3.** In Colorado Revised Statutes, 24-46-102, **add** (4) as follows:

**24-46-102. Colorado economic development commission - creation - membership - definition.** (4) NO LATER THAN JULY 1, 2018, AND EACH JULY 1 THEREAFTER, THE COMMISSION SHALL SCHEDULE AN ORIENTATION WITH OFFICE OF

ECONOMIC DEVELOPMENT STAFF IN ORDER TO RECEIVE AN OFFICIAL OVERVIEW OF THE STATUTORY REQUIREMENTS FOR A PRODUCTION COMPANY TO EARN A PERFORMANCE-BASED INCENTIVE FOR FILM PRODUCTION IN COLORADO AS SET FORTH IN SECTIONS 24-48.5-114 AND 24-48.5-116.

**SECTION 4. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 15, 2018