

SENATE BILL 452

Q3

3lr1286
CF 3lr2989

By: **Senators Griffith, Corderman, Elfreth, Guzzone, Jackson, King, Klausmeier, Muse, Salling, M. Washington, ~~and Watson~~ Watson, Bailey, Benson, Hester, Hettleman, McCray, Rosapepe, and Zucker**

Introduced and read first time: February 2, 2023

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 12, 2023

CHAPTER _____

1 AN ACT concerning

2 ~~Income Tax~~ **Film Production Activity Income Tax Credit – Alterations and**
3 **Maryland Entertainment Council**

4 FOR the purpose of expanding eligibility for the credit against the State income tax for
5 certain film production activities to include documentaries and talk, reality, and
6 game shows; altering the definition of “total direct costs” to include certain
7 compensation for certain individuals; increasing the percentages of total direct costs
8 that qualify for the tax credit; establishing the Maryland Entertainment Council to
9 study and make recommendations regarding Maryland’s film, television, and
10 entertainment industry; altering the aggregate amount of tax credit certificates that
11 the Secretary of Commerce may issue each fiscal year; and generally relating to the
12 film production activity tax credit and the Maryland Entertainment Council.

13 BY repealing and reenacting, with amendments,

14 Article – Tax – General

15 Section 10–730

16 Annotated Code of Maryland

17 (2022 Replacement Volume)

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

20 **Article – Tax – General**

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 Commerce.

4 (3) "Digital animation project" means the creation, development, and
5 production of computer-generated animation content for distribution or exhibition to the
6 general public.

7 (4) (i) "Film production activity" means:

8 1. the production of a film or video project that is intended
9 for nationwide commercial distribution; and

10 2. for a television series, each season of the television series.

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

12 1. a feature film;

13 2. a television project;

14 3. a commercial;

15 4. a corporate film;

16 5. a music video; **[or]**

17 6. a digital animation project;

18 **7. A DOCUMENTARY; ~~OR~~**

19 **8. A TALK, REALITY, OR GAME SHOW; OR**

20 **9. A LIVE TO TAPE EVENT.**

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

22 1. a student film;

23 2. a noncommercial personal video;

24 3. a sports broadcast;

25 4. a broadcast of a live event;

- 1 5. [a talk show;
- 2 6.] a video, computer, or social networking game;
- 3 [7.] 6. pornography;
- 4 [8.] 7. an infomercial;
- 5 [9.] 8. a digital project or an animation project other than a
- 6 digital animation project; or
- 7 [10.] 9. a multimedia project.

8 (5) “Maryland small or independent film entity” means a qualified film

9 production entity that:

- 10 (i) has been incorporated in Maryland for at least 3 months;
- 11 (ii) is independently owned and operated;
- 12 (iii) is not a subsidiary of another entity;
- 13 (iv) is not dominant in its field of operation;
- 14 (v) employs 25 or fewer full-time employees; and
- 15 (vi) employs Maryland residents as at least 40% of its workforce in
- 16 the film production activity.

17 (6) “Pornography” means any production for which records are required to

18 be maintained under § 2257 of Title 18, U.S.C., with respect to any performer in such

19 production engaging in sexually explicit conduct.

20 (7) “Qualified film production entity” means an entity that:

- 21 (i) is carrying out a film production activity; and
- 22 (ii) the Secretary determines to be eligible for the tax credit under
- 23 this section in accordance with subsection (c) of this section.

24 (8) “Secretary” means the Secretary of Commerce.

25 (9) “Television series” means a group of program episodes intended for

26 television broadcast or transmission with a common series title, with or without a

1 predetermined number of episodes, and shall include a miniseries and a pilot episode
2 produced for an intended television series.

3 (10) (i) "Total direct costs", with respect to a film production activity,
4 means the total costs incurred in the State that are necessary to carry out the film
5 production activity.

6 (ii) "Total direct costs" includes costs incurred for:

7 1. employee wages and benefits;

8 2. fees for services;

9 3. acquiring or leasing property; [and]

10 4. **SALARIES, WAGES, OR OTHER COMPENSATION FOR**
11 **WRITERS, DIRECTORS, OR PRODUCERS DOMICILED IN THE STATE; AND**

12 [4.] 5. any other expense necessary to carry out a film
13 production activity, including costs associated with:

14 A. set construction and operation;

15 B. wardrobe, makeup, and related services;

16 C. photography and sound synchronization, lighting, and
17 related services and materials;

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

21 E. salary, wages, and other compensation including related
22 benefits, for work performed in the State, paid to persons employed in the production;

23 F. rental of facilities in the State and equipment used in the
24 State;

25 G. leasing of vehicles;

26 H. food and lodging;

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

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

4 K. legal and accounting services performed by attorneys or
5 accountants licensed in Maryland.

6 (iii) "Total direct costs" does not include any salary, wages, or other
7 compensation for:

8 1. personal services of an individual who receives more than
9 \$500,000 in salary, wages, or other compensation for personal services in connection with
10 any film production activity; or

11 2. **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
12 **PARAGRAPH**, writers, directors, or producers.

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

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

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

22 (2) The application shall describe the anticipated film production activity,
23 including:

24 (i) the projected total budget;

25 (ii) the estimated number of Maryland resident and out-of-state
26 employees and total wages to be paid; and

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

29 (3) Except as provided in subsection (h) of this section, to qualify as a film
30 production entity, the estimated total direct costs incurred in the State must exceed
31 \$250,000.

32 (4) The application shall include any other information required by the
33 Secretary.

1 (5) For a film production entity with total direct costs that exceed \$250,000,
2 the Secretary may require the information provided in an application to be verified by an
3 independent auditor selected and paid for by the film production entity seeking
4 certification.

5 (6) The Secretary shall:

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

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

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

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

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

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

16 (3) Subject to subsections (f) and (h) of this section, the Secretary shall
17 determine the total direct costs that qualify for the tax credit and issue a tax credit
18 certificate for:

19 (i) except as provided in item (ii) of this paragraph, ~~[25%]~~ **28%** of
20 the total direct costs that qualify for the tax credit; and

21 (ii) for a television series, ~~[27%]~~ **30%** of the total direct costs that
22 qualify for the tax credit.

23 (e) In accordance with § 2.5–109 of the Economic Development Article, the
24 Department shall submit a report on film production activity in the State and the economic
25 benefits to the State resulting from film production activity during the reporting period.

26 (f) (1) Except as provided in paragraph (2) of this subsection, the Secretary
27 may not issue tax credit certificates for credit amounts in the aggregate totaling more than:

28 (i) for fiscal year 2014, \$25,000,000;

29 (ii) for fiscal year 2015, \$7,500,000;

30 (iii) for fiscal year 2016, \$7,500,000;

31 (iv) for fiscal year 2019, \$8,000,000;

1 (v) for fiscal year 2020, \$11,000,000; [and]

2 (vi) for fiscal [year] YEARS 2021 [and each fiscal year thereafter]
3 THROUGH ~~2023~~ 2024, \$12,000,000;

4 (VII) FOR FISCAL ~~YEAR 2024~~ YEARS 2025 THROUGH 2028,
5 \$25,000,000; AND

6 (VIII) FOR FISCAL YEAR ~~2025~~ 2029 AND EACH FISCAL YEAR
7 THEREAFTER, ~~\$50,000,000~~ \$12,000,000.

8 (2) If the aggregate credit amounts under the tax credit certificates issued
9 by the Secretary total less than the maximum provided under paragraph (1) of this
10 subsection in any fiscal year, any excess amount may be carried forward and issued under
11 tax credit certificates in a subsequent fiscal year.

12 (3) The Secretary may not issue tax credit certificates for credit amounts
13 totaling more than \$10,000,000 in the aggregate for a single film production activity.

14 (4) (i) For fiscal year 2019 and each fiscal year thereafter, the Secretary
15 shall make 10% of the credit amount authorized under paragraph (1) of this subsection
16 available for Maryland small or independent film entities.

17 (ii) If the total amount of credits applied for by Maryland small or
18 independent film entities is less than the amount made available under subparagraph (i)
19 of this paragraph, the Secretary shall make available the unused amount of credits for use
20 by qualified film production entities.

21 (g) (1) Except as provided in paragraph (2) of this subsection, a qualified film
22 production entity that receives a tax credit certificate under this section for a film
23 production activity shall include:

24 (i) for a feature film project, a 5-second long static or animated logo
25 that promotes the State in the end credits before the below-the-line crew crawl for the life
26 of the project and a link to the State's website on the project's website;

27 (ii) for a television series project, an embedded 5-second long static
28 or animated logo that promotes the State during each broadcast worldwide for the life of
29 the project and a link to the State's website on the project's website; or

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

32 (2) In lieu of including a State logo as required under paragraph (1) of this
33 subsection, the qualified film production entity may offer alternative marketing

1 opportunities to be evaluated by the Department to ensure that those opportunities offer
2 equal or greater promotional value to the State.

3 (h) (1) For a Maryland small or independent film entity to qualify as a film
4 production entity:

5 (i) the estimated total direct costs incurred in the State shall exceed
6 \$25,000; and

7 (ii) at least 50% of the filming of the film production activity must
8 occur within the State.

9 (2) The Secretary shall determine the total direct costs that qualify for the
10 tax credit and issue a tax credit certificate to a Maryland small or independent film entity
11 for [25%] **28%** of the total direct costs that qualify for the tax credit, not to exceed \$125,000.

12 (i) The Department and the Comptroller jointly shall adopt regulations to carry
13 out the provisions of this section and to specify criteria and procedures for the application
14 for, approval of, and monitoring of continuing eligibility for the tax credit under this section.

15 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July~~
16 ~~1, 2023, and shall be applicable to all taxable years beginning after December 31, 2022.~~

17 SECTION 2. AND BE IT FURTHER ENACTED, That:

18 (a) There is a Maryland Entertainment Council.

19 (b) (1) Subject to paragraph (2) of this subsection, the Council consists of:

20 (i) one member of the Senate of Maryland, appointed by the
21 President of the Senate;

22 (ii) one member of the House of Delegates, appointed by the Speaker
23 of the House;

24 (iii) the Governor's appointed Senior Advisor on Film, Television, and
25 Entertainment; and

26 (iv) the following members, appointed by the Governor:

27 1. one expert in the business of the film, television, and
28 entertainment industry, such as an executive, producer, studio representative, or an
29 individual holding a leadership role within the industry;

30 2. one expert in workforce development or higher education
31 related to the film, television, and entertainment industry;

1 3. one expert in emerging technologies or specialties of the
2 film, television, and entertainment industry, such as an expert in gaming, artificial
3 intelligence, visual effects, animation, post-production, or another related specialty;

4 4. one expert in legal or policy fields specific to the film,
5 television, and entertainment industry;

6 5. one representative of the independent film and television
7 community;

8 6. one representative of nongovernmental entities or
9 philanthropic institutions that support film, television, or entertainment directly or
10 creative economies more broadly; and

11 7. one representative of organized labor in the entertainment
12 industry.

13 (2) The Governor may appoint up to three additional individuals as
14 honorary cochairs of the Council who are:

15 (i) individuals with extraordinary cultural capital and commanding
16 significant influence within the film, television, and entertainment industry;

17 (ii) business leaders commanding a significant stake within the film,
18 television, and entertainment industry; or

19 (iii) individuals who have defined the current cultural brand of the
20 film, television, and entertainment industry within the State.

21 (3) An individual appointed as an honorary cochair of the Council shall be
22 a nonvoting member of the Council whose responsibilities shall be limited to the promotion
23 and business development of Maryland's film, television, and entertainment industry.

24 (c) The Senior Advisor on Film, Television, and Entertainment shall chair the
25 Council.

26 (d) The Department of Commerce shall provide staff for the Council.

27 (e) A member of the Council:

28 (1) may not receive compensation as a member of the Council; but

29 (2) is entitled to reimbursement for expenses under the Standard State
30 Travel Regulations, as provided in the State budget.

31 (f) The Council shall:

1 (1) assess Maryland's existing assets, opportunities, and competitive
2 position within the film, television, and entertainment industry;

3 (2) study:

4 (i) Maryland's State, local, and private assets that currently
5 support Maryland's film, television, and entertainment industry, including key
6 infrastructure, existing workforce, workforce pipelines, scenic profile, emerging specialties,
7 and independent creative communities;

8 (ii) existing State programs, agencies, offices, grant programs, and
9 commissions across State agencies that support the film, television, and entertainment
10 industry;

11 (iii) models, competitive profiles, methods, and legislation that states
12 have utilized to incentivize necessary infrastructure and workforce to support the film,
13 television, and entertainment industry;

14 (iv) industry needs, disruptive trends, and emerging technologies
15 within the film, television, and entertainment industry; and

16 (v) complementary industries, aligned businesses, and potential
17 corporate, philanthropic, and other partners for the film, television, and entertainment
18 industry; and

19 (3) make recommendations on the development of a coordinated,
20 comprehensive strategic plan to position Maryland as an emerging leader in the film,
21 television, and entertainment industry.

22 (g) On or before December 1, 2023, the Council shall submit a preliminary report
23 to the Governor, the Secretary of Commerce, and, in accordance with § 2-1257 of the State
24 Government Article, the General Assembly that includes:

25 (1) an assessment of Maryland's existing infrastructure, creative profile,
26 and core structural advantages that the State is uniquely positioned to leverage;

27 (2) recommendations on how to best utilize existing State offices,
28 commissions, and programs to advance Maryland's film, television, and entertainment
29 industry and what, if any, additional investments should be made to support these State
30 functions;

31 (3) a clear definition of Maryland's creative and competitive profile; and

32 (4) recommendations to measure the economic impact of additional
33 investment in the film, television, and entertainment industry.

1 (h) On or before September 1, 2024, the Council shall submit its final report to
2 the Governor, the Secretary of Commerce, and, in accordance with § 2-1257 of the State
3 Government Article, the General Assembly on:

4 (1) the matters included in the Council’s preliminary report;

5 (2) recommendations to strengthen the structure and funding of the State’s
6 existing film and theatrical production incentives to ensure a greater return on investment
7 on Maryland’s investment in the film, television, and entertainment industry;

8 (3) recommendations for additional State investment to bolster identified
9 specialties and high-leverage growth opportunities in the film, television, and
10 entertainment industry;

11 (4) recommendations to support and grow Maryland’s independent
12 creative community and incentivize export promotions of Maryland-based talent;

13 (5) methods to bolster film-, television-, and entertainment-related
14 business development and identify potential industry partnerships;

15 (6) methods to sustainably grow the film, television, and entertainment
16 workforce and identify potential workforce development and higher education partners;
17 and

18 (7) other recommendations, as appropriate, to support and grow the
19 economic impact of Maryland’s film, television, and entertainment industry.

20 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be
21 applicable to all taxable years beginning after December 31, 2022.

22 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July
23 1, 2023. Section 2 of this Act shall remain effective for a period of 2 years and, at the end of
24 June 30, 2025, Section 2 of this Act, with no further action required by the General
25 Assembly, shall be abrogated and of no further force and effect.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.