

TO: Governor Joe Manchin III  
and  
Joint Committee on Government and Finance, WV Legislature

FROM: Pam Haynes  
Director, West Virginia Film Office  
WV Department of Commerce, Division of Tourism

DATE: December 1, 2008

SUBJECT: Statutory Annual Report of Recommendations to Expand Film Industry

#### STATUTORY AUTHORITY

Pursuant to W. Va. Code §11-13X-12, the West Virginia Development Office, in consultation and coordination with the appropriate public and private entities, shall promote, foster, encourage and monitor the development of the film industry in this state as part of its comprehensive economic development strategy for West Virginia and report recommendations for expanding the industry in the state to the Governor and the Joint Committee on Government and Finance annually on or before the first day of December.

#### BRIEF HISTORY

Since 1994, the West Virginia Film Office has been charged with recruiting motion picture, television, commercial and related media productions to select West Virginia as a place to conduct business. Beginning with FY2006-2007, and at the Governor's behest, the Legislature approved a budget improvement for the then-one-person Film Office, resulting in the hiring of two additional staff and better marketing of the state as a filming destination. The results from the improvement package have been successful: Production days have increased; the state's workforce is being hired more frequently by out-of-state companies filming in-state; there is more interest by state residents for training opportunities; and target marketing to decision-makers has elevated the number of filming inquiries received as well as the prominence of those inquiring.

#### RECOMMENDATION NO. 1: AMEND THE WV FILM INDUSTRY INVESTMENT ACT

The purpose of the WV Film Industry Investment Act, W. Va. Code §§11-13X-1, et seq. ("the Act"), is to spur economic growth and increase workforce and business development, which are in the public interest and promotes the general welfare of the people of this state. More than 40 states have some form of financial incentives to lure film industry business.

While the Act, which became effective January 1, 2008, has generated a great deal of interest toward filming in West Virginia, the fact is that very few applications have been received to participate in the program. A few amendments to the Act would ensure the sustainability and successfulness of the program and could catapult West Virginia to one of the Top 10 states for filming in the country. Without correction, West Virginia will remain non-competitive and at an enormous disadvantage in recruiting this industry to the state.

The State Tax Department filed proposed Legislative Rules on July 29, 2008, for Public Comment. Public Comments were received by the Motion Picture Association of America for its members Walt Disney Studios, Paramount Pictures, Sony Pictures, 20th Century Fox, NBCUniversal, Warner Bros., and

CBS; Allegheny Image Factory (Robert and Jeff Tinnell, producers of “Feast of the Seven Fishes”); Tax Credits LLC; Amper Politziner & Mattia LLP; and Cast & Crew Entertainment Services LLC. Some of the Public Comments were incorporated into the Agency Approved Rule filed August 29, 2008, but some of the Public Comments could not be incorporated without also amending the statute. Hence, it is clearly evident that the Act will not trigger economic growth in workforce and business development until these proposed amendments are adopted.

During the upcoming legislative session, the Film Office will continue to work closely with the Tax Department on suggested amendments to the statute to ensure the integrity of the program. The Tax Department has already reviewed these proposed amendments and has indicated concurrence.

Proposed Amendment No. 1. As written, the tax credit of 27% is reduced by 5% after 2009, which will greatly limit the number of interested companies that would otherwise have participated in the program. We suggest maintaining the 27% for the life of the statute. Thus, the amendment would combine 11-13X-5(a)(2) with 11-13X-5(a)(1) to stay at 27%. (The additional 4% credit in 11-13X-5(b) for encouraging the hiring of local residents would remain unchanged.)

Proposed Amendment No. 2. Strike references to the “federal new markets tax credit program” in 11-13X-3(b) (5) and 11-13X-5(e). These provisions penalize an applicant by reducing the amount of state tax credits available if the applicant also participates in the Federal New Markets Tax Credit Program. The federal program has no effect whatsoever, adverse or otherwise, on an applicant’s participation in the WV Film Industry Investment Act, and, therefore, should be struck.

Proposed Amendment No. 3. Strike 11-13X-8(h) which relates to recapture and joint and several liability of tax credit transferors and transferees. As written, the provision significantly restricts the value and transferability of the tax credits. Ample protection against tax credit abuse is provided under §11-13X-6(b)(2), which requires independent third-party certified public accountants to utilize “agreed upon procedures” in accordance with generally accepted auditing standards when certifying qualified expenditures for all projects approved for participation in the program.

Proposed Amendment No. 4. Insert new 11-13X-9(b) which gives authority to the Secretary of Commerce to promulgate the issuance of rules for administration of the Act.

## RECOMMENDATION NO. 2: DEVELOP SKILLED LABOR POOL FOR FILM INDUSTRY

It is in the financial interests of nearly all companies filming on location to be able to hire local, skilled labor. Hiring local labor (and talent) reduces a company’s budget for travel, lodging, and per diems. A company’s decision to film on location will nearly always depend on the availability of local, skilled labor.

West Virginia is not alone in its efforts to build a workforce that will sustain long-term, year-round growth in the film industry. States with the most successful financial incentive programs have also developed workforce initiatives to sustain such growth (New Mexico, Louisiana and Connecticut are the most successful in this regard).

During the past few years, the Film Office has researched the efforts of numerous other states that are developing a film industry workforce. Since the passage of the Act, the Film Office has escalated its efforts to determine a course of action that would provide training opportunities for residents who wish to work in the film industry.

The Film Office assembled a group of representatives from appropriate state agencies as well as individuals with expertise in the film industry to address workforce and training issues. It is believed that the best course of action is to work within the state’s community and technical college system. In that regard, the Film Office and representatives of the community and technical college system are developing an action plan to help determine the costs of implementing such training programs. The action plan is beginning to take shape but is not yet ready for review.