

# 2022 UT S 49 , Enrolled

Utah

Changes in Bill text reflected as:

~~Text Deleted~~

*Text Added*

~~Text Vetoed~~

session: Utah 64th Legislature - 2022 General Assembly

cite: 2022 UT S 49

Enrolled

March 11, 2022

Winterton

STATE FILM PRODUCTION INCENTIVES AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronald M. Winterton

House Sponsor: Stephen G. Handy

Cosponsor: Daniel W. Thatcher

LONG TITLE

General Description:

This bill modifies provisions related to motion picture incentives.

Highlighted Provisions:

This bill:

\* defines terms;

\* allows the Governor's Office of Economic Opportunity to issue an additional amount of tax credit incentives each fiscal year only for rural film productions;

\* establishes a sunset date for the additional amount of tax credit incentives for rural film productions; and

\* makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63I-1-263, as last amended by Laws of Utah 2021, Chapters 70, 72, 84, 90, 171, 196, 260, 280, 282, 345, 382, 401, 421 and last amended by Coordination Clause, Laws of Utah 2021, Chapter 382

63N-8-102, as last amended by Laws of Utah 2021, Chapter 282

63N-8-103, as last amended by Laws of Utah 2021, Chapters 282 and 436

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 63I-1-263 is amended to read:

63I-1-263. Repeal dates, Titles 63A to 63N.

- (1) In relation to the Utah Transparency Advisory Board, on January 1, 2025:
- (a) Section 63A-16-102 is repealed;
  - (b) Section 63A-16-201 is repealed; and
  - (c) Section 63A-16-202 is repealed.
- (2) Subsection 63A-5b-405(5), relating to prioritizing and allocating capital improvement funding, is repealed July 1, 2024.
- (3) Section 63A-5b-1003, State Facility Energy Efficiency Fund, is repealed July 1, 2023.
- (4) Sections 63A-9-301 and 63A-9-302, related to the Motor Vehicle Review Committee, are repealed July 1, 2023.
- (5) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July 1, 2028.
- (6) Title 63C, Chapter 6, Utah Seismic Safety Commission, is repealed January 1, 2025.
- (7) Title 63C, Chapter 12, Snake Valley Aquifer Advisory Council, is repealed July 1, 2024.
- (8) Title 63C, Chapter 17, Point of the Mountain Development Commission Act, is repealed July 1, 2023.
- (9) Title 63C, Chapter 18, Behavioral Health Crisis Response Commission, is repealed July 1, 2023.
- (10) Title 63C, Chapter 23, Education and Mental Health Coordinating Council, is repealed July 1, 2026.
- (11) Title 63A, Chapter 16, Part 7, Data Security Management Council, is repealed July 1, 2025.
- (12) Section 63G-6a-805, which creates the Purchasing from Persons with Disabilities Advisory Board, is repealed July 1, 2026.
- (13) Title 63G, Chapter 21, Agreements to Provide State Services, is repealed July 1, 2025.
- (14) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1, 2024.
- (15) Title 63H, Chapter 8, Utah Housing Corporation Act, is repealed July 1, 2026.
- (16) Subsection 63J-1-602.1(17), Nurse Home Visiting Restricted Account is repealed July 1, 2026.
- (17) (a) Subsection 63J-1-602.1(61), relating to the Utah Statewide Radio System Restricted Account, is repealed July 1, 2022.
- (b) When repealing Subsection 63J-1-602.1(61), the Office of Legislative Research and General Counsel shall, in addition to the office's authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.
- (18) Subsection 63J-1-602.2(5), referring to dedicated credits to the Utah Marriage Commission, is repealed July 1, 2023.
- (19) Subsection 63J-1-602.2(6), referring to the Trip Reduction Program, is repealed July 1, 2022.
- (20) Subsection 63J-1-602.2(24), related to the Utah Seismic Safety Commission, is repealed January 1, 2025.
- (21) ~~Title 63J, Chapter 4, Part 5~~ *Title 63L, Chapter 11, Part 4* , Resource Development Coordinating Committee, is repealed July 1, 2027.
- (22) In relation to the advisory committee created in Subsection 63L-11-305(3), on July 1, 2022:
- (a) Subsection 63L-11-305(1)(a), which defines "advisory committee," is repealed; and
  - (b) Subsection 63L-11-305(3), which creates the advisory committee, is repealed.
- (23) In relation to the Utah Substance Use and Mental Health Advisory Council, on January 1, 2023:
- (a) Sections 63M-7-301, 63M-7-302, 63M-7-303, 63M-7-304, and 63M-7-306 are repealed;
  - (b) Section 63M-7-305, the language that states "council" is replaced with "commission";
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(c) Subsection 63M-7-305(1) is repealed and replaced with:

”(1) “Commission” means the Commission on Criminal and Juvenile Justice.“; and

(d) Subsection 63M-7-305(2) is repealed and replaced with:

”(2) The commission shall:

(a) provide ongoing oversight of the implementation, functions, and evaluation of the Drug-Related Offenses Reform Act; and

(b) coordinate the implementation of Section 77-18-104 and related provisions in Subsections 77-18-103(2)(c) and (d).“.

(24) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, 2027.

(25) Title 63M, Chapter 7, Part 6, Utah Council on Victims of Crime, is repealed July 1, 2022.

(26) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2026.

~~(27) Title 63N, Chapter 1, Part 5, Governor's Economic Development Coordinating Council, is repealed July 1, 2024.~~

~~(28)~~ (27) Title 63N, Chapter 2, Part 2, Enterprise Zone Act, is repealed July 1, 2028.

~~(29)~~ (28) Section 63N-2-512, related to the Hotel Impact Mitigation Fund, is repealed July 1, 2028.

~~(30)~~ (29) (a) Title 63N, Chapter 2, Part 6, Utah Small Business Jobs Act, is repealed January 1, 2021.

(b) Section 59-9-107 regarding tax credits against premium taxes is repealed for calendar years beginning on or after January 1, 2021.

(c) Notwithstanding Subsection ~~(30)~~ (29) (b), an entity may carry forward a tax credit in accordance with Section 59-9-107 if:

(i) the person is entitled to a tax credit under Section 59-9-107 on or before December 31, 2020; and

(ii) the qualified equity investment that is the basis of the tax credit is certified under Section 63N-2-603 on or before December 31, 2023.

~~(31)~~ (30) Title 63N, Chapter 4, Part 4, Rural Employment Expansion Program, is repealed July 1, 2023.

~~(32)~~ (31) Title 63N, Chapter 7, Part 1, Board of Tourism Development, is repealed July 1, 2025.

***(32) Subsection 63N-8-103(3)(c), which allows the Governor's Office of Economic Opportunity to issue an amount of tax credit certificates only for rural productions, is repealed on July 1, 2024.***

(33) Title 63N, Chapter 9, Part 2, Outdoor Recreational Infrastructure Grant Program, is repealed January 1, 2028.

Section 2. Section 63N-8-102 is amended to read:

63N-8-102. Definitions.

As used in this chapter:

(1) "Digital media company" means a company engaged in the production of a digital media project.

(2) "Digital media project" means all or part of a production of interactive entertainment or animated production that is produced for distribution in commercial or educational markets, which shall include projects intended for Internet or wireless distribution.

(3) "Dollars left in the state" means expenditures made in the state for a state-approved production, including:

- (a) an expenditure that is subject to:
  - (i) a corporate franchise or income tax under Title 59, Chapter 7, Corporate Franchise and Income Taxes;
  - (ii) an individual income tax under Title 59, Chapter 10, Individual Income Tax Act; and
  - (iii) a sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act, notwithstanding any sales and use tax exemption allowed by law; or
  - (iv) a combination of Subsections (3)(a)(i), (ii), and (iii);
- (b) payments made to a nonresident only to the extent of the income tax paid to the state on the payments, the amount of per diems paid in the state, and other direct reimbursements transacted in the state; and
- (c) payments made to a payroll company or loan-out corporation that is registered to do business in the state, only to the extent of the amount of withholding under Section 59-10-402.
- (4) "Loan-out corporation" means a corporation owned by one or more artists that provides services of the artists to a third party production company.
- (5) "Motion picture company" means a company engaged in the production of:
  - (a) motion pictures;
  - (b) television series; or
  - (c) made-for-television movies.
- (6) "Motion picture incentive" means either a cash rebate from the Motion Picture Incentive Account or a refundable tax credit under Section 59-7-614.5 or 59-10-1108.
- (7) "New state revenues" means:
  - (a) incremental new state sales and use tax revenues generated as a result of a digital media project that a digital media company pays under Title 59, Chapter 12, Sales and Use Tax Act;
  - (b) incremental new state tax revenues that a digital media company pays as a result of a digital media project under:
    - (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
    - (ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information;
    - (iii) Title 59, Chapter 10, Part 2, Trusts and Estates;
    - (iv) Title 59, Chapter 10, Part 4, Withholding of Tax; or
    - (v) a combination of Subsections (7)(b)(i), (ii), (iii), and (iv);
  - (c) incremental new state revenues generated as individual income taxes under Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, paid by employees of the new digital media project as evidenced by payroll records from the digital media company; or
  - (d) a combination of Subsections (7)(a), (b), and (c).
- (8) "Payroll company" means a business entity that handles the payroll and becomes the employer of record for the staff, cast, and crew of a motion picture production.
- (9) "Refundable tax credit" means a refundable motion picture tax credit authorized under Section 63N-8-103 and claimed under Section 59-7-614.5 or 59-10-1108.
- (10) "Restricted account" means the Motion Picture Incentive Account created in Section 63N-8-103.

***(11) "Rural production" means a state-approved production in which at least 75% of the total number of production days occur within a county of the third, fourth, fifth, or sixth class.***

~~(11)~~ **(12)** "State-approved production" means a production under Subsections (2) and (5) that is:

- (a) approved by the office and ratified by the GO Utah board; and

(b) produced in the state by a motion picture company.

~~(12)~~ **(13)** "Tax credit amount" means the amount the office lists as a tax credit on a tax credit certificate for a taxable year.

~~(13)~~ **(14)** "Tax credit certificate" means a certificate issued by the office that:

- (a) lists the name of the applicant;
- (b) lists the applicant's taxpayer identification number;
- (c) lists the amount of tax credit that the office awards the applicant for the taxable year; and
- (d) may include other information as determined by the office.

Section 3. Section 63N-8-103 is amended to read:

63N-8-103. Motion Picture Incentive Account created -- Cash rebate incentives -- Refundable tax credit incentives.

(1) (a) There is created within the General Fund a restricted account known as the Motion Picture Incentive Account, which the office shall use to provide cash rebate incentives for state-approved productions by a motion picture company.

(b) All interest generated from investment of money in the restricted account shall be deposited in the restricted account.

(c) The restricted account shall consist of an annual appropriation by the Legislature.

(d) The office shall:

(i) with the advice of the GO Utah board, administer the restricted account; and

(ii) make payments from the restricted account as required under this section.

(e) The cost of administering the restricted account shall be paid from money in the restricted account.

(2) (a) A motion picture company or digital media company seeking disbursement of an incentive allowed under an agreement with the office shall follow the procedures and requirements of this Subsection (2).

(b) The motion picture company or digital media company shall provide the office with an incentive request form, provided by the office, identifying and documenting the dollars left in the state and new state revenues generated by the motion picture company or digital media company for state-approved production, including any related tax returns by the motion picture company, payroll company, digital media company, or loan-out corporation under Subsection (2)(d).

(c) For a motion picture company, an independent certified public accountant shall:

(i) review the incentive request form submitted by the motion picture company; and

(ii) provide a report on the accuracy and validity of the incentive request form, including the amount of dollars left in the state, in accordance with the agreed upon procedures established by the office by rule.

(d) The motion picture company, digital media company, payroll company, or loan-out corporation shall provide the office with a document that expressly directs and authorizes the State Tax Commission to disclose the entity's tax returns and other information concerning the entity that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code, to the office.

(e) The office shall submit the document described in Subsection (2)(d) to the State Tax Commission.

(f) Upon receipt of the document described in Subsection (2)(d), the State Tax Commission shall provide the office with the information requested by the office that the motion picture company, digital media company, payroll company, or loan-out corporation directed or authorized the State Tax Commission to provide to the office in the document described in Subsection (2)(d).

(g) Subject to Subsection (3), for a motion picture company the office shall:

(i) review the incentive request form from the motion picture company described in Subsection (2)(b) and verify that the incentive request form was reviewed by an independent certified public accountant as described in Subsection (2)(c); and

(ii) based upon the independent certified public accountant's report under Subsection (2)(c), determine the amount of the incentive that the motion picture company is entitled to under the motion picture company's agreement with the office.

(h) Subject to Subsection (3), for a digital media company, the office shall:

(i) ensure the digital media project results in new state revenues; and

(ii) based upon review of new state revenues, determine the amount of the incentive that a digital media company is entitled to under the digital media company's agreement with the office.

(i) Subject to Subsection (3), if the incentive is in the form of a cash rebate, the office shall pay the incentive from the restricted account to the motion picture company, notwithstanding Subsections 51-5-3(23)(b) and 63J-1-105(6).

(j) If the incentive is in the form of a refundable tax credit under Section 59-7-614.5 or 59-10-1108, the office shall:

(i) issue a tax credit certificate to the motion picture company or digital media company; and

(ii) provide a digital record of the tax credit certificate to the State Tax Commission.

(k) A motion picture company or digital media company may not claim a motion picture tax credit under Section 59-7-614.5 or 59-10-1108 unless the motion picture company or digital media company has received a tax credit certificate for the claim issued by the office under Subsection (2)(j)(i).

(l) A motion picture company or digital media company may claim a motion picture tax credit on the motion picture company's or the digital media company's tax return for the amount listed on the tax credit certificate issued by the office.

(m) A motion picture company or digital media company that claims a tax credit under Subsection (2)(l) shall retain the tax credit certificate and all supporting documentation in accordance with Subsection 63N-8-104(6).

(3) (a) Subject to ~~Subsections (3)(b) and (e)~~ **this Subsection (3)**, the office may issue \$6,793,700 in tax credit certificates under this part in each fiscal year.

(b) For the fiscal year ending June 30, 2022, the office may issue \$8,393,700 in tax credit certificates under this part.

***(c) For a fiscal year beginning on or after July 1, 2022, in addition to the amount of tax credit certificates authorized under Subsection (3)(a), the office may issue \$12,000,000 in tax credit certificates under this part only for rural productions.***

~~(e)~~ ***(d)*** If the office does not issue tax credit certificates in a fiscal year totaling the amount authorized under ~~Subsections (3)(a) and (b)~~ **this Subsection (3)**, the office may carry over that amount for issuance in subsequent fiscal years.