

Senate Bill No. 338

(By Senator Palumbo, Gaunch, Snyder, M. Hall, Williams, Blair, Unger, Trump and Stollings)

[Introduced January 27, 2015; referred to the Committee on Economic Development; and then to the Committee on Finance.]

A BILL to amend and reenact §11-13X-3 and §11-13X-5 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Film Industry Investment tax credit; defining terms; specifying amount of West Virginia Film Industry Investment tax credit authorized as percentage of qualified expenditures for purposes of calculating tax credit; decreasing percentage authorized for expenditures on projects that do not employ ten or more West Virginia residents as part of the full-time employees working on the project in West Virginia or as apprentices working in West Virginia; increasing percentage authorized for expenditures on projects that do employ ten or more West Virginia residents as part of the full-time employees working on the project in West Virginia or as apprentices working in West Virginia; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That §11-13X-3 and §11-13X-5 of the Code of West Virginia, 1931, as amended, be

1 amended and reenacted, all to read as follows:

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

3 **§11-13X-3. Definitions.**

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

7 (b) *Terms defined.* --

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

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

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

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

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

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

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

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

- 1 (ii) Set construction and operations, wardrobe, accessories and related services;
2 (iii) Photography, sound synchronization, lighting and related services;
3 (iv) Editing and related services;
4 (v) Rental of facilities and equipment;
5 (vi) Leasing of vehicles;
6 (vii) Food or lodging;
7 (viii) Airfare if purchased through a West Virginia-based travel agency or travel company;
8 (ix) Insurance coverage and bonding if purchased through a West Virginia-based insurance
9 agent; and
10 (x) Other direct costs of producing a qualified project in accordance with generally accepted
11 entertainment industry practices.
- 12 (3) "Eligible company" means a person or business entity engaged in the business of
13 producing film industry productions.
- 14 ~~(4) "Feature length" means in excess of forty minutes.~~
- 15 ~~(5)~~ (4) "Film industry production" means a qualified project intended for reasonable national
16 or international commercial exploitation.
- 17 ~~(6)~~ (5) "Film office" means the West Virginia Film Office, which is a division of the West
18 Virginia Department of Commerce.
- 19 (6) "Loan out company" --
- 20 (A) The term "loan out company" means and includes a corporation, partnership, limited
21 liability company, S-corporation, association, nominee trust, or any entity other than an individual:

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

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

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

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

9 (C) For purposes of this definition, a loan out company is "owned and controlled" by an
10 individual, if more than fifty percent of the loan out company is owned by the individual, or, in the
11 case of a publicly owned business, more than fifty percent of all classes or types of the stock of the
12 loan out company is owned by the individual, and management of the loan out company is controlled
13 directly or indirectly by the individual.

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

21 (8) "Qualified project" means a ~~feature-length~~ theatrical or direct-to-video or Internet

1 broadcast motion picture, a made-for-television motion picture, a television miniseries or series, a
 2 television pilot program, a television documentary, a television special, a commercial, a music video,
 3 commercial still photography, programming containing both audio and video entertainment or
 4 educational content created for reasonable national or international commercial exploitation, a
 5 ~~television pilot program, a television series, and a television mini-series~~ that incurs a minimum of
 6 \$25,000 in direct production expenditures ~~and~~ or post-production expenditures, as defined by this
 7 subsection, in West Virginia. The term excludes news or current affairs programming, radio
 8 broadcasts, a weather or market program, ~~an~~ a live interview or talk show, a sporting event or show,
 9 an awards show, a gala, a production that solicits funds, ~~a home shopping program, a program that~~
 10 ~~primarily markets a product or service~~, political advertising or a concert production.

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

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

14 (B) Can be viewed or reproduced;

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

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

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

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

21 (9) "Tax Commissioner" means the West Virginia State Tax Commissioner or his or her

1 designee.

2 **§11-13X-5. Amount of credit allowed; limitation of the credits.**

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

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

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

11 (d) *Limitation of the credits.* -- No more than \$5 million of the tax credits may be allocated
12 by the film office in any given West Virginia state fiscal year. The film office shall allocate the tax
13 credits in the order the applications therefor are received.

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

NOTE: The purpose of this bill is to provide a greater incentive for hiring West Virginia workers, by adjusting the amount of tax credit authorized as a percentage of qualified expenditures for purposes of calculating the West Virginia Film Industry Investment tax credit (1) by decreasing the percentage of expenditures that will qualify for tax credit on qualified projects that do not employ ten or more West Virginia residents as part of the full-time employees working on the project in West Virginia or as apprentices working in West Virginia and (2) by increasing the percentage of

expenditures that will qualify for tax credit on qualified projects that do employ ten or more West Virginia residents as part of the full-time employees working on the project in West Virginia or as apprentices working in West Virginia.

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