

2011 WA S 5539 , Enacted - Session Law

Washington

SUMMARY: Addresses motion picture competitiveness relating to limiting funding assistance from the approved motion picture competitiveness program, changing the composition on the board of directors for the program, business and occupation tax credits, revising the definition of motion picture, and developing a survey form and instructions that certain motion picture productions are required to complete; increases funding and investment percentages.~SAME AS: WA H 1554#

State Net Legislative History and Analysis

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

01/27/2011 INTRODUCED.

01/28/2011 To SENATE Committee on LABOR, COMMERCE & CONSUMER PROTECTION.

02/07/2011 Public hearing scheduled.

02/11/2011 From SENATE Committee on LABOR, COMMERCE & CONSUMER PROTECTION: Do pass as substituted.

02/14/2011 To SENATE Committee on WAYS AND MEANS.

02/23/2011 Public hearing scheduled.

03/25/2011 From SENATE Committee on WAYS AND MEANS: Do pass as substituted.

04/26/2011 2011 FIRST SPECIAL SESSION ACTION.

04/26/2011 By Order of Resolution - Reintroduced and retained in present status.

05/19/2011 Committee substitute adopted on SENATE floor.

05/19/2011 Rules suspended. Placed on Third Reading.

05/19/2011 Passed SENATE. *****To HOUSE.

05/20/2011 To HOUSE Committee on WAYS AND MEANS.

05/23/2011 From HOUSE Committee on WAYS AND MEANS: Do pass as amended.

05/24/2011 Placed on Second Reading.

05/25/2011 By order of Resolution - Returned to SENATE. Placed on Third Reading.

11/28/2011 2011 SECOND SPECIAL SESSION ACTION.

11/28/2011 By Order of Resolution - Reintroduced and retained in present status.

01/09/2012 2012 REGULAR SESSION ACTION.

01/09/2012 By Order of Resolution - Reintroduced and retained in present status.

02/11/2012 In SENATE: Placed on 3rd Reading by RULES Committee.

02/14/2012 Rules suspended.

02/14/2012 Amended on SENATE floor.

02/14/2012 Rules suspended. Placed on Third Reading.

02/14/2012 Passed SENATE. *****To HOUSE.

02/16/2012 Public hearing scheduled.

02/16/2012 To HOUSE Committee on COMMUNITY, ECONOMIC DEVELOPMENT & HOUSING.
02/20/2012 Executive action taken by committee.
02/20/2012 From HOUSE Committee on COMMUNITY, ECONOMIC DEVELOPMENT & HOUSING: Do pass.
02/21/2012 To HOUSE Committee on WAYS AND MEANS.
03/07/2012 Public hearing scheduled.
03/08/2012 Withdrawn from HOUSE Committee on WAYS AND MEANS.
03/08/2012 Rules suspended. Placed on Third Reading.
03/08/2012 Passed HOUSE.
03/08/2012 Eligible for GOVERNOR'S desk.
03/08/2012 *****To GOVERNOR.
03/29/2012 Signed by GOVERNOR.
03/29/2012 Chapter No. 189

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session: Washington 62nd Legislature - 2011 Regular Session

cite: 2011 WA S 5539

Enacted - Session Law

March 29, 2012

Kohl-Welles

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5539

Chapter 189, Laws of 2012

MOTION PICTURE COMPETITIVENESS

EFFECTIVE DATE: 06/07/12

Passed Legislature - 2012 Regular Session

State of Washington -- 62nd Legislature -- 2012 Regular Session

By Senate Ways & Means (originally sponsored by Senators Kohl-Welles, Prentice,
White, Kilmer, Brown, and McAuliffe)

READ FIRST TIME 03/25/11.

AN ACT Relating to Washington's motion picture competitiveness; amending RCW 43.365.020, 43.365.030, 82.04.4489, and 43.365.040; and reenacting and amending RCW 43.365.010.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1 RCW 43.365.010 and 2009 c 565 s 46 are each reenacted and amended to read as follows:

The following definitions apply to this chapter, unless the context clearly requires otherwise.

(1) "Approved motion picture competitiveness program" means a nonprofit organization under the internal revenue code, section 501(c)(6), with the sole purpose of revitalizing the state's economic, cultural, and educational standing in the national and international market of motion picture production *and assisting and providing services for attracting the film industry*, by recommending and awarding financial assistance for costs associated with motion pictures in the state of Washington.

(2) "Contribution" means cash contributions.

(3) "Costs" means actual expenses of production and postproduction expended in Washington state for the production of motion pictures, including but not limited to payments made for salaries, wages, and health insurance and retirement benefits, the rental costs of machinery and equipment and the purchase of services, food, property, lodging, and permits for work conducted in Washington state.

(4) "Department" means the department of commerce.

(5) "Funding assistance" means cash expenditures from an approved motion picture competitiveness program.

(6) "Motion picture" means a recorded audio-visual production intended for distribution to ~~theaters, DVD, video, or the internet, or television, or one or more episodes of a single television series, television pilots or presentations, or a commercial.~~ *"Motion picture" does not mean production of a television commercial of an amount less than two hundred fifty thousand dollars in actual total investment or one or more segments of a newscast or sporting event the public for exhibition in public and/or private settings by means of any and all delivery systems and/or delivery platforms now or hereafter known, including without limitation, screenings in motion picture theaters, broadcasts and cablecast transmissions for viewing on televisions, computer screens, and other audio-visual receivers, viewings on screens by means of digital video disc (DVD) players, video on demand (VOD) services, and digital video recording (DVR) services, direct internet transmission, and viewing on digital computer-based systems which respond to the users' actions (interactive media) .*

(7) "Person" has the same meaning as provided in RCW 82.04.030.

Sec. 2 RCW 43.365.020 and 2009 c 100 s 1 are each amended to read as follows:

(1) The department ~~shall~~ *must* adopt criteria for ~~an~~ *the* approved motion picture competitiveness program with the sole purpose of revitalizing the state's economic, cultural, and educational standing in the national and international market of motion picture production. Rules adopted by the department shall allow the program, within the established criteria, to provide funding assistance only when it captures economic opportunities for Washington's communities and businesses and shall only be provided under a contractual arrangement with a private entity. In establishing the criteria, the department shall consider:

- (a) The additional income and tax revenue to be retained in the state for general purposes;
- (b) The creation and retention of family wage jobs which provide health insurance and payments into a retirement plan;
- (c) The impact of motion picture projects to maximize in-state labor and the use of in-state film production and film postproduction companies;
- (d) The impact upon the local economies and the state economy as a whole, including multiplier effects;
- (e) The intangible impact on the state and local communities that comes with motion picture projects;
- (f) The regional, national, and international competitiveness of the motion picture filming industry;
- (g) The revitalization of the state as a premier venue for motion picture production and national television commercial campaigns;
- (h) Partnerships with the private sector to bolster film production in the state and serve as an educational and cultural purpose for its citizens;
- (i) The vitality of the state's motion picture industry as a necessary and critical factor in promoting the state as a premier tourist and cultural destination;
- (j) Giving preference to additional seasons of television series that have previously qualified;
- (k) Other factors the department may deem appropriate for the implementation of this chapter.

(2) The board of directors created under RCW 43.365.030 shall create and administer an account for carrying out the purposes of subsection (3) of this section.

(3) Money received by ~~an~~ *the* approved motion picture competitiveness program shall be used only for:

- (a) Health insurance and payments into a retirement plan, and other costs associated with film production; *and*
- (b) ~~a tax credit marketer to market the tax credits authorized under RCW 82.04.4489; and (c) S~~ taff and related expenses to maintain the program's proper administration and operation.

(4) *Except as provided otherwise in subsection (7) of this section, m* aximum funding assistance from ~~an~~ *the* approved motion picture competitiveness program is limited to an amount up to thirty percent of the total actual investment in the state of at least:

- (a) Five hundred thousand dollars for a single ~~feature film~~ *motion picture* produced in Washington state; *or*
- (b) ~~Three hundred thousand dollars per television episode produced in Washington state; or~~
- (c) ~~(e)~~ One hundred fifty thousand dollars for ~~an infomercial or a~~ television commercial associated with a national or regional advertisement campaign produced in Washington state.
- (5) *Except as provided otherwise in subsection (7) of this section, maximum funding assistance from the approved*

motion picture competitiveness program is limited to an amount up to thirty-five percent of the total actual investment of at least three hundred thousand dollars per episode produced in Washington state. A minimum of six episodes of a series must be produced to qualify under this subsection. A maximum of up to thirty percent of the total actual investment from the approved motion picture competitiveness program may be awarded to an episodic series of less than six episodes.

(6) With respect to costs associated with nonstate labor for motion pictures and episodic services, funding assistance from the approved motion picture competitiveness program is limited to an amount up to fifteen percent of the total actual investment used for costs associated with nonstate labor. To qualify under this subsection, the production must have a labor force of at least eighty-five percent of Washington residents. The board may establish additional criteria to maximize the use of in-state labor.

(7)(a) The approved motion picture competitiveness program may allocate an annual aggregate of no more than ten percent of the qualifying contributions by the program under RCW 82.04.4489 to provide funding support for filmmakers who are Washington residents, new forms of production, and emerging technologies.

(i) Up to thirty percent of the actual investment for a motion picture with an actual investment lower than that of motion pictures under subsection (4)(a) of this section; or

(ii) Up to thirty percent of the actual investment of an interactive motion picture intended for multiplatform exhibition and distribution.

(b) Subsections (4) and (5) of this section do not apply to this subsection.

(8) Funding assistance approval must be determined by the approved motion picture competitiveness program within a maximum of thirty calendar days from when the application is received, if the application is submitted after August 15, 2006.

Sec. 3 RCW 43.365.030 and 2008 c 85 s 2 are each amended to read as follows:

(1) A Washington motion picture competitiveness program under this chapter ~~shall~~ **must** be administered by a board of directors appointed by the governor, and the appointments ~~shall~~ **must** be made within sixty days following enactment. The department, after consulting with the board, ~~shall~~ **must** adopt rules for the standards that shall be used to evaluate the applications for funding assistance prior to June 30, 2006.

(2) The board ~~shall~~ **must** evaluate and award financial assistance to motion picture projects under rules set forth under RCW 43.365.020.

(3) The board ~~shall~~ **must** consist of the following members:

(a) One member representing the Washington motion picture production industry;

(b) One member representing the Washington motion picture postproduction industry;

(c) *One member representing the Washington interactive media or emerging motion picture industry;*

(d) Two members representing labor unions affiliated with Washington motion picture production;

~~(d)~~ (e) One member representing the Washington visitors and convention bureaus;

~~(e)~~ (f) One member representing the Washington tourism industry;

~~(f)~~ (g) One member representing the Washington restaurant, hotel, and airline industry; and

~~(g)~~ (h) A chairperson, chosen at large, ~~shall~~ **must** serve at the pleasure of the governor.

(4) The term of the board members, other than the chair, is four years, except as provided in subsection (5) of this section.

(5) The governor ~~shall~~ **must** appoint board members in 2010 to two-year or four-year staggered terms. Once the initial two-year or four-year terms expire, all subsequent terms ~~shall be~~ **are** for four years. The terms of the initial board members ~~shall be~~ **are** as follows:

(a) The board positions in subsection (3)(b), ~~(d), and (f)~~ (e), and (g) of this section, and one position from subsection (3) ~~(e)~~ (d) of this section ~~shall~~ **must** be appointed to two-year terms; and

(b) The remaining board positions in subsection (3) of this section shall be appointed to four-year terms.

(6) A board member appointed by the governor may be removed by the governor for cause under RCW 43.06.070 and 43.06.080.

(7) Five members of the board constitute a quorum.

(8) The board ~~shall~~ **must** elect a treasurer and secretary annually, and other officers as the board members determine necessary, and may adopt bylaws or rules for its own government.

(9) The board ~~shall~~ **must** make any information available at the request of the department to administer this chapter.

(10) Contributions received by a board ~~shall~~ **must** be deposited into the account described in RCW 43.365.020(2).

Sec. 4 RCW 82.04.4489 and 2008 c 85 s 3 are each amended to read as follows:

(1) Subject to the limitations in this section, a credit is allowed against the tax imposed under this chapter for contributions made by a person to a Washington motion picture competitiveness program.

(2) The person must make the contribution before claiming a credit authorized under this section. Credits earned under this section may be claimed against taxes due for the calendar year in which the contribution is made. The amount of credit claimed for a reporting period ~~shall~~ **may** not exceed the tax otherwise due under this chapter for that reporting period. No person may claim more than one million dollars of credit in any calendar year, including credit carried over from a previous calendar year. No refunds may be granted for any unused credits.

(3) The maximum credit that may be earned for each calendar year under this section for a person is limited to the lesser of one million dollars or an amount equal to one hundred percent of the contributions made by the person to a program during the calendar year.

(4) Except as provided under subsection (5) of this section, a tax credit claimed under this section may not be carried over to another year.

(5) Any amount of tax credit otherwise allowable under this section not claimed by the person in any calendar year may be carried over and claimed against the person's tax liability for the next succeeding calendar year. Any credit remaining unused in the next succeeding calendar year may be carried forward and claimed against the person's tax liability for the second succeeding calendar year; and any credit not used in that second succeeding calendar year may be carried over and claimed against the person's tax liability for the third succeeding calendar year, but may not be carried over for any calendar year thereafter.

(6) Credits are available on a first in-time basis. The department ~~shall~~ **must** disallow any credits, or portion thereof, that would cause the total amount of credits claimed under this section during any calendar year to exceed three million five hundred thousand dollars. If this limitation is reached, the department ~~shall~~ **must** notify all Washington motion picture competitiveness programs that the annual statewide limit has been met. In addition, the department ~~shall~~ **must** provide written notice to any person who has claimed tax credits in excess of the ~~three million five hundred thousand dollar~~ limitation in this subsection. The notice ~~shall~~ **must** indicate the amount of tax due and ~~shall~~ provide that the tax be paid within thirty days from the date of ~~such~~ **the** notice. The department ~~shall~~ **may** not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(7) To claim a credit under this section, a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format under this section is not filed until received by the department in an electronic format. As used in this subsection, "returns" has the same meaning as "return" in RCW 82.32.050.

(8) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section.

(9) A Washington motion picture competitiveness program ~~shall~~ **must** provide to the department, upon request, such information needed to verify eligibility for credit under this section, including information regarding contributions received by the program.

(10) The department ~~shall~~ **may** not allow any credit under this section before July 1, 2006.

(11) For the purposes of this section, "Washington motion picture competitiveness program" or "program" means an organization established pursuant to chapter 43.365 RCW.

(12) No credit may be earned for contributions made on or after July 1, ~~2011~~ **2017** .

Sec. 5 RCW 43.365.040 and 2009 c 518 s 14 are each amended to read as follows:

(1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how incentives are used.

(2) Each motion picture production receiving funding assistance under RCW 43.365.020 ~~shall~~ *must* report information to the department by filing a complete annual survey. The survey is due by March 31st of the year following any calendar year in which funding assistance under RCW 43.365.020 is taken. The department may extend the due date for timely filing of annual surveys under this section if failure to file was the result of circumstances beyond the control of the motion picture production receiving the funding assistance.

(3) ~~The survey shall include~~ *The Washington motion picture competitiveness program established in RCW 43.365.030, in collaboration with the department and the department of revenue, and in consultation with the joint legislative audit and review committee, must develop a survey form and instructions that accompany the survey form by November 1, 2012. The instructions must provide sufficient detail to ensure consistent reporting. The survey must be designed to acquire data to allow the state to better measure the effectiveness of the program and to provide transparency of the motion picture competitiveness program. The survey must include:*

(a) *The total amount of taxes paid;*

(b) *The amount of taxes paid classified by type, which may include, but is not limited to, sales taxes, use taxes, business and occupation taxes, unemployment insurance taxes, and workers' compensation premiums;*

(c) *The amount of funding assistance received* ~~The survey shall also include~~ *;* ~~and~~

(d) *The following information for employment positions in Washington by the motion picture production receiving funding assistance, including indirect employment by contractors or other affiliates:*

~~(a)~~ (i) *The number of total employment positions;*

~~(b)~~ *Full-time, part-time, and temporary employment positions as a percent of total employment;*

~~(c)~~ *The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and*

~~(d)~~ (ii) *The average number of hours worked by employed individuals;*

(iii) *The average base pay of individuals employed by motion picture companies, including contributions to health care benefits and retirement plans;*

(iv) *The number of employment positions that have employer-provided medical, dental, and retirement benefits* ~~by each of the wage bands~~ *;* ~~and~~

(v) *The number of employment positions filled by Washington state residents, and residency information for employment positions filled by people from other locations* .

(4) The department may request additional information necessary to measure the results of the funding assistance program, to be submitted at the same time as the survey.

(5) If a person fails to submit an annual survey under subsection (2) of this section by the due date of the report or any extension the department ~~shall~~ *must* declare the amount of funding assistance for the previous calendar year to be immediately due and payable. The department ~~shall~~ *must* assess interest, but not penalties, on the amounts due under this section. The interest ~~shall be~~ *is* assessed at the rate provided for delinquent taxes under chapter 82.32 RCW, retroactively to the date the funding assistance was received, and ~~shall~~ *accrue* ~~s~~ until the funding assistance is repaid.

(6) The department ~~shall~~ *must* use the information from this section to prepare summary descriptive statistics. The department ~~shall~~ *must* report these statistics to the legislature each even-numbered year by September 1st. The department ~~shall~~ *must* provide the complete annual surveys to the joint legislative audit and review committee.

(7) The motion picture competitiveness program must monitor the survey information submitted by production companies for completeness and accuracy.

Passed by the Senate February 14, 2012.

Passed by the House March 8, 2012.

Approved by the Governor March 29, 2012.

Filed in Office of Secretary of State March 29, 2012.