

SENATE BILL 672

Q3, C8

(11r2490)

ENROLLED BILL

— Budget and Taxation / Ways and Means and Economic Matters —

Introduced by ~~Senator Kasemeyer~~ Senators Kasemeyer, Brinkley, Colburn, Currie, DeGrange, Edwards, Jones-Rodwell, King, Klausmeier, Madaleno, Manno, McFadden, Peters, and Robey

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 ~~Income Tax~~ Maryland Film Production Activity Credit Employment Act of
3 2011

4 FOR the purpose of repealing the Film Production Rebate Program; allowing certain
5 film production entities to claim a credit against the State income tax for
6 certain costs incurred for certain film production activities within the State;
7 requiring a film production entity to apply to the Department of Business and
8 Economic Development to be a qualified film production entity; requiring the
9 Secretary of Business and Economic Development to determine if a film
10 production entity qualifies for the credit; requiring that to qualify for the credit
11 certain estimated costs incurred in the State must exceed a certain amount;
12 authorizing the Secretary to require the entity to provide certain information;
13 authorizing the Secretary to require that certain information be verified by an

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber / conference committee amendments.



1 independent auditor; requiring a qualified film production entity to apply for a
2 tax credit certificate from the Department; authorizing the Secretary to provide
3 for the form of the application; requiring the application to include certain
4 information; requiring the Secretary to determine the total direct costs that
5 qualify for the tax credit and issue a tax credit certificate for a certain
6 percentage of the total direct costs; limiting the total credit amounts for which
7 the Secretary may issue initial tax credit certificates for each fiscal year;
8 requiring the Secretary to notify the Comptroller of the amount of any tax credit
9 certificate issued; providing that the total direct costs for a film production
10 activity may not include the wages of an employee if the employee's wages
11 exceed a certain amount; requiring that each year the Department report to the
12 Governor and the General Assembly certain information regarding the tax
13 credit and certain economic impacts of the credit; requiring the Department and
14 the Comptroller to jointly adopt certain regulations; defining certain terms;
15 providing for the application of this Act; providing for the termination of certain
16 provisions of this Act; and generally relating to an income tax credit for certain
17 film production activities.

18 BY repealing

19 Article – Economic Development

20 Section 4–401 through 4–407 and the subtitle “Subtitle 4. Film Production
21 Rebate Fund”

22 Annotated Code of Maryland

23 (2008 Volume and 2010 Supplement)

24 BY adding to

25 Article – Tax – General

26 Section 10–729

27 Annotated Code of Maryland

28 (2010 Replacement Volume)

29 Preamble

30 WHEREAS, The State of Maryland has a long and successful history of movie
31 making in the State; and

32 WHEREAS, Producing large scale movies in Maryland provides strong stimulus
33 to the State's economy by creating jobs for Maryland workers and generating sales by
34 Maryland businesses; and

35 WHEREAS, Significant amounts of State and local tax revenues are generated
36 by the economic activity created from producing films in Maryland; and

37 WHEREAS, Maryland's geographic, cultural, physical, and historic attributes
38 provide many favorable settings for film production in the State; and

1 WHEREAS, Key decision makers in the movie industry have demonstrated a
2 preference for and commitment to making movies in the State; and

3 WHEREAS, The scope of film production activity is broad and diverse resulting
4 in substantial expenditures within a state on local companies and businesses that
5 become part of the film production activity; and

6 WHEREAS, In addition to economic benefits derived from film production
7 activity, the long-term benefits include development and establishment of spin-off
8 film production activities such as editing, sound production, creative and artistic
9 activities, development of permanent facilities such as sound stages and studios and
10 cottage industries related to independent movie making, documentaries, advertising,
11 and other film and video activity; and

12 WHEREAS, Other states have established proven models for attracting film
13 production activity to their states to the detriment of such activity in Maryland; and

14 WHEREAS, Maryland can adopt such proven methods resulting in the
15 immediate generation of new economic activity within the State, including the
16 derivative benefits described above; and

17 WHEREAS, Maryland's economy and Maryland's State and local tax revenues
18 would receive the direct benefit of these new activities prior to issuance of the tax
19 credit certificates enabling the film production entity to claim the tax credit; and

20 WHEREAS, The production of television series in Maryland results in even
21 greater positive economic benefits to the State, providing extended employment for
22 Maryland residents and sustained revenues for local companies providing goods and
23 services to production entities producing television series in Maryland; and

24 WHEREAS, The Governor and the General Assembly find and declare that the
25 net benefit to Maryland as a result of this increased economic activity is positive and is
26 necessary for strengthening the State's economic condition; now, therefore,

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
28 MARYLAND, That the Laws of Maryland read as follows:

29 **Article – Economic Development**

30 **[Subtitle 4. Film Promotion Rebate Fund.]**

31 **[4-401.**

32 (a) In this subtitle the following words have the meanings indicated.

33 (b) (1) “Film production activity” means the production of a film or video
34 project that is intended for nationwide commercial distribution.

1 (2) “Film production activity” includes the production of:

2 (i) a feature film;

3 (ii) a television project;

4 (iii) a commercial;

5 (iv) a corporate film;

6 (v) an infomercial;

7 (vi) a music video;

8 (vii) a digital project;

9 (viii) an animation project; and

10 (ix) a multimedia project.

11 (3) “Film production activity” does not include:

12 (i) production of a:

13 1. student film;

14 2. noncommercial personal video;

15 3. sports broadcast;

16 4. broadcast of a live event; or

17 5. talk show; or

18 (ii) any activity not necessary to and undertaken directly and
19 exclusively for the making of a master film, tape, or image.

20 (c) “Fund” means the Film Production Rebate Fund established under §
21 4–405 of this subtitle.

22 (d) “Qualified film production entity” means an entity that:

23 (1) is carrying out a film production activity; and

24 (2) the Secretary determines to be eligible for the rebate provided
25 under this subtitle in accordance with § 4–403 of this subtitle.

1 (e) (1) “Total direct costs”, with respect to a film production activity,
2 means the total costs incurred in the State that are necessary to carry out the film
3 production activity.

4 (2) “Total direct costs” includes costs incurred for:

5 (i) employee wages and benefits;

6 (ii) fees for services;

7 (iii) acquiring or leasing property; and

8 (iv) any other expense necessary to carry out a film production
9 activity.]

10 [4-402.

11 It is the intent of the General Assembly that the rebate provided under this
12 subtitle is for the purpose of:

13 (1) increasing film production activity in the State;

14 (2) bringing economic benefits to the residents of the State; and

15 (3) generating increased employment opportunities for the residents of
16 the State.]

17 [4-403.

18 (a) To be eligible for a rebate under this subtitle, a qualified film production
19 entity shall incur total direct costs of at least \$500,000 in the State for a single film
20 production activity.

21 (b) To qualify for the rebate provided under this subtitle, a film production
22 entity shall notify the Department of the intent of the entity to seek the rebate before
23 beginning the film production activity.

24 (c) To apply for the rebate, the film production entity shall submit to the
25 Secretary:

26 (1) a description of the anticipated film production activity, including
27 its projected total budget with estimated number of employees and total wages, and
28 anticipated dates for carrying out the major elements of the film production activity;
29 and

1 (2) any other information that the Secretary requires related to the
2 film production activity and the entity seeking the rebate.

3 (d) The Secretary may require any information required under this section to
4 be verified by an independent auditor that:

5 (1) the film production entity seeking the rebate certification selects
6 and pays for; and

7 (2) the Secretary approves.

8 (e) As a condition of applying for and receiving the rebate, the qualified film
9 production entity shall enter into a grant agreement with the Department that is
10 satisfactory to the Department.]

11 [4-404.

12 The Department may grant to a qualified film production entity, from the Fund,
13 a rebate not to exceed 25% of the total direct costs that the qualified film production
14 entity has paid for a particular film production activity.]

15 [4-405.

16 (a) There is a Film Production Rebate Fund in the Department.

17 (b) The Department shall administer the Fund.

18 (c) (1) The Fund is a special, nonlapsing fund that is not subject to
19 reversion under § 7-302 of the State Finance and Procurement Article.

20 (2) The Treasurer shall hold the Fund separately and the Comptroller
21 shall account for the Fund.

22 (d) The Fund consists of:

23 (1) money appropriated by the State to the Fund;

24 (2) repayments of any defaulted grant from the Fund; and

25 (3) any other money made available to the Department for the Fund.

26 (e) The Department may use the Fund to:

27 (1) make grants to qualified film production entities as rebates in
28 accordance with this subtitle; and

1 (2) pay the administrative, legal, and actuarial expenses of the Fund.

2 (f) (1) The Treasurer shall invest the money of the Fund in the same
3 manner as other money of the State may be invested.

4 (2) Any investment earnings of the Fund shall be credited to the
5 Fund.]

6 [4-406.

7 The Secretary shall adopt regulations to specify eligibility criteria and
8 application procedures for the rebate under this subtitle.]

9 [4-407.

10 (a) On or before December 31 of each year, the Department shall report to
11 the Governor and, in accordance with § 2-1246 of the State Government Article, to the
12 General Assembly on the grants provided as rebates for film production activity in the
13 preceding fiscal year.

14 (b) The report shall include:

15 (1) the number of local technicians, actors, and extras hired for film
16 production activity during the reporting period;

17 (2) a list of companies doing business in the State, including hotels,
18 that directly provided goods or services for film production activity during the
19 reporting period; and

20 (3) any other information that indicates the economic benefits to the
21 State resulting from film production activity during the reporting period.]

22 **Article – Tax – General**

23 **10-729.**

24 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
25 MEANINGS INDICATED.

26 (2) “DEPARTMENT” MEANS THE DEPARTMENT OF BUSINESS AND
27 ECONOMIC DEVELOPMENT.

28 (3) (I) “FILM PRODUCTION ACTIVITY” MEANS THE
29 PRODUCTION OF A FILM OR VIDEO PROJECT THAT IS INTENDED FOR
30 NATIONWIDE COMMERCIAL DISTRIBUTION.

1 **(II) “FILM PRODUCTION ACTIVITY” INCLUDES THE**
2 **PRODUCTION OF:**

- 3 **1. A FEATURE FILM;**
- 4 **2. A TELEVISION PROJECT;**
- 5 **3. A COMMERCIAL;**
- 6 **4. A CORPORATE FILM;**
- 7 **5. AN INFOMERCIAL;**
- 8 **6. A MUSIC VIDEO;**
- 9 **7. A DIGITAL PROJECT;**
- 10 **8. AN ANIMATION PROJECT; OR**
- 11 **9. A MULTIMEDIA PROJECT.**

12 **(III) “FILM PRODUCTION ACTIVITY” DOES NOT INCLUDE**
13 **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**
20 **GAME; OR**
- 21 **7. PORNOGRAPHY.**

22 **(4) “PORNOGRAPHY” MEANS ANY PRODUCTION FOR WHICH**
23 **RECORDS ARE REQUIRED TO BE MAINTAINED UNDER § 2257 OF TITLE 18,**
24 **U.S.C., WITH RESPECT TO ANY PERFORMER IN SUCH PRODUCTION ENGAGING**
25 **IN SEXUALLY EXPLICIT CONDUCT.**

1 **(5) “QUALIFIED FILM PRODUCTION ENTITY” MEANS AN ENTITY**
2 **THAT:**

3 **(I) IS CARRYING OUT A FILM PRODUCTION ACTIVITY; AND**

4 **(II) THE SECRETARY DETERMINES TO BE ELIGIBLE FOR THE**
5 **TAX CREDIT UNDER THIS SECTION IN ACCORDANCE WITH SUBSECTION (C) OF**
6 **THIS SECTION.**

7 **(6) “SECRETARY” MEANS THE SECRETARY OF BUSINESS AND**
8 **ECONOMIC DEVELOPMENT.**

9 **(7) “TELEVISION SERIES” MEANS A GROUP OF PROGRAM**
10 **EPISODES INTENDED FOR TELEVISION BROADCAST OR TRANSMISSION WITH A**
11 **COMMON SERIES TITLE, WITH OR WITHOUT A PREDETERMINED NUMBER OF**
12 **EPISODES, AND SHALL INCLUDE A MINISERIES AND A PILOT EPISODE**
13 **PRODUCED FOR AN INTENDED TELEVISION SERIES.**

14 **(8) (I) “TOTAL DIRECT COSTS”, WITH RESPECT TO A FILM**
15 **PRODUCTION ACTIVITY, MEANS THE TOTAL COSTS INCURRED IN THE STATE**
16 **THAT ARE NECESSARY TO CARRY OUT THE FILM PRODUCTION ACTIVITY.**

17 **(II) “TOTAL DIRECT COSTS” INCLUDES COSTS INCURRED**
18 **FOR:**

19 **1. EMPLOYEE WAGES AND BENEFITS;**

20 **2. FEES FOR SERVICES;**

21 **3. ACQUIRING OR LEASING PROPERTY; AND**

22 **4. ANY OTHER EXPENSE NECESSARY TO CARRY OUT**
23 **A FILM PRODUCTION ACTIVITY, INCLUDING COSTS ASSOCIATED WITH:**

24 **A. SET CONSTRUCTION AND OPERATION;**

25 **B. WARDROBE, MAKEUP, AND RELATED SERVICES;**

26 **C. PHOTOGRAPHY AND SOUND SYNCHRONIZATION,**
27 **LIGHTING, AND RELATED SERVICES AND MATERIALS;**

28 **D. EDITING AND RELATED SERVICES, INCLUDING**
29 **FILM PROCESSING, TRANSFERS OF FILM TO TAPE OR DIGITAL FORMAT, SOUND**

1 MIXING, COMPUTER GRAPHIC SERVICES, SPECIAL EFFECTS SERVICES, AND
2 ANIMATION SERVICES;

3 E. SALARY, WAGES, AND OTHER COMPENSATION
4 INCLUDING RELATED BENEFITS, FOR WORK PERFORMED IN THE STATE, PAID
5 TO PERSONS EMPLOYED IN THE PRODUCTION, WRITERS, DIRECTORS, AND
6 PRODUCERS;

7 F. RENTAL OF FACILITIES IN THE STATE AND
8 EQUIPMENT USED IN THE STATE;

9 G. LEASING OF VEHICLES;

10 H. FOOD AND LODGING;

11 I. MUSIC, IF PERFORMED, COMPOSED, OR
12 RECORDED BY A MARYLAND MUSICIAN OR PUBLISHED BY A PERSON OR
13 COMPANY DOMICILED IN MARYLAND;

14 J. TRAVEL EXPENSES INCURRED TO BRING PERSONS
15 EMPLOYED, EITHER DIRECTLY OR INDIRECTLY, IN THE PRODUCTION OF THE
16 PROJECT TO MARYLAND, BUT NOT INCLUDING EXPENSES OF THESE PERSONS
17 DEPARTING FROM MARYLAND; AND

18 K. LEGAL AND ACCOUNTING SERVICES PERFORMED
19 BY ATTORNEYS OR ACCOUNTANTS LICENSED IN MARYLAND.

20 (III) "TOTAL DIRECT COSTS" DOES NOT INCLUDE ANY
21 SALARY, WAGES, OR OTHER COMPENSATION FOR PERSONAL SERVICES OF AN
22 INDIVIDUAL WHO RECEIVES MORE THAN ~~\$1,000,000~~ \$500,000 IN SALARY,
23 WAGES, OR OTHER COMPENSATION FOR PERSONAL SERVICES IN CONNECTION
24 WITH ANY FILM PRODUCTION ACTIVITY.

25 (B) (1) A QUALIFIED FILM PRODUCTION ENTITY MAY CLAIM A CREDIT
26 AGAINST THE STATE INCOME TAX FOR FILM PRODUCTION ACTIVITIES IN THE
27 STATE IN AN AMOUNT EQUAL TO THE AMOUNT STATED IN THE FINAL TAX
28 CREDIT CERTIFICATE APPROVED BY THE SECRETARY FOR FILM PRODUCTION
29 ACTIVITIES.

30 (2) IF THE TAX CREDIT ALLOWED UNDER THIS SECTION IN ANY
31 TAXABLE YEAR EXCEEDS THE TOTAL TAX OTHERWISE PAYABLE BY THE
32 QUALIFIED FILM PRODUCTION ENTITY FOR THAT TAXABLE YEAR, THE
33 QUALIFIED FILM PRODUCTION ENTITY MAY CLAIM A REFUND IN THE AMOUNT
34 OF THE EXCESS.

1 **(C) (1) BEFORE BEGINNING A FILM PRODUCTION ACTIVITY, A FILM**
2 **PRODUCTION ENTITY SHALL SUBMIT TO THE DEPARTMENT AN APPLICATION TO**
3 **QUALIFY AS A FILM PRODUCTION ENTITY.**

4 **(2) THE APPLICATION SHALL DESCRIBE THE ANTICIPATED FILM**
5 **PRODUCTION ACTIVITY, INCLUDING:**

6 **(I) THE PROJECTED TOTAL BUDGET;**

7 **(II) THE ESTIMATED NUMBER OF EMPLOYEES AND TOTAL**
8 **WAGES TO BE PAID; AND**

9 **(III) THE ANTICIPATED DATES FOR CARRYING OUT THE**
10 **MAJOR ELEMENTS OF THE FILM PRODUCTION ACTIVITY.**

11 **(3) TO QUALIFY AS A FILM PRODUCTION ENTITY, THE ESTIMATED**
12 **TOTAL DIRECT COSTS INCURRED IN THE STATE MUST EXCEED \$500,000.**

13 **(4) THE APPLICATION SHALL INCLUDE ANY OTHER INFORMATION**
14 **REQUIRED BY THE SECRETARY.**

15 **(5) THE SECRETARY MAY REQUIRE THE INFORMATION PROVIDED**
16 **IN AN APPLICATION TO BE VERIFIED BY AN INDEPENDENT AUDITOR SELECTED**
17 **AND PAID FOR BY THE FILM PRODUCTION ENTITY SEEKING CERTIFICATION.**

18 **(6) THE SECRETARY SHALL:**

19 **(I) DETERMINE IF THE FILM PRODUCTION ENTITY**
20 **QUALIFIES FOR THE CREDIT UNDER THIS SECTION; AND**

21 **(II) NOTIFY THE COMPTROLLER OF THE ESTIMATED**
22 **AMOUNT OF TOTAL DIRECT COSTS AND THE TAXABLE YEAR THE CREDIT WILL BE**
23 **CLAIMED.**

24 **(D) (1) AFTER COMPLETION OF THE FILM PRODUCTION ACTIVITY, A**
25 **QUALIFIED FILM PRODUCTION ENTITY SHALL APPLY TO THE DEPARTMENT FOR**
26 **A TAX CREDIT CERTIFICATE.**

27 **(2) THE APPLICATION SHALL BE ON A FORM REQUIRED BY THE**
28 **SECRETARY AND SHALL INCLUDE:**

29 **(I) PROOF OF THE TOTAL DIRECT COSTS THAT QUALIFY**
30 **FOR THE TAX CREDIT; AND**

1 (II) THE NUMBER OF EMPLOYEES HIRED AND WAGES PAID.

2 (3) SUBJECT TO SUBSECTION (F) OF THIS SECTION, THE
3 SECRETARY SHALL DETERMINE THE TOTAL DIRECT COSTS THAT QUALIFY FOR
4 THE TAX CREDIT AND ISSUE A TAX CREDIT CERTIFICATE FOR:

5 (I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH,
6 25% OF THE TOTAL DIRECT COSTS THAT QUALIFY FOR THE TAX CREDIT; AND

7 (II) FOR A TELEVISION SERIES, 27% OF THE TOTAL DIRECT
8 COSTS THAT QUALIFY FOR THE TAX CREDIT.

9 (4) THE SECRETARY SHALL NOTIFY THE COMPTROLLER OF THE
10 AMOUNT OF A TAX CREDIT CERTIFICATE ISSUED UNDER THIS SUBSECTION.

11 (E) ON OR BEFORE JANUARY 1 OF EACH YEAR, THE DEPARTMENT
12 SHALL REPORT TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF THE STATE
13 GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY, ON:

14 (1) THE NUMBER OF FILM PRODUCTION ENTITIES SUBMITTING
15 APPLICATIONS UNDER SUBSECTION (C) OF THIS SECTION; ~~AND~~

16 (2) THE NUMBER AND AMOUNT OF TAX CREDIT CERTIFICATES
17 ISSUED UNDER SUBSECTION (D) OF THIS SECTION;

18 (3) THE NUMBER OF LOCAL TECHNICIANS, ACTORS, AND EXTRAS
19 HIRED FOR FILM PRODUCTION ACTIVITY DURING THE REPORTING PERIOD;

20 (4) A LIST OF COMPANIES DOING BUSINESS IN THE STATE,
21 INCLUDING HOTELS, THAT DIRECTLY PROVIDED GOODS OR SERVICES FOR FILM
22 PRODUCTION ACTIVITY DURING THE REPORTING PERIOD; AND

23 (5) ANY OTHER INFORMATION THAT INDICATES THE ECONOMIC
24 BENEFITS TO THE STATE RESULTING FROM FILM PRODUCTION ACTIVITY
25 DURING THE REPORTING PERIOD.

26 (F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
27 SUBSECTION, FOR ANY FISCAL YEAR, THE SECRETARY MAY NOT ISSUE TAX
28 CREDIT CERTIFICATES FOR CREDIT AMOUNTS IN THE AGGREGATE TOTALING
29 MORE THAN ~~\$15,000,000~~ \$7,500,000.

30 (2) IF THE AGGREGATE CREDIT AMOUNTS UNDER THE TAX
31 CREDIT CERTIFICATES ISSUED BY THE SECRETARY TOTAL LESS THAN

1 ~~\$15,000,000~~ \$7,500,000 IN ANY FISCAL YEAR, ANY EXCESS AMOUNT MAY BE
2 CARRIED FORWARD AND ISSUED UNDER TAX CREDIT CERTIFICATES IN A
3 SUBSEQUENT FISCAL YEAR.

4 (G) THE DEPARTMENT AND THE COMPTROLLER JOINTLY SHALL ADOPT
5 REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION AND TO
6 SPECIFY CRITERIA AND PROCEDURES FOR THE APPLICATION FOR, APPROVAL
7 OF, AND MONITORING OF CONTINUING ELIGIBILITY FOR THE TAX CREDIT
8 UNDER THIS SECTION.

9 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect~~
10 ~~July 1, 2011, and shall be applicable to all taxable years beginning after December 31,~~
11 ~~2010.~~

12 SECTION 2. AND BE IT FURTHER ENACTED, That § 10-729 of the Tax –
13 General Article as enacted by this Act shall take effect July 1, 2011, and shall be
14 applicable to all taxable years beginning after December 31, 2010. Section 10-729 of the
15 Tax – General Article as enacted by this Act shall remain effective for a period of 3
16 years and, at the end of July 1, 2014, with no further action required by the General
17 Assembly, shall be abrogated and of no further force and effect. The Secretary of
18 Business and Economic Development may not issue credit certificates under § 10-729 of
19 the Tax – General Article for any fiscal year beginning on or after July 1, 2014.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.