

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 661

**FISCAL
NOTE**

BY SENATOR MAYNARD

[Introduced March 18, 2017; Referred
to the Committee on Economic Development; and then to
the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §5B-8-1, §5B-8-2, §5B-8-3, §5B-8-4, §5B-8-5 and §5B-8-6, all relating to
 3 creating a grant fund to encourage production of film and entertainment in West Virginia;
 4 defining terms; requiring production company to apply for grant funds; requiring
 5 substantiation of production costs; establishing reporting requirements; and requiring
 6 production company to file a notice of intent to apply for grant funds.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §5B-8-1, §5B-8-2, §5B-8-3, §5B-8-4, §5B-8-5 and §5B-8-6, all to read as
 3 follows:

ARTICLE 8. THE FILM AND ENTERTAINMENT GRANT FUND.

§5B-8-1. Creation and purpose of fund.

1 There is created in the Department of Commerce a special revenue account to be known
 2 as the Film and Entertainment Grant Fund to provide funds to encourage the production of motion
 3 pictures, television shows, movies for television, productions intended for on-line distribution, and
 4 commercials and to develop the filmmaking industry within the state. The Department of
 5 Commerce shall adopt guidelines providing for the administration of the program. Those
 6 guidelines may provide for the secretary to award the grant proceeds over a period of time, not to
 7 exceed three years. Those guidelines shall include the following provisions, which shall apply to
 8 each grant from the account:

9 (1) The funds are reserved for a production on which the production company has
 10 qualifying expenses of at least the following:

11 (A) For a featurelength film, \$5 million .

12 (B). For a television series, \$1 million per episode.

13 (C) For a commercial for theatrical or television viewing or on-line distribution \$250,000.

14 (2) The funds are not used to provide a grant in excess of any of the following:

15 (A) An amount more than twenty-five percent of the qualifying expenses for the production.

16 (B) An amount more than \$5 million for a featurelength film, more than \$9 million for a
17 single season of a television series, or \$250,000 for a commercial for theatrical or television
18 viewing or on-line distribution.

19 (3) The funds are not used to provide a grant to more than one production company for a
20 single production.

21 (4) The funds are not used to provide a grant for a production that meets one or more of
22 the following:

23 (A) It contains "obscene matter," as defined in subsection (k), section (1), article eight-a,
24 chapter sixty-one of this code.

25 (B) It has the primary purpose of political advertising, fundraising, or marketing, other than
26 by commercial, a product or service.

27 (C) News programming, including weather, financial market and current events reporting.

28 (D) Live sporting event programming, including pre-event and post-event coverage and
29 scripted sports entertainment. For purposes of this exception, a live sporting event is a scheduled
30 sporting competition, game, or race that is originated solely by an amateur, collegiate, or
31 professional organization, institution, or association for live or tape-delayed television or satellite
32 broadcast. The term does not include commercial advertising, an episodic television series, a
33 television pilot, a music video, a motion picture, or a documentary production in which sporting
34 events are presented through archived historical footage or similar footage taken at least thirty
35 days before it is used.

36 (E) Radio productions.

37 (F) It is a talk, game, or awards show or other gala event. For purposes of this exception,
38 an awards show is television programming involving the filming of a ceremony in which
39 individuals, groups, or organizations are given an award.

40 (G) It fails to contain, in the end credits of the production, a statement that the production
41 was "Filmed in West Virginia" a logo provided by the Department of Commerce, and an
42 acknowledgement of the geographic area in which the filming of the production occurred.
43 Additionally, the production company will offer marketing opportunities to be evaluated by the
44 Department of Commerce to ensure that they offer promotional value to the state.

45 (5) Priority for the use of funds shall be given to productions that are reasonably
46 anticipated to maximize the benefit to the state, in consideration of at least the following factors:

47 (A) Percentage of employees that are permanent residents in the state.

48 (B) The extent to which the production features identifiable attractions or state locales in
49 a manner that would be reasonably expected to induce visitation by nonresidents of the state to
50 the attraction or locale.

51 (C) The extent to which the production invests in permanent improvements to open public
52 spaces, commercial districts, traditional downtown areas, public landmarks, residential areas, or
53 similar properties or areas.

54 (D) The extent to which the production will be filmed in an economically distressed county
55 or area of the state.

56 (E) The duration of production activities in the state.

§5B-8-2. Definitions.

1 The following definitions apply in this section:

2 (1) "Department" means the Department of Commerce.

3 (2) "Employee" means a person who is employed for consideration and whose wages are
4 subject to withholding under article twenty-one, chapter eleven of this code.

5 (3) "Highly compensated individual" means an individual who directly or indirectly receives
6 compensation in excess of \$1 million for personal services with respect to a single production. An
7 individual receives compensation indirectly when a production company pays a personal service
8 company or an employee leasing company that pays the individual.

9 (4) "Loan-out company" A personal service corporation that employs an individual who is
10 hired by a film or digital media production company.

11 (5) "Production" means any of the following:

12 (A) A motion picture intended for commercial distribution to a motion picture theater or
13 directly to the consumer viewing market that has a running time of at least seventy-five minutes.

14 (B) A television series or a commercial for theatrical or television viewing, made-for-
15 television movie, or production intended for on-line distribution. For video and television series, a
16 production is all of the episodes of the series produced for a single season.

17 (6) "Production company" means an entity engaged in the business of making original
18 motion picture, television, or radio images for theatrical, commercial, advertising, or educational
19 purposes.

20 (7) "Qualifying expenses" means the sum of the amounts listed in this subdivision,
21 substantiated pursuant to subdivision (D) of this section, and spent in this state by a production
22 company in connection with a production, less the amount paid in excess of \$1 million to a highly
23 compensated individual:

24 (A) Goods and services leased or purchased. For goods with a purchase price of \$25,000
25 or more, the amount included in qualifying expenses is the purchase price less the fair market
26 value of the goods at the time the production is completed. Goods and services includes the costs
27 of tangible and intangible property used for, and services performed primarily and customarily in,
28 production, including preproduction and postproduction and other direct costs of producing the
29 project in accordance with generally accepted entertainment industry practices. Goods and
30 services exclude costs for development, marketing, and distribution; costs of financing for the
31 production, of bonding related to the production, of production-related insurance coverage
32 obtained on the production; and expenses for insurance coverage purchased from a related
33 member.

34 (B) Compensation and wages and payments on which withholding payments are remitted

35 to the Department of Revenue under article twenty-one, chapter eleven of this code. Payments
36 made to a loan-out company for services provided in West Virginia shall be subject to gross
37 income tax withholding at the applicable rate under article twenty-one, chapter eleven of this code.

38 (C) Employee fringe contributions, including health, pension and welfare contributions.

39 (D) Per diems, stipends, and living allowances paid for work being performed in this state.

40 (8) "Secretary" means the Secretary of Commerce.

§5B-8-3. Application.

1 A production company shall apply to the secretary for a grant on a form prescribed by the
2 secretary. The secretary shall evaluate the applications to ensure the production's content is
3 created for entertainment purposes. The application shall include all documentation and
4 information the secretary deems necessary to evaluate the grant application.

§5B-8-4. Substantiation.

1 The secretary shall adopt guidelines to provide a process to verify the actual qualifying
2 expenses of a certified production. The secretary may not release grant funds until the
3 substantiation process required by this subsection is complete and the final verified amount of
4 qualified expenses is determined. The process shall require each of the following:

5 (1) The production company shall submit all the qualifying expenses for the production
6 and data substantiating the qualifying expenses, including documentation on the net expenditure
7 on equipment and other tangible personal property to an independent certified public accountant
8 licensed in this state.

9 (2) The accountant shall conduct a compliance audit, at the certified production's expense,
10 pursuant to guidelines established by the secretary and submit the results as a report, along with
11 the required substantiating data, to the production company and the Department of Commerce.

§5B-8-5. Reporting.

1 The department shall file an annual report by January 1, to the Legislature, the Joint
2 Committee on Government and Finance, and the Governor that contains the following

3 information, itemized by production company:

4 (1) The location of sites used in a production for which a grant was awarded.

5 (2) The qualifying expenses, classified by whether the expenses were for goods, services,
6 or compensation paid by the production company.

7 (3) The number of people employed in the state with respect to grants awarded, including
8 the number of residents of the state employed.

9 (4) The total cost of the grants awarded.

§5B-8-6. Notice of intent.

1 To claim a grant under this section, a production company must notify the Department of
2 Commerce of its intent to apply for a grant. The notification must include the title of the production,
3 the name of the production company, a financial contact for the production company, the
4 proposed dates on which the production company plans to begin filming the production, and any
5 other information required by the department.

NOTE: The purpose of this bill is to encourage the film and entertainment industries to choose West Virginia as a location to do business.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.