

IN S 262, Introduced

Indiana

Synopsis: Film and media production rebate. Authorizes the Indiana destination development corporation (IDDC) to approve and issue a film and media production expenditure rebate (rebate) to a qualified applicant that proposes to make qualified production expenditures totaling: (1) in the case of certain productions, at least \$500,000; and (2) in the case of animation or music productions, at least \$100,000; in Indiana. Requires the IDDC to enter into an agreement with a qualified applicant for the rebate, and specifies the terms that must be in the agreement. Establishes the criteria for approving a rebate and the procedures for claiming a rebate. Provides that the IDDC may not issue a rebate to a qualified applicant after December 31, 2027. Provides that the total amount of rebates issued by the corporation may not exceed \$5,000,000 in a state fiscal year. Requires the IDDC to employ a film commissioner to supervise the rebate program. Provides duties for the film commissioner.

Legislative History and Analysis Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

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Introduced January 8, 2020 Busch

Introduced Version SENATE BILL No. 262

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-33. Effective: July 1, 2020.

Busch

January 9, 2020, read first time and referred to Committee on Tax and Fiscal Policy. Introduced

Second Regular Session of the 121st General Assembly (2020) SENATE BILL No. 262

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration. Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-33-5-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Sec. 14. (a) The corporation shall employ a film commissioner to supervise, direct, coordinate, and administer the film and media production expenditure rebate described in IC 5-33-7.

(b) The film commissioner may do the following:

- (1) *Request information from a qualified applicant (as defined in IC 5-33-7-3) as necessary to review and audit qualified media productions (as defined in IC 5-33-7-5) for which an application or claim for rebate under IC 5-33-7 has been submitted.*
 - (2) *Employ or contract for accountants, consultants, and other professional personnel as necessary to assist the film commissioner with conducting reviews and audits of qualified media productions (as defined in IC 5-33-7-5) for which an application or claim for rebate under IC 5-33-7 has been submitted.*
 - (3) *Perform other duties as directed.*
- (c) *The film commissioner may coordinate with approved postsecondary educational institutions (as defined in IC 21-7-13-6) to offer opportunities for work experience, including student internships, to students on productions for which an application for rebate under IC 5-33-7 has been submitted.*

SECTION 2. IC 5-33-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Chapter 7. Indiana Film and Media Production Expenditure Rebate

Sec.1. As used in this chapter, "corporation" refers to the Indiana destination development corporation established by IC 5-33-3-1.

Sec. 2. As used in this chapter, "Film Indiana" refers to the program administered by the corporation that provides support for the film, television, commercial, and news media industries.

Sec. 3. As used in this chapter, "qualified applicant" means a person, corporation, partnership, limited liability partnership, limited liability company, or other entity that is engaged in the business of making a qualified media production in Indiana.

Sec. 4. As used in this chapter, "qualified Indiana resident" means an individual who:

- (1) maintains a dwelling in Indiana as the individual's principal place of residence and is present in Indiana for not less than six (6) months during the year; and***
- (2) has signed a declaration of residency that certifies that the individual has maintained a dwelling in Indiana as the individual's principal place of residence for not less than six (6) months immediately preceding the production start date for the applicable qualified media production.***

Sec. 5. (a) As used in this chapter, "qualified media production" refers to the following for which at least fifty percent (50%) of the total incurred expenses for production are qualified production expenditures:

- (1) A feature length film, including an independent or studio production, or a documentary.***
- (2) A television episodic series, program, or feature.***
- (3) A digital media production that is intended for reasonable commercial***

exploitation.

- (4) A music video, video game, or game show.*
- (5) An advertising message, except for political advertising, that is intended to be distributed in any media form.*
- (6) An educational media production, provided that the educational media production is not produced primarily for industrial or corporate purposes.*
- (7) Animation or music recorded in Indiana fixed on any delivery system, including film, videotape, computer disc, laser disc, or any digital format.*

(b) The term does not include the following:

- (1) Television coverage of:
 - (A) athletic events;*
 - (B) news; or*
 - (C) current events.**
- (2) Programs that include weather reports or financial reports as a material portion of the program.*
- (3) Talk shows in which a host interviews or talks with guests.*
- (4) Awards shows or gala productions.*
- (5) Any production that is intended to solicit donations, other than donations that are:
 - (A) deductible, in whole or in part, for federal income tax purposes; or*
 - (B) solicited as funding for a project or business venture.**
- (6) Any political advertising message.*
- (7) A production produced primarily for industrial or corporate purposes.*
- (8) A production in any medium that is obscene (under the standard set forth in IC 35-49-2-1).*

Sec. 6. (a) *As used in this chapter, "qualified production expenditure" means any of the following expenses incurred in Indiana or expenditures in Indiana that are made in the direct production (including the direct preproduction and direct postproduction) of a qualified media production in Indiana:*

- (1) Acquisition costs for locations, facilities, offices, and equipment.*
- (2) Acquisition costs for sets, production props, wardrobes, special*

effects, and accessories.

- (3) Expenditures for materials used to make and operate sets, production props, wardrobes, special effects, and accessories.*
- (4) Expenditures for photography, sound synchronization, film processing, digital imaging, lighting, and related services.*
- (5) Expenditures for editing, visual effects, sound mixing, composing, animation, music supervision, and related services.*
- (6) Food and lodging.*
- (7) Expenditures for travel within Indiana at a rate that is not more than the Internal Revenue Service standard mileage rate used to calculate the deductible costs of operating an automobile for business.*
- (8) Commercial airfare travel expenditures incurred to transport cast members and crew members to and from Indiana.*
- (9) Legal services, if purchased from an attorney admitted to the Indiana bar.*
- (10) Accounting services, if purchased from a certified public accountant licensed in Indiana.*
- (11) Shipping costs when originating from a location in Indiana.*
- (12) Receiving costs when a shipment is received at a location in Indiana.*
- (13) Any other production expenditure for which taxes are assessed or imposed by the state.*
- (14) The total sum expended on wages, salaries, and benefits. Expenses under this subdivision do not include expenses described in subdivision (15) or (17).*
- (15) Expenditures for skilled workforce training of crew members who are qualified Indiana residents.*
- (16) Financing fees, if the entity charging the fees is a financial institution (as defined in IC 5-13-4-10) in Indiana.*
- (17) The payment of student internships, if the student who receives the internship payment is enrolled at a state educational institution (as defined in IC 21-7-13-32).*
- (18) Expenditures for acquisition of rights to a story or story material and scripts.*
- (19) Acquisition costs and expenditures for:

(A) vehicles that are to be directly used as part of the qualified media production; and*

(B) the leasing or rental of vehicles.

(b) The term does not include the following expenses or expenditures:

- (1) Expenditures for tangible personal property acquired in a transaction outside Indiana, even if the property is subject to the use tax under IC 6-2.5-3.*
- (2) The payment of penalties or fines.*
- (3) The performance of services or the conveyance of property in an in kind exchange.*
- (4) Any production expenditures for tangible personal property or services that are acquired from a business (or an agent of a business) that does not maintain a physical presence in Indiana.*
- (5) Expenditures for cellular telephone service.*
- (6) Marketing and advertising costs.*
- (7) Any expenses that are incurred after the qualified media production becomes commercially available to the general public.*
- (8) Airfare travel expenditures for private or chartered aircraft.*
- (9) Acquisition costs of vehicles that are not to be directly used as part of the qualified media production.*

Sec. 7. (a) Beginning January 1, 2021, and subject to subsection (c), a qualified applicant that proposes to incur or make qualified production expenditures totaling at least:

- (1) in the case of a qualified media production described in section 5(a)(1) through section 5(a)(6) of this chapter, five hundred thousand dollars (\$500,000); or*
- (2) in the case of a qualified media production described in section 5(a)(7) of this chapter, one hundred thousand dollars (\$100,000); in Indiana may apply to the corporation for approval of a rebate from the corporation under this chapter. An application must be submitted before incurring or making the qualified production expenditures.*

(b) The corporation shall prescribe the form of the application.

(c) In the case of a qualified media production described in section 5(a)(1) of this chapter, a qualified applicant must provide a confirmation that the qualified applicant is seeking a valid completion bond for the project.

Sec. 8. A rebate approved by the corporation under this chapter is equal to the product of:

- (1) the amount of the applicant's qualified production expenditures in the taxable year, up to a maximum amount of five million dollars (\$5,000,000);*

multiplied by (2) the percentage determined by the corporation under section 9 of this chapter.

Sec. 9. (a) *The corporation shall review an application submitted under section 7 of this chapter not later than thirty (30) days after the application is received.*

(b) *An applicant for a rebate shall pay an application fee in an amount determined by the corporation at the time an application is submitted. Application fees must be used by the corporation toward paying the compensation of the film commissioner and any individuals employed or contracted by the film commissioner under IC 5-33-5-14(b).*

(c) *After receiving and reviewing an application, the corporation may enter into an agreement with the applicant for a rebate under this chapter if the corporation determines that:*

(1) *the applicant's proposed qualified media production:*

(A) *is economically viable; and*

(B) *will increase economic growth and job creation in Indiana; and*

(2) *the applicant's proposed qualified media production and qualified production expenditures otherwise satisfy the requirements of this chapter.*

(d) *The corporation shall consult with Film Indiana in making the decision to enter into an agreement with an applicant under subsection (c).*

(e) *If the corporation and an applicant enter into an agreement under this section, the agreement must contain at least the following provisions:*

(1) *The percentage to be used under section 8(2) of this chapter in determining the amount of the rebate. The percentage amount may not be more than:*

(A) *thirty-five percent (35%), in the case of qualified production expenditures for:*

(i) *skilled workforce training described in section 6(a)(15) of this chapter; or*

(ii) *the payment of student internships described in section 6(a)(17) of this chapter;*

(B) *thirty percent (30%), in the case of qualified production expenditures for the payment of wages, salaries, and benefits described in section 6(a)(14) of this chapter; or*

(C) *twenty percent (20%), in the case of all other qualified production expenditures described in section 6(a) of this chapter.*

(2) *The following conditions that the applicant must satisfy before the applicant may claim the rebate:*

- (A) The applicant must certify that the applicant has not engaged in the production of obscene material (under the standard set forth in IC 35-49-2-1).*
 - (B) In the case of a qualified media production for which an application for rebate is submitted before January 1, 2022, production must commence not later than one hundred twenty (120) days after the applicant and the corporation enter into an agreement.*
 - (C) In the case of a qualified media production for which an application for rebate is submitted after December 31, 2021, production must commence not later than ninety (90) days after the applicant and the corporation enter into an agreement.*
 - (D) In the case of a qualified media production described in section 5(a)(1) of this chapter, the applicant has obtained a completion bond for the project.*
- (3) The following obligations of the applicant:*
- (A) The applicant must agree to comply with applicable state and federal laws during the course of the production, including:
 - (i) the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.);*
 - (ii) the state minimum wage law under IC 22-2-2;*
 - (iii) worker's compensation system requirements under IC 22-3-5 and IC 22-3-7; and*
 - (iv) unemployment compensation system requirements under IC 22-4-1 through IC22-4-39.5.**
 - (B) The applicant must agree to place in the credits of the qualified media production (if the production contains credits):
 - (i) a statement indicating "filmed in Indiana"; and*
 - (ii) the logo of Film Indiana.**
 - (C) The applicant must agree to submit to Film Indiana a viewable copy of the final qualified media production not later than ten (10) days after the production is complete and is commercially available to the general public.*
 - (D) The applicant must agree to provide Film Indiana with specified promotional material for the qualified media production (such as photos, trailer scenes, and poster art). In addition, the applicant must agree to convey to Film Indiana a copyright license that permits Film Indiana to use the promotional material for archival purposes, government relations purposes, and marketing purposes.*
 - (E) The applicant must agree to the review and audit of the qualified*

production expenditures by the film commissioner. The film commissioner may determine whether the qualified production expenditures were reasonable.

(4) The following consents to civil process and procedures in Indiana:

(A) The applicant must consent that the applicant (and any successor in interest in any part of the applicant) will be subject to the jurisdiction of Indiana courts.

(B) The applicant must consent that service of process in accordance with the Indiana Rules of Trial Procedure is proper service and subjects the applicant (and any successor in interest in any part of the applicant) to the jurisdiction of Indiana courts.

(C) The applicant must consent that any civil action related to the provisions of this chapter in which the applicant (or any successor in interest in any part of the applicant) is a party will be heard in an Indiana court.

(f) Not later than ten (10) days after the corporation and an applicant enter into an agreement under this section, the applicant shall pay a final administrative review fee to the corporation in an amount determined by the corporation. Final administrative review fees must be used by the corporation toward paying the compensation of the film commissioner and any individuals employed or contracted by the film commissioner under IC 5-33-5-14(b).

Sec. 10. (a) A rebate:

(1) may not be issued by the corporation before July 1, 2021; and

(2) may only be issued by the corporation after June 30, 2021, if the general assembly has appropriated funds for the purpose of paying rebates.

(b) If funds have not been appropriated and a rebate may not be issued, the corporation shall refund the application fee required under section 9(b) of this chapter and the final administrative review fee required under section 9(f) of this chapter.

Sec. 11. (a) A qualified applicant that has entered into an agreement with the corporation under section 9 of this chapter may file a claim for a rebate with the corporation as set forth under this section.

(b) A qualified applicant shall provide the corporation with any information necessary, including any information considered necessary by the film commissioner, to determine the qualified applicant's compliance with the terms of the qualified applicant's agreement with the corporation and the amount of the rebate to which the qualified applicant is entitled under this chapter.

(c) A qualified applicant must also submit a digital copy of the completed qualified media production with the qualified applicant's claim for a rebate under this section.

(d) A rebate may not be issued by the corporation under this section after December 31, 2027.

(e) The corporation may adopt guidelines and prescribe forms necessary to implement this section.

Sec. 12. (a) A qualified applicant may assign the qualified applicant's right to receive a rebate to which the qualified applicant is entitled under this chapter.

(b) A right to receive a rebate that is assigned under this section remains subject to the qualified applicant's agreement with the corporation under section 9 of this chapter and the provisions of this chapter.

(c) An assignment under this section must be in writing and signed by contracting parties to the assignment.

(d) If the right to receive a rebate is assigned under this section, the qualified applicant must report the assignment to the corporation and provide the corporation with a copy of the written assignment not later than ten (10) days after the assignment is made.

Sec. 13. If an applicant (or any successor in interest in any part of the applicant) fails to satisfy any condition of this chapter or any condition or obligation in an agreement under section 9 of this chapter, or if the conditions in section 10 of this chapter are not satisfied, the corporation may take any of the following actions:

(1) Reject all or part of the applicant's (or the applicant's successor's) claim for a rebate under this chapter.

(2) Rescind the issuance of a rebate to the applicant (or to the applicant's successor) under this chapter.

(3) Recapture all or a part of the rebate issued to the applicant (or to the applicant's successor) under this chapter.

Sec. 14. The total amount of rebates issued by the corporation under this chapter may not exceed five million dollars (\$5,000,000) in a state fiscal year.

Sec. 15. This chapter expires January 1, 2029.