

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2773**

4 (By Delegates Espinosa, Overington, Storch, Skinner, Ashley
5 and Upson)
6

7 (Originating in the House Committee on Finance)

8 [February 20, 2015]
9

10 A BILL to amend and reenact §13-11X-3 and §11-13X-5 of the Code of West Virginia, 1931, as
11 amended, relating to the West Virginia Film Industry Investment tax credit; defining terms;
12 decreasing the amount of credit allocated by the film office; specifying the amount of tax
13 credit allowed to eligible companies as a percentage of qualified expenditures; and specifying
14 effective date.

15 Be it enacted by the Legislature of West Virginia:

16 That §11-13X-3 and §11-13X-5 of the Code of West Virginia, 1931, as amended, be
17 amended and reenacted, all to read as follows:

18 **ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT.**

19 **§11-13X-3. Definitions.**

20 (a) *General.* -- When used in this article, or in the administration of this article, terms defined
21 in subsection (b) of this section have the meanings ascribed to them by this section, unless a different
22 meaning is clearly required by the context in which the term is used.

23 (b) *Terms defined.* --

1 (1) "Commercial exploitation" means reasonable intent for public viewing for the delivery
2 medium used.

3 (2) "Direct production expenditure" means a transaction that occurs in the State of West
4 Virginia or with a West Virginia vendor and includes:

5 (A) Payment of wages, fees and costs for related fringe benefits provided for talent,
6 management or labor that are subject to West Virginia income tax;

7 (B) Payment to a ~~personal services corporation~~ loan-out company for ~~the~~ an individual's
8 ~~services of a performing artist~~ if:

9 (i) The ~~personal services corporation~~ loan-out company is subject to West Virginia income
10 tax on those payments; and

11 (ii) The ~~performing artist~~ individual receiving payments from the ~~personal services~~
12 ~~corporation~~ loan-out company is subject to West Virginia income tax; and

13 (C) Any of the following provided by a vendor:

14 (i) The story and scenario to be used by a qualified project;

15 (ii) Set construction and operations, wardrobe, accessories and related services;

16 (iii) Photography, sound synchronization, lighting and related services;

17 (iv) Editing and related services;

18 (v) Rental of facilities and equipment;

19 (vi) Leasing of vehicles;

20 (vii) Food or lodging;

21 (viii) Airfare if purchased through a West Virginia-based travel agency or travel company;

22 (ix) Insurance coverage and bonding if purchased through a West Virginia-based insurance

1 agent; and

2 (x) Other direct costs of producing a qualified project in accordance with generally accepted
3 entertainment industry practices.

4 (3) "Eligible company" means a person or business entity engaged in the business of
5 producing film industry productions.

6 ~~(4)~~ "Feature length" means in excess of forty minutes.

7 ~~(5)~~ (4) "Film industry production" means a qualified project intended for reasonable national
8 or international commercial exploitation.

9 ~~(6)~~ (5) "Film office" means the West Virginia Film Office, which is a division of the West
10 Virginia Department of Commerce.

11 (6) "Loan out company" --

12 (A) The term "loan out company" means and includes a corporation, partnership, limited
13 liability company, S-corporation, association, nominee trust, or any entity other than an individual:

14 (i) Which is owned and controlled by an actor, performer, director, producer, cast member,
15 crew member or other individual who performs services used directly in a qualified project,

16 (ii) Which, for contractual purposes, serves as an entity separate from the individual that
17 owns and controls the loan out company, and

18 (iii) Which contracts with an eligible company to provide such services.

19 (B) The term loan out company does not include any company or entity retained by the
20 eligible company to provide tangible property or catering, construction, trailers, equipment or
21 transportation.

22 (C) For purposes of this definition, a loan out company is "owned and controlled" by an

1 individual, if more than fifty percent of the loan out company is owned by the individual, or, in the
2 case of a publicly owned business, more than fifty percent of all classes or types of the stock of the
3 loan out company is owned by the individual, and management of the loan out company is controlled
4 directly or indirectly by the individual.

5 (7) "Post- production expenditure" means a transaction that occurs in West Virginia or with
6 a West Virginia vendor after the completion of principal photography, including editing and negative
7 cutting, Foley recording and sound effects, automatic dialogue replacement (also known as ADR or
8 dubbing), special effects or visual effects, including computer-generated imagery or other effects,
9 scoring and music editing, sound editing, beginning and end credits, soundtrack production,
10 subtitling or addition of sound or visual effects; but not including an expenditure for advertising,
11 marketing, distribution or expense payments.

12 (8) "Qualified project" means a ~~feature length theatrical or direct-to-video~~ or Internet
13 broadcast motion picture, a made-for-television motion picture, a television miniseries or series, a
14 television pilot program, a television documentary, a television special, a commercial, a music video,
15 commercial still photography, programming containing both audio and video entertainment or
16 educational content created for reasonable national or international commercial exploitation, a
17 ~~television pilot program, a television series, and a television mini-series~~ that incurs a minimum of
18 \$25,000 in direct production expenditures ~~and~~ or post-production expenditures, as defined by this
19 subsection, in West Virginia. The term excludes news or current affairs programming, radio
20 broadcasts, a weather or market program, ~~an~~ a live interview or talk show, a sporting event or show,
21 an awards show, a gala, a production that solicits funds, ~~a home shopping program, a program that~~
22 ~~primarily markets a product or service,~~ political advertising or a concert production.

1 A qualified project may be produced on any single media or multimedia program that:

2 (A) Is fixed on film, digital medium, videotape, computer disk, laser disc or other similar
3 delivery medium;

4 (B) Can be viewed or reproduced;

5 (C) Is not intended to and does not violate article eight-c, chapter sixty-one of this code;

6 (D) Does not contain obscene matter or sexually explicit conduct, as defined by article eight-
7 a, chapter sixty-one of this code;

8 (E) Is intended for reasonable commercial exploitation for the delivery medium used; and

9 (F) Does not contain content that portrays the State of West Virginia in a significantly
10 derogatory manner.

11 (9) "Tax Commissioner" means the West Virginia State Tax Commissioner or his or her
12 designee.

13 **§11-13X-5. Amount of credit allowed; limitation of the credits.**

14 (a) *Base allowance.* -- The amount of credit allowed to every eligible company, except as
15 provided in subsection (b) of this section, is ~~twenty-seven~~ twenty-five percent.

16 (b) *Extra allowance for hiring of local workers.* -- ~~Any~~ The amount allowed in subsection
17 (a) of this section shall be ~~increased by an additional four~~ thirty percent if the eligible company, or
18 its authorized payroll service company, employs ten or more West Virginia residents as part of its
19 full-time employees working in the state or as apprentices working in the state.

20 (c) *Application of the credits.* -- The tax credit allowed under this section shall be applied to
21 the eligible company's state tax liability as provided in section seven of this article.

22 (d) *Limitation of the credits.* -- No more than ~~\$5~~ \$3 million of the tax credits may be

1 allocated by the film office in any given West Virginia state fiscal year. The film office shall allocate
2 the tax credits in the order the applications therefor are received.

3 (e) Effective date. – The amendments to this section, enacted in the 2015 Regular Legislative
4 Session, shall apply to projects for which an allocation of tax credit is made by the film office under
5 this section for fiscal years beginning on and after July 1, 2015.