

Act No. 117
Public Acts of 2015
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STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2015

**Introduced by Reps. Lauwers, Johnson, Somerville, Leutheuser, Rendon, Kelly, Bumstead, Victory, Barrett,
Howrylak, Glenn and Chatfield**

ENROLLED HOUSE BILL No. 4122

AN ACT to amend 1984 PA 270, entitled "An act relating to the economic development of this state; to create the Michigan strategic fund and to prescribe its powers and duties; to transfer and provide for the acquisition and succession to the rights, properties, obligations, and duties of the job development authority and the Michigan economic development authority to the Michigan strategic fund; to provide for the expenditure of proceeds in certain funds to which the Michigan strategic fund succeeds in ownership; to provide for the issuance of, and terms and conditions for, certain notes and bonds of the Michigan strategic fund; to create certain boards and funds; to create certain permanent funds; to exempt the property, income, and operation of the fund and its bonds and notes, and the interest thereon, from certain taxes; to provide for the creation of certain centers within and for the purposes of the Michigan strategic fund; to provide for the creation and funding of certain accounts for certain purposes; to impose certain powers and duties upon certain officials, departments, and authorities of this state; to make certain loans, grants, and investments; to provide penalties; to make an appropriation; and to repeal acts and parts of acts," by amending section 29h (MCL 125.2029h), as amended by 2014 PA 396.

The People of the State of Michigan enact:

Sec. 29h. (1) The Michigan film office shall create and operate the film and digital media production assistance program. The film and digital media production assistance program may provide funds to eligible production companies for direct production expenditures or qualified personnel expenditures for state certified qualified productions. Beginning on the effective date of the amendatory act that added this sentence, the Michigan film office and the fund shall not provide funding under a new agreement, or increase funding through an amendment to an existing agreement, for direct production expenditures, Michigan personnel expenditures, crew personnel expenditures, or qualified personnel expenditures under this section.

(2) If the office receives applications that would exceed what the office can award in any year, the office may prioritize that application for funding in the subsequent year.

(3) The film and digital media production assistance program shall provide for all of the following:

(a) Funding shall be provided only to reimburse direct production expenditures or qualified personnel expenditures.

(b) To be eligible to apply for funding, the eligible production company shall have direct production expenditures or qualified personnel expenditures, or a combination of direct production expenditures and qualified personnel expenditures, of \$100,000.00 or more.

(c) To be eligible to apply for funding, the eligible production company shall not be delinquent in a tax or other obligation owed to this state or be owned or under common control of an entity that is delinquent in a tax or other obligation owed to this state.

(d) Except as otherwise provided in this section, for state certified qualified production expenditures on or before December 1, 2014, funding as provided in the agreement if that agreement was entered into on or before December 1, 2014. Except as otherwise provided in this section, for state certified qualified production expenditures after December 1, 2014, an agreement under this section shall provide for funding equal to the sum of the following:

(i) 25% of direct production expenditures and qualified personnel expenditures.

(ii) In addition to the expenditures described in subparagraph (i), 3% of direct production expenditures and qualified personnel expenditures at a qualified facility or 10% of direct production expenditures and qualified personnel expenditures at a postproduction facility for a qualified production produced at the facility.

(e) A television show may submit an application for 1 or more successive seasons, notwithstanding the fact that the successive seasons have not been ordered. The successive season's direct production expenditures and qualified personnel expenditures shall be based on the current season's estimated expenditures. Upon the completion of production of each season, a television show may submit an application for successive additional seasons. If a television show received funding under this section and completed the production of that television show season, the television show shall receive a preference for funding the immediately succeeding season for that television show.

(f) As a separate and distinct part of the film and digital media production assistance program, the office may create a program to directly support and promote qualified facilities and other infrastructure throughout this state.

(g) That not less than 10% of the funding awarded under this section is awarded for qualified productions that are motion pictures, documentaries, or television series with a budget of less than \$15,000,000.00.

(4) An eligible production company intending to produce a qualified production in this state may submit an application for funding under this section to the Michigan film office. The request shall be submitted in a form prescribed by the office and shall be accompanied by an application fee equal to 0.2% of the funding requested but not less than \$200.00 and not more than \$5,000.00 and all of the information and records requested by the office. An application fee received by the office under this subsection shall be deposited in the Michigan film promotion fund. The office shall not process the application until it is complete. If an eligible production company is producing a qualified production at a qualified facility, a copy of the agreement between the eligible production company and the qualified facility shall be provided to the office before the office enters into an agreement to award funding under this section. The office shall process each application within 21 days after the application is complete as determined by the office. As part of the application, the company shall estimate direct production expenditures and qualified personnel expenditures for an identified qualified production. If the office determines to award funding under this section to an eligible production company, the office with the concurrence of the fund president or his or her designee shall enter into an agreement under this section. The agreement shall include, but is not limited to, all of the following:

(a) A requirement that the eligible production company commence work in this state on the identified qualified production within 90 days of the date of the agreement or else the agreement shall expire. However, upon request submitted by the company based on good cause, the office may extend the period for commencement of work in this state for up to an additional 90 days.

(b) A statement identifying the company and the qualified production that the company intends to produce in whole or in part in this state.

(c) A unique number assigned to the qualified production by the office.

(d) A requirement that the qualified production not depict obscene matter or an obscene performance.

(e) If the qualified production is a long-form narrative film production, a requirement that the qualified production include within its presentation worldwide for the life of the qualified production an acknowledgment as provided by the office that promotes the Pure Michigan tourism campaign or any successor campaign. If the qualified production is a television show, a requirement that the qualified production include within each broadcast of 30 minutes or longer an acknowledgment as provided by the office that promotes the Pure Michigan tourism campaign or any successor campaign. If the qualified production is a music video, a requirement that the music video include an acknowledgment as provided by the office that promotes the Pure Michigan tourism campaign or any successor campaign. If the qualified production is an interactive game, a requirement that the qualified production include with each unit distributed and online promotions an acknowledgment as provided by the office that promotes the Pure Michigan tourism campaign or any successor campaign. If the qualified production is a long-form narrative film production, the office also may require

that, if the qualified production is distributed by digital video disc or other digital media for the secondary market, the qualified production include a video between 30 and 60 seconds long in a form approved by the office that promotes the Pure Michigan tourism campaign or any successor campaign.

(f) A requirement that the company provide the office with the information and independent certification the office deems necessary to verify direct production expenditures and qualified personnel expenditures, and eligibility for funding under this section, which may include a report of direct production expenditures and qualified personnel expenditures for the qualified production audited and certified by an independent certified public accountant.

(g) If determined to be necessary by the office, a provision for addressing expenditures in excess of those identified in the agreement.

(h) A requirement that residual payments to above the line personnel, personal service corporations, loan out companies, professional employer organizations, limited liability companies, corporations, or other entities for a qualified production are subject to taxation in this state under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713. With respect to residual payments not otherwise subject to withholding under section 703 of the income tax act of 1967, 1967 PA 281, MCL 206.703, the eligible production company, affiliate entity, or its successor company shall elect to either, for a period of not less than 12 years following theatrical release of the qualified production, withhold taxes from those residual payments and pay to this state the amount provided under section 51 of the income tax act of 1967, 1967 PA 281, MCL 206.51, or require above the line personnel paid directly or through, except as otherwise provided in this subdivision, personal services corporations, loan out companies, professional employer organizations, limited liability companies, corporations, or other entities for the services of above the line personnel receiving payments for direct production expenditures or qualified personnel expenditures under this section to register to do business under the laws of this state. To the extent that the production company elects not to withhold, it shall notify the above the line personnel of their registration obligations in writing at the time of engagement for their services. Residual payments shall include deferred, residual, or contingent compensation, royalties, or profit participation relating to the qualified production. A personal service corporation, loan out company, professional employer organization, limited liability company, corporation, or other entity is exempt from the requirement to be registered to do business under the laws of this state if it receives less than \$250,000.00 for the above the line services of an actor during the period that the qualified production is produced in this state and any related residual payments are based solely on a collective bargaining agreement. As used in this subdivision, "loan out company" means a personal service corporation or other entity contracted with and retained by the production company to provide individual personnel, including artists, crew, actors, directors, and producers, for the performance of services used directly in a production, but not including entities retained by the production company to provide tangible property or outside contractor service, including catering, construction, trailers, equipment, and transportation.

(5) In determining whether to award funding under this section, the Michigan film office shall consider all of the following:

(a) The potential that, in the absence of funding, the qualified production will be produced in a location other than this state.

(b) The extent to which the qualified production may have the effect of promoting this state as a tourist destination.

(c) The extent to which the qualified production may have the effect of promoting economic development or job creation in this state.

(d) The extent to which state funding will attract private investment for the production of qualified productions in this state.

(e) The record of the eligible production company in completing commitments to engage in a qualified production.

(f) The extent to which the qualified production will employ Michigan residents.

(g) Whether the eligible production company will hold a premiere in this state for the qualified production.

(h) Whether the eligible production company will make film trailers and clips available to the office for the tourism campaign or any successor campaign to promote the qualified production and the Pure Michigan tourism campaign or any successor campaign.

(6) If the Michigan film office determines that an eligible production company has complied with the terms of an agreement entered into under this section, the office shall award funding as provided in this section. A person that willfully submits information under this section that the person knows to be fraudulent or false shall, in addition to any other penalties provided by law, be liable for a civil penalty equal to the amount of funding provided to the person under this section. A penalty collected under this section shall be deposited in the Michigan film promotion fund.

(7) Information, records, or other data received, prepared, used, or retained by the Michigan film office under this section that are submitted by an eligible production company and considered by the applicant and acknowledged by the office as confidential shall not be subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. Information, records, or other data shall only be considered confidential to the extent that the information or records describe the commercial and financial operations or intellectual property of the company, the information or records have not been publicly disseminated at any time, and disclosure of the information or records

may put the company at a competitive disadvantage. For purposes of this subsection, information or records that describe commercial and financial operations do not include that portion of information or records that include any expenses that qualify under this section as direct production expenditures or qualified personnel expenditures.

(8) The office shall produce a performance dashboard for the assistance authorized by this section. The performance dashboard shall be made available by the office on the fund's website and shall be updated at least annually. The performance dashboard shall include the following measures:

(a) Direct and indirect economic impacts in this state of the assistance authorized by this section.

(b) Direct and indirect job creation attributable to the assistance authorized by this section.

(c) Direct and indirect private investment in this state attributable to the assistance authorized by this section.

(d) Any other measures considered relevant by the office or the Michigan film advisory council.

(e) The name of each eligible production company and the amount of each incentive disbursed for each state certified qualified production.

(9) Funding under this section for above the line personnel shall not exceed 30% of total funding under this section for each qualified production.

(10) To be eligible for funding under this section, except as otherwise provided in subsection (11), Michigan residents shall be hired to work on qualified productions as follows:

(a) Through September 30, 2017, at a ratio of not less than 1 Michigan resident for every nonresident hired.

(b) Beginning October 1, 2017 through September 30, 2020, at a ratio of not less than 1.5 Michigan residents for every nonresident hired.

(11) A producer may apply to the Michigan economic development corporation for a waiver of the Michigan resident hiring requirements described in subsection (10), based on the unavailability of qualified Michigan residents. The Michigan economic development corporation may waive the Michigan resident hiring requirement described in subsection (10) if the Michigan economic development corporation determines that there is an insufficient number of qualified Michigan residents for the qualified production.

(12) The legislature finds and declares that funding authorized under this section to encourage diversification of the economy, to encourage film production, to encourage investment, and to encourage the creation of jobs in this state is a public purpose and of paramount concern in the interest of the health, safety, and general welfare of the citizens of this state. It is the intent of the legislature that the economic benefits, film production, investment, and the creation of jobs resulting from this section shall accrue substantially within this state.

(13) The fund board may authorize the use of money appropriated for the program authorized by this section for administration of the program. However, the fund board shall not use more than 4% of the annual appropriation for administering the program authorized under this section.

(14) At the end of each fiscal year, the commissioner shall certify the total amount of unclaimed certificates of completion, agreements where work has not commenced as required in subsection (4), and agreements for qualified productions the commissioner reasonably believes will not be completed. Funding allocated for qualified productions described in the preceding sentence may be reallocated.

(15) Notwithstanding any other provision in section 29d, after September 30, 2016 after all payments and obligations under this section have been satisfied, the money remaining in the Michigan film promotion fund shall revert back to the general fund of this state.

(16) As used in this section:

(a) "Above the line personnel" means a producer, director, writer, actor, other than extras and stunt performers, or other similar personnel whose compensation is negotiated prior to the start of the production.

(b) "Below the line crew" means persons employed by an eligible production company for state certified qualified production expenditures made after production begins and before production is completed, including, but not limited to, a best boy, boom operator, camera loader, camera operator, assistant camera operator, compositor, cook, driver, dialogue editor, film editor, assistant film editor, focus puller, Foley operator, Foley editor, gaffer, grip, key grip, lighting crew, lighting board operator, lighting technician, music editor, sound editor, sound effects editor, sound mixer, steadicam operator, first assistant camera operator, second assistant camera operator, digital imaging technician, camera operator working with a director of photography, electric best boy, grip best boy, dolly grip, rigging grip, assistant key for makeup, assistant key for hair, assistant script supervisor, set construction foreperson, lead set dresser, assistant key for wardrobe, scenic foreperson, assistant propmaster, assistant audio mixer, assistant boom person, assistant key for special effects, stunt performer, and other similar personnel. Below the line crew does not include a producer, director, writer, actor, or other similar personnel.

(c) "Direct production expenditure" means a development, preproduction, production, or postproduction expenditure made in this state directly attributable to the production or development of a qualified production that is a transaction subject to taxation in this state. Direct production expenditure does not include out-of-state production costs that are

made in this state even if the costs are passed through a third-party company in this state or payments made by an eligible production company to its parent company, affiliate, subsidiary, or joint venture partner except where the payments are for transactions entered into pursuant to arm's-length negotiations and which reflect a commercially reasonable price for the goods and services purchased. A direct production expenditure must have true economic substance within the state. Direct production expenditure does not include a prize payable to participants in a game show; an expenditure for entertainment, amusement, or recreation; or an expenditure of more than \$2,500.00 for the purchase of artwork or jewelry used in a production. Direct production expenditure does not include a qualified personnel expenditure. Direct production expenditure includes payments to vendors doing business in this state to purchase or use tangible personal property in producing the qualified production or to purchase services relating to the production or development of the qualified production, including all of the following:

(i) Production work, production equipment, production software, development work, postproduction work, postproduction equipment, postproduction software, set design, set construction, set operations, props, lighting, wardrobe, makeup, makeup accessories, photography, sound synchronization, special effects, visual effects, audio effects, digital effects, film processing, music, sound mixing, editing, interactive game development and programming, and related services and materials.

(ii) Use of facilities or equipment, use of soundstages or studios, location fees, and related services and materials.

(iii) Catering, food, lodging, and related services and materials.

(iv) Use of vehicles, which may include chartered aircraft based in this state used for transportation in this state directly attributable to production of a qualified production, but may not include the chartering of aircraft for transportation outside of this state.

(v) Commercial airfare if purchased through a travel agency or travel company based in this state for travel to this state or within this state directly attributable to production or development of a qualified production.

(vi) Insurance coverage or bonding if purchased from an insurance agent based in this state.

(vii) Interest on a loan, if the entity from which the financing is obtained is a public, private, or institutional entity with the requisite level of physical presence in this state that is not related to or affiliated with the eligible production company or any above the line personnel or cast members, and whose principal business activity is the lending of money to individuals and businesses. In addition, the financing shall be a good faith loan, payable by the eligible production company, evidenced by an enforceable promissory note or other debt instrument with clear repayment obligations and bearing a market-related rate of interest.

(viii) Other expenditures for production of a qualified production in accordance with generally accepted entertainment industry practices.

(d) "Eligible production company" or "company" means an entity in the business of producing qualified productions or for interactive games in the business of developing interactive games, but does not include an entity that is more than 30% owned, affiliated, or controlled by an entity or individual who is in default on a loan made by this state, a loan guaranteed by this state, or a loan made or guaranteed by any other state. For an interactive game, an eligible production company need not possess ownership of or legal control over all of the intellectual property rights or other rights necessary to complete the qualified production in its entirety nor be the same entity that distributes or publishes the interactive game.

(e) "Made in this state" means all of the following:

(i) Tangible personal property and services acquired by the eligible production company from a source within this state. If an item of tangible personal property is not available from a source within this state and a vendor with the requisite physical presence in this state that regularly sells or leases property of that kind obtains the property from an out-of-state vendor and sells or leases it to an eligible production company, that expenditure is considered made in this state and is a direct production expenditure and not an out-of-state production cost.

(ii) Services wholly performed within this state.

(f) "Obscene matter or an obscene performance" means matter described in 1984 PA 343, MCL 752.361 to 752.374.

(g) "Postproduction expenditure" means a direct expenditure for editing, Foley recording, automatic dialogue replacement, sound editing, special or visual effects including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling, or addition of sound or visual effects. Postproduction expenditure includes direct expenditures for advertising, marketing, or related expenses.

(h) "Postproduction facility" means a permanent facility within this state equipped for the postproduction of motion pictures, television shows, or digital media production that meets all of the following requirements:

(i) Includes at least 3,000 square feet of contiguous space.

(ii) Includes at least 8 work stations.

(iii) Has been a qualified film and digital media infrastructure project from which an investment expenditure certificate was issued under section 457 of the Michigan business tax act, 2007 PA 36, MCL 208.1457, or has been the

location of a state certified qualified production for which a postproduction certificate of completion was issued under section 455 of the Michigan business tax act, 2007 PA 36, MCL 208.1455, or both.

(i) "Producer" means an individual without regard to his or her actual title or screen credit involved in or responsible for any of the following:

(i) Funding for financing in whole or in part, or arranging for the funding, or financing, of the qualified production.

(ii) Obtaining the creative rights to or the intellectual property for development or production of the qualified production.

(iii) Hiring above the line personnel.

(iv) Supervising the overall production of the qualified production.

(v) Arranging for the exhibition of the qualified production.

(j) "Qualified facility" means a permanent facility within this state equipped for the production of motion pictures, television shows, or digital media production that meets all of the following requirements:

(i) Includes more than 1 soundstage.

(ii) Includes not less than 3,000 square feet of contiguous, column-free space for production activities with a height of at least 12 feet.

(iii) Includes any grid and sufficient built-in electric service for shooting without the need of portable electric generators.

(iv) Has been a qualified film and digital media infrastructure project for which an investment expenditure certificate was issued under section 457 of the Michigan business tax act, 2007 PA 36, MCL 208.1457, or has been the location of a state certified qualified production for which a postproduction certificate of completion was issued under section 455 of the Michigan business tax act, 2007 PA 36, MCL 208.1455, or both.

(k) "Qualified personnel expenditure" means an expenditure made in this state directly attributable to the production or development of a qualified production that is a transaction subject to taxation in this state and is a payment or compensation for personnel, talent, management, or labor, including both of the following:

(i) Payment of wages, benefits, or fees for talent, management, or labor.

(ii) Payment to a personal services corporation or professional employer organization for the services of a performing artist or crew member if the personal services corporation or professional employer organization is subject to taxation in this state on the portion of the payment qualifying for funding under this section and the payments received by the performing artist or crew member that are subject to taxation under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713, and are withheld and paid to this state in the amount provided under section 703 of the income tax act of 1967, 1967 PA 281, MCL 206.703.

(l) "State certified qualified production" or "qualified production" means single media or multimedia entertainment content created in whole or in part in this state for distribution or exhibition to the general public in 2 or more states by any means and media in any digital media format, film, or video tape, including, but not limited to, a motion picture, a documentary, a television series, a television miniseries, a television special, interstitial television programming, long-form television, interactive television, music videos, interactive games such as video games or wireless games, including console, computer, mobile, and online games, internet programming, an internet video, a sound recording, a video, digital animation, or an interactive website. Qualified production also includes any trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in a production. Qualified production does not include any of the following:

(i) A production for which records are required to be maintained with respect to any performer in the production under 18 USC 2257.

(ii) A production that includes obscene matter or an obscene performance.

(iii) A production that primarily consists of televised news or current events.

(iv) A production that primarily consists of a live sporting event.

(v) A production that primarily consists of political advertising.

(vi) A radio program.

(vii) A weather show.

(viii) A financial market report.

(ix) An awards show or other gala event production.

(x) A production with the primary purpose of fund-raising.

(xi) A production that primarily is for employee training or in-house corporate advertising or other similar production.

(xii) A commercial.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor