

**ELECTRONIC MARK-UP
TEXT APPROVED IN FINAL VOTE BY SENATE
(JUNE 23, 2014)**

COMMONWEALTH OF PUERTO RICO

17th. Legislative
Assembly

3rd. Ordinary
Session

PUERTO RICO SENATE

P. del S. 845

December 4, 2013

Presented by Mr. *Fas Alzamora*

Referred to the Tourism, Cultural, Sports and Recreation and Globalization; and Treasury and Public Finances

LAW

To amend Articles 2.2, 3.5, 4.1(a)(3), 7.3 (b)(A) and 9.1 of Act 27-2011, known as the “Puerto Rico Film Industry Economic Incentives Act of 2011”, for the purpose of extending the definitions of terms and proper words; reduce the minimum investment amount in film projects; improve the incentives to certain film projects with local elements; create a tax credit when it expressly promotes Puerto Rico; and for other purposes.

STATEMENT OF MOTIVES

Puerto Rico has managed to be placed as a world-wide competitive destination for the production of feature films and television series, thanks, in part, to the incentives of Act 27-2011, also known as the “Puerto Rico Film Industry Economic Incentives Act of 2011”. In spite of what has been previously stated, two situations exist that cause local concern among the members of the film industry. On the one hand, the economic difficulty for a local producer to be able to finance its movie product and on the other hand, the fact that highly qualified local professionals are not being used in foreign productions.

Currently, many local producers who have planned great quality film projects, do not have the economic capital required to benefit from the incentives that Act 27-2000 provides. Some local productions have managed to combine the above described incentives with financing from the Cinematographic Fund created by Act 121-2001, as amended, known as the “Law of

the Corporation for the Development of the Arts, Sciences and Cinematographic Industry of Puerto Rico". The Cinematographic Fund can finance up to eighty percent (80%) of the total budget of a film project, not to exceed a contribution of \$1.2 million. Nevertheless, the assignment of funds to the Cinematographic Fund is limited to \$3.2 million annually, while Act 27-2011 reserves \$50 million annually in tax credits for the industry, of which forty percent (40%) is related to payments to Puerto Rico residents. At the present time there are close to \$15 million that are not being used of the \$50 million that are annually available. To reach its maximum utilization would represent an injection of approximately \$125 million to the economy of Puerto Rico, which would mean that the jobs in the cinematographic industry would triple.

On the other hand, it is well known that the local industry has professionals of high caliber and experience, whom on many occasions are alienated by foreign productions due to the fact that they bring their own working staff from the exterior. We have actors, actresses, screenwriters, band composers, among other professionals that actually have no work and have the same or more experience than those that are contracted from the exterior. Conditions must be created so that our professionals in the film industry may be hired and thus; this type of professional continues his/her development; and at the same time make their hiring beneficial for local and foreign productions.

Both situations exposed herein, coexist with the idea that the benefit cannot stop being attractive in economic terms in order to continue being considered a competitive destination. This bill addresses the injustices that our producers and professionals of the industry experience. On the one hand, it modifies the minimum amount required for the eligible film projects, so that the local producers may have real access to the economic incentives that are offered by the Film Industry Act. This way, we achieve a greater amount of film projects made by Puerto Rican producers under Act 27-2011, specifically feature films, short films, documentaries and recorded live performances. This would definitely place local producers in a better position to be able to finance their project.

On the other hand, the total of the tax credits that are available for feature films, short films, documentaries and television series, including soap operas, are increased in order to be up to ninety percent (90%) of the payments to residents of Puerto Rico instead of forty percent

(40%). This will only be possible when producers and co-producers, residents of Puerto Rico, would have the right to receive earnings from the project. Contracting residents of Puerto Rico will set up the perfect conditions for the creation of Puerto Rican jobs, which in turn encourage the efforts of the Puerto Rican producer. Because of this, the definition of Puerto Rican Actor and Actress is also added to include persons born in Puerto Rico and persons who are descendants of Puerto Rican fathers or mothers up to the second degree of consanguinity *including* (grandchildren). This will encourage the return of talent to Puerto Rico.

In addition, the need to include and define various terms is analyzed so this and all the laws that interact in the film industry can be more comprehensive, the article of the definitions of Act 27-2011 is amended, to reflect more specific terms about the Film industry.

With all of the above, this Legislative Assembly deems appropriate and takes advantage of the situation to promote Puerto Rico as a tourist destination or place to do business, including a new special tax credit of ten percent (10%) of the costs of production in the country, when the main story occurs or expressly mentions Puerto Rico. In making more attractive the incentive for projects with important local elements, the investment in new film projects is encouraged. Also, it provides that in order for a grantee to take advantage of the new benefits, a producer, resident of Puerto Rico will have the right to receive no less than thirty percent (30%) of the net profits from the film production.

BE IT DECREED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

1 Article 1.- Article 2.2 of Act 27-2011, is amended to read as follows:

2 “Article 2.2- Definitions.-

3 Whenever used as proper nouns, the following words and terms, as used in this Act,
4 shall have the meaning indicated herein below:

5 (a) Puerto Rican Actors and Actresses – Talent that acts on camera that is considered;
6 an individual resident of Puerto Rico, within the meaning of the *Puerto Rico*
7 *Internal Revenue Code of 2011*, a non-resident individual born in Puerto Rico or a

- 1 non-resident individual, descendant of a Puerto Rican father or mother and up to
2 second degree of consanguinity *including* (grandchildren).
- 3 (b) Legislative Assembly – Means the House of Representatives and the Senate of
4 the Commonwealth of Puerto Rico, acting jointly.
- 5 (c) Auditor – an independent Certified Public Accountant authorized to practice said
6 profession in Puerto Rico, contracted by the Grantee to carry out the functions
7 contemplated under this Act.
- 8 (d) Code –means Act 1-2011, as amended, known as the “Puerto Rico Internal
9 Revenue Code of 2011”, or any subsequent similar Law that replaces it.
- 10 (e) Grantee – a Person that has received a Grant under the provisions of this Act.
- 11 (f) Conflict of Interest – Any situation in which a direct or indirect interest of the
12 person or his/her relatives, in accordance with the Government Ethics Law of
13 Puerto Rico of 2011, is or may be reasonably in conflict with the interests of the
14 Corporation or the public interest in relation to one or more projects to be
15 evaluated.
- 16 (g) Motion Picture Corporation – the Puerto Rico Motion Picture Arts, Sciences, and
17 Industry Development Corporation, created under Act No. 121 of August 17,
18 2001, as amended.
- 19 (h) Grant – the concession of authority pursuant to this Act, Act No. 121-2001 and
20 the Motion Picture Corporation Act by the Secretary of Development of Economic
21 Development and Commerce to allow a person engaged in film projects or
22 infrastructure projects, *or* studio operator, or large-scale studio operator to avail
23 him/herself of the incentives set forth in this Act, subject to compliance with the

1 requirements of this Act. “Grant” shall have the same meaning as “incentives
2 grant”, “tax exemption”, “tax incentives” or merely “incentives,” “exemption”,
3 “grant”, or “license”, which can be used indiscriminately, as may be convenient
4 for the purpose of illustrating what is provided in the corresponding text.

5 (i) Studio – a comprehensive purpose-built, high-capacity film and television
6 production studio, developed and operated anywhere in Puerto Rico, suitable for
7 the purposes of housing sound stages and exterior sets, including facilities for set
8 construction and design, production offices and production services departments
9 catering to the production community and such other built-in necessary amenities
10 or facilities, as determined by the Secretary of Development of Economic
11 Development and Commerce, through regulation, circular letter or administrative
12 determination and with a budget equal to or greater than fifty million dollars
13 (\$50,000,000), as certified by the Auditor.

14 (j) Large-Scale Studio – a comprehensive purpose-built, high-capacity film and
15 television production studio, developed and operated within a Film Development
16 Zone, suitable for the purposes of housing sound stages and exterior sets,
17 including facilities for set construction and design, production offices, and
18 production services departments catering to the production community and such
19 other built-in necessary amenities or facilities, as determined by the Secretary of
20 Development of Economic Development and Commerce, through regulation,
21 circular letter or administrative determination, with a budget equal to or greater
22 than one hundred million dollars (\$100,000,000), as certified by the Auditor.

- 1 (k) Bond – an irrevocable standby letter of credit issued by a financial institution
2 duly authorized to do business in Puerto Rico, the assurance of a surety, insurance
3 or bonding company or a guarantee issued by a creditworthy person, in each case
4 acceptable to the Secretary of the Treasury, to the effect that a Film Project or
5 Infrastructure Project shall be completed within the corresponding proposed term
6 and parameters. In the case of Film Projects, “Bond” shall include a “Completion
7 Bond”.
- 8 (l) Fund or Cinematographic Fund – Means the Fund of the Puerto Rico Motion
9 Picture Arts, Sciences and Industry Development Corporation Act, created
10 pursuant to Act 121-2001, as amended, known as the “Puerto Rico Motion Picture
11 Arts, Sciences, and Industry Development Corporation Act”.
- 12 (m) Principal Photography – the phase of production during which a film project is
13 actually filmed. The term shall not include the preproduction or the postproduction
14 of the film project.
- 15 (n) Production Expenditures – development, preproduction, production and
16 postproduction expenditures directly incurred in the production of a Film Project.
17 Expenditures related to the development of a Film Project shall only be included
18 when not less than fifty percent (50%) of the Principal Photography of the Film
19 Project takes place in Puerto Rico. Expenditures related to the preproduction,
20 production and postproduction shall not be required to comply with the
21 aforementioned fifty percent (50%) of Principal Photography requirement to be
22 considered Production Expenditures.

1 (o) Puerto Rico Production Expenditures – payments made to Puerto Rico Residents,
2 and/or Qualified Nonresident for services physically rendered in Puerto Rico, that
3 are directly attributable to the development, preproduction, production and
4 postproduction of a Film Project. Expenditures related to the development of a
5 Film Project shall only be included when not less than fifty percent (50%) of the
6 Principal Photography takes place in Puerto Rico. Expenditures related to the
7 preproduction, production and postproduction shall not be required to comply with
8 the aforementioned fifty percent (50%) of Principal Photography requirement to
9 be considered Puerto Rico Production Expenditures. In order to constitute Puerto
10 Rico Production Expenditures, the payments received by the Puerto Rico
11 Residents and Qualified Nonresident shall be subject to income taxes in Puerto
12 Rico as provided in this Act, whether directly or through a professional services
13 corporation, cooperative, or other legal entity. Puerto Rico Production
14 Expenditures include payments related to the development, preproduction,
15 production and postproduction of Film Project, including, but not limited to, the
16 following:

17 (1) Wages, fringe benefits, per diems or fees for talent, management or labor
18 to a person who is a Puerto Rico Resident or a Qualified Nonresident.
19 Nevertheless, per diems of a person that is not a Puerto Rico Resident a
20 Qualified Nonresident, could be, up to the discretion of the Secretary of
21 Economic Development, included in the definition of Puerto Rico
22 Production Expenditures;

- 1 (2) interests, charges and fees paid to persons listed in Section 1033.17(f) (4)
2 of the Code; and/or
- 3 (3) any of the following goods or services provided by a supplier that is a
4 Puerto Rico Resident:
- 5 (A) the story and screenplay to be used for a Film Project;
 - 6 (B) set construction and operations, wardrobe, accessories and related
7 services;
 - 8 (C) photography, sound synchronization, lighting and related services;
 - 9 (D) editing and related services;
 - 10 (E) rental of facilities and equipment;
 - 11 (F) leasing of vehicles, including the chartering of aircraft or watercraft
12 provided such aircraft or watercraft is registered and home ported
13 in Puerto Rico and such leasing is limited for travel within Puerto
14 Rico, its airspace and territorial waters;
 - 15 (G) food and lodging;
 - 16 (H) airfare if purchased through a Puerto Rico-based travel agency or
17 travel company for travel to and from Puerto Rico or within Puerto
18 Rico that is directly attributable to the Film Project;
 - 19 (I) insurance coverage and bonding; provided, that it is purchased
20 through an insurance producer authorized to do business in Puerto
21 Rico; and
 - 22 (J) other costs directly attributable to the Film Project in accordance
23 with generally accepted entertainment industry practice, as

1 determined by the Secretary of Development through regulations,
2 circular letter or administrative determination.

3 (4) The following shall be excluded from the Puerto Rico Production
4 Expenditures definition:

5 (A) Those items paid to Puerto Rico Residents with the money in cash
6 obtained through any subsidy, gift, or fund appropriation from the
7 Government of the Commonwealth of Puerto Rico. Those items
8 paid to Puerto Rico Residents with monies in cash obtained through
9 contributions made to a Film Project through advertising
10 sponsorships, marks or products integration, or media buys, or, that
11 by their nature and terms are refundable, such as loans or
12 investments, including contributions by the Puerto Rico Motion
13 Picture Fund created under the Motion Picture Corporation Act
14 may, at the discretion of the Secretary of Development, be included
15 in the definition of Puerto Rico Production Expenditures.

16 (B) The costs of goods acquired or leased by Puerto Rico Resident
17 suppliers outside of Puerto Rico for resale to a Grantee, that do not
18 comply with the rules issued by the Secretary of Development by
19 regulation and/or circular letter and when, in the judgment of the
20 Auditor, there is no economic substance in the transaction; and

21 (C) Those items paid to Puerto Rico Resident entities mainly for the
22 services rendered by natural persons not considered Puerto Rico

1 Residents, except for entities rendering Qualified Nonresident
2 services.

3 (p) Governor – Means the Governor of the Commonwealth of Puerto Rico.

4 (q) Government– Means the Government of the Commonwealth of Puerto Rico,
5 including all of its municipalities, instrumentalities, political subdivisions,
6 agencies, and public and quasi-public corporations.

7 (r) Script – Document describing the cinematographic project, the scenes, actions,
8 dialogues, description of environment, events and annotations of a fiction project.

9 (s) Screenwriter – Natural person that creates the original script, the dialogues or the
10 adaptation from another source, on which the cinematographic project is based.

11 (t) Board of Directors – Means the Board of Directors of the Corporation for the
12 Development of the Arts, Science and Cinematographic Industry of Puerto Rico.

13 (u) Act – Means the Puerto Rico Film Industry Economic Incentives Act.

14 (v) Motion Picture Corporation Act – Act No. 121-2001, as amended, known as the
15 “Puerto Rico Motion Picture Arts, Sciences, and Industry Development
16 Corporation Act”.

17 (w) Qualified Nonresident – Producer, director, writer, onscreen talent (except a
18 helper, also known as an extra), including stuntmen, known as “*Above the Line*”,
19 and any person of technical or creative nature behind the lens, known as “*Below*
20 *the Line*”, and any other similar person who in accordance with the general
21 practice accepted in the entertainment industry is considered “*Above the Line*” or
22 “*Below the Line*”, as determined by the Secretary of Development, that is not
23 considered a Resident of Puerto Rico.

- 1 (x) Large Scale Studio Operator – the person dedicated to administer and operate a
2 Large Scale Studio.
- 3 (y) Studio Operator – the Person dedicated to administer and operate a Studio.
- 4 (z) Person – any natural person, corporation, partnership, professional services
5 corporation, association, trust, limited liability company, cooperative or any other
6 entity or organization, including the Government of the Commonwealth of Puerto
7 Rico.
- 8 (aa) Producer – Means the private entrepreneur who is the holder of intellectual
9 property rights of the work and is responsible for the making and marketing of
10 the film project.
- 11 (bb) Infrastructure Project – the development or substantial expansion in Puerto Rico
12 of studios, large-scale studios, laboratories, facilities for postproduction,
13 animation and special effects, facilities for the international transmission of
14 television images or other media, or other permanent facilities to carry out Film
15 Projects (regardless of whether said projects avail themselves of the provisions of
16 this Act), whose hard costs budget, as certified by the Auditor, exceeds one
17 million dollars (\$1,000,000).
- 18 (cc) Film Project – defined according to the provisions of Article 4.1 (b) of this Act.
- 19 (dd) Puerto Rico Resident – an individual who meets the requirements set forth in
20 Section 1010.01(a) (30) of the Code and/or a corporation, partnership, limited
21 liability company, cooperative or other legal entity organized under the laws of
22 the Government of the Commonwealth of Puerto Rico, or engaged in trade or
23 business in Puerto Rico pursuant to the provisions of the Code, which must

1 derive not less than eighty percent (80%) of its gross income from sources
2 within Puerto Rico, using the rules prescribed in Section 1032.04 of the Code,
3 related to the sources of income.

4 (ee) Secretary of Development – the Secretary of Development of Economic
5 Development and Commerce of the Government of the Commonwealth of Puerto
6 Rico.

7 (ff) Secretary of the Treasury – the Secretary of the Department of the Treasury of
8 the Government of the Commonwealth of Puerto Rico.

9 (gg) Transfer – means, as appropriate in each case, a lease, sale, exchange, transfer,
10 assignment or conveyance in any manner of real or personal property, as the case
11 may be.

12 (hh) Film Development Zones – the geographic areas designated pursuant to Article
13 6.1 of this Act.”

14 Article 2.- Article 3.5 of Act 27-2011, as amended, is amended to read as follows:

15 “Article 3.5.- General responsibilities and authority of the Secretary of Development.-

16 In the evaluation, analysis, consideration, grant, renegotiation or revision of any
17 incentive or benefit issued by the present Act , the Department of Economic Development and
18 Commerce and, its Secretary, shall be obligated to review and guarantee that all provisions
19 of this Act are complied with.

20 The Secretary of Development will have the obligation and responsibility to annually
21 prepare a Certificate of Compliance, once the individuals or entities interested in enjoying
22 the incentives set forth herein, validate, in the opinion of said officer, that they have complied
23 with the requirements provided in this Act. The information submitted by the exempt business

1 will be verified annually by the Secretary of Development, in order for the Certificate of
2 Compliance is issued on the tenth (10th) day of January of every year.

3 The Certificate of Compliance shall include, in turn, the following information with
4 respect to the person or entity favored by the incentive: the name of the person or entity; the
5 property tax identification number of the property or properties related to the incentivized
6 activity; the merchant's registration number; the account related to the business as required
7 by the Puerto Rico Internal Revenue Code; the employer identification number; and the
8 information required pursuant to Act 216-2014, also known as the Control of Fiscal
9 Information and Permits Act, as applicable.

10 The Certificate of Compliance shall be processed by the Secretary of Development,
11 through the Interagency Portal of Validation for the Concession of Incentives for the
12 Economic Development of Puerto Rico to, the agencies, public corporations and
13 municipalities in charge of granting the benefits or incentives established in this Act. The
14 submission of the Certificate of Compliance by the person interested in obtaining the
15 incentives herein provided will be indispensable in order for the agency, public corporation
16 or municipality to issue the benefit or incentive provided in this Act.

17 The only step to be undertaken by the Secretary of the Department of Treasury, the
18 Executive Director of the Center for the Collection of Municipal Income (CRIM, as its
19 Spanish acronym) or any other official or governmental organization or public corporation
20 in connection with any of the benefits or incentives granted pursuant to the Act, will be
21 limited to the granting of the benefit or incentive in question if a current Certificate of
22 Compliance is obtained, as provided in this article, leaving the total enforcement of all the
23 provisions of this Act under the exclusive responsibility of the Secretary of Development.

1 The Secretary of Development may delegate to the Film Commissioner any of the
2 powers conferred to him/her by this Act, except those related to the designation of geographic
3 areas such as the Film Development Zones in accordance with the provisions of Articles 6.1
4 and 8.4.”

5 Article ~~2~~ 3.- Article 4.1(a) (3) of Act 27-2011, as amended, is amended to read as
6 follows:

7 “Article 4.1.- Eligible film projects

8 (a) ...

9 (1) ...

10 (2) ...

11 (3) Puerto Rico production expenditures shall be at least fifty thousand dollars
12 (\$50,000), provided that in the case of a Film Project, as described in
13 paragraphs (b)(2) and (b)(3) below, Puerto Rico production expenditures will
14 be at least twenty five thousand dollars (\$25,000); and in the case of a film
15 project, as described in Article 4 (b)(9) of this Act, the Puerto Rico production
16 expenditures will be at least twenty five thousand dollars (\$25,000).

17 (b) ...”

18 Article ~~3~~ 4.- Article 7.3 of Act 27-2011, as amended, is amended to read as follows:

19 “Article 7.3.- Availability of tax credits for Grantees.

20 (a)...

21 (b)...

22 (A) ...

23 (B) ...

- 1 (C) except in the case of documentaries up to fifty percent (50%) of the Puerto
2 Rico Production Expenditures, not including payments made to Qualified
3 Nonresidents in accordance with the following rules:
- 4 (a) (i) an additional seven percent (7%) when a least one (1) of the writers of the script is a
5 Puerto Rico Resident;
- 6 (b) (ii) an additional seven percent (7%) when the director is a Puerto Rico Resident;
- 7 (c) (iii) an additional four percent (4%) when the first assistant to the director is a Puerto Rico
8 Resident;
- 9 (d) (iv) an additional four percent (4%) when the cinematographer is a Puerto Rico Resident;
- 10 (e) (v) an additional four percent (4%) when the production designer is a Puerto Rico
11 Resident;
- 12 (f) (vi) an additional four percent (4%) when the composer of the film score is a Puerto Rico
13 Resident;
- 14 (g) (vii) an additional four percent (4%) when the editor is a Puerto Rico Resident.
- 15 (h) (viii) an additional six percent (6%) when the Puerto Rican Actor and/or Actresses play a
16 leading role;
- 17 (i) (ix) an additional four percent (4%) when at least five (5) of the following are Puerto Rico
18 Residents: The secondary Puerto Rican Actor and/or Actress, special effects supervisor,
19 visual effects supervisor, postproduction supervisor, sound engineer, electrical chief
20 (gaffer), key grip, stunts coordinator, script supervisor, or chief of sets;
- 21 (j) (x) an additional six percent (6%) when the unit production manager (“Unit Production
22 Manager”) is a Puerto Rico Resident.

1 (D) in the case of documentaries up to an additional fifty percent (50%) in
2 Puerto Rico Production Expenditures, without including payments made to Qualified
3 Nonresidents in accordance with the following rules:

4 (i) an additional nine percent (9%) when at least one (1) of the screen writers is a
5 Puerto Rico Resident;

6 (ii) an additional nine percent (9%) when the director is a Puerto Rico Resident;

7 (iii) an additional nine percent (9%) when the cinematographer is a Puerto Rico
8 Resident;

9 (iv) an additional eight percent (8%) when the composer of the film score is a
10 Puerto Rico Resident;

11 (v) an additional eight percent (8%) when the editor is a Puerto Rico Resident.

12 (vi) an additional seven percent (7%) when at least two (2) of the following are
13 Puerto Rico Residents: sound engineer, gaffer or key grip; and

14 (E) ten percent (10%) of the amounts that have been certified by the Auditor as
15 reimbursed in relation to Puerto Rico Production Expenditures, without including
16 payments made to Qualified Nonresidents, to the Grantees of grants dedicated to Film
17 Projects as described in Articles 4.1(b)(1) and 4.1(b)(4), in which the main story
18 occurs in and expressly mentions Puerto Rico.

19 (F) General Rules -

20 (i) The combination of all the credits granted in this subsection (b) shall never
21 exceed ninety (90%) of the total of the Puerto Rico Production
22 Expenditures, without including payments made to Qualified
23 Nonresidents.

1 (ii) In order for a Grantee of a grant to qualify for the benefits in section (b) of
 2 this Article which are established in clauses (C) and (D), the Auditor must
 3 certify and provide copies of the corresponding contracts, which one or
 4 more producers or coproducers that are Puerto Rico Residents, natural
 5 persons, nonentities, direct or indirectly, individually or in the aggregate,
 6 have a right to receive not less than thirty percent (30%) of the net profits
 7 of the film project to be distributed among the producers of the project,
 8 after the repayment of the financing and other economic obligations.

9 (2)...

10 ...”

11 Article 4 5. – Article 9.1 is amended for Act 27-2011, as amended, known as the
 12 “Puerto Rico Film Industry Economic Incentives Acts: so that it reads as follows:

13 “Article 9.1.- Refusal, revocation and limitation of benefits.-

14 (a)

15 ...

16 (c) The existence or mere appearance of a conflict of interest must be immediately
 17 notified by the person with such knowledge to the Secretary of Development. If the situation
 18 is not corrected or clarified within a period of thirty (30) days, the persons involved will not
 19 be able to benefit from the provisions of this Act.”

20 Article 5 6.- Effects of Judicial Interpretation

21 If any clause, paragraph, subparagraph, article, provision, section, subsection or part
 22 of this Act were to be declared unconstitutional by a court with competence and jurisdiction,
 23 the ruling to that effect shall not affect, impair or invalidate the remainder of this Act.

1 Article ~~6~~ 7.- Term.

2 This Act shall become effective immediately after its approval.