

OH H 166, Enrolled

Ohio

SUMMARY: Makes operating appropriations for the biennium; provides authorization and conditions for the operation of state programs.

Legislative History and Analysis

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

03/25/2019 INTRODUCED.

03/25/2019 To HOUSE Committee on RULES AND REFERENCE.

03/26/2019 From HOUSE Committee on RULES AND REFERENCE: Recommended referral.

03/26/2019 In HOUSE. To second reading. Read a second time.

03/26/2019 To HOUSE Committee on FINANCE.

05/09/2019 From HOUSE Committee on FINANCE: Recommended as substituted.

05/09/2019 In HOUSE. Read third time and amended.

05/09/2019 In HOUSE. Read third time. Passed HOUSE. *****To SENATE.

05/09/2019 To SENATE Committee on RULES AND REFERENCE.

05/14/2019 From SENATE Committee on RULES AND REFERENCE: Recommended referral.

05/14/2019 In SENATE. To second reading. Read a second time.

05/14/2019 To SENATE Committee on FINANCE.

06/20/2019 From SENATE Committee on FINANCE: Recommended as substituted.

06/20/2019 In SENATE. Read third time and amended.

06/20/2019 In SENATE. Read third time. Passed SENATE. *****To HOUSE for concurrence.

06/20/2019 HOUSE refused to concur in SENATE amendments.

06/20/2019 *****To CONFERENCE Committee.

07/17/2019 CONFERENCE Committee Report adopted by HOUSE.

07/17/2019 CONFERENCE Committee Report adopted by SENATE.

07/17/2019 Eligible for GOVERNOR'S desk.

07/18/2019 Enrolled.

07/18/2019 Line Item Vetoed by GOVERNOR.

07/18/2019 Session Law No. 10

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session: Ohio 133rd General Assembly - 2019-20 Regular Session cite: 2019 OH H 166

Enrolled

July 18, 2019

Oelslager

(133rd General Assembly)

(Amended Substitute House Bill Number 166)

AN ACT

To amend sections...

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

122.85...

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

SECTION 101.01. That sections...122.85...

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

Sec. 107.036.

(A) For each business incentive tax credit, the main operating appropriations act shall contain a detailed estimate of the total amount of credits that may be authorized in each year, an estimate of the amount of credits expected to be claimed in each year, and an estimate of the amount of credits expected to remain outstanding at the end of the biennium. The governor shall include such estimates in the state budget submitted to the general assembly pursuant to section 107.03 of the Revised Code.

(B) As used in this section, "business incentive tax credit" means all of the following:

- (1) The job creation tax credit under section 122.17 of the Revised Code;
- (2) The job retention tax credit under section 122.171 of the Revised Code;
- (3) The historic preservation tax credit under section 149.311 of the Revised Code;
- (4) The motion picture **and Broadway theatrical production** tax credit under section 122.85 of the Revised Code;

- (5) The new markets tax credit under section 5725.33 of the Revised Code;
- (6) The research and development credit under section 166.21 of the Revised Code;
- (7) The small business investment credit under section 122.86 of the Revised Code;
- (8) The rural growth investment credit under section 122.152 of the Revised Code;
- (9) **The opportunity zone investment credit under section 122.84 of the Revised Code.**

***** 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 services under division (B) of this section as qualifying the ~~motion picture~~ **production** company **and its production contractors** for a tax credit under section 5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code.
- (2) "Certificate owner" means a ~~motion picture~~ **production** company **or production contractor** to which a tax credit certificate is issued ~~or a person to which the company has transferred under division (H) of this section the authority to claim all or a part of the tax credit authorized by that certificate~~ .
- (3) "~~Motion picture~~ **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 ~~production~~ expenditures" means expenditures made after June 30, 2009, for goods or services purchased and consumed in this state by a ~~motion picture~~ **production** company directly for the production of a tax credit-eligible production **or for postproduction activities, or for advertising and promotion of the production.**

"Eligible ~~production~~ expenditures" includes, but is not limited to, 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 pre Broadway 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) ***“Pre Broadway 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 presentation to the public of theater productions.***
 - (11) ***“Production contractor” means an individual, corporation, partnership, limited liability company, or other form of business association that is registered with the secretary of state and that, pursuant to a contract with a production company producing a motion picture in this state, provides any of the following services to the production company with respect to that production: editing, postproduction, photography, lighting, cinematography, sound design, catering, special effects, production coordination, hair styling or makeup, art design, or distribution.***
- (B) For the purpose of encouraging and developing ~~a~~ strong film ~~industry~~ **and theater industries** in this state, the director of development services may certify a motion picture **or Broadway theatrical production** produced by a ~~motion picture~~ **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 ~~motion picture~~ **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 ~~motion picture~~ 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 ~~date~~ **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 ~~of the motion picture~~ ;
 - (6) The total budgeted eligible ~~production~~ expenditures and the percentage that amount is of the total production budget of the motion picture **or Broadway theatrical production** ;
 - (7) ~~The~~ **In the case of a motion picture, the** total percentage of the ~~motion picture~~ **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) ~~The~~ *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 ~~of the motion picture~~;
- (13) Estimated value of the tax credit based upon total budgeted eligible ~~production~~ 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 of development services, the ~~motion picture~~ *production* company shall present to the director sufficient evidence of reviewable progress. If the ~~motion picture~~ *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 ~~motion picture~~ *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 services 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 application shall state the name and address of each production contractor with which the production company contracted for services and the amount of eligible expenditures paid or incurred under the contract with respect to the production.*

The credit is determined as follows:

- (a) If the total budgeted eligible ~~production~~ expenditures stated in the application submitted under division (B) of this section or the actual eligible ~~production~~ 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 ~~production~~ expenditures stated in the application submitted under division (B) of this section or the actual eligible ~~production~~ expenditures as finally determined under division (D) of this section, whichever is least, is greater than three hundred thousand dollars, the credit *for the production company* equals thirty per cent of the least of such

budgeted or actual eligible expenditure amounts **and the credit for each production contractor equals thirty per cent of the amount of eligible expenditures paid or incurred under the contract with respect to the production.**

- (2) Except as provided in division (C)(4) of this section, if the director of development services approves a ~~motion picture~~ **production** company's application for a credit, the director shall issue a tax credit certificate to the company **and to each of the company's production contractors identified in the application** . 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 ~~production~~ 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 ~~applicant~~ **production company or contractor to which the certificate was issued** , the amount of eligible ~~production~~ 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 ~~production~~ 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 ~~production~~ 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 of tax credit may be allowed per fiscal year ~~beginning July 1, 2016,~~ provided that, for 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.
- (5) ~~In approving~~ **The director shall review and approve** applications for tax credits ~~under this section~~ **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 plus any credit allotment that was not awarded in the preceding fiscal year and carried over under division (C)(4) of this section. 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 ~~motion picture~~ **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

~~production~~ expenditures. The certified public accountant shall issue a report to the company and to the director of development services certifying the company's eligible ~~production~~ 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 ~~production~~ expenditure. ***If any expenditure disallowed under this division was included in the expenditure for a contract with a production contractor, the contractor's credit amount shall be reduced in proportion to such disallowed expenditure.*** If the director disallows an expenditure, the director shall issue a written notice to the ~~motion picture~~ production company ***or affected production contractor*** 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 ~~production~~ expenditures stated in the application submitted under division (B) of this section or the actual eligible ~~production~~ 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 services 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 ~~production~~ 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 ~~(I)~~ ***(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) ~~(1) After the director of development services makes the determination required under division (D) of this section, a motion picture company to which a tax credit certificate is issued may transfer the authority to claim all or a portion of the amount of the tax credit the motion picture company is authorized to claim pursuant to that certificate under section 5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code to one or more other persons. Within thirty days after a transfer under this division, the motion picture company shall submit the following information to the director, 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 motion picture 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 (H)(1) of this section to the tax commissioner.~~

~~(2) A transferee may not claim a credit under section 5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code unless and until the transferring motion picture company complies with division (H)(1) 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 motion picture company was authorized to claim the credit or portion of a credit pursuant to the certificate. A motion picture company shall make no transfer under division (H)(1) of this section after the last day of the tax period or taxable year for which the motion picture company is required to claim the credit pursuant to the certificate.~~

~~A motion picture company may make not more than one transfer under division (H)(1) 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 motion picture company may not authorize more than one transferee to claim the same portion of a credit.~~

~~(I)~~ The director of development services 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 ~~motion picture~~ **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 ~~motion picture~~ **production** company whose application was approved under division ~~(I)~~ **(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.

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