

WORKING DRAFT

HOUSE BILL NO. _____

Film production incentives.

Sponsored by: Representative(s) Berger

A BILL

for

1 AN ACT relating to economic development; creating the
 2 entertainment industry financial incentives program;
 3 authorizing incentives for qualified film productions;
 4 providing for administration of the program; providing
 5 penalties for false claims; providing an appropriation; and
 6 providing for an effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 9-12-402 through 9-12-406 are created
 11 to read:

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13 **9-12-402. Entertainment industry financial incentive**
 14 **program; creation.**

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1 There is created the entertainment industry financial
2 incentive program to encourage the use of this state as a
3 site for filming and providing production services for
4 filmed entertainment. The program shall be administered by
5 the business council.

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7 **9-12-403. Entertainment industry financial incentive**
8 **program; definitions.**

9

10 (a) As used in this article:

11

12 (i) "Filmed entertainment" means a motion
13 picture, television production, commercial, music video or
14 digital media effects production to be sold or displayed in
15 electronic medium motion pictures;

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17 ***** STAFF COMMENTS *****
18 **Last session's bill used a similar definition,**
19 **but also had different provisions in substantive**
20 **provisions. It did not appear there was any**
21 **intent to distinguish the definition from the**
22 **substantive provisions, so they were combined**
23 **here and eliminated elsewhere in the bill in**
24 **favor of just speaking of "filmed entertainment".**
25 **This same approach is taken throughout the bill**
26 **in an attempt to simplify and clarify.**

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28 (ii) "Production costs" means the total cost of
29 producing filmed entertainment;

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2 (iii) "Program" means the entertainment industry
3 financial incentive program created under this article;

4

5 (iv) "Qualified expenditures" mean expenditures
6 for goods purchased or leased or services purchased, leased
7 or employed from a vendor or supplier who is located and
8 doing business in this state if the expenditure was made in
9 this state and was made for a qualified production;

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***** STAFF COMMENTS *****

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As in the last definition, the substantive provisions were consolidated with the definition, rather than a portion here and some elsewhere. This definition is key. The expenditure must meet all of the criteria stated here.

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(v) "Qualified production" means filmed entertainment totally or partially produced in this state. Productions that are deemed by the business council to contain obscene content, as defined by the United States Supreme Court, shall not be considered qualified productions.

9-12-404. Entertainment industry financial incentive program; reimbursement eligibility; submission of required documentation; payment.

1 (a) The business council may contract with the makers
2 of a qualified production to provide a reimbursement of up
3 to fifteen percent (15%) of the production's qualified
4 expenditures if a minimum of five hundred thousand dollars
5 (\$500,000.00) in total qualified expenditures are made.
6 Qualified expenditures for which reimbursement may be made
7 include:

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9 (i) Salaries and employment benefits for
10 services rendered in this state, except that the salaries
11 for the two (2) highest paid actors may not be reimbursed;

12

13 (ii) Rents for real and personal property
14 located in this state used in the production;

15

16 (iii) Payments for pre-production, production,
17 post-production and digital media effects services rendered
18 in this state;

19

20 (D) Costs of set construction.

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***** STAFF COMMENTS *****

22 **The above was confusing to me in relation to the**
23 **definition of qualified expenditures. Is it**
24 **intended to limit that definition or for this to**
25 **be a descriptive non-exhaustive listing?**
26 **Whichever it is should be clarified with**
27 **additional language.**

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2 (b) The sum of all contractual obligations under this
3 section shall not exceed the total appropriation available
4 for the program for any fiscal biennium.

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6 (c) A digital media effects company in the state
7 which furnishes digital material to a qualified production
8 may be eligible for a payment in an amount not to exceed
9 five percent (5%) of its annual gross revenues on qualified
10 expenditures listed in subsection (a) of this section
11 before taxes or one hundred thousand dollars (\$100,000.00),
12 whichever is less. A company applying for payment under
13 this subsection shall submit documentation annually for
14 determination of eligibility of claimed billing and
15 determination of the amount of payment for which the
16 company is eligible.

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***** STAFF COMMENTS *****

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The above was one of the confusing portions of the bill to me. I'm not sure exactly what it does. It appears to be a subsidy for providing a certain type of service or good to the production company. If so, again, it seems to me that without some consideration to the state beyond "economic development" there are constitutional questions surrounding any such payment. The last sentence seemed covered by the next subsection, but in case something more was intended, I left it in for now.

1 (d) A qualified production or digital media effects
2 company applying for a payment under this section shall
3 submit documentation for claimed qualified expenditures to
4 the council.

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6 **9-12-405. Entertainment industry financial incentive**
7 **program; contract required; procedure; approval process.**

8

9 (a) The council may contract with any entity engaged
10 in this state in producing filmed entertainment for
11 reimbursement of qualified expenditures as provided in this
12 article. The council shall be provided information
13 required to determine if the production is a qualified
14 production and to determine the qualified expenditures,
15 production costs and other information necessary for the
16 council to determine both eligibility for and the
17 appropriate level of reimbursement. No reimbursement shall
18 be made unless the council has entered into an agreement
19 which provides for adequate consideration to the state in
20 exchange for the reimbursement provided. No reimbursement
21 of qualified expenditures shall be made by the council
22 until the qualified production is complete and
23 substantially all contractual commitments made to the
24 council have been fulfilled. If a qualified production is

1 not completed according to a reasonable schedule, the
2 contract shall be terminated and funds reallocated to other
3 qualified productions.

4 ***** STAFF COMMENTS *****

5 **The above is a major change. The requirement**
6 **that the production be complete is not necessary,**
7 **but if advertisement of the State of Wyoming in**
8 **the production is part of the contract, not**
9 **requiring completion seriously undercuts the**
10 **value of consideration flowing to the state.**
11

12 (b) A digital media effects entity in this state
13 which furnishes digital material to a qualified production
14 may submit an application to the business council for the
15 purpose of determining qualification for receipt of
16 reimbursement authorized under this act.

17 ***** STAFF COMMENTS *****

18 **Same comment as above under the first mention of**
19 **digital media effects.**
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21 (c) The council shall establish a process by which a
22 contract under this article is formulated and executed and
23 reimbursement amounts are determined. The council shall
24 require information including, but not limited to:

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26 (i) Production related employment;

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28 (ii) Proposed total production budgets;

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1 (iii) Planned expenditures in this state which
2 are intended for use exclusively as an integral part of
3 pre-production, production or post-production activities
4 engaged in primarily in this state; and

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6 (iv) A signed affidavit by a person authorized
7 to commit the entity that the information provided to the
8 council has been verified and is correct.

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10 (d) The council shall not contract with any
11 qualified production or digital media effects company for
12 reimbursement of qualified expenditures under this article
13 unless the council determines that adequate consideration
14 to the state in exchange for the reimbursement will be
15 provided under the contract. The reimbursement shall not
16 exceed the amount of measurable benefit gained by the state
17 resulting from the qualified production or digital media
18 effects company expenditures. The consideration may
19 include but is not limited to:

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21 (i) Providing promotion and public visibility of
22 Wyoming as a tourist or business destination;

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1 (ii) Providing new employment opportunities
2 within Wyoming for Wyoming workers.

3 *** STAFF COMMENTS ***

4 This is the heart of the redrafted bill. Note
5 that the term measurable benefit is used. That
6 might be more strict than you would like. The
7 attempt here is to allow the council as much
8 discretion as possible, but still make clear that
9 the reimbursement is not a donation, nor can only
10 general economic development suffice. There is a
11 balance to be determined here regarding how much
12 discretion versus how specific to be in
13 enumerating the types of acceptable
14 consideration. This draft clearly errs on the
15 side of maximum flexibility.
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17 9-12-406. Entertainment industry financial incentive
18 program; rules and regulations; fraudulent claims;
19 reporting.
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21 (a) The council may adopt rules and regulations to
22 implement this article, including, but not limited to,
23 requirements for the contract process, records required for
24 submission for substantiation of reimbursement and
25 determination of and qualification for reimbursement.
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27 (b) An entity that obtains payment under this article
28 through a claim that is fraudulent is liable for
29 reimbursement of the amount paid plus an amount double the
30 payment plus reimbursement of reasonable costs. The

1 amounts under this subsection are in addition to any
2 criminal penalty for which the entity is liable for the
3 same acts. The entity shall also be liable for costs and
4 fees incurred by the state in investigating and prosecuting
5 the fraudulent claim.

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7 (c) The council shall include in its an annual report
8 under W.S. 9-12-112 expenditures under this article and
9 the return to the state on funds expended pursuant to this
10 article.

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12 **Section 2.** W.S. 9-12-104(a) by creating a new
13 paragraph (xxi) and 9-12-112(a) by creating a new paragraph
14 (v) are amended to read:

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16 **9-12-104. General powers and duties of the council.**

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18 (a) Except as otherwise limited by this act, the
19 council may:

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21 (xxi) Administer the entertainment industry
22 financial incentive program as provided in W.S. 9-12-402
23 through 9-12-406.

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1 **9-12-112. Annual report and budget.**

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3 (a) The council shall submit an annual report in the
4 manner provided by W.S. 9-2-1014 and using the benchmarks
5 prescribed in this act. In addition to the requirements of
6 W.S. 9-2-1014, included within the annual report shall be:

7

8 (v) A report of the entertainment industry
9 financial incentive program as provided in W.S. 9-12-406.

10

11 **Section 3.** There is appropriated two million dollars
12 (\$2,000,000.00) from the general fund to the business
13 council for fiscal period commencing July 1, 2007 and
14 ending June 30, 2008, for purposes of providing
15 entertainment industry financial incentive program
16 reimbursements authorized under this act.

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***** STAFF COMMENTS *****

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**The appropriation was kept the same, but the
19 period was reduced to one year, since we would
20 then be in the middle of a fiscal biennium.**

21

22 **Section 4.** This act is effective July 1, 2007.

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24

(END)