

CHAPTER 419

GOVERNMENT - STATE

HOUSE BILL 09-1010

BY REPRESENTATIVE(S) Massey and McGihon, Acree, Apuan, Baumgardner, Ferrandino, Frangas, Gerou, Kefalas, Kerr J., Liston, Looper, Marostica, May, McCann, McFadyen, Riesberg, Ryden, Scanlan, Schafer S., Summers, Tipton, Todd, Vigil, Waller, Carroll T., Curry, Labuda, Priola, Stephens;
also SENATOR(S) Gibbs and Spence, Newell, White.

AN ACT

**CONCERNING THE PROMOTION OF COLORADO AS A LOCATION FOR FILM PRODUCTION ACTIVITIES,
AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

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

SECTION 1. Article 48.5 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 2
COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA**

24-48.5-201. Definitions. AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "FILM" MEANS ANY VISUAL OR AUDIOVISUAL WORK, INCLUDING, WITHOUT LIMITATION, A VIDEO GAME, THAT CONTAINS A SERIES OF RELATED IMAGES, REGARDLESS OF THE MEDIUM BY WHICH THE WORK IS FIXED AND FROM WHICH IT CAN BE VIEWED OR REPRODUCED, AND THAT IS PRIMARILY INTENDED TO BE EITHER:

(a) COMMERCIALY EXPLOITED BY BEING SHOWN IN THEATERS, LICENSED FOR TELEVISION EXHIBITION, LICENSED FOR THE HOME MARKET, OR OTHERWISE; OR

(b) FOR INTERNAL INDUSTRIAL, CORPORATE, OR INSTITUTIONAL USE.

(2) "OFFICE" MEANS THE COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA CREATED PURSUANT TO SECTION 24-48.5-202.

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

(3) "PRODUCTION ACTIVITIES" MEANS THE SHOOTING OF A FILM, SUPPORT ACTIVITIES RELATED TO SUCH SHOOTING, AND ANY PRESHOOTING OR POSTSHOOTING ACTIVITIES THAT COMMENCE ON OR AFTER JULY 1, 2009, AND THAT ARE NECESSARY TO PRODUCE A FINISHED FILM, INCLUDING BUT NOT LIMITED TO EDITING AND THE CREATION OF SETS, PROPS, COSTUMES, AND SPECIAL EFFECTS.

(4) "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.

(5) "QUALIFIED LOCAL EXPENDITURE" MEANS A PAYMENT MADE BY A PRODUCTION COMPANY OPERATING 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 NEED NOT BE LIMITED TO:

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

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

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

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

(e) 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;

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

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

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

(6) "QUALIFIED PAYROLL EXPENDITURE" MEANS AN EXPENDITURE OF UP TO THREE MILLION DOLLARS PER EMPLOYEE OR CONTRACTOR, MADE BY A PRODUCTION COMPANY TO PAY THE SALARIES OF ACTORS, MANAGEMENT, AND CREW, WHO PARTICIPATE IN THE FILM PRODUCTION ACTIVITIES. IN ORDER FOR ANY SALARY TO BE CONSIDERED A QUALIFIED PAYROLL EXPENDITURE, ALL COLORADO INCOME TAXES SHALL BE WITHHELD AND PAID EITHER BY THE PRODUCTION COMPANY OR THE INDIVIDUAL. ANY EXPENDITURES IN EXCESS OF THREE MILLION DOLLARS PER EMPLOYEE OR CONTRACTOR SHALL BE EXCLUDED.

24-48.5-202. Colorado office of film, television, and media - creation.

(1) THERE IS HEREBY CREATED WITHIN THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT THE COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA, THE HEAD OF WHICH SHALL BE THE DIRECTOR OF THE COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA. THE DIRECTOR OF THE OFFICE SHALL BE ASSISTED BY A STAFF TO FULFILL THE OFFICE'S MISSION TO PROMOTE COLORADO AS A LOCATION FOR MAKING FEATURE FILMS, TELEVISION SHOWS, TELEVISION COMMERCIALS, STILL PHOTOGRAPHY, MUSIC VIDEOS, AND EMERGING MASS MEDIA PROJECTS.

(2) THE OFFICE SHALL:

(a) MARKET COLORADO AS A DESTINATION FOR MAKING FEATURE FILMS, TELEVISION SHOWS, TELEVISION COMMERCIALS, STILL PHOTOGRAPHY, MUSIC VIDEOS, AND NEW MEDIA PROJECTS;

(b) ASSIST PRODUCTION COMPANIES THAT ARE INTERESTED IN CONDUCTING PRODUCTION ACTIVITIES IN COLORADO IN SCOUTING APPROPRIATE LOCATIONS IN THE STATE FOR THE PRODUCTION COMPANY'S FILM;

(c) ASSIST STATE AND LOCAL GOVERNMENT AGENCIES AND ORGANIZATIONS IN THE CREATION OF PERMITTING CRITERIA FOR PRODUCTION COMPANIES THAT PLAN TO CONDUCT PRODUCTION ACTIVITIES ON STATE OR LOCAL GOVERNMENT PROPERTY;

(d) ASSIST PRODUCTION COMPANIES IN DETERMINING THE APPROPRIATE STATE OR LOCAL GOVERNMENT AGENCIES TO CONTACT TO APPLY FOR A PERMIT TO CONDUCT PRODUCTION ACTIVITIES ON STATE OR LOCAL GOVERNMENT PROPERTY;

(e) SERVE AS A GENERAL LIAISON FOR PRODUCTION COMPANIES AND ASSIST IN COORDINATION EFFORTS AMONG PRODUCTION COMPANIES, ANY STATE OR LOCAL GOVERNMENT AGENCY, AND LOCAL BUSINESSES AND INDIVIDUALS BEFORE, DURING, AND AFTER THE PRODUCTION COMPANY CONDUCTS PRODUCTION ACTIVITIES IN COLORADO;

(f) SERVE AS A RESOURCE FOR LOCAL GOVERNMENTS AND COMMUNITIES AROUND COLORADO WHEN A PRODUCTION COMPANY APPROACHES THE LOCAL GOVERNMENT OR COMMUNITY REGARDING THE POSSIBILITY OF CONDUCTING PRODUCTION ACTIVITIES ON THE PROPERTY OF THE LOCAL GOVERNMENT OR WITHIN THE COMMUNITY;

(g) ADMINISTER THE PERFORMANCE-BASED INCENTIVE FOR FILM PRODUCTION IN COLORADO AS SPECIFIED IN SECTION 24-48.5-203;

(h) CONDUCT EDUCATIONAL SEMINARS TO PROMOTE THE FILM INDUSTRY AND PEOPLE WORKING IN THE FILM INDUSTRY IN COLORADO; AND

(i) PERFORM ANY OTHER DUTIES IN FURTHERANCE OF THE OFFICE'S MISSION AS DEEMED NECESSARY BY THE DIRECTOR OF THE OFFICE AND THE DIRECTOR OF THE OFFICE OF ECONOMIC DEVELOPMENT.

24-48.5-203. Performance-based incentive for film production in Colorado - Colorado office of film, television, and media operational account cash fund - creation - repeal. (1) SUBJECT TO THE PROVISIONS OF THIS SECTION, ON OR AFTER

JULY 1, 2009, 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.

(2)(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 OFFICE, IN A MANNER TO BE DETERMINED BY THE OFFICE, 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 (1) OF THIS SECTION, AS APPLICABLE.

(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 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 OFFICE SHALL SUBMIT FINANCIAL DOCUMENTS TO THE OFFICE 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 OFFICE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), THE OFFICE SHALL ISSUE AN INCENTIVE TO THE PRODUCTION COMPANY.

(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.

(3) THE OFFICE 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.

(4) THERE IS HEREBY CREATED IN THE STATE TREASURY THE COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA OPERATIONAL ACCOUNT CASH FUND, REFERRED TO IN THIS SECTION AS THE "FUND". THE FUND SHALL CONSIST OF:

(a) (I) MONEYS TRANSFERRED TO THE FUND AS SPECIFIED IN SECTION 24-46-105.8 (4) (a).

(II) THIS PARAGRAPH (a) IS REPEALED, EFFECTIVE JANUARY 1, 2010.

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

(c) ANY GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES THAT THE OFFICE IS HEREBY AUTHORIZED TO SEEK AND ACCEPT; AND

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

(5) (a) THE MONEYS IN THE FUND SHALL BE CONTINUOUSLY APPROPRIATED TO THE OFFICE FOR THE OPERATION OF THE OFFICE AND FOR THE PERFORMANCE-BASED INCENTIVE FOR FILM PRODUCTION IN COLORADO AS SPECIFIED IN SUBSECTION (1) OF THIS SECTION.

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

(c) 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. 12-47.1-701 (4) (a) (V) (A), (4) (a) (V) (B), and (4) (a) (V) (C), Colorado Revised Statutes, are amended to read:

12-47.1-701. Limited gaming fund. (4) (a) At the end of each fiscal year, the state treasurer shall distribute the balance remaining in the limited gaming fund in accordance with the provisions of section 9 (5) (b) (II) of article XVIII of the state constitution and paragraph (c) of subsection (1) of this section; except that:

(V) (A) Except as provided in sub-subparagraphs (B), (C), and (E) of this subparagraph (V), for the 2006-07, 2007-08 AND 2008-09 fiscal year and each fiscal year thereafter YEARS, of the portion of limited gaming fund moneys that would otherwise be transferred to the general fund pursuant to section 9 (5) (b) (II) of article XVIII of the state constitution, after the transfer to the local government limited gaming impact fund required by section 12-47.1-1601, six hundred thousand dollars shall be transferred to the film incentives cash fund created in section 24-46-105.8, C.R.S. EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPHS (B) AND (C) OF THIS SUBPARAGRAPH (V), FOR THE 2009-10 FISCAL YEAR AND EACH FISCAL YEAR THEREAFTER, OF THE PORTION OF LIMITED GAMING FUND MONEYS THAT WOULD OTHERWISE BE TRANSFERRED TO THE GENERAL FUND PURSUANT TO SECTION 9 (5) (b) (II) OF ARTICLE XVIII OF THE STATE CONSTITUTION, AFTER THE TRANSFER TO THE LOCAL GOVERNMENT LIMITED GAMING IMPACT FUND REQUIRED BY SECTION 12-47.1-1601, SIX HUNDRED THOUSAND DOLLARS SHALL BE TRANSFERRED TO THE COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA OPERATIONAL ACCOUNT CASH FUND CREATED IN SECTION 24-48.5-203, C.R.S. For purposes of the transfers occurring at the end of the 2006-07 fiscal year and each fiscal year thereafter, no later than June 1, 2007, and no later than June 1 of each calendar year thereafter, the executive director shall adjust the dollar amounts specified in this sub-subparagraph (A) to reflect the percentage change in the consumer price index for the Denver metropolitan area. As used in this sub-subparagraph (A), "percentage change in the consumer price index for the Denver metropolitan area" means the percentage change between the two published annual estimates of the consumer price index for the Denver-Boulder-Greeley combined statistical area for all urban consumers, all goods, as defined and officially reported by the bureau of labor statistics in the United States department of labor for the two calendar years immediately preceding the calendar year in which the adjustment is made.

(B) If, based on the March revenue forecast prepared by the legislative council, the joint budget committee determines that the amount of general fund revenues for the fiscal year in which the forecast is prepared will be insufficient to allow the maximum amount of general fund appropriations permitted by section 24-75-201.1 (1) (a) (II), C.R.S., to be made for that fiscal year, the joint budget committee, acting by bill, shall determine the amount of limited gaming fund moneys, if any, that should be transferred to the film incentives cash fund OR THE COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA OPERATIONAL ACCOUNT CASH FUND pursuant to sub-subparagraph (A) of this subparagraph (V) at the end of that fiscal year.

(C) If the joint budget committee, pursuant to sub-subparagraph (B) of this subparagraph (V), does not determine the amount of limited gaming fund moneys, if any, to be transferred to the film incentives cash fund OR THE COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA OPERATIONAL ACCOUNT CASH FUND specified in sub-subparagraph (A) of this subparagraph (V) and if, based on the June revenue

forecast prepared by the legislative council, the state treasurer determines that the amount of general fund revenues for the fiscal year in which the forecast is prepared will be insufficient to allow the maximum amount of general fund appropriations permitted by section 24-75-201.1 (1) (a) (II), C.R.S., to be made for that fiscal year, the state treasurer shall transfer to the general fund from the moneys that would otherwise be transferred to the film incentives cash fund OR THE COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA OPERATIONAL ACCOUNT CASH FUND pursuant to sub-subparagraph (A) of this subparagraph (V) at the end of the fiscal year an amount equal to the lesser of the full amount that would otherwise be transferred to the film incentives cash fund OR THE COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA OPERATIONAL ACCOUNT CASH FUND or the amount necessary to allow the maximum amount of general fund appropriations to be made for the fiscal year. Any reduction in the amount transferred to the film incentives cash fund OR THE COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA OPERATIONAL ACCOUNT CASH FUND required by this sub-subparagraph (C) and the amounts transferred to the state council on the arts cash fund, the new jobs incentives cash fund, and the Colorado travel and tourism promotion fund required by sub-subparagraph (B) of subparagraph (IV) of this paragraph (a) shall be pro-rated based on the amounts otherwise required to be transferred to said funds pursuant to sub-subparagraph (A) of this subparagraph (V) and sub-subparagraph (A) of subparagraph (IV) of this paragraph (a).

SECTION 3. 24-46-105.8, Colorado Revised Statutes, is amended to read:

24-46-105.8. Performance-based incentive for film production in Colorado - film incentives cash fund - definitions - repeal. (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 preshooting or postshooting 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.~~

(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:~~

(f) ~~Payments made in connection with developing or purchasing the story and scenario to be used for a film;~~

~~(H) Payments made for the costs of set construction and operations, wardrobe, accessories, and related services;~~

~~(HI) 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 June 5, 2006, 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, 2007-08, AND 2008-09 fiscal year and for each fiscal year thereafter YEARS, the general assembly shall annually appropriate the moneys transferred to the fund pursuant to section 12-47.1-701 (4) (a) (V), 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. ANY MONEYS REMAINING IN THE FUND ON JULY 1, 2009, SHALL BE TRANSFERRED TO THE COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA OPERATIONAL ACCOUNT CASH FUND CREATED IN SECTION 24-48.5-203.

(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:

(d) THIS SUBSECTION (4) IS REPEALED, EFFECTIVE JANUARY 1, 2010.

(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:~~

~~(f) Moneys transferred to the fund in accordance with section 12-47.1-701 (4) (a); C.R.S.; and~~

~~(h) 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. Any moneys not expended or encumbered from any appropriation at the end of any fiscal year shall remain available for expenditure in the next fiscal year without further appropriation.~~

SECTION 4. Adjustments to the 2009 long bill. For the implementation of this act, the appropriation made in the annual general appropriation act for the fiscal year beginning July 1, 2009, for the department of governor – lieutenant governor – state planning and budgeting, division of economic development programs, for film incentives, from the film incentives cash fund, is decreased by four hundred eighty thousand eleven dollars (\$480,011) cash funds.

SECTION 5. Effective date. This act shall take effect July 1, 2009.

SECTION 6. 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 4, 2009