

# SENATE BILL No. 323

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-33-5-13.5; IC 5-33-7.

**Synopsis:** Music production incentive program. Authorizes the Indiana destination development corporation (corporation) to employ a music commissioner. Authorizes the corporation to establish a music production incentive program. Requires the corporation, in coordination with the office of management and budget, to provide a report to the interim study committee on fiscal policy concerning: (1) music production incentives offered in other states; and (2) a recommendation on the type of incentive that should be offered in Indiana.

**Effective:** July 1, 2021.

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January 14, 2021, read first time and referred to Committee on Appropriations.

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First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## SENATE BILL No. 323

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 5-33-5-13.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2021]: **Sec. 13.5. The corporation may employ a music  
4 commissioner and other necessary staff to perform duties as  
5 directed that relate to a music production incentive program.**  
6 SECTION 2. IC 5-33-7 IS ADDED TO THE INDIANA CODE AS  
7 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
8 1, 2021]:  
9 **Chapter 7. Indiana Music Production Incentive Program**  
10 **Sec. 1. As used in this chapter, "Music Indiana" refers to the  
11 program administered by the corporation that provides support  
12 for the music industry.**  
13 **Sec. 2. As used in this chapter, "program" refers to an Indiana  
14 music production incentive program established under section 7 of  
15 this chapter.**  
16 **Sec. 3. As used in this chapter, "qualified applicant" means a  
17 person, corporation, partnership, limited liability partnership,**



1 limited liability company, or other entity that is engaged in the  
2 business of making a qualified music production in Indiana.

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

5 (1) maintains a dwelling in Indiana as the individual's  
6 principal place of residence and is present in Indiana for not  
7 less than six (6) months during the year; and

8 (2) has signed a declaration of residency that certifies that the  
9 individual has maintained a dwelling in Indiana as the  
10 individual's principal place of residence for not less than six  
11 (6) months immediately preceding the production start date  
12 for the applicable qualified music production.

13 Sec. 5. (a) As used in this chapter, "qualified music production"  
14 refers to the following for which at least fifty percent (50%) of the  
15 total incurred expenses for production are qualified music  
16 production expenditures:

17 (1) A touring music production, concert tour, musical, or  
18 opera that has its initial live public performance in the United  
19 States in Indiana.

20 (2) Music recorded in Indiana fixed on any delivery system,  
21 including compact disc, videotape, computer disk, laser disc,  
22 vinyl record, cassette tape, or any digital format.

23 (3) A music video.

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

25 (1) Awards shows or gala music productions.

26 (2) Any music production that is intended to solicit donations,  
27 other than donations that are:

28 (A) deductible, in whole or in part, for federal income tax  
29 purposes; or

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

31 (3) Any political advertising message.

32 (4) A music production produced primarily for industrial or  
33 corporate purposes.

34 (5) A music production in any medium that is obscene (under  
35 the standard set forth in IC 35-49-2-1).

36 Sec. 6. (a) As used in this chapter, "qualified music production  
37 expenditure" means any of the following expenses incurred in  
38 Indiana or expenditures in Indiana that are made in the direct  
39 production (including the direct preproduction and direct  
40 postproduction) of a qualified music production in Indiana:

41 (1) Acquisition costs for locations, facilities, offices, and  
42 equipment.



- 1           **(2) Acquisition costs for sets, production props, wardrobes,**  
2           **special effects, and accessories.**
- 3           **(3) Expenditures for materials used to make and operate sets,**  
4           **production props, wardrobes, special effects, and accessories.**
- 5           **(4) Expenditures for sound synchronization, lighting, and**  
6           **related services.**
- 7           **(5) Expenditures for editing, visual effects, sound mixing,**  
8           **composing, animation, music supervision, and related**  
9           **services.**
- 10          **(6) Food and lodging.**
- 11          **(7) Expenditures for travel within Indiana at a rate that is not**  
12          **more than the Internal Revenue Service standard mileage**  
13          **rate used to calculate the deductible costs of operating an**  
14          **automobile for business.**
- 15          **(8) Commercial airfare travel expenditures incurred to**  
16          **transport cast members and crew members to and from**  
17          **Indiana.**
- 18          **(9) Legal services, if purchased from an attorney admitted to**  
19          **the Indiana bar.**
- 20          **(10) Accounting services, if purchased from a certified public**  
21          **accountant licensed in Indiana.**
- 22          **(11) Shipping costs when originating from a location in**  
23          **Indiana.**
- 24          **(12) Receiving costs when a shipment is received at a location**  
25          **in Indiana.**
- 26          **(13) Any other production expenditure for which taxes are**  
27          **assessed or imposed by the state.**
- 28          **(14) The total sum expended on wages, salaries, and benefits.**  
29          **Expenses under this subdivision do not include expenses**  
30          **described in subdivision (15) or (17).**
- 31          **(15) Expenditures for skilled workforce training of crew**  
32          **members who are qualified Indiana residents.**
- 33          **(16) Financing fees, if the entity charging the fees is a financial**  
34          **institution (as defined in IC 5-13-4-10) in Indiana.**
- 35          **(17) The payment of student internships, if the student who**  
36          **receives the internship payment is enrolled at a state**  
37          **educational institution (as defined in IC 21-7-13-32).**
- 38          **(18) Expenditures for acquisition of rights to a story or story**  
39          **material and scripts.**
- 40          **(19) Acquisition costs and expenditures for:**  
41                **(A) vehicles that are to be directly used as part of the**  
42                **qualified music production; and**



- 1           **(B) the leasing or rental of vehicles.**  
 2           **(b) The term does not include the following expenses or**  
 3 **expenditures:**  
 4           **(1) Expenditures for tangible personal property acquired in**  
 5 **a transaction outside Indiana, even if the property is subject**  
 6 **to the use tax under IC 6-2.5-3.**  
 7           **(2) The payment of penalties or fines.**  
 8           **(3) The performance of services or the conveyance of property**  
 9 **in an in-kind exchange.**  
 10           **(4) Any production expenditures for tangible personal**  
 11 **property or services that are acquired from a business (or an**  
 12 **agent of a business) that does not maintain a physical**  
 13 **presence in Indiana.**  
 14           **(5) Expenditures for cellular telephone service.**  
 15           **(6) Marketing and advertising costs.**  
 16           **(7) Any expenses that are incurred after the qualified music**  
 17 **production becomes commercially available to the general**  
 18 **public.**  
 19           **(8) Airfare travel expenditures for private or chartered**  
 20 **aircraft.**  
 21           **(9) Acquisition costs of vehicles that are not to be directly**  
 22 **used as part of the qualified music production.**  
 23           **Sec. 7. (a) The corporation may establish an Indiana music**  
 24 **production incentive program. Beginning July 1, 2022, and subject**  
 25 **to subsection (c), a qualified applicant that proposes to incur or**  
 26 **make qualified music production expenditures totaling at least:**  
 27           **(1) in the case of a qualified music production described in**  
 28 **section 5(a)(1) of this chapter, five hundred thousand dollars**  
 29 **(\$500,000); or**  
 30           **(2) in the case of a qualified music production described in**  
 31 **section 5(a)(2) and 5(a)(3) of this chapter, seventy-five**  
 32 **thousand dollars (\$75,000);**  
 33 **in Indiana may apply to the corporation for approval of an**  
 34 **incentive under the program from the corporation under this**  
 35 **chapter. An application must be submitted before incurring or**  
 36 **making the qualified music production expenditures.**  
 37           **(b) The corporation shall prescribe the form of the application.**  
 38           **(c) In the case of a qualified music production described in**  
 39 **section 5(a)(1) of this chapter, a qualified applicant must provide**  
 40 **a confirmation that the qualified applicant is seeking a valid**  
 41 **completion bond for the project.**  
 42           **Sec. 8. (a) The corporation shall review an application**



1 submitted under section 7 of this chapter not later than thirty (30)  
2 days after the application is received.

3 (b) An applicant for an incentive under the program shall pay  
4 an application fee in an amount determined by the corporation at  
5 the time an application is submitted. Application fees must be used  
6 by the corporation toward paying the compensation of the music  
7 commissioner and any necessary staff employed by the corporation  
8 under IC 5-33-5-14.

9 (c) After receiving and reviewing an application, the  
10 corporation may enter into an agreement with an applicant for an  
11 incentive under the program under this chapter if the corporation  
12 determines that:

13 (1) the applicant's proposed qualified music production:

14 (A) is economically viable; and

15 (B) will increase economic growth and job creation in  
16 Indiana; and

17 (2) the applicant's proposed qualified music production and  
18 qualified production expenditures otherwise satisfy the  
19 requirements of this chapter.

20 (d) The corporation shall consult with Music Indiana in making  
21 the decision to enter into an agreement with an applicant under  
22 subsection (c).

23 (e) If the corporation and an applicant enter into an agreement  
24 under this section, the agreement must contain at least the  
25 following provisions:

26 (1) The following conditions that the applicant must satisfy  
27 before the applicant may claim an incentive under the  
28 program:

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 qualified music production for which  
33 an application for an incentive under the program is  
34 submitted before January 1, 2023, production must  
35 commence not later than one hundred twenty (120) days  
36 after the applicant and the corporation enter into an  
37 agreement.

38 (C) In the case of a qualified music production for which  
39 an application for an incentive under the program is  
40 submitted after December 31, 2022, production must  
41 commence not later than ninety (90) days after the  
42 applicant and the corporation enter into an agreement.



- 1                   **(D) In the case of a qualified music production described**  
 2                   **in section 5(a)(1) and 5(a)(3) of this chapter, the applicant**  
 3                   **has obtained a completion bond for the project.**
- 4                   **(2) The following obligations of the applicant:**
- 5                   **(A) The applicant must agree to comply with applicable**  
 6                   **state and federal laws during the course of the production,**  
 7                   **including:**
- 8                         **(i) the federal Fair Labor Standards Act of 1938, as**  
 9                         **amended (29 U.S.C. 201 et seq.);**
- 10                        **(ii) the state minimum wage law under IC 22-2-2;**  
 11                        **(iii) worker's compensation system requirements under**  
 12                        **IC 22-3-5 and IC 22-3-7; and**
- 13                        **(iv) unemployment compensation system requirements**  
 14                        **under IC 22-4-1 through IC 22-4-39.5.**
- 15                   **(B) The applicant must agree to place in the credits or the**  
 16                   **liner notes of the qualified music production (if the**  
 17                   **production contains credits):**
- 18                         **(i) a statement indicating "performed in Indiana" or**  
 19                         **"recorded in Indiana"; and**
- 20                         **(ii) the logo of Music Indiana.**
- 21                   **(C) The applicant that is recording music in Indiana must**  
 22                   **agree to submit to Music Indiana a copy of the final**  
 23                   **qualified music production not later than ten (10) days**  
 24                   **after the production is complete and is commercially**  
 25                   **available to the general public.**
- 26                   **(D) The applicant must agree to provide Music Indiana**  
 27                   **with specified promotional material for the qualified music**  
 28                   **production (such as photos and poster art). In addition, the**  
 29                   **applicant must agree to convey to Music Indiana a**  
 30                   **copyright license that permits Music Indiana to use the**  
 31                   **promotional material for archival purposes, government**  
 32                   **relations purposes, and marketing purposes.**
- 33                   **(E) The applicant must agree to the review and audit of the**  
 34                   **qualified production expenditures by the music**  
 35                   **commissioner. The music commissioner may determine**  
 36                   **whether the qualified production expenditures were**  
 37                   **reasonable.**
- 38                   **(3) The following consents to civil process and procedures in**  
 39                   **Indiana:**
- 40                         **(A) The applicant must consent that the applicant (and any**  
 41                         **successor in interest in any part of the applicant) will be**  
 42                         **subject to the jurisdiction of Indiana courts.**



1           **(B) The applicant must consent that service of process in**  
2           **accordance with the Indiana Rules of Trial Procedure is**  
3           **proper service and subjects the applicant (and any**  
4           **successor in interest in any part of the applicant) to the**  
5           **jurisdiction of Indiana courts.**

6           **(C) The applicant must consent that any civil action**  
7           **related to the provisions of this chapter in which the**  
8           **applicant (or any successor in interest in any part of the**  
9           **applicant) is a party will be heard in an Indiana court.**

10          **(f) Not later than ten (10) days after the corporation and an**  
11          **applicant enter into an agreement under this section, the applicant**  
12          **shall pay a final administrative review fee to the corporation in an**  
13          **amount determined by the corporation. Final administrative**  
14          **review fees must be used by the corporation toward paying the**  
15          **compensation of the music commissioner and any necessary staff**  
16          **employed by the corporation under IC 5-33-5-14.**

17          **Sec. 9. Incentives under the program are subject to**  
18          **appropriations to the program by the general assembly. If funds**  
19          **have not been appropriated for the program by the general**  
20          **assembly, the corporation shall refund an applicant's application**  
21          **fees and final administrative review fees.**

22          **Sec. 10. (a) A qualified applicant that has entered into an**  
23          **agreement with the corporation under section 8 of this chapter**  
24          **may file a claim for an incentive under the program with the**  
25          **corporation as set forth under this section.**

26          **(b) A qualified applicant shall provide the corporation with any**  
27          **information necessary, including any information considered**  
28          **necessary by the music commissioner, to determine the qualified**  
29          **applicant's compliance with the terms of the qualified applicant's**  
30          **agreement with the corporation and the incentive under the**  
31          **program to which the qualified applicant is entitled under this**  
32          **chapter.**

33          **(c) A qualified applicant must also submit a digital copy of the**  
34          **completed qualified music production with the qualified**  
35          **applicant's claim for an incentive under this section.**

36          **(d) An incentive under the program may not be issued by the**  
37          **corporation under this section after December 31, 2027.**

38          **(e) The corporation may adopt guidelines and prescribe forms**  
39          **necessary to implement this section.**

40          **Sec. 11. (a) A qualified applicant may assign the qualified**  
41          **applicant's right to receive an incentive under the program to**  
42          **which the qualified applicant is entitled under this chapter.**





1           (b) A right to receive an incentive under the program that is  
2 assigned under this section remains subject to the qualified  
3 applicant's agreement with the corporation under section 8 of this  
4 chapter and the provisions of this chapter.

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

7           (d) If the right to receive an incentive under the program is  
8 assigned under this section, the qualified applicant must report the  
9 assignment to the corporation and provide the corporation with a  
10 copy of the written assignment not later than ten (10) days after the  
11 assignment is made.

12           Sec. 12. If an applicant (or any successor in interest in any part  
13 of the applicant) fails to satisfy any condition of this chapter or any  
14 condition or obligation in an agreement under section 8 of this  
15 chapter, or if the conditions in section 10 of this chapter are not  
16 satisfied, the corporation may take any of the following actions:

17           (1) Reject all or part of the applicant's (or the applicant's  
18 successor's) claim for an incentive under this chapter.

19           (2) Rescind the issuance of an incentive under the program to  
20 the applicant (or to the applicant's successor) under this  
21 chapter.

22           (3) Recapture all or a part of the incentive under the program  
23 issued to the applicant (or to the applicant's successor) under  
24 this chapter.

25           Sec. 13. This chapter expires January 1, 2029.

26           SECTION 3. [EFFECTIVE JULY 1, 2021] (a) Before October 1,  
27 2021, and subject to subsection (b), the Indiana destination  
28 development corporation, in coordination with the office of  
29 management and budget, shall prepare a detailed report  
30 concerning music production incentives and provide the report to  
31 the interim study committee on fiscal policy established by  
32 IC 2-5-1.3-4. The report must be in an electronic format under  
33 IC 5-14-6.

34           (b) The report required under subsection (a) must include at  
35 least the following information:

36           (1) Information concerning music production incentives  
37 offered in all other states.

38           (2) Information concerning the effectiveness of music  
39 production incentives offered in all other states.

40           (3) A recommendation on the type of incentive Indiana should  
41 offer in order to be competitive with other states, including:

42           (A) the amount of incentive that should be offered;



- 1           **(B) the types of productions that should be incentivized;**
- 2           **(C) the types of production expenditures that should be**
- 3           **considered qualified for purposes of an incentive;**
- 4           **(D) the minimum amount of expenditures that should be**
- 5           **required in order to be eligible for an incentive; and**
- 6           **(E) the maximum amount of incentives that should be**
- 7           **offered per state fiscal year.**
- 8           **(c) This SECTION expires July 1, 2024.**

