

OH H 33, Enacted

Ohio

SUMMARY: Makes operating appropriations for the biennium beginning July 1, 2023, and ending June 30, 2025, to levy taxes, and to provide authorization and conditions for the operation of state programs.~SAME AS:

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

02/15/2023 INTRODUCED.

02/15/2023 To HOUSE Committee on RULES AND REFERENCE.

02/16/2023 From HOUSE Committee on RULES AND REFERENCE: Recommended referral.

02/16/2023 To HOUSE Committee on FINANCE.

04/26/2023 From HOUSE Committee on FINANCE: Recommended as substituted.

04/26/2023 In HOUSE. Read third time. Passed HOUSE. *****To SENATE.

04/27/2023 To SENATE Committee on RULES AND REFERENCE.

05/04/2023 From SENATE Committee on RULES AND REFERENCE: Recommended referral.

05/04/2023 In SENATE. To second reading. Read a second time.

05/04/2023 To SENATE Committee on FINANCE.

06/14/2023 From SENATE Committee on FINANCE: Recommended as substituted.

06/15/2023 In SENATE. Read third time. Passed SENATE. *****To HOUSE for concurrence.

06/21/2023 HOUSE refused to concur in SENATE amendments.

06/21/2023 SENATE insists upon amendments. Asks for Conference Committee.

06/21/2023 *****To CONFERENCE Committee.

06/30/2023 CONFERENCE Committee Report adopted by HOUSE.

06/30/2023 CONFERENCE Committee Report adopted by SENATE.

07/03/2023 Eligible for GOVERNOR'S desk.

07/03/2023 Enrolled.

07/04/2023 Line Item Vetoed by GOVERNOR.

07/04/2023 Session Law No. 8

~

session: Ohio 135th General Assembly - 2023-24 Regular Session

cite: 2023 OH H 33

Enacted - Line Item Vetoed

July 4, 2023

Edwards

(135th General Assembly)

(Amended Substitute House Bill Number 33)

Session Law No. 8

AN ACT

Be it enacted by the General Assembly of the State of Ohio:

*****TEXT OMITTED, DOES NOT PERTAIN TO FILM*****

Sec. 122.85. (A) As used in this section and in sections 5726.55, 5733.59, 5747.66, and 5751.54 of the Revised Code:

(1) "Tax credit-eligible production" means a motion picture or Broadway theatrical production certified by the director of development under division (B) of this section as qualifying the production company for a tax credit under section 5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code.

(2) "Certificate owner" means a production company to which a tax credit certificate is issued.

(3) "Production company" means an individual, corporation, partnership, limited liability company, or other form of business association that is registered with the secretary of state and that is producing a motion picture or Broadway theatrical production.

(4) "Eligible expenditures" means expenditures made after June 30, 2009, for goods or services purchased and consumed in this state by a production company directly for the production of a tax credit-eligible production, for postproduction activities, or for advertising and promotion of the production.

"Eligible expenditures" do not include qualified expenditures for which a production company receives a tax credit under section 122.852 of the Revised Code.

"Eligible expenditures" include expenditures for cast and crew wages, accommodations, costs of set construction and operations, editing and related services, photography, sound synchronization, lighting, wardrobe, makeup and accessories, film processing, transfer, sound mixing, special and visual effects, music, location fees, and the purchase or rental of facilities and equipment.

(5) "Motion picture" means entertainment content created in whole or in part within this state for distribution or exhibition to the general public, including, but not limited to, feature-length films; documentaries; long-form, specials, miniseries, series, and interstitial television programming; interactive web sites; sound recordings; videos; music videos; interactive television; interactive games; video games; commercials; any format of digital media; and any trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in either a product or a motion picture by any means and media in any digital media format, film, or videotape, provided the motion picture qualifies as a motion picture. "Motion picture" does not include any television program created primarily as news, weather, or financial market reports, a production featuring current events or sporting events, an awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service or in-house corporate advertising or other similar productions, a production for purposes of political advocacy, or any production for which records are required to be maintained under 18 U.S.C. 2257 with respect to sexually explicit content.

(6) "Broadway theatrical production" means a prebroadway production, long run production, or tour launch that is directed, managed, and performed by a professional cast and crew and that is directly associated with New York city's Broadway theater district.

(7) "Prebroadway production" means a live stage production that is scheduled for presentation in New York city's Broadway theater district after the original or adaptive version is performed in a qualified production facility.

(8) "Long run production" means a live stage production that is scheduled to be performed at a qualified production facility for more than five weeks, with an average of at least six performances per week.

(9) "Tour launch" means a live stage production for which the activities comprising the technical period are conducted at a qualified production facility before a tour of the original or adaptive version of the production begins.

(10) "Qualified production facility" means a facility located in this state that is used in the

development or presentation to the public of theater productions.

(B) For the purpose of encouraging and developing strong film and theater industries in this state, the director of development may certify a motion picture or Broadway theatrical production produced by a production company as a tax credit-eligible production. In the case of a television series, the director may certify the production of each episode of the series as a separate tax credit-eligible production. A production company shall apply for certification of a motion picture or Broadway theatrical production as a tax credit-eligible production on a form and in the manner prescribed by the director. Each application shall include the following information:

- (1) The name and telephone number of the production company;
- (2) The name and telephone number of the company's contact person;
- (3) A list of the first preproduction date through the last production and postproduction dates in Ohio and, in the case of a Broadway theatrical production, a list of each scheduled performance in a qualified production facility;
- (4) The Ohio production office or qualified production facility address and telephone number;
- (5) The total production budget;
- (6) The total budgeted eligible expenditures and the percentage that amount is of the total production budget of the motion picture or Broadway theatrical production;
- (7) In the case of a motion picture, the total percentage of the production being shot in Ohio;
- (8) The level of employment of cast and crew who reside in Ohio;
- (9) A synopsis of the script;
- (10) In the case of a motion picture, the shooting script;
- (11) A creative elements list that includes the names of the principal cast and crew and the producer and director;
- (12) Documentation of financial ability to undertake and complete the motion picture or Broadway theatrical production, including documentation that shows that the company has secured funding equal to at least fifty per cent of the total production budget;
- (13) Estimated value of the tax credit based upon total budgeted eligible expenditures;
- (14) Estimated amount of state and local taxes to be generated in this state from the production;
- (15) Estimated economic impact of the production in this state;
- (16) Any other information considered necessary by the director.

Within ninety days after certification of a motion picture or Broadway theatrical production as a tax credit-eligible production, and any time thereafter upon the request of the director, the production company shall present to the director sufficient evidence of reviewable progress. If the production company fails to present sufficient evidence, the director may rescind the certification. If the production of a motion picture or Broadway theatrical production does not begin within ninety days after the date it is certified as a tax credit-eligible production, the director shall rescind the certification unless the director finds that the production company shows good cause for the delay, meaning that the production was delayed due to unforeseeable circumstances beyond the production company's control or due to action or inaction by a government agency. Upon rescission, the director shall notify the applicant that the certification has been rescinded. Nothing in this section prohibits an applicant whose tax credit-eligible production certification has been rescinded from submitting a subsequent application for certification.

(C)(1) A production company whose motion picture or Broadway theatrical production has been certified as a tax credit-eligible production may apply to the director of development on or after July 1, 2009, for a refundable credit against the tax imposed by section 5726.02, 5733.06, 5747.02, or 5751.02 of the Revised Code. The director in consultation with the tax commissioner shall prescribe the form and manner of the application and the information or documentation required to be submitted with the application.

The credit is determined as follows:

(a) If the total budgeted eligible expenditures stated in the application submitted under division (B) of this section or the actual eligible expenditures as finally determined under division (D) of this section, whichever is least, is less than or equal to three hundred thousand dollars, no credit is allowed;

(b) If the total budgeted eligible expenditures stated in the application submitted under division (B) of this section or the actual eligible expenditures as finally determined under division (D) of this section, whichever is least, is greater than three hundred thousand dollars, the credit equals thirty per cent of the least of such budgeted or actual eligible expenditure amounts.

(2) Except as provided in division (C) (4) of this section, if the director of development approves a production company's application for a credit, the director shall issue a tax credit certificate to the company. The director in consultation with the tax commissioner shall prescribe the form and manner of issuing certificates. The director shall assign a unique identifying number to each tax credit certificate and shall record the certificate in a register devised and maintained by the director for that purpose. The certificate shall state the amount of the eligible expenditures on which the credit is based and the amount of the credit. Upon the issuance of a certificate, the director shall certify to the tax commissioner the name of the production company to which the certificate was issued, the amount of eligible expenditures shown on the certificate, the amount of the credit, and any other information required by the rules adopted to administer this section.

(3) The amount of eligible expenditures for which a tax credit may be claimed is subject to inspection and examination by the tax commissioner or employees of the commissioner under section 5703.19 of the Revised Code and any other applicable law. Once the eligible expenditures are finally determined under section 5703.19 of the Revised Code and division (D) of this section, the credit amount is not subject to adjustment unless the director determines an error was committed in the computation of the credit amount.

(4) No tax credit certificate may be issued before the completion of the tax credit-eligible production. ~~Not more than forty million dollars~~ *The amount* of tax credit ~~may be~~ allowed per fiscal year ~~provided that, for~~ *shall not exceed the sum of (a) fifty million dollars, (b) the difference between the maximum credit amount for that fiscal year under section 122.852 of the Revised Code and the amount the director of development elects to allow under this section pursuant to division (D)(3) section 122.852 of the Revised Code, and (c) the difference between the maximum amount of credits that could have been awarded in the previous fiscal year under this section and the amount actually awarded. Out of that sum, five million dollars shall be reserved for Broadway theatrical productions, and the balance may be allowed for any tax credit-eligible production. any fiscal year in which the amount of tax credits allowed under this section is less than that maximum annual amount, the amount not allowed for that fiscal year shall be added to the maximum annual amount that may be allowed for the following fiscal year* *For any fiscal year in which less than five million dollars of tax credits are allowed for Broadway theatrical productions, the amount of the five million dollars not allowed and added to the maximum annual amount for the following fiscal year shall be reserved for Broadway theatrical productions in the following fiscal year.*

(5) The director shall review and approve applications for tax credits in two rounds each fiscal year. The first round of credits shall be awarded not later than the last day of July of the fiscal year, and the second round of credits shall be awarded not later than the last day of the ensuing January. The amount of credits awarded in the first round of applications each fiscal year shall not exceed ~~twenty million dollars~~ *one-half of the maximum allowance for the fiscal year calculated under division (D) (4) of this section plus any credit allotment that was not awarded in the preceding fiscal year and carried over under division (C)(4) of this section* , *two million five hundred thousand dollars of which shall be reserved for Broadway theatrical productions.* For each round, the director shall rank applications on the basis of the extent of positive economic impact each tax credit-eligible production is likely to have in this state and the effect on developing a permanent workforce in motion picture or theatrical production industries in the state. For the purpose of such ranking, the director shall give priority to tax-credit eligible productions that are television series or

miniseries due to the long-term commitment typically associated with such productions. The economic impact ranking shall be based on the production company's total expenditures in this state directly associated with the tax credit-eligible production. The effect on developing a permanent workforce in the motion picture or theatrical production industries shall be evaluated first by the number of new jobs created and second by amount of payroll added with respect to employees in this state.

The director shall approve productions in the order of their ranking, from those with the greatest positive economic impact and workforce development effect to those with the least positive economic impact and workforce development effect.

(D) A production company whose motion picture or Broadway theatrical production has been certified as a tax credit-eligible production shall engage, at the company's expense, an independent certified public accountant to examine the company's production, postproduction, and advertising and promotion expenditures to identify the expenditures that qualify as eligible expenditures. The certified public accountant shall issue a report to the company and to the director of development certifying the company's eligible expenditures and any other information required by the director. Upon receiving and examining the report, the director may disallow any expenditure the director determines is not an eligible expenditure. If the director disallows an expenditure, the director shall issue a written notice to the production company stating that the expenditure is disallowed and the reason for the disallowance. Upon examination of the report and disallowance of any expenditures, the director shall determine finally the lesser of the total budgeted eligible expenditures stated in the application submitted under division (B) of this section or the actual eligible expenditures for the purpose of computing the amount of the credit.

(E) No credit shall be allowed under section 5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code unless the director has reviewed the report and made the determination prescribed by division (D) of this section.

(F) This state reserves the right to refuse the use of this state's name in the credits of any tax credit-eligible motion picture production or program of any Broadway theatrical production.

(G)(1) The director of development in consultation with the tax commissioner shall adopt rules for the administration of this section, including rules setting forth and governing the criteria for determining whether a motion picture or Broadway theatrical production is a tax credit-eligible production; activities that constitute the production or postproduction of a motion picture or Broadway theatrical production; reporting sufficient evidence of reviewable progress; expenditures that qualify as eligible expenditures; a schedule and deadlines for applications to be submitted and reviewed; a competitive process for approving credits based on likely economic impact in this state and development of a permanent workforce in motion picture or theatrical production industries in this state; consideration of geographic distribution of credits; and implementation of the program described in division (H) of this section. The rules shall be adopted under Chapter 119. of the Revised Code.

(2) To cover the administrative costs of the program, the director shall require each applicant to pay an application fee equal to the lesser of ten thousand dollars or one per cent of the estimated value of the tax credit as stated in the application. The fees collected shall be credited to the tax incentives operating fund created in section 122.174 of the Revised Code. All grants, gifts, fees, and contributions made to the director for marketing and promotion of the motion picture industry within this state shall also be credited to the fund.

(H) The director of development shall establish a program for the training of Ohio residents who are or wish to be employed in the film or multimedia industry. Under the program, the director shall:

(1) Certify individuals as film and multimedia trainees. In order to receive such a certification, an individual must be an Ohio resident, have participated in relevant on-the-job training or have completed a relevant training course approved by the director, and have met any other requirements established by the director.

(2) Accept applications from production companies that intend to hire and provide on-the-job training to one or more certified film and multimedia trainees who will be employed in the

company's tax credit-eligible production ;

(3) Upon completion of a tax-credit eligible production, and upon the receipt of any salary information and other documentation required by the director, authorize a reimbursement payment to each production company whose application was approved under division (H) (2) of this section. The payment shall equal fifty per cent of the salaries paid to film and multimedia trainees employed in the production.

Sec. 122.852. (A) As used in this section:

(1) "Capital improvement project" means a project that consists of acquiring, constructing, rehabilitating, repairing, redeveloping, expanding, or improving facilities located, or equipment used in this state for production and postproduction of motion pictures or Broadway theatrical productions.

(2) "Qualified expenditures" means expenditures incurred by a production company after June 30, 2023, for goods and services purchased and consumed directly for a capital improvement project. "Qualified expenditures" include accounting or auditing expenditures incurred in connection with the report required by division (F) of this section if paid to an independent certified public accountant certified, or an accounting firm registered under Chapter 4701, of the Revised Code. "Qualified expenditures" do not include eligible expenditures for which a production company received a tax credit under section 122.85 of the Revised Code.

(3) "Certificate owner" means a production company to which a tax credit certificate is issued under division (H) of this section or a person to which all or part of a tax credit is transferred under division (I) of this section.

(4) "Production company," "eligible expenditures," "motion picture," and "Broadway theatrical production" have the same meanings as in section 122.85 of the Revised Code.

(B) For the purpose of encouraging and developing strong film and theater industries in this state, the director of development may award a refundable credit against the tax imposed by section 5726.02, 5747.02, or 5751.02 of the Revised Code to a production company that completes a capital improvement project expected to have a positive economic impact in this state as a whole, or in any community in this state in which the facilities or equipment involved in the project are or will be located. A production company may apply to the director for a credit on a form and in the manner prescribed by rules adopted under division (T) of this section. An application may be submitted before, during, or after completion of the capital improvement project, but not sooner than July 1, 2024, and shall include all of the following information:

(1) The name, address, telephone number, and taxpayer identification number of the production company:

(2) A detailed description of the capital improvement project including the location of the facilities or equipment involved in the project and an explanation of how those facilities or equipment are intended to be used in the production or postproduction of motion pictures or Broadway theatrical productions in this state:

(3) (a) If the capital improvement project is complete at the time the application is submitted, a schedule documenting the progression of the project from its commencement to its completion:

(b) If the capital improvement project is not complete at the time the application is submitted, a schedule for the progression, completion, and, if applicable, commencement of the project.

(4) An estimate of the amount of the project's qualified expenditures that have been or will be incurred by the production company and, if the project is not

complete at the time the application is submitted, documentation of the company's financial ability to complete the project, including documentation that shows the company has secured funding, other than the tax credit authorized by this section, equal to at least fifty per cent of the total cost of the project:

(5) The estimated credit amount, which shall equal the lesser of five million dollars or twenty-five per cent of the production company's estimated qualified expenditures:

(6) The estimated economic impact of the capital improvement project in this state as a whole, and in any community in this state in which the facilities or equipment involved in the project are or will be located:

(7) Any other information considered necessary by the director.

(C) The director shall review, evaluate, and approve applications in one round per fiscal year. For each round, the director shall rank applications on the basis of the capital improvement project's likely positive economic impact and effect on developing a permanent workforce in motion picture or theatrical production industries in the state as a whole, and in any community in this state in which the facilities or equipment involved in the project are or will be located. The effect on developing a permanent workforce in the motion picture or theatrical production industries shall be evaluated first by the number of new jobs created and second by amount of payroll added with respect to employees in this state. Subject to division (D) (2) of this section, the director shall approve applications in the order of their ranking, from those with the greatest positive economic impact and workforce development effect to those with the least positive economic impact and workforce development effect. The director shall not approve an application or issue a tax credit certificate for a capital improvement project that is not likely to have a positive economic impact or workforce development impact in either the state as a whole, or any community in this state in which the facilities or equipment involved in the project are or will be located.

(D)(1) The director shall not approve more than twenty-five million dollars in estimated tax credits in total per fiscal year provided that, for any fiscal year in which the amount of estimated credits approved under this section is less than the maximum annual amount, the amount not approved for that fiscal year shall be added to the maximum annual amount that may be approved for the following fiscal year.

If the director rescinds approval of a capital improvement project under division (E) (2) of this section, the estimated credit amount attributed to that project shall be added back to the maximum total annual credit amount for that fiscal year. If the actual credit amount computed under division (H) of this section is less than the estimated credit amount approved by the director, the difference shall be added back to the maximum total annual credit amount for that fiscal year.

In any fiscal year, the director may reduce the maximum amount calculated under division (D) (1) of this section and increase the maximum amount calculated under division (D)(4) of section 122.85 of the Revised Code by the amount of that reduction.

(2) The director shall not approve more than five million dollars in estimated tax credits per fiscal year for capital improvement projects located in any single county.

(E) (1) Within ninety days after the director of development approves a capital improvement project that was not complete at the time of the production company's application, the production company shall submit sufficient evidence of reviewable progress to the director. The director may request additional updates from the production company regarding the progression of the project as often as the director considers necessary until the project is complete or approval

of the project is rescinded. The production company shall respond to each such request within thirty days.

(2) The director may rescind approval of a capital improvement project if the production company fails to timely submit evidence of reviewable progress or respond to the director's request for a project update, as required by division (E)(1) of this section, or if the director determines that the progression of the project is significantly behind the schedule submitted in the tax credit application. The director shall rescind approval of a project that does not begin within ninety days after the date the application is approved unless the production company shows good cause for the delay, meaning that the project was delayed due to unforeseeable circumstances beyond the production company's control or due to action or inaction by a government agency.

(3) The director shall notify the production company upon rescinding approval of a capital improvement project. Nothing in this section prohibits the production company from reapplying for approval of the same capital improvement project.

(F)(1) A production company whose capital improvement project is approved by the director of development shall engage, at the company's expense, an independent certified public accountant to examine the company's qualified expenditures. Within ninety days after the director approves the project or within ninety days after a project approved by the director is complete, whichever is later, the certified public accountant shall issue a report to the company and to the director that includes all of the following:

(a) The amount of the company's actual qualified expenditures:

(b) Completed copies of all accounting and auditing forms required by the director in connection with the capital improvement project:

(c) An itemized review of all contract and expense items of ten thousand dollars or more that are reported as qualified expenditures:

(d) An itemized review of at least one-half of the contract and expense items of less than ten thousand dollars that are reported as qualified expenditures, both in terms of the total number of such contracts and items and the total amount of qualified expenditures reported for such contracts and items:

(e) Certification that all goods and services reported as qualified expenditures were purchased and consumed in this state.

(2) Upon receiving and examining the report, the director may disallow any expenditure the director determines is not a qualified expenditure. If the director disallows an expenditure, the director shall issue a written notice to the production company stating that the expenditure is disallowed and the reason for the disallowance. Upon examination of the report and disallowance of any expenditures, the director shall determine the production company's actual qualified expenditures for the purpose of computing the amount of the credit.

(3) Qualified expenditures reported by the production company are subject to inspection and examination by the tax commissioner or employees of the commissioner under section 5703.19 of the Revised Code and any other applicable law. Once the qualified expenditures are finally determined under division (F) (2) of this section, the credit amount is not subject to adjustment unless the director determines an error was committed in the computation of the credit amount.

(G) After reviewing the report and making the determination prescribed by division (F) of this section, the director of development shall issue a tax credit certificate to the production company. The director, in consultation with the tax commissioner, shall prescribe the form and manner of issuing certificates. The director shall assign a unique identifying number to each tax credit certificate and shall record the certificate in a register devised and maintained by the director for

that purpose. The certificate shall state the amount of the credit and the amount of the qualified expenditures upon which the credit is based. Upon issuance of a certificate, the director shall certify to the tax commissioner the name of the production company to which the certificate was issued, the amount of qualified expenditures shown on the certificate, the amount of the credit, and any other information required by the rules adopted to administer this section.

(H) The credit amount stated on the tax credit certificate shall equal the lesser of the following:

(1) Twenty-five per cent of the production company's actual qualified expenditures, as determined by the director of development under division (F) of this section:

(2) The estimated credit amount specified in the production company's tax credit application under division (B) (5) of this section:

(3) Five million dollars.

(I) (1) A production company to which a tax credit certificate is issued under division (H) of this section may transfer the authority to claim all or a portion of the amount of the tax credit the production company is authorized to claim pursuant to that certificate under section 5726.59, 5747.67, or 5751.55 of the Revised Code to one or more other persons. Within thirty days after a transfer under this division, the production company shall submit the following information to the director of development, on a form prescribed by the director:

(a) Information necessary for the director to identify the certificate that is the basis for the transfer:

(b) The portion or amount of the tax credit transferred to each transferee:

(c) The portion or amount of the tax credit that the production company retains the authority to claim:

(d) The tax identification number of each transferee:

(e) The date of the transfer:

(f) Any other information required by the director:

(g) Any information required by the tax commissioner.

The director shall deliver a copy of any submission received under division (I)(l) of this section to the tax commissioner.

(2) A transferee may not claim a credit under section 5726.59, 5747.67, or 5751.55 of the Revised Code unless and until the transferring production company complies with division (D)(l) of this section. A transferee may claim the transferred amount of any credit or portion of a credit for the same taxable year or tax period for which the transferring production company was authorized to claim the credit or portion of a credit pursuant to the certificate. A production company shall make no transfer under division (D)(l) of this section after the last day of the tax period or taxable year for which the production company is required to claim the credit pursuant to the certificate.

A production company may make not more than one transfer under division (D)(l) of this section for each tax credit certificate, but pursuant to that transaction, may allocate the authority to claim a portion of the credit to more than one transferee. A production company may not authorize more than one transferee to claim the same portion of a credit. No transferee may transfer the right to claim the credit to another person.

(J) The director of development, in consultation with the tax commissioner, shall adopt rules in accordance with Chapter 119, of the Revised Code for the administration of this section, including rules setting forth and governing the criteria for reporting sufficient evidence of reviewable progress: expenditures that

are qualified expenditures: a schedule and deadlines for applications to be submitted and reviewed: a competitive process for approving credits based on likely economic impact and development of a permanent workforce in motion picture or theatrical production industries: and consideration of geographic distribution of credits.

To cover the administrative costs of the program, the director shall require each applicant to pay an application fee equal to the lesser of ten thousand dollars or one per cent of the estimated value of the tax credit as stated in the application. The fees collected shall be credited to the tax incentives operating fund created in section 122.174 of the Revised Code.

*****TEXT OMITTED, DOES NOT PERTAIN TO FILM*****