

# SENATE BILL 183

Q3

EMERGENCY BILL

3lr0010

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By: **Chair, Budget and Taxation Committee (By Request – Departmental – Business and Economic Development) and Senator Kasemeyer**

Introduced and read first time: January 18, 2013

Assigned to: Budget and Taxation

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Committee Report: Favorable

Senate action: Adopted

Read second time: February 20, 2013

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Income Tax – Business and Economic Development – Film Production**  
3 **Activity Tax Credit**

4 FOR the purpose of extending certain termination provisions for a certain income tax  
5 credit allowed for certain entities that carry out certain film production  
6 activities in the State; altering the amount of certain tax credit certificates that  
7 the Secretary of Business and Economic Development may issue for certain  
8 fiscal years; making this Act an emergency measure; and generally relating to  
9 income tax credits for certain film production activities.

10 BY repealing and reenacting, with amendments,  
11 Article – Tax – General  
12 Section 10–730  
13 Annotated Code of Maryland  
14 (2010 Replacement Volume and 2012 Supplement)

15 BY repealing and reenacting, with amendments,  
16 Chapter 516 of the Acts of the General Assembly of 2011  
17 Section 2

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

20 **Article – Tax – General**

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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.



1 10-730.

2 (a) (1) In this section the following words have the meanings indicated.

3 (2) "Department" means the Department of Business and Economic  
4 Development.

5 (3) (i) "Film production activity" means the production of a film or  
6 video project that is intended for nationwide commercial distribution.

7 (ii) "Film production activity" includes the production of:

- 8 1. a feature film;
- 9 2. a television project;
- 10 3. a commercial;
- 11 4. a corporate film;
- 12 5. an infomercial;
- 13 6. a music video;
- 14 7. a digital project;
- 15 8. an animation project; or
- 16 9. a multimedia project.

17 (iii) "Film production activity" does not include production of:

- 18 1. a student film;
- 19 2. a noncommercial personal video;
- 20 3. a sports broadcast;
- 21 4. a broadcast of a live event;
- 22 5. a talk show;
- 23 6. a video, computer, or social networking game; or
- 24 7. pornography.

1           (4) “Pornography” means any production for which records are  
2 required to be maintained under § 2257 of Title 18, U.S.C., with respect to any  
3 performer in such production engaging in sexually explicit conduct.

4           (5) “Qualified film production entity” means an entity that:

5                   (i) is carrying out a film production activity; and

6                   (ii) the Secretary determines to be eligible for the tax credit  
7 under this section in accordance with subsection (c) of this section.

8           (6) “Secretary” means the Secretary of Business and Economic  
9 Development.

10           (7) “Television series” means a group of program episodes intended for  
11 television broadcast or transmission with a common series title, with or without a  
12 predetermined number of 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 production  
15 activity, means the total costs incurred in the State that are necessary to carry out the  
16 film production activity.

17                   (ii) “Total direct costs” includes costs incurred for:

18                           1. employee wages and benefits;

19                           2. fees for services;

20                           3. acquiring or leasing property; and

21                           4. any other expense necessary to carry out a film  
22 production activity, including costs associated with:

23                                   A. set construction and operation;

24                                   B. wardrobe, makeup, and related services;

25                                   C. photography and sound synchronization, lighting, and  
26 related services and materials;

27                                   D. editing and related services, including film processing,  
28 transfers of film to tape or digital format, sound mixing, computer graphic services,  
29 special effects services, and animation services;

1 E. salary, wages, and other compensation including  
2 related benefits, for work performed in the State, paid to persons employed in the  
3 production, writers, directors, and producers;

4 F. rental of facilities in the State and equipment used in  
5 the State;

6 G. leasing of vehicles;

7 H. food and lodging;

8 I. music, if performed, composed, or recorded by a  
9 Maryland musician or published by a person or company domiciled in Maryland;

10 J. travel expenses incurred to bring persons employed,  
11 either directly or indirectly, in the production of the project to Maryland, but not  
12 including expenses of these persons departing from Maryland; and

13 K. legal and accounting services performed by attorneys  
14 or accountants licensed in Maryland.

15 (iii) "Total direct costs" does not include any salary, wages, or  
16 other compensation for personal services of an individual who receives more than  
17 \$500,000 in salary, wages, or other compensation for personal services in connection  
18 with any film production activity.

19 (b) (1) A qualified film production entity may claim a credit against the  
20 State income tax for film production activities in the State in an amount equal to the  
21 amount stated in the final tax credit certificate approved by the Secretary for film  
22 production activities.

23 (2) If the tax credit allowed under this section in any taxable year  
24 exceeds the total tax otherwise payable by the qualified film production entity for that  
25 taxable year, the qualified film production entity may claim a refund in the amount of  
26 the excess.

27 (c) (1) Before beginning a film production activity, a film production  
28 entity shall submit to the Department an application to qualify as a film production  
29 entity.

30 (2) The application shall describe the anticipated film production  
31 activity, including:

32 (i) the projected total budget;

33 (ii) the estimated number of employees and total wages to be  
34 paid; and

1 (iii) the anticipated dates for carrying out the major elements of  
2 the film production activity.

3 (3) To qualify as a film production entity, the estimated total direct  
4 costs incurred in the State must exceed \$500,000.

5 (4) The application shall include any other information required by  
6 the Secretary.

7 (5) The Secretary may require the information provided in an  
8 application to be verified by an independent auditor selected and paid for by the film  
9 production entity seeking certification.

10 (6) The Secretary shall:

11 (i) determine if the film production entity qualifies for the  
12 credit under this section; and

13 (ii) notify the Comptroller of the estimated amount of total  
14 direct costs and the taxable year the credit will be claimed.

15 (d) (1) After completion of the film production activity, a qualified film  
16 production entity shall apply to the Department for a tax credit certificate.

17 (2) The application shall be on a form required by the Secretary and  
18 shall include:

19 (i) proof of the total direct costs that qualify for the tax credit;  
20 and

21 (ii) the number of employees hired and wages paid.

22 (3) Subject to subsection (f) of this section, the Secretary shall  
23 determine the total direct costs that qualify for the tax credit and issue a tax credit  
24 certificate for:

25 (i) except as provided in item (ii) of this paragraph, 25% of the  
26 total direct costs that qualify for the tax credit; and

27 (ii) for a television series, 27% of the total direct costs that  
28 qualify for the tax credit.

29 (4) The Secretary shall notify the Comptroller of the amount of a tax  
30 credit certificate issued under this subsection.

1 (e) On or before January 1 of each year, the Department shall report to the  
2 Governor and, subject to § 2-1246 of the State Government Article, the General  
3 Assembly, on:

4 (1) the number of film production entities submitting applications  
5 under subsection (c) of this section;

6 (2) the number and amount of tax credit certificates issued under  
7 subsection (d) of this section;

8 (3) the number of local technicians, actors, and extras hired for film  
9 production activity during the reporting period;

10 (4) a list of companies doing business in the State, including hotels,  
11 that directly provided goods or services for film production activity during the  
12 reporting period; and

13 (5) any other information that indicates the economic benefits to the  
14 State resulting from film production activity during the reporting period.

15 (f) (1) Except as provided in paragraph (2) of this subsection[, for any  
16 fiscal year], the Secretary may not issue tax credit certificates for credit amounts in  
17 the aggregate totaling more than:

18 (I) FOR FISCAL YEAR 2014, \$25,000,000;

19 (II) FOR FISCAL YEAR 2015, \$7,500,000; AND

20 (III) FOR FISCAL YEAR 2016, \$7,500,000.

21 (2) If the aggregate credit amounts under the tax credit certificates  
22 issued by the Secretary total less than **[\$7,500,000] THE MAXIMUM PROVIDED**  
23 **UNDER PARAGRAPH (1) OF THIS SUBSECTION** in any fiscal year, any excess amount  
24 may be carried forward and issued under tax credit certificates in a subsequent fiscal  
25 year.

26 (g) The Department and the Comptroller jointly shall adopt regulations to  
27 carry out the provisions of this section and to specify criteria and procedures for the  
28 application for, approval of, and monitoring of continuing eligibility for the tax credit  
29 under this section.

30 **Chapter 516 of the Acts of 2011**

31 SECTION 2. AND BE IT FURTHER ENACTED, That **THE FILM**  
32 **PRODUCTION ACTIVITY TAX CREDIT UNDER § [10-729] 10-730** of the  
33 Tax – General Article as enacted by this Act shall take effect July 1, 2011, and shall be

1 applicable to all taxable years beginning after December 31, 2010. [Section 10–729]  
2 **THE FILM PRODUCTION ACTIVITY TAX CREDIT UNDER § 10–730** of the  
3 Tax – General Article as enacted by this Act shall remain effective for a period of [3] **5**  
4 years and, at the end of [July 1, 2014] **JUNE 30, 2016**, with no further action required  
5 by the General Assembly, shall be abrogated and of no further force and effect. The  
6 Secretary of Business and Economic Development may not issue **FILM PRODUCTION**  
7 **ACTIVITY TAX** credit certificates under § [10–729] **10–730** of the Tax – General  
8 Article for any fiscal year beginning on or after July 1, [2014] **2016**.

9           SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
10 measure, is necessary for the immediate preservation of the public health or safety,  
11 has been passed by a yea and nay vote supported by three–fifths of all the members  
12 elected to each of the two Houses of the General Assembly, and shall take effect from  
13 the date it is enacted.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.