

2005 Montana Legislature

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HOUSE BILL NO. 584

INTRODUCED BY HARRIS, BECKER, BERGREN, BIXBY, BRANAE, CAMPBELL, COONEY, DICKENSON, DOWELL, DRISCOLL, EATON, FACEY, FRANKLIN, FUREY, GALLIK, GILLAN, GOLIE, GRINDE, GROESBECK, GUTSCHE, HAMILTON, HAWKS, HENDRICK, HENRY, JACOBSON, JENT, JOPEK, KEANE, LASLOVICH, LENHART, LINDEEN, MAEDJE, MATTHEWS, MCALPIN, MUSGROVE, NOONAN, PARKER, SMALL-EASTMAN, SONJU, STAHL, TESTER, TOOLE, VILLA, WANZENRIED, WARDEN, WILLIAMS, WILSON, WINDHAM, WINDY BOY, WISEMAN

BY REQUEST OF THE GOVERNOR

AN ACT CREATING THE BIG SKY ON THE BIG SCREEN ACT; PROMOTING THE MOTION PICTURE AND TELEVISION INDUSTRIES AND RELATED MEDIA IN MONTANA BY PROVIDING TAX INCENTIVES FOR FILMING AND FOR DEVELOPING MAGAZINE ADVERTISING IN MONTANA; PROVIDING DEFINITIONS; ALLOWING A PRODUCTION COMPANY A TAX CREDIT FOR EMPLOYING MONTANA RESIDENTS; ALLOWING A PRODUCTION COMPANY A TAX CREDIT FOR QUALIFYING EXPENDITURES MADE IN MONTANA; REQUIRING A PRODUCTION COMPANY TO APPLY TO THE DEPARTMENT OF COMMERCE FOR STATE CERTIFICATION OF A PRODUCTION IN ORDER TO QUALIFY FOR THE TAX CREDITS; REQUIRING AN APPLICATION AND AN APPLICATION FEE FOR A PRODUCTION COMPANY TO CLAIM TAX CREDITS FOR A STATE-CERTIFIED PRODUCTION; REQUIRING THAT THE APPLICATION FEE BE USED FOR ADMINISTERING THE TAX CREDITS; LIMITING THE TAX CREDITS THAT MAY BE CLAIMED FOR A STATE-CERTIFIED PRODUCTION; PROVIDING FOR THE ADMINISTRATION OF THE TAX CREDITS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, APPLICABILITY DATES, AND A TERMINATION DATE.

AN ACT CREATING THE BIG SKY ON THE BIG SCREEN ACT; PROMOTING THE MOTION PICTURE AND TELEVISION INDUSTRIES AND RELATED MEDIA IN MONTANA BY PROVIDING TAX INCENTIVES FOR FILMING AND FOR DEVELOPING MAGAZINE ADVERTISING IN MONTANA; PROVIDING DEFINITIONS; ALLOWING A PRODUCTION COMPANY A TAX CREDIT FOR EMPLOYING MONTANA RESIDENTS; ALLOWING A PRODUCTION COMPANY A TAX CREDIT FOR QUALIFYING EXPENDITURES MADE IN MONTANA; REQUIRING A PRODUCTION COMPANY TO APPLY TO THE DEPARTMENT OF COMMERCE

FOR STATE CERTIFICATION OF A PRODUCTION IN ORDER TO QUALIFY FOR THE TAX CREDITS; REQUIRING AN APPLICATION AND AN APPLICATION FEE FOR A PRODUCTION COMPANY TO CLAIM TAX CREDITS FOR A STATE-CERTIFIED PRODUCTION; REQUIRING THAT THE APPLICATION FEE BE USED FOR ADMINISTERING THE TAX CREDITS; LIMITING THE TAX CREDITS THAT MAY BE CLAIMED FOR A STATE-CERTIFIED PRODUCTION; PROVIDING FOR THE ADMINISTRATION OF THE TAX CREDITS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, APPLICABILITY DATES, AND A TERMINATION DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [Sections 1 through 11] may be cited as the "Big Sky on the Big Screen Act".

Section 2. Purpose. (1) The purposes of [sections 1 through 11] are to enhance Montana's economy by revitalizing and expanding the motion picture and television industries and related media in Montana and to promote the growth of small businesses. The objectives of [sections 1 through 11] are to:

(a) renew interest in Montana as a premier location for the production of motion pictures, documentaries, television programs and commercials, and magazine advertising;

(b) encourage the creation of jobs that pay well for Montana workers and university graduates;

(c) enhance the growth of Montana businesses that provide goods and services for these types of productions; and

(d) help promote the tourism industry in Montana.

(2) The objectives in subsection (1) will best be achieved by offering tax incentives to production companies for hiring Montana residents and for purchasing Montana goods and services.

Section 3. Definitions. As used in [sections 1 through 11], unless the context requires otherwise, the following definitions apply:

(1) "Compensation" means salary, wages, or other compensation, including related benefits paid to a Montana resident.

(2) (a) "Production" means a nationally or regionally distributed feature-length film, short film, documentary, television series or segment, television pilot, magazine advertising, other than advertising for tobacco products, or commercial made in Montana, in whole or in part, for theatrical, television, video, internet, or other viewing.

(b) The term does not include the production of television coverage of news and athletic events or a film, video, internet production, television series, magazine advertising, or commercial that:

(i) contains any obscene material or performance as described in 45-8-201(2); or

(ii) is produced in whole or in part with money received for tobacco product placement, advertisement, or other tobacco use in the production.

(3) (a) "Production company" means a company engaged in the business of producing nationally or regionally distributed productions.

(b) The term does not include a company owned, affiliated, or controlled by, in whole or in part, a company or person that is in default on a loan made by this state or a loan guaranteed by this state or a company or person that has filed for bankruptcy.

(4) (a) "Qualified expenditures" means expenditures in Montana made by a production company that are directly related to a state-certified production. The term includes expenditures for lodging expenses, restaurant and food expenses, location fees, lumber and construction materials, rental of production equipment and vehicles, and supplies and materials that will be used in the production.

(b) The term does not include expenditures made for goods and services obtained out of state.

(5) "Resident" or "Montana resident", for the purpose of determining eligibility for the tax credit provided under [section 7], has the meaning provided in 15-30-101.

(6) "State-certified production" means a production certified by the department of commerce as provided in [section 4] and produced by a production company that has a national or regional distribution plan, including but not limited to a major theatrical exhibition, film festival, television network, cable television programming, magazine advertising, or video or internet distribution.

Section 4. Application for state certification -- approval -- revocation -- eligibility for tax credits -- rules. (1) A production company may not receive the tax credits allowed under [sections 7 and 8] unless the production has been certified by the department of commerce, as provided in this section, and has applied to the department of revenue for the tax credits as provided in [section 6]. The certification by the department of commerce must occur within 30 days after submission of the application under this section.

(2) An application, on a form provided by the department of commerce, must be submitted by the production company to the department of commerce before the start of principal photography. The application must include:

(a) the production company's name, primary home address, business address, telephone and fax numbers,

incorporation information, and federal tax identification number;

(b) the address and telephone and fax numbers of the production company's Montana office;

(c) the name of the line producer, unit production manager, or production accountant or the names of all three;

(d) a statement that the applicant meets the definition of a production company under [section 3];

(e) the title of the production;

(f) the type of production;

(g) the proposed dates of production from preproduction to the start and completion of principal photography;

(h) a copy or synopsis of the production script;

(i) a list of the production locations;

(j) a statement that the proposed production:

(i) does not contain any material or performance that would be considered obscene under 45-8-201(2);

or

(ii) will not receive any money for tobacco product placement, advertisement, or other tobacco use in the production; and

(k) if the production is a feature-length film, a statement that the production will include a line in the production's film credits that the production was filmed in Montana.

(3) The application must be signed by the manager, agent, president, vice president, or other person authorized to represent the production company.

(4) (a) The department of commerce shall notify the applicant within 30 days of receipt as to whether the production qualifies as a state-certified production.

(b) (i) Subject to subsection (4)(b)(ii), if the department of commerce approves the application, it shall provide a certification number to the applicant and notify the department of revenue of the approval and certification number.

(ii) If the production is a feature-length film, the production company and the department of commerce, prior to the issuance of the certification number, shall enter into an agreement that the production company will comply with the provisions of subsection (2)(k). The agreement may provide for remedies if the production company violates the agreement.

(5) If the department of commerce determines that the production company has violated the provisions of subsection (2)(d) or (2)(j), the department of commerce may revoke the state certification of the production. If

the department of commerce revokes the state certification, the department of commerce shall notify the department of revenue. The production company has the right to a hearing under Title 2, chapter 4, part 6.

(6) The department of commerce shall prescribe rules, including a procedure for review of that department's denial or revocation of state certification, necessary to carry out the provisions of this section.

Section 5. Submission of costs. Within 60 days of completion of principal photography, the production company shall submit a statement of all expenditures and compensation paid to Montana residents to the department.

Section 6. Application for tax credit -- fee. (1) To receive the tax credits under [sections 7 and 8] for a state-certified production, a production company shall apply to the department on a form prescribed by the department. The form must be accompanied by an application fee. The application must be made and the fee paid at the time the production company files its tax return.

(2) The application fee is determined as follows:

(a) if the total compensation paid to Montana residents for the production is less than or equal to \$30,000, the application fee is \$500;

(b) if the total compensation paid to Montana residents for the production is more than \$30,000, the application fee is \$75 for each resident employed by the production company; or

(c) if the production company is applying only for the qualified expenditure tax credit, the application fee is \$500.

(3) The fee must be deposited in the state special revenue account. The fee is statutorily appropriated, as provided in 17-7-502, in equal amounts to the department of revenue and the department of commerce to administer the provisions of [sections 6 through 11].

Section 7. Employment production tax credit. (1) Subject to [section 9], a production company that has submitted an application for a tax credit and paid the fee as required under [section 6] is allowed a tax credit against the taxes imposed by chapter 30 or 31 for the employment of residents of this state in connection with a state-certified production in the state. Except as provided in subsection (4)(b), the credit is equal to credit carryovers and the credit for the tax year.

(2) The aggregate of the credit allowed under this section for a production occurring in the production company's tax year is equal to the sum of 12% of the first \$50,000 or less of actual compensation paid to each

Montana resident employed in connection with the state-certified production during the tax year.

(3) The taxpayer is required to provide to the department, on a form prescribed by the department, a list of all cast and crew participating in the production and the amount of compensation paid to each Montana resident. The form returned by the taxpayer must include the certification number provided for in [section 4].

(4) If the credit exceeds the taxpayer's tax liability, the taxpayer shall make a one-time election to claim the credit for each state-certified production allowed under this section as follows:

(a) the credit may be refunded; or

(b) the credit may be carried forward against the taxes imposed by chapter 30 or 31 for the 4 succeeding tax years. However, the credit may not be carried forward to the extent that the credit in the tax year that the credit is received exceeds the limitation under [section 9].

(5) A C. corporation, an individual, an S. corporation, or a partnership qualifies for the credit under this section. If the credit is claimed by an S. corporation or a partnership, the credit must be attributed to the shareholders, partners, or members in the same proportion used to report income or loss for state tax purposes.

(6) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the amount of the compensation upon which the amount of the credit was computed as a deduction under 15-30-121 or 15-31-114.

(7) If any application of this section is held invalid, this section applies to other situations or persons in a manner that is not included in the invalid application.

Section 8. Tax credit for qualified expenditures. (1) Subject to [section 9], a production company that has submitted an application and paid the fee as required under [section 6] is allowed a tax credit against the taxes imposed by chapter 30 or 31 for qualified expenditures in this state made in connection with a state-certified production in the state. The credit allowed under this section is equal to 8% of the total qualified expenditures incurred in connection with the state-certified production during the tax year.

(2) The taxpayer is required to provide to the department, on a form prescribed by the department, the amount of qualified expenditures. The form returned by the taxpayer must include the certification number provided for in [section 4]. The taxpayer shall also provide other information required by the department to verify the accuracy of the qualified expenditures.

(3) The credit allowed under this section must be refunded if a taxpayer has tax liability less than the amount of the credit.

(4) A C. corporation, an individual, an S. corporation, or a partnership qualifies for the credit under this section. If the credit is claimed by an S. corporation or a partnership, the credit must be attributed to the shareholders, partners, or members in the same proportion used to report income or loss for state tax purposes.

(5) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the amount of the qualified expenditure upon which the amount of the credit was computed as a deduction under 15-30-121 or 15-31-114.

Section 9. Limitation on amount of credits. The total amount of the credits allowed under [sections 7 and 8] may not exceed \$1 million for each state-certified production.

Section 10. Denial of claim for credit -- recapture. A taxpayer whose state-certified production has been revoked as provided in [section 4(5)] may not claim the credits allowed under [sections 7 and 8]. If the department of commerce revokes the state certification of a production company after the production company has taken a credit under [section 7 or 8], the production company shall refund the amount of any credits taken. The taxpayer is subject to the penalty and interest provisions of this chapter.

Section 11. Rules. (1) The department of revenue shall adopt rules that are necessary to implement and administer [sections 6 through 11]. The department shall, in consultation with the department of commerce, develop procedures for determining compensation paid to residents and qualified expenditures for the credits allowed under [sections 7 and 8] and for taxpayer compliance with the provisions of [section 4].

(2) The department and the department of commerce shall jointly adopt rules related to the definitions in [section 3].

Section 12. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; [section 6]; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 13. Codification instruction. [Sections 1 through 11] are intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [sections 1 through 11].

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Effective date. [This act] is effective on passage and approval.

Section 16. Applicability. (1) Except as provided in subsection (2), [this act] applies to state-certified productions approved after [the effective date of this act].

(2) [Sections 6 through 10] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004.

Section 17. Termination -- carryforward. [This act] terminates January 1, 2010, but an unused credit under [section 7] may be carried forward for use on returns for tax years beginning before January 1, 2014, subject to use, limitations on the amount of the credit, carryforward, and recapture provisions of the credit effective on December 31, 2009.

- END -

Latest Version of HB 584 (HB0584.ENR)

Processed for the Web on April 22, 2005 (3:28pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

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