

CHAPTER 336

GOVERNMENT - STATE

HOUSE BILL 06-1362

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also SENATOR(S) Veiga, Boyd, Entz, Evans, Fitz-Gerald, Isgar, Keller, Kester, Spence, Tapia, Taylor, Tochtrop, and Williams.

AN ACT**CONCERNING THE CREATION OF PERFORMANCE-BASED INCENTIVES FOR THE MOTION PICTURE INDUSTRY TO WORK IN COLORADO, AND MAKING AN APPROPRIATION THEREFOR.**

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

SECTION 1. Part 1 of article 46 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-46-105.8. Performance-based incentive for film production in Colorado - film incentives cash fund - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "FILM" MEANS ANY VISUAL OR AUDIOVISUAL WORK THAT CONTAINS A SERIES OF RELATED IMAGES, THAT IS FIXED ON PHOTOGRAPHIC FILM, VIDEOTAPE, COMPUTER DISC, LASER DISC, OR A SIMILAR DELIVERY MEDIUM FROM WHICH IT CAN BE VIEWED OR REPRODUCED, AND THAT IS SHOWN IN THEATERS, LICENSED FOR TELEVISION BROADCASTING, OR LICENSED FOR THE HOME VIEWING MARKET.

(b) "PRODUCTION ACTIVITIES" MEANS THE SHOOTING OF A FILM, SUPPORT ACTIVITIES RELATED TO SUCH SHOOTING, AND ANY PRE-SHOOTING OR PHOTO-SHOOTING ACTIVITIES THAT ARE NECESSARY TO PRODUCE A FINISHED FILM, INCLUDING BUT NOT LIMITED TO EDITING AND THE CREATION OF SETS, PROPS, COSTUMES, AND SPECIAL EFFECTS.

(c) "PRODUCTION COMPANY" MEANS A PERSON, INCLUDING A CORPORATION OR OTHER BUSINESS ENTITY, THAT ENGAGES IN PRODUCTION ACTIVITIES FOR THE PURPOSE OF PRODUCING ALL OR ANY PORTION OF A FILM IN COLORADO.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(d) "QUALIFIED LOCAL EXPENDITURE" MEANS A PAYMENT MADE BY A PRODUCTION COMPANY IN COLORADO TO A BUSINESS IN COLORADO IN CONNECTION WITH THE PRODUCTION OF A FILM THAT THE PRODUCTION COMPANY IS PRODUCING IN COLORADO. "QUALIFIED LOCAL EXPENDITURE" SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO:

(I) PAYMENTS MADE IN CONNECTION WITH DEVELOPING OR PURCHASING THE STORY AND SCENARIO TO BE USED FOR A FILM;

(II) PAYMENTS MADE FOR THE COSTS OF SET CONSTRUCTION AND OPERATIONS, WARDROBE, ACCESSORIES, AND RELATED SERVICES;

(III) PAYMENTS MADE FOR THE COSTS OF PHOTOGRAPHY, SOUND SYNCHRONIZATION, LIGHTING, AND RELATED SERVICES;

(IV) PAYMENTS MADE FOR THE COSTS OF EDITING, POST-PRODUCTION, MUSIC, AND RELATED SERVICES;

(V) PAYMENTS MADE FOR THE COSTS OF RENTING FACILITIES AND EQUIPMENT, INCLUDING LOCATION FEES, LEASING VEHICLES, AND PROVIDING FOOD AND LODGING TO PEOPLE WORKING ON THE FILM PRODUCTION;

(VI) PAYMENTS FOR AIRFARE PURCHASED THROUGH A COLORADO-BASED TRAVEL AGENCY OR COMPANY;

(VII) PAYMENTS FOR INSURANCE AND BONDING PURCHASED THROUGH A COLORADO-BASED INSURANCE AGENT; AND

(VIII) PAYMENTS FOR OTHER DIRECT COSTS INCURRED BY THE FILM PRODUCTION COMPANY THAT ARE DEEMED APPROPRIATE BY THE COMMISSION.

(e) "QUALIFIED PAYROLL EXPENDITURE" MEANS AN EXPENDITURE MADE BY A PRODUCTION COMPANY TO PAY THE SALARIES OF ACTORS, MANAGEMENT, AND CREW WHO PARTICIPATE IN THE FILM PRODUCTION ACTIVITIES AND WHO ARE COLORADO RESIDENTS.

(2) SUBJECT TO THE PROVISIONS OF THIS SECTION, ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION, ANY PRODUCTION COMPANY THAT SPENDS AT LEAST SEVENTY-FIVE PERCENT OF ITS PRODUCTION EXPENDITURES FOR A FILM ON QUALIFIED LOCAL EXPENDITURES AND AT LEAST SEVENTY-FIVE PERCENT OF ITS PAYROLL EXPENDITURES FOR A FILM ON QUALIFIED LOCAL PAYROLL EXPENDITURES SHALL BE ALLOWED TO CLAIM A PERFORMANCE-BASED INCENTIVE IN AN AMOUNT AS FOLLOWS:

(a) FOR A PRODUCTION COMPANY THAT ORIGINATES THE FILM PRODUCTION IN COLORADO, AN AMOUNT EQUAL TO TEN PERCENT OF THE TOTAL AMOUNT OF THE PRODUCTION COMPANY'S QUALIFIED LOCAL EXPENDITURES AND QUALIFIED PAYROLL EXPENDITURES IF THE TOTAL OF SUCH EXPENDITURES EQUALS OR EXCEEDS ONE HUNDRED THOUSAND DOLLARS; AND

(b) FOR A PRODUCTION COMPANY THAT DOES NOT ORIGINATE THE FILM PRODUCTION ACTIVITIES IN COLORADO, AN AMOUNT EQUAL TO TEN PERCENT OF THE TOTAL AMOUNT OF THE PRODUCTION COMPANY'S QUALIFIED LOCAL EXPENDITURES AND QUALIFIED PAYROLL EXPENDITURES IF THE TOTAL OF SUCH EXPENDITURES EQUALS OR EXCEEDS ONE MILLION DOLLARS.

(3)(a) IN ORDER FOR A PRODUCTION COMPANY TO CLAIM A PERFORMANCE-BASED INCENTIVE FOR FILM PRODUCTION ACTIVITIES IN COLORADO PURSUANT TO THIS SECTION, THE PRODUCTION COMPANY SHALL APPLY TO THE COMMISSION, IN A MANNER TO BE DETERMINED BY THE COMMISSION, PRIOR TO BEGINNING PRODUCTION ACTIVITIES IN THE STATE. THE APPLICATION SHALL 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 THE PRODUCTION COMPANY'S PROJECTED QUALIFIED LOCAL EXPENDITURES AND QUALIFIED PAYROLL EXPENDITURES WILL SATISFY THE EXPENDITURES SPECIFIED IN PARAGRAPH (a) OR (b) OF SUBSECTION (2) OF THIS SECTION, AS APPLICABLE.

(b) THE COMMISSION 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 COMMISSION 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 COMMISSION SHALL GRANT CONDITIONAL WRITTEN APPROVAL TO EVERY PRODUCTION COMPANY THAT, BASED ON THE INFORMATION PROVIDED BY THE PRODUCTION COMPANY, WILL SATISFY THE REQUIREMENTS OF THIS SECTION AND BE ELIGIBLE TO CLAIM AN INCENTIVE.

(c) UPON COMPLETION OF PRODUCTION ACTIVITIES IN COLORADO, A PRODUCTION COMPANY THAT RECEIVED CONDITIONAL APPROVAL FOR A PERFORMANCE-BASED INCENTIVE FROM THE COMMISSION SHALL SUBMIT FINANCIAL DOCUMENTS TO THE COMMISSION THAT DETAIL THE EXPENSES INCURRED IN THE COURSE OF THE FILM PRODUCTION ACTIVITIES IN COLORADO, ALONG WITH A SIGNED AFFIDAVIT STATING THAT THE FINANCIAL DOCUMENTS ARE AN ACCURATE ACCOUNTING OF THE PRODUCTION COMPANY'S QUALIFIED LOCAL EXPENDITURES AND QUALIFIED PAYROLL EXPENDITURES. IF THE AMOUNT OF THE PRODUCTION COMPANY'S ACTUAL QUALIFIED LOCAL EXPENDITURES AND QUALIFIED PAYROLL EXPENDITURES EQUAL OR EXCEED THE PRODUCTION COMPANY'S PROJECTED QUALIFIED LOCAL EXPENDITURES AND QUALIFIED PAYROLL EXPENDITURES SUBMITTED TO THE COMMISSION PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3), THE COMMISSION SHALL ISSUE AN INCENTIVE TO THE PRODUCTION COMPANY.

(d) THE COMMISSION 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 COMMISSION TO ISSUE PAYMENT OF THE INCENTIVES PURSUANT TO THIS SECTION.

(4)(a) FOR THE 2006-07 FISCAL YEAR AND FOR EACH FISCAL YEAR THEREAFTER,

THE GENERAL ASSEMBLY SHALL ANNUALLY APPROPRIATE THE MONEYS TRANSFERRED TO THE FUND PURSUANT TO SECTION 12-47.1-701 (4) (a) (III), C.R.S., TO THE COMMISSION TO BE USED FOR PERFORMANCE-BASED INCENTIVES FOR THE MOTION PICTURE INDUSTRY PURSUANT TO THE PROVISIONS OF THIS SECTION.

(b) THE COMMISSION MAY ANNUALLY WITHHOLD A PORTION OF THE MONEYS APPROPRIATED FOR THE PURPOSES OF THIS SECTION TO OFFSET THE DIRECT COSTS INCURRED IN ADMINISTERING THE INCENTIVE PROGRAM. THE AMOUNT WITHHELD BY THE COMMISSION IN ANY FISCAL YEAR SHALL NOT EXCEED TWO AND ONE-HALF PERCENT OF THE AMOUNT APPROPRIATED FOR THE PURPOSES OF THIS SECTION IN THAT FISCAL YEAR.

(c) THE TOTAL AMOUNT OF PERFORMANCE-BASED INCENTIVES THAT THE COMMISSION ISSUES PURSUANT TO THIS SECTION IN ANY FISCAL YEAR SHALL NOT EXCEED THE AMOUNT APPROPRIATED TO THE COMMISSION TO BE USED FOR THE PURPOSES OF THIS SECTION IN THE APPLICABLE FISCAL YEAR. IF THE COMMISSION RECEIVES APPLICATIONS FOR INCENTIVES THAT EXCEED THE AMOUNT APPROPRIATED BY THE GENERAL ASSEMBLY FOR THE FISCAL YEAR, THE COMMISSION SHALL ISSUE INCENTIVES TO PRODUCTION COMPANIES IN THE ORDER IN WHICH THE COMMISSION RECEIVED APPLICATIONS UNTIL THE AMOUNT APPROPRIATED HAS BEEN EXPENDED.

(5) THE COMMISSION SHALL INCLUDE DATA REGARDING THE NUMBER OF PRODUCTION COMPANIES THAT CLAIMED THE PERFORMANCE-BASED INCENTIVE PURSUANT TO THIS SECTION AND THE TOTAL AMOUNT OF ALL INCENTIVES CLAIMED DURING THE MOST RECENT FISCAL YEAR FOR WHICH SUCH INFORMATION IS AVAILABLE IN AN ANNUAL REPORT TO THE GENERAL ASSEMBLY.

(6) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE FILM INCENTIVES CASH FUND, REFERRED TO IN THIS SECTION AS THE "FUND". THE FUND SHALL CONSIST OF:

(I) MONEYS TRANSFERRED TO THE FUND IN ACCORDANCE WITH SECTION 12-47.1-701 (4) (a), C.R.S.; AND

(II) ANY MONEYS APPROPRIATED TO THE FUND BY THE GENERAL ASSEMBLY.

(b) THE MONEYS IN THE FUND SHALL BE ANNUALLY APPROPRIATED BY THE GENERAL ASSEMBLY FOR THE PURPOSES OF THIS SECTION. ALL MONEYS NOT EXPENDED OR ENCUMBERED, AND ALL INTEREST EARNED ON THE INVESTMENT OR DEPOSIT OF MONEYS IN THE FUND, SHALL REMAIN IN THE FUND AND SHALL NOT REVERT TO THE GENERAL FUND AT THE END OF ANY FISCAL YEAR.

SECTION 2. 24-46-106, Colorado Revised Statutes, is amended to read:

24-46-106. Repeal of part. This part 1 is repealed, effective ~~July 1, 2006~~. JULY 1, 2017.

SECTION 3. Effective date. This act shall take effect upon passage; except that section 1 of this act shall only take effect if House Bill 06-1201 is enacted at the Second Regular Session of the Sixty-fifth General Assembly and becomes law.

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: June 5, 2006