

NE L 937, Enacted

Nebraska

SUMMARY: Provides that for taxable years beginning or deemed to begin on or after a specified date, a production company shall be eligible to receive tax credits under the Cast and Crew Nebraska Act for qualifying expenditures incurred by the production company in State directly attributable to a qualified production activity; provides that tax credit under the Cast and Crew Nebraska Act shall be a refundable tax credit allowed against the income tax imposed by the Nebraska Revenue Act of 1967.~SAME AS:

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

01/04/2024 INTRODUCED.

01/08/2024 To LEGISLATIVE Committee on REVENUE.

01/17/2024 Notice of hearing for January 25, 2024.

03/19/2024 From LEGISLATIVE Committee on REVENUE: Placed on General File as amended.

03/28/2024 Committee Amendment adopted on LEGISLATIVE floor. AMENDMENT: AM3205

03/28/2024 Amended on LEGISLATIVE floor. AMENDMENT: AM3260

03/28/2024 Committee Amendment adopted on LEGISLATIVE floor. AMENDMENT: AM3206

03/28/2024 Advanced to Enrollment and Review Initial.

04/02/2024 Placed on SELECT FILE as amended.

04/10/2024 From SELECT FILE: Do pass as amended. AMENDMENT: ER115

04/10/2024 Amended on LEGISLATIVE floor. AMENDMENT: AM3420

04/10/2024 Advanced to Enrollment and Review for Engrossment.

04/10/2024 Placed on FINAL READING.

04/18/2024 Passed on FINAL READING.

04/18/2024 Passed LEGISLATURE.

04/18/2024 *****To GOVERNOR.

04/23/2024 Signed by GOVERNOR.

~

session: Nebraska 108th Legislature - First Regular Session

cite: 2023 NE L 937

Enacted - Slip Law

April 23, 2024

Bostar

LEGISLATIVE BILL 937

Approved by the Governor April 23, 2024

Introduced by Bostar, 29; Sanders, 45; Day, 49; Vargas, 7; McDonnell, 5.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 66-489, Reissue Revised Statutes of Nebraska, sections 66-482, 77-908, 77-3806, and 81-1220, Revised Statutes Cumulative Supplement, 2022, and sections 77-2701, 77-2701.04, 77-2701.41, 77-2704.12, 77-2711, 77-2713, 77-2715.07, 77-2716, 77-2717, 77-2734.03,

77-27,223, 77-27,241, 77-7012, and 77-7015, Revised Statutes Supplement, 2023; to adopt the Cast and Crew Nebraska Act, the Nebraska Shortline Rail Modernization Act, the Nebraska Pregnancy Help Act, the Individuals with Intellectual and Developmental Disabilities Support Act, the Medical Debt Relief Act, the Sustainable Aviation Fuel Tax Credit Act, the Caregiver Tax Credit Act, and the Reverse Osmosis System Tax Credit Act; to change provisions relating to fuel tax; to provide for sales and use tax exemptions; to change provisions relating to tax credits; to provide for grant programs for the film industry; to define and redefine terms; to eliminate obsolete provisions; to harmonize provisions; to provide operative dates; to repeal the original sections; and to outright repeal section 66-4,146.01, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. ***Sections 1 to 13 of this act shall be known and may be cited as the Cast and Crew Nebraska Act.***

Sec. 2. ***(1) The Legislature finds that:***

(a) Film and television production in Nebraska not only provides jobs for residents of Nebraska and dollars for Nebraska businesses but also enhances the state's image nationwide;

(b) The high cost of film and television production is driving such production to other states, and the industry is always seeking attractive locations that can help cut the costs of production;

(c) The retention of Nebraska's youth is one of the top priorities in growing the state's economy. Film studies and creative arts students from the universities and colleges in Nebraska are taking their talents to other states due to the lack of strongly developed media production facilities within the state;

(d) The State of Nebraska, with a competitive incentive, can build on past success as an attractive site for film and television production;

(e) Nebraska is presently among several states with minimal incentives to attract the film and television industry; and

(f) A new and attractive film incentive should be used in conjunction with the Local Option Municipal Economic Development Act, passed by the Ninety-Second Legislature, First Session, 1991, as Legislative Bill 840, for municipalities that have included production of films or television programs as a qualifying business expense.

(2) It is the intent of the Legislature to provide an incentive that will allow the state to compete with other states and increase film and television production in this state.

Sec. 3. ***For purposes of the Cast and Crew Nebraska Act:***

(1) Above-the-line employee means production company employees involved in the creative development, direct production, and direction of a production activity including screenwriters, producers, directors, casting directors, and cast;

(2) Below-the-line employee means production company employees that are responsible for keeping production operations on schedule and preparing all lights, sets, props, and other aspects for production;

(3) Department means the Department of Economic Development;

(4)(a) Expatriate means a person that previously resided in Nebraska for at least one year but does not currently reside in Nebraska.

(b) The Nebraska Film Office shall partner with other instate film offices, production companies, chambers of commerce, and convention and visitors bureaus in the state to maintain a roster of cast and crew who are expatriates and shall make such roster available to any production company upon request;

(5) Film office means a specialized office under the authority of a government entity or an administrative office with the purpose of promoting the local region through the development of film, video, and multimedia productions;

(6) Full-length means a production at least sixty minutes in length including credits;

(7) Loan out means payments to a loan out company by a production company if the production company withheld and remitted Nebraska applicable income tax on all payments to the loan out company for services performed in this state. The amount withheld is considered to have been withheld by the loan out company on wages paid to its employees for services performed in this state. Loan out company nonresident employees performing services in this state must be considered taxable nonresidents, and the loan out company is subject to income taxation in the taxable year in which the loan out company's employees perform services in this state;

(8) Loan out company means a United States business entity in which the creator is an employee whose services are loaned out by the corporate body;

(9) Nebraska Film Office means the Nebraska Film Office within the Department of Economic Development or its successor;

(10) Nebraska supplier means a brick and mortar Nebraska-based corporation or limited liability company registered, licensed, and in good standing with the Secretary of State;

(11) Post-production means the time period after the production is completed and the editing of the visual and audio materials begins. Post-production includes, but is not limited to, all of the tasks associated with cutting raw footage, assembling that footage, and adding and dubbing music, sound effects, and visual effects;

(12) Pre-production means the planning process and execution of every task that must take place before production begins;

(13) Principal photography means the creative execution phase of film production between pre-production and post-production;

(14)(a) Production activity means production of a new film, video, or digital project in this state. This includes the scouting, pre-production, principal photography, and post-production of projects filmed or recorded in this state, in whole or in part and in short or long form and animation, fixed on a delivery system, including film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced and which is intended for multimarket commercial distribution via a theater, video on demand, digital or fiber optic distribution platforms, digital video recording, a digital platform designed for distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser-supported sites, cable television stations, streaming services, or public broadcasting stations.

(b) Production activity includes full-length films, animation projects, documentaries, short-length films, and over-the-air and streaming television programming, except those television programs that are exclusively for news, weather, sports, financial market reports, or instructional videos, and also includes commercial advertisements, except commercials containing political promotions, infomercials, or commercials distributed only on the Internet.

(c) Production activity does not include any project with sexually explicit or obscene material;

(15) Production company means a corporation, partnership, limited liability company, or other business entity engaged in the business of creating productions and registered with the Secretary of State to engage in business in Nebraska;

(16)(a) Production expenditure report means a report issued and submitted by a certified public accountant that verifies all expenses of a production activity and ensures all expenses have been paid in full.

(b) The production company shall pay the certified public accountant for preparation of the report and such payment is a qualifying expenditure under section 4 of this act;

(17) Qualified production activity means any production activity approved by the department after application for qualification;

(18) Resident means any individual domiciled in the State of Nebraska and any other individual who maintains a permanent place of residence within the state even though temporarily absent

from the state and who has not established a residence elsewhere;

(19) Scouting means finding places to shoot commercials, television shows, or movies and searching for interior and exterior venues to serve as the setting for scenes depicted in a script during pre-production;

(20) Screen credit means a logo developed by the Nebraska Film Office and mentioned in the production credits and end titles declaring the production activity was filmed in Nebraska;

(21) Screenplay means a film, movie, television show, or other motion picture in written form; and

(22) Short-length means a production more than thirty seconds and less than forty minutes including credits.

Sec. 4. (1) For purposes of the Cast and Crew Nebraska Act, qualifying expenditure includes:

(a) Pre-production, production, and post-production expenditures made in Nebraska that are subject to taxation by the state;

(b) Scouting and spending related to the production activity in the state prior to application for qualification;

(c)(i) Above-the-line employee wages for residents of Nebraska or paid through a Nebraska loan out company.

(ii) Loan out companies will be required to pay applicable Nebraska income taxes.

(iii) The total above-the-line employee wages and related expenses shall be not more than twenty-five percent of the total instate expenditures of a production activity;

(d) Below-the-line employee wages;

(e) Per diems of up to thirty dollars per day per employee; and

(f) Expenditures not otherwise available for rental or purchase within Nebraska and paid for via a Nebraska supplier.

(2) Qualifying expenditures do not include:

(a) Wages paid to independent contractors, or self-employed individuals, except that wages shown to be paid by a Nebraska-based production company for a commercial production activity and wages the taxes of which are shown to be withheld by the employer may be approved by the department on the application for the tax credit;

(b) Above-the-line employee per diems or living allowance expenses;

(c) Taxes imposed pursuant to the Federal Insurance Contributions Act and other payroll taxes;

(d) Contributions under the Federal Unemployment Tax Act and the Employment Security Law; and

(e) Union dues and benefits.

Sec. 5. (1) For taxable years beginning or deemed to begin on or after January 1, 2025, a production company shall be eligible to receive tax credits under the Cast and Crew Nebraska Act for qualifying expenditures incurred by the production company in Nebraska directly attributable to a qualified production activity.

(2) The tax credit under the Cast and Crew Nebraska Act shall be a refundable tax credit allowed against the income tax imposed by the Nebraska Revenue Act of 1967 in an amount equal to twenty percent of the qualifying expenditures incurred by the production company directly attributable to a qualified production activity.

(3) The amount of the tax credit may be increased by any or all of the following amounts:

(a) An additional five percent of the qualifying expenditures incurred by the production company directly attributable to a qualified production activity if the qualified production activity films Nebraska as Nebraska in Nebraska, contains a minimum of seventy percent of the

principal photography from the original submitted screenplay based in Nebraska, and uses a screen credit;

(b) An additional five percent of the qualifying expenditures incurred by the production company directly attributable to a full-length qualified production activity if the qualified production activity films entirely in areas at least thirty miles from the corporate limits of a city of the metropolitan class or city of the primary class; and

(c)(i) An additional five percent of qualified expenditures incurred by the production company directly attributable to a full-length qualified production activity that are wages paid, at a rate of at least the Nebraska minimum wage, to Nebraska residents who are employed as first-time actors or first-time below-the-line employees.

(ii) For purposes of subdivision (3)(c)(i) of this section, first-time means the individual's first-time receiving compensation and wages as either an actor or as a below-the-line employee on a full-length film in the State of Nebraska.

(iii) The wages of a maximum of ten first-time actors and below-the-line employees per full-length film can be used in calculating the tax credit in subdivision (3)(c)(i) of this section.

Sec. 6. (1) The total amount of tax credits allowed in any fiscal year under the Cast and Crew Nebraska Act shall not exceed five hundred thousand dollars in fiscal year 2025-26 and one million dollars in any fiscal year thereafter.

(2) The maximum allowable tax credit claimed under the act in any single taxable year for any qualified production activity that is a full-length film, made-for-television movie, television series of at least five episodes, or streaming television series shall not exceed five hundred thousand dollars in fiscal year 2025-26 and one million dollars in any fiscal year thereafter.

Sec. 7. (1) For a production activity to qualify as a qualified production activity under the Cast and Crew Nebraska Act, a production company must file an application for qualification of a production activity to the department at least:

(a) Thirty days prior to the start of principal photography for a full-length film, documentary, or television programming; and

(b) Ten days prior to the start of filming for a short-length film, animation project, or commercial.

(2) The application shall be submitted on a form prescribed by the department and shall include the following:

(a) A nonrefundable fee of five hundred dollars;

(b) A detailed description of the production activity;

(c) An estimate of expected qualifying expenditures for the production activity;

(d) A certificate of general liability insurance with a minimum coverage of one million dollars;

(e) A worker's compensation policy;

(f)(i) Except as provided in subdivision (2)(f)(ii) of this section, documentation that shows the production activity is fully funded other than post-production expenditures.

(ii) If a production activity is a commercial production activity, documentation showing full funding for post-production expenditures shall be included; and

(g) Any other information or documentation required by the department.

Sec. 8. (1) If the department determines that an application for qualification is complete and that the production activity qualifies under the Cast and Crew Nebraska Act, the department shall approve the application, notify the production company of the approval, and issue a screen credit to the production company that can be used to meet the requirements for the tax credit increase under subdivision (3)(a) of section 5 of this act.

(2) The department shall consider and approve applications for qualification under the act in the

order in which the applications are received.

Sec. 9. To receive tax credits under the Cast and Crew Nebraska Act, the production company shall submit an application to the department on a form prescribed by the department after the completion of the qualified production activity. Such application shall contain the following information:

- (1) The total amount of qualifying expenditures for the qualified production activity;*
- (2) The production expenditure report for the qualified production activity;*
- (3) Documentation showing the total expenditures for the qualified production activity are greater than or equal to:
 - (a) Five hundred thousand dollars for a full-length film or made-for-television movie;*
 - (b) Five hundred thousand dollars per over-the-air and streaming television programming episode; or*
 - (c) Twenty-five thousand dollars per short-length film, documentary, animation project, or commercial;**
- (4) Documentation showing the total amount of individual or loan out company wages or earnings paid during the qualified production activity is five hundred thousand dollars or less;*
- (5) Documentation showing at least forty percent of the production days for the qualified production activity were in Nebraska and, for full-length films only, at least ten days of production were in Nebraska;*
- (6) Documentation showing at least forty percent of the below-the-line employees of the qualified production activity were Nebraska residents with expatriates included in the percentage but not exceeding fifteen percent of the total below-the-line employees;*
- (7) Documentation showing at least fifteen percent of the cast of the qualified production activity were Nebraska residents with expatriates included in the percentage;*
- (8) If applying for the tax credit under subdivision (3)(c)(i) of section 5 of this act, proof of Nebraska residency for all employees whose wages will be part of the calculation of such credit for the qualified production activity; and*
- (9) Any other information or documentation required by the department.*

Sec. 10. (1) If the department determines that an application is complete and that the production company qualifies for tax credits under the Cast and Crew Nebraska Act, the department shall approve the application, notify the production company of the approval, and conduct an audit of each qualified production activity.

(2) Each audit shall:

- (a) Be completed in accordance with this section and the procedures developed by the department;*
- (b) Use sampling methods that the department may adopt;*
- (c) Follow rules and regulations adopted and promulgated by the department;*
- (d) Verify each reported qualifying expenditure and identify and exclude each such expenditure that does not fully meet the conditions of the act; and*
- (e) Exclude any expenditure not submitted with or that was incurred after the application required by section 9 of this act was submitted.*

(3) Upon completion of the audit, the department shall adjust the value of the tax credit as necessary and issue a tax credit certification to the production company. The certificate shall include the following information:

- (a) An identification number for the certificate;*
- (b) The date of issuance for the certificate; and*

(c) The amount of the tax credit allowed under the act for the production company.

(4) The department shall consider and approve applications for tax credits under the act in the order in which the applications are received.

Sec. 11. *(1) A taxpayer shall claim the tax credit under the Cast and Crew Nebraska Act by attaching the tax credit certification received from the department under section 10 of this act to its tax return for the taxable year in which the tax credit certification was issued or in the three taxable years immediately following the taxable year in which the tax credit certification was issued.*

(2) The tax credits allowed under the Cast and Crew Nebraska Act may be transferred by the production company to any Nebraska taxpayer at any time during the taxable year in which the tax credit certification was issued to the transferor or in the three taxable years immediately following the taxable year in which the tax credit certification was issued to the transferor. The transferee shall pay the transferor at least eighty-five percent of the value of the transferred tax credits in order to acquire such credits.

Sec. 12. *A production company that receives tax credits under the Cast and Crew Nebraska Act shall not be eligible for a grant under subsection (3) of section 81-1220.*

Sec. 13. *The department shall adopt and promulgate rules and regulations to carry out the Cast and Crew Nebraska Act.*

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

Sec. 83. Section 81-1220, Revised Statutes Cumulative Supplement, 2022, is amended to read:

81-1220 (1)(a) The Nebraska Film Office Fund is created. The fund shall be administered by the Department of Economic Development and used for grants for Nebraska-based films , *Nebraska filmmakers, and tribal communities in Nebraska* as provided in this section.

(b) The fund shall consist of funds transferred by the Legislature, gifts, grants, and bequests. ~~It is the intent of the Legislature to transfer the unexpended and unobligated balance in the Nebraska Film Office Fund on June 30, 2025, to the General Fund.~~

(c) Any money in the Nebraska Film Office Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2)(a) The department shall administer a grant program for Nebraska-based films and shall require applications to be submitted to the department prior to beginning production.

(b) To be eligible for a grant under the program, the applicant shall verify that:

(i) The film is to be produced in Nebraska;

(ii) The film tells a Nebraska story; and

(iii) At least fifty percent of the workforce for film production will be composed of Nebraska residents for the duration of the production except as otherwise provided in subdivision (c) of this subsection.

(c) The department may lower the fifty-percent requirement in subdivision (b)(iii) of this subsection but shall not waive the requirement. The applicant shall apply to the department to lower the requirement and provide a certification that the requirement is an unreasonable impediment to production of the film. The department shall notify the applicant of the decision under this subdivision.

(d) The department shall review each application to determine whether the film qualifies for a grant under this ~~subsection~~ ~~section~~ and shall not award a grant that exceeds twenty-five percent of the projected production cost of the film.

(3)(a) The department shall administer a grant program for Nebraska filmmakers with the intention to create Nebraska film industry jobs and shall require applications to be submitted to the department prior to beginning production.

- (b) To be eligible for a grant under the program, the applicant shall verify that:**
- (i) One hundred percent of the principal photography of the film will be in Nebraska;**
 - (ii) The applicant is a resident that has a validated credit as a producer, director, director of photography, or screenwriter for the film;**
 - (iii) The film will be a full-length film or documentary or a short-length film or documentary;**
 - (iv) The film will not contain any obscene or sexually explicit material;**
 - (v) All employees who will work on the film are residents; and**
 - (vi) The total budget of the film is at least:**
 - (A) For full-length films or documentaries, fifty thousand dollars; or**
 - (B) For short-length films or documentaries, five thousand dollars;**
 - (c) The department shall review each application to determine whether the film qualifies for a grant under this subsection.**
 - (d) The department shall review applications for grants under this subsection in the order in which the applications are received.**
 - (e) The department shall award grants under this subsection for a total of four full-length films or documentaries and ten short-length films or documentaries each calendar year.**
 - (f) The department shall not award a grant that exceeds two hundred fifty thousand dollars for a full-length film or documentary or twenty-five thousand dollars for a short-length film or documentary.**
 - (g) The department shall not award total grants exceeding one million three hundred twenty-five thousand dollars in any calendar year.**
 - (h) The first grant awarded for each individual film shall not exceed:**
 - (i) For full-length films or documentaries, fifty thousand dollars; or**
 - (ii) For short-length films or documentaries, ten thousand dollars.**
 - (i) If an applicant who receives a grant under this subsection does not meet the requirements for eligibility under subdivision (b) of this subsection during the entirety of the production of the film, the applicant shall repay the entirety of the grant.**
 - (j) For purposes of this subsection:**
 - (i) Full-length means a production at least sixty minutes in length;**
 - (ii) Short-length means a production at least thirty minutes and less than sixty minutes in length; and**
 - (iii) Resident means any individual domiciled in the State of Nebraska and any other individual who maintains a permanent place of residence within the state even though temporarily absent from the state and who has not established a residence elsewhere.**
 - (4)(a) The department shall administer a grant program for film and entertainment education programs in tribal communities in Nebraska.**
 - (b) The department shall award total grants of at least seventy-five thousand dollars each calendar year.**

Sec. 84. Sections 64, 65, and 85 of this act become operative on August 1, 2024. Sections 67, 68, 69, 70, 71, 72, 73, 78, and 86 of this act become operative on October 1, 2024. Sections 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33 of this act become operative for all taxable years beginning or deemed to begin on or after January 1, 2025, under the Internal Revenue Code of 1986, as amended. The other sections of this act become operative on their effective date.

Sec. 85. Original section 66-489, Reissue Revised Statutes of Nebraska, and section 66-482, Revised Statutes Cumulative Supplement, 2022, are repealed.

Sec. 86. Original sections 77-2701, 77-2701.04, 77-2701.41, 77-2704.12, 77-2711, 77-2713, and 77-27,223, Revised

Statutes Supplement, 2023, are repealed.

Sec. 87. Original sections 77-908, 77-3806, and 81-1220, Revised Statutes Cumulative Supplement, 2022, and sections 77-2715.07, 77-2716, 77-2717, 77-2734.03, 77-27,241, 77-7012, and 77-7015, Revised Statutes Supplement, 2023, are repealed.

Sec. 88. The following section is outright repealed: Section 66-4,146.01, Reissue Revised Statutes of Nebraska.