

HOUSE BILL No. 1070

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-32.3.

Synopsis: Film and media production rebate. Authorizes the Indiana economic development corporation (IEDC) to approve and issue a film and media production expenditure rebate (rebate) to a qualified applicant that proposes to make a qualified production expenditure of at least \$500,000 in Indiana. Requires the IEDC to enter into an agreement with a qualified applicant for the rebate, and specifies the terms that must be in the agreement. Establishes the criteria for approving a rebate and the procedures for claiming a rebate. Provides that the IEDC may not issue a rebate to a qualified applicant after December 31, 2025.

Effective: January 1, 2019 (retroactive).

**Frizzell, Karickhoff, Mahan,
Hatfield**

January 3, 2019, read first time and referred to Committee on Ways and Means.



First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1070

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3.1-32.3 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2019 (RETROACTIVE)]:

4 **Chapter 32.3. Indiana Film and Media Production Expenditure**
5 **Rebate**

6 **Sec. 1. As used in this chapter, "corporation" refers to the**
7 **Indiana economic development corporation.**

8 **Sec. 2. As used in this chapter, "Film Indiana" refers to the state**
9 **agency that provides support for the film, television, commercial,**
10 **and news media industries.**

11 **Sec. 3. As used in this chapter, "qualified applicant" means a**
12 **person, corporation, partnership, limited liability partnership,**
13 **limited liability company, or other entity that is engaged in the**
14 **business of making a qualified media production in Indiana.**

15 **Sec. 4. As used in this chapter, "qualified Indiana resident"**
16 **means an individual who:**

17 **(1) maintains a dwelling in Indiana as the individual's**



1 principal place of residence and is present in Indiana for not
2 less than six (6) months during the year; and

3 (2) has signed a declaration of residency that certifies that the
4 individual has maintained a dwelling in Indiana as the
5 individual's principal place of residence for not less than six
6 (6) months immediately preceding the production start date
7 for the applicable qualified media production.

8 Sec. 5. (a) As used in this chapter, "qualified media production"
9 refers to the following for which at least fifty percent (50%) of the
10 total incurred expenses for production are qualified production
11 expenditures:

12 (1) A feature length film, including an independent or studio
13 production, or a documentary.

14 (2) A television episodic series, program, or feature.

15 (3) A digital media production that is intended for reasonable
16 commercial exploitation.

17 (4) A music video, video game, or game show.

18 (5) An advertising message, except for political advertising,
19 that is intended to be distributed in any media form.

20 (6) An educational media production, provided that the
21 educational media production is not produced primarily for
22 industrial or corporate purposes.

23 (b) The term does not include the following:

24 (1) Television coverage of:

25 (A) athletic events;

26 (B) news; or

27 (C) current events.

28 (2) Programs that include weather reports or financial reports
29 as a material portion of the program.

30 (3) Talk shows in which a host interviews or talks with guests.

31 (4) Awards shows or gala productions.

32 (5) Any production that is intended to solicit donations, other
33 than donations that are:

34 (A) deductible, in whole or in part, for federal income tax
35 purposes; or

36 (B) solicited as funding for a project or business venture.

37 (6) Any political advertising message.

38 (7) A production produced primarily for industrial or
39 corporate purposes.

40 (8) A production in any medium that is obscene (under the
41 standard set forth in IC 35-49-2-1).

42 Sec. 6. (a) As used in this chapter, "qualified production



1 expenditure" means any of the following expenses incurred in
 2 Indiana or expenditures in Indiana that are made in the direct
 3 production (including the direct preproduction and direct
 4 postproduction) of a qualified media production in Indiana:

5 (1) Acquisition costs for locations, facilities, offices,
 6 equipment, and vehicles.

7 (2) Acquisition costs for sets, production props, wardrobes,
 8 special effects, and accessories.

9 (3) Expenditures for materials used to make sets, production
 10 props, wardrobes, special effects, and accessories.

11 (4) Expenditures for photography, sound synchronization,
 12 film processing, digital imaging, lighting, and related services.

13 (5) Expenditures for editing, visual effects, sound mixing,
 14 composing, animation, music supervision, and related
 15 services.

16 (6) Food and lodging.

17 (7) Expenditures for travel within Indiana at a rate that is not
 18 more than the Internal Revenue Service standard mileage
 19 rate used to calculate the deductible costs of operating an
 20 automobile for business.

21 (8) Airfare travel expenditures incurred to transport cast
 22 members and crew members to and from Indiana.

23 (9) Legal services, if purchased from an attorney admitted to
 24 the Indiana bar.

25 (10) Accounting services, if purchased from a certified public
 26 accountant licensed in Indiana.

27 (11) Shipping costs when originating from a location in
 28 Indiana.

29 (12) Receiving costs when a shipment is received at a location
 30 in Indiana.

31 (13) Any other production expenditure for which taxes are
 32 assessed or imposed by the state.

33 (14) The payment of wages, salaries, and benefits to qualified
 34 Indiana residents.

35 (15) Expenditures for skilled workforce training of crew
 36 members who are qualified Indiana residents.

37 (16) Financing fees, if the entity charging the fees is a financial
 38 institution (as defined in IC 5-13-4-10) in Indiana.

39 (17) The payment of student internships, if the student who
 40 receives the internship payment is enrolled at a state
 41 educational institution (as defined in IC 21-7-13-32).

42 (b) The term does not include the following expenditures:



1 (1) Expenditures for tangible personal property acquired in
 2 a transaction outside Indiana, even if the property is subject
 3 to the use tax under IC 6-2.5-3.

4 (2) The payment of wages, salaries, and benefits to an
 5 individual who is not a qualified Indiana resident.

6 (3) The payment of penalties or fines.

7 (4) The performance of services or the conveyance of property
 8 in an in kind exchange.

9 (5) Any production expenditures for tangible personal
 10 property or services that are acquired from a business (or an
 11 agent of a business) that does not maintain a physical
 12 presence in Indiana.

13 (6) Expenditures for cellular telephone service.

14 (7) Marketing and advertising costs.

15 (8) Any expenses that are incurred after the qualified media
 16 production becomes commercially available to the general
 17 public.

18 Sec. 7. (a) A qualified applicant that proposes to incur or make
 19 a qualified production expenditure of at least five hundred
 20 thousand dollars (\$500,000) in Indiana may apply to the
 21 corporation for approval of a rebate from the corporation under
 22 this chapter. An application must be submitted before incurring or
 23 making the qualified production expenditures.

24 (b) The corporation shall prescribe the form of the application.

25 Sec. 8. A rebate approved by the corporation under this chapter
 26 is equal to the product of:

27 (1) the amount of the applicant's qualified production
 28 expenditures in the taxable year; multiplied by

29 (2) the percentage determined by the corporation under
 30 section 9 of this chapter.

31 Sec. 9. (a) The corporation shall review an application
 32 submitted under section 7 of this chapter not later than thirty (30)
 33 days after the application is received.

34 (b) An applicant for a rebate shall pay an application fee of two
 35 hundred dollars (\$200) to the corporation at the time an
 36 application is submitted.

37 (c) After receiving and reviewing an application, the
 38 corporation may enter into an agreement with the applicant for a
 39 rebate under this chapter if the corporation determines that:

40 (1) the applicant's proposed qualified media production:

41 (A) is economically viable; and

42 (B) will increase economic growth and job creation in



- 1 **Indiana; and**
 2 **(2) the applicant's proposed qualified media production and**
 3 **qualified production expenditures otherwise satisfy the**
 4 **requirements of this chapter.**
 5 **(d) The corporation shall consult with Film Indiana in making**
 6 **the decision to enter into an agreement with an applicant under**
 7 **subsection (c).**
 8 **(e) If the corporation and an applicant enter into an agreement**
 9 **under this section, the agreement must contain at least the**
 10 **following provisions:**
 11 **(1) The percentage to be used under section 8(2) of this**
 12 **chapter in determining the amount of the rebate. The**
 13 **percentage amount may not be more than:**
 14 **(A) thirty-five percent (35%), in the case of qualified**
 15 **production expenditures for:**
 16 **(i) skilled workforce training described in section**
 17 **6(a)(15) of this chapter; or**
 18 **(ii) the payment of student internships described in**
 19 **section 6(a)(17) of this chapter;**
 20 **(B) thirty percent (30%), in the case of qualified**
 21 **production expenditures for the payment of wages,**
 22 **salaries, and benefits described in section 6(a)(14) of this**
 23 **chapter; or**
 24 **(C) twenty percent (20%), in the case of all other qualified**
 25 **production expenditures described in section 6(a) of this**
 26 **chapter.**
 27 **(2) The following conditions that the applicant must satisfy**
 28 **before the applicant may claim the rebate:**
 29 **(A) The applicant must certify that the applicant has not**
 30 **engaged in the production of obscene material (under the**
 31 **standard set forth in IC 35-49-2-1).**
 32 **(B) In the case of a production of a feature length film or**
 33 **episodic series, the principal photography for the**
 34 **production must commence not later than one hundred**
 35 **twenty (120) days after the applicant receives a letter of**
 36 **intent for financing of the production.**
 37 **(C) In the case of a production of an advertising message,**
 38 **the principal photography for the production must**
 39 **commence not later than forty-five (45) days after the**
 40 **applicant receives a letter of intent for financing of the**
 41 **production.**
 42 **(3) The following obligations of the applicant:**



- 1 (A) The applicant must agree to comply with applicable
 2 state and federal laws during the course of the production,
 3 including:
- 4 (i) the federal Fair Labor Standards Act of 1938, as
 5 amended (29 U.S.C. 201 et seq.);
 - 6 (ii) the state minimum wage law under IC 22-2-2;
 - 7 (iii) worker's compensation system requirements under
 8 IC 22-3-5 and IC 22-3-7; and
 - 9 (iv) unemployment compensation system requirements
 10 under IC 22-4-1 through IC 22-4-39.5.
- 11 (B) The applicant must agree to place in the credits of the
 12 production (if the production contains credits):
- 13 (i) a statement indicating "filmed in Indiana"; and
 - 14 (ii) the logo of Film Indiana.
- 15 (C) The applicant must agree to submit to Film Indiana a
 16 viewable copy of the final qualified media production not
 17 later than ten (10) days after the production is complete
 18 and is commercially available to the general public.
- 19 (D) The applicant must agree to provide Film Indiana with
 20 specified promotional material for the qualified media
 21 production (such as photos, trailer scenes, and poster art).
 22 In addition, the applicant must agree to convey to Film
 23 Indiana a copyright license that permits Film Indiana to
 24 use the promotional material for archival purposes,
 25 governmental relations purposes, and marketing purposes.
- 26 (4) The following consents to civil process and procedures in
 27 Indiana:
- 28 (A) The applicant must consent that the applicant (and any
 29 successor in interest in any part of the applicant) will be
 30 subject to the jurisdiction of Indiana courts.
 - 31 (B) The applicant must consent that service of process in
 32 accordance with the Indiana Rules of Trial Procedure is
 33 proper service and subjects the applicant (and any
 34 successor in interest in any part of the applicant) to the
 35 jurisdiction of Indiana courts.
 - 36 (C) The applicant must consent that any civil action
 37 related to the provisions of this chapter in which the
 38 applicant (or any successor in interest in any part of the
 39 applicant) is a party will be heard in an Indiana court.
- 40 (f) Not later than ten (10) days after the corporation and an
 41 applicant enter into an agreement under this section, the applicant
 42 shall pay a final administrative review fee to the corporation. The



1 amount of the fee is:

- 2 (1) one thousand dollars (\$1,000), in the case of a qualified
 3 media production that is a feature length film; or
 4 (2) five hundred dollars (\$500), in the case of all other
 5 qualified media productions.

6 Sec. 10. (a) A qualified applicant that has entered into an
 7 agreement with the corporation under section 9 of this chapter
 8 may file a claim for a rebate with the corporation as set forth
 9 under this section.

10 (b) A qualified applicant shall provide the corporation with any
 11 information necessary to determine the qualified applicant's
 12 compliance with the terms of the qualified applicant's agreement
 13 with the corporation and the amount of the rebate to which the
 14 qualified applicant is entitled under this chapter.

15 (c) A qualified applicant must also submit a digital copy of the
 16 completed qualified media production with the qualified
 17 applicant's claim for a rebate under this section.

18 (d) A rebate may not be issued by the corporation under this
 19 section after December 31, 2025.

20 (e) The corporation may adopt guidelines and prescribe forms
 21 necessary to implement this section.

22 Sec. 11. (a) A qualified applicant may assign the qualified
 23 applicant's right to receive a rebate to which the qualified
 24 applicant is entitled under this chapter.

25 (b) A right to receive a rebate that is assigned under this section
 26 remains subject to the qualified applicant's agreement with the
 27 corporation under section 9 of this chapter and the provisions of
 28 this chapter.

29 (c) An assignment under this section must be in writing and
 30 signed by contracting parties to the assignment.

31 (d) If the right to receive a rebate is assigned under this section,
 32 the qualified applicant must report the assignment to the
 33 corporation and provide the corporation with a copy of the written
 34 assignment not later than ten (10) days after the assignment is
 35 made.

36 Sec. 12. If an applicant (or any successor in interest in any part
 37 of the applicant) fails to satisfy any condition of this chapter or any
 38 condition or obligation in an agreement under section 9 of this
 39 chapter, the corporation may take any of the following actions:

- 40 (1) Reject all or part of the applicant's (or the applicant's
 41 successor's) claim for a rebate under this chapter.
 42 (2) Rescind the issuance of a rebate to the applicant (or to the



1 applicant's successor) under this chapter.
2 **(3) Recapture all or a part of the rebate issued to the**
3 **applicant (or to the applicant's successor) under this chapter.**
4 **Sec. 13. This chapter expires January 1, 2027.**
5 SECTION 2. [EFFECTIVE JANUARY 1, 2019] **(a) IC 6-3.1-32.3,**
6 **as added by this act, applies to qualified production expenditures**
7 **made after December 31, 2018.**
8 **(b) This SECTION expires January 1, 2021.**
9 SECTION 3. **An emergency is declared for this act.**

