## **SENATE BILL 20**

 $\mathbf{Q}3$ 8lr0478 SB 723/17 - B&T(PRE-FILED) By: Senators Young, Benson, Ferguson, Kagan, Nathan-Pulliam, Peters, Manno, and Guzzone Requested: August 10, 2017 Introduced and read first time: January 10, 2018 Assigned to: Budget and Taxation A BILL ENTITLED AN ACT concerning Income Tax - Film Production Activity Tax Credit - Small or Independent Film **Entities** FOR the purpose of authorizing a Maryland small or independent film entity to qualify as a film production entity under certain circumstances; requiring that certain funding in a certain reserve account be reserved for certain purposes; altering a certain audit requirement to apply only to a film production entity with total direct costs that exceed a certain amount; altering the amount of certain tax credit certificates that the Secretary of Commerce may issue under certain circumstances; defining a certain term; providing for the application of this Act; and generally relating to income tax credits for certain film production activities. BY repealing and reenacting, with amendments, Article - Tax - General Section 10–730 Annotated Code of Maryland (2016 Replacement Volume and 2017 Supplement) SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows: Article - Tax - General 10-730.(a) In this section the following words have the meanings indicated. (1) "Department" means the Department of Commerce.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

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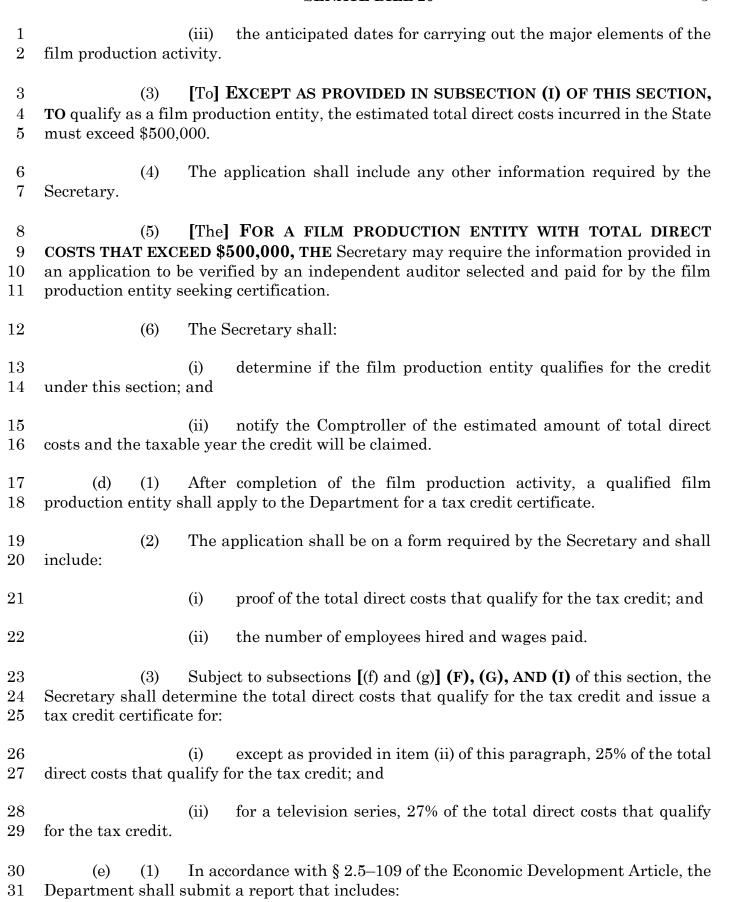
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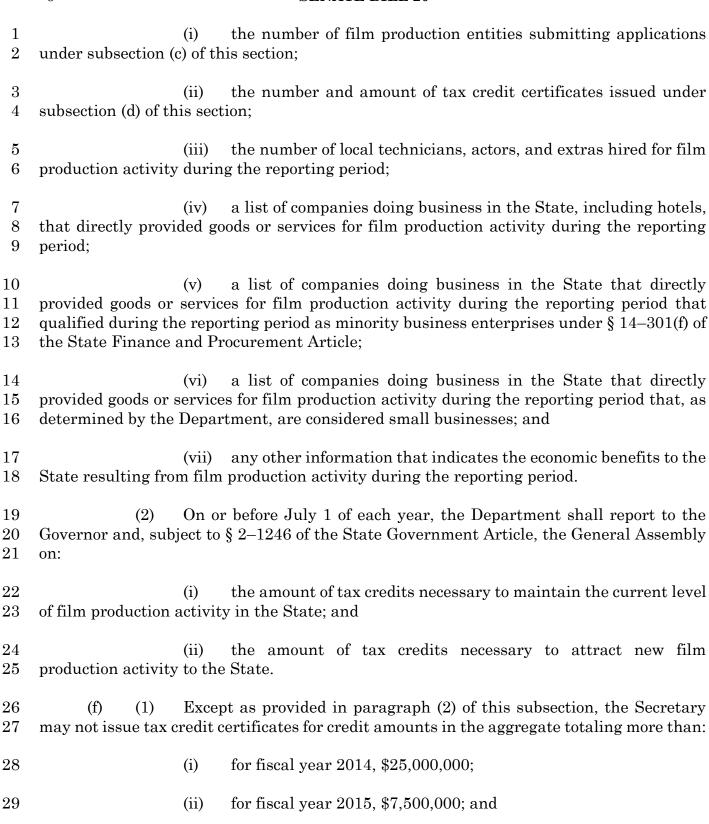
$\frac{1}{2}$	(3) project that is int	(i) ended		m production activity" means the production of a film or video tionwide commercial distribution.
3		(ii)	"Fili	m production activity" includes the production of:
4			1.	a feature film;
5			2.	a television project;
6			3.	a commercial;
7			4.	a corporate film;
8			5.	an infomercial;
9			6.	a music video;
10			7.	a digital project;
11			8.	an animation project; or
12			9.	a multimedia project.
13		(iii)	"Fili	m production activity" does not include production of:
14			1.	a student film;
15			2.	a noncommercial personal video;
16			3.	a sports broadcast;
17			4.	a broadcast of a live event;
18			5.	a talk show;
19			6.	a video, computer, or social networking game; or
20			7.	pornography.
21 22	(4) QUALIFIED FILM			ND SMALL OR INDEPENDENT FILM ENTITY" MEANS A
23 24	YEAR; AND	(I)	HAS	BEEN INCORPORATED IN MARYLAND FOR AT LEAST 1

$\frac{1}{2}$	(II) WORKFORCE IN THE FI	EMPLOYS MARYLAND RESIDENTS AS AT LEAST 40% OF ITS LM PRODUCTION ACTIVITY.			
3 4 5	[(4)] (5) "Pornography" means any production for which records are required to be maintained under § 2257 of Title 18, U.S.C., with respect to any performer in such production engaging in sexually explicit conduct.				
6	<b>[</b> (5) <b>] (6)</b>	"Qualified film production entity" means an entity that:			
7	(i)	is carrying out a film production activity; and			
8	(ii) this section in accordance	the Secretary determines to be eligible for the tax credit under with subsection (c) of this section.			
10	[(6)] <b>(7)</b>	"Secretary" means the Secretary of Commerce.			
11 12 13 14		"Television series" means a group of program episodes intended or transmission with a common series title, with or without a of episodes, and shall include a miniseries and a pilot episode television series.			
15 16 17					
18	(ii)	"Total direct costs" includes costs incurred for:			
19		1. employee wages and benefits;			
20		2. fees for services;			
21		3. acquiring or leasing property; and			
22 23	activity, including costs a	4. any other expense necessary to carry out a film production associated with:			
24		A. set construction and operation;			
25		B. wardrobe, makeup, and related services;			
26 27	related services and mate	C. photography and sound synchronization, lighting, and erials;			
28 29 30	transfers of film to tape of effects services, and anim	D. editing and related services, including film processing, or digital format, sound mixing, computer graphic services, special nation services;			

1 2 3	E. salary, wages, and other compensation including related benefits, for work performed in the State, paid to persons employed in the production, writers, directors, and producers;					
4 5	F. rental of facilities in the State and equipment used in the State;					
6	G. leasing of vehicles;					
7	H. food and lodging;					
8 9	I. music, if performed, composed, or recorded by a Maryland musician or published by a person or company domiciled in Maryland;					
10 11 12	J. travel expenses incurred to bring persons employed, either directly or indirectly, in the production of the project to Maryland, but not including expenses of these persons departing from Maryland; and					
13 14	K. legal and accounting services performed by attorneys or accountants licensed in Maryland.					
15 16 17 18	(iii) "Total direct costs" does not include any salary, wages, or other compensation for personal services of an individual who receives more than \$500,000 in salary, wages, or other compensation for personal services in connection with any film production activity.					
19 20 21 22	(b) (1) A qualified film production entity may claim a credit against the State income tax for film production activities in the State in an amount equal to the amount stated in the final tax credit certificate approved by the Secretary for film production activities.					
23 24 25	(2) If the tax credit allowed under this section in any taxable year exceeds the total tax otherwise payable by the qualified film production entity for that taxable year, the qualified film production entity may claim a refund in the amount of the excess.					
26 27	(c) (1) Before beginning a film production activity, a film production entity shall submit to the Department an application to qualify as a film production entity.					
28 29	(2) The application shall describe the anticipated film production activity, including:					
30	(i) the projected total budget;					
31 32	(ii) the estimated number of employees and total wages to be paid;					



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31 (2) If the aggregate credit amounts under the tax credit certificates issued 32 by the Secretary total less than the maximum provided under paragraph (1) of this

for fiscal year 2016, \$7,500,000.

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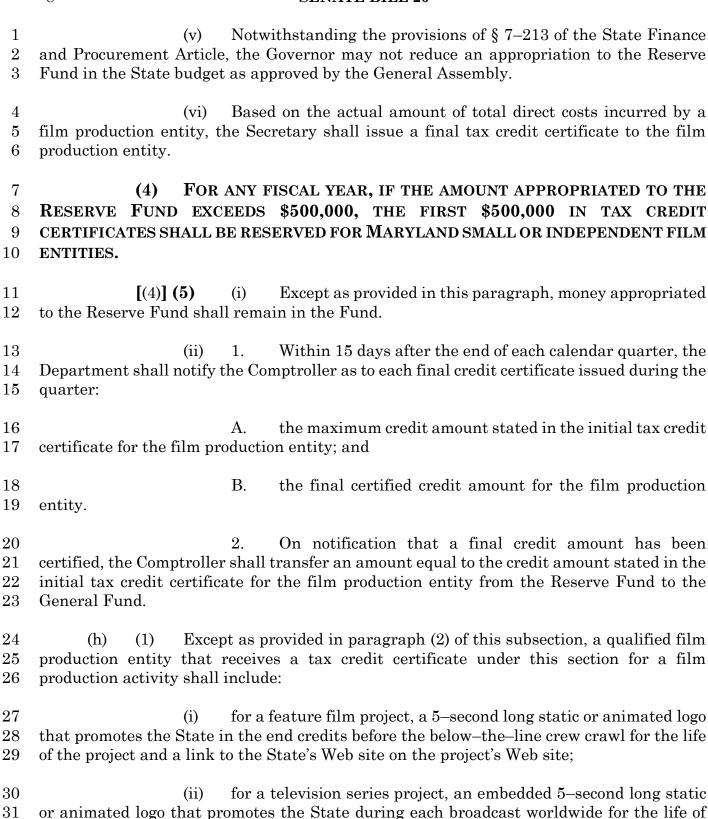
- subsection in any fiscal year, any excess amount may be carried forward and issued under tax credit certificates in a subsequent fiscal year.
- 3 (g) (1) In this subsection, "Reserve Fund" means the Maryland Film 4 Production Activity Tax Credit Reserve Fund established under paragraph (2) of this 5 subsection.
- 6 (2) (i) There is a Maryland Film Production Activity Tax Credit 7 Reserve Fund that is a special continuing, nonlapsing fund that is not subject to § 7–302 of 8 the State Finance and Procurement Article.
- 9 (ii) The money in the Reserve Fund shall be invested and reinvested 10 by the Treasurer, and interest and earnings shall be credited to the General Fund.
- 11 (3) (i) Subject to the provisions of this subsection, the Secretary shall issue an initial tax credit certificate for the total direct costs incurred by a film production entity that qualifies for a tax credit.
- 14 (ii) An initial tax credit certificate issued under this subsection shall state the maximum amount of tax credit for which the film production entity is eligible.
- 16 (iii) 1. Except as otherwise provided in this subparagraph, for 17 any fiscal year, the Secretary may not issue initial tax credit certificates for credit amounts 18 in the aggregate totaling more than the amount appropriated to the Reserve Fund for that 19 fiscal year in the State budget as approved by the General Assembly.
- 20 2. If the aggregate credit amounts under initial tax credit certificates issued in a fiscal year total less than the amount appropriated to the Reserve Fund for that fiscal year, any excess amount shall remain in the Reserve Fund and may be issued under initial tax credit certificates for the next fiscal year.
- 3. For any fiscal year, if funds are transferred from the Reserve Fund under the authority of any provision of law other than under paragraph [(4)]

  (5) of this subsection, the maximum credit amounts in the aggregate for which the Secretary may issue initial tax credit certificates shall be reduced by the amount transferred.
- (iv) For fiscal year 2017 and each fiscal year thereafter, it is the intent of the General Assembly that the Governor include in the budget bill an appropriation to the Reserve Fund in an amount equal to the amount the Department reports as necessary under subsection (e)(2) of this section to:
- 33 1. maintain the current level of film production activity in 34 the State; and

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2. attract new film production activity to the State.

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33 (iii) for any other project, the State logo at the end of each project and 34 in online promotions.

the project and a link to the State's Web site on the project's Web site; or

- 1 (2) In lieu of including a State logo as required under paragraph (1) of this 2 subsection, the qualified film production entity may offer alternative marketing 3 opportunities to be evaluated by the Department to ensure that those opportunities offer 4 equal or greater promotional value to the State.
- 5 (I) (1) FOR A MARYLAND SMALL OR INDEPENDENT FILM ENTITY TO 6 QUALIFY AS A FILM PRODUCTION ENTITY:
- 7 (I) THE ESTIMATED TOTAL DIRECT COSTS INCURRED IN THE 8 STATE SHALL EXCEED \$25,000; AND
- 9 (II) AT LEAST **50**% OF THE FILMING OF THE FILM PRODUCTION 10 ACTIVITY MUST BE IN THE STATE.
- 11 (2) SUBJECT TO SUBSECTION (G) OF THIS SECTION, THE SECRETARY
  12 SHALL DETERMINE THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE TAX CREDIT
  13 AND ISSUE A TAX CREDIT CERTIFICATE TO A MARYLAND SMALL OR INDEPENDENT
  14 FILM ENTITY FOR 25% OF THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE TAX
  15 CREDIT, NOT TO EXCEED \$125,000.
- [(i)] (J) The Department and the Comptroller jointly shall adopt regulations to carry out the provisions of this section and to specify criteria and procedures for the application for, approval of, and monitoring of continuing eligibility for the tax credit under this section.
- SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2018, and shall be applicable to all film production activity tax credit certificates issued after June 30, 2018.