



February 5, 2021

SENATE BILL No. 323

DIGEST OF SB 323 (Updated February 4, 2021 11:03 am - DI 120)

Citations Affected: IC 5-33; noncode.

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.

**Busch, Holdman, Perfect, Zay,
Buchanan, Melton, Niezgodski, Crane,
Niemeyer**

January 14, 2021, read first time and referred to Committee on Appropriations.
February 4, 2021, amended, reported favorably — Do Pass.

SB 323—LS 6896/DI 138



February 5, 2021

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,**

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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) The total sum expended on wages, salaries, and benefits.**
 11 **Expenses under this subdivision do not include expenses**
 12 **described in subdivision (7) or (8).**
 13 **(7) Expenditures for skilled workforce training of crew**
 14 **members who are qualified Indiana residents.**
 15 **(8) The payment of student internships, if the student who**
 16 **receives the internship payment is enrolled at a state**
 17 **educational institution (as defined in IC 21-7-13-32).**
 18 **(b) The term does not include the following expenses or**
 19 **expenditures:**
 20 **(1) Expenditures for tangible personal property acquired in**
 21 **a transaction outside Indiana, even if the property is subject**
 22 **to the use tax under IC 6-2.5-3.**
 23 **(2) The payment of penalties or fines.**
 24 **(3) The performance of services or the conveyance of property**
 25 **in an in-kind exchange.**
 26 **(4) Any production expenditures for tangible personal**
 27 **property or services that are acquired from a business (or an**
 28 **agent of a business) that does not maintain a physical**
 29 **presence in Indiana.**
 30 **(5) Expenditures for cellular telephone service.**
 31 **(6) Marketing and advertising costs.**
 32 **(7) Any expenses that are incurred after the qualified music**
 33 **production becomes commercially available to the general**
 34 **public.**
 35 **(8) Airfare travel expenditures for private or chartered**
 36 **aircraft.**
 37 **(9) Acquisition costs of vehicles that are not to be directly**
 38 **used as part of the qualified music production.**
 39 **Sec. 7. (a) The corporation may establish an Indiana music**
 40 **production incentive program. Beginning July 1, 2022, and subject**
 41 **to subsection (c), a qualified applicant that proposes to incur or**
 42 **make qualified music production expenditures totaling at least:**



1 (1) in the case of a qualified music production described in
 2 section 5(a)(1) of this chapter, five hundred thousand dollars
 3 (\$500,000); or

4 (2) in the case of a qualified music production described in
 5 section 5(a)(2) and 5(a)(3) of this chapter, seventy-five
 6 thousand dollars (\$75,000);

7 in Indiana may apply to the corporation for approval of an
 8 incentive under the program from the corporation under this
 9 chapter. An application must be submitted before incurring or
 10 making the qualified music production expenditures.

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

12 (c) In the case of a qualified music production described in
 13 section 5(a)(1) of this chapter, a qualified applicant must provide
 14 a confirmation that the qualified applicant is seeking a valid
 15 completion bond for the project.

16 Sec. 8. (a) The corporation shall review an application
 17 submitted under section 7 of this chapter not later than thirty (30)
 18 days after the application is received.

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

25 (c) After receiving and reviewing an application, the
 26 corporation may enter into an agreement with an applicant for an
 27 incentive under the program under this chapter if the corporation
 28 determines that:

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

30 (A) is economically viable; and

31 (B) will increase economic growth and job creation in
 32 Indiana; and

33 (2) the applicant's proposed qualified music production and
 34 qualified production expenditures otherwise satisfy the
 35 requirements of this chapter.

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

39 (e) If the corporation and an applicant enter into an agreement
 40 under this section, the agreement must contain at least the
 41 following provisions:

42 (1) The following conditions that the applicant must satisfy



1 before the applicant may claim an incentive under the
2 program:

3 (A) The applicant must certify that the applicant has not
4 engaged in the production of obscene material (under the
5 standard set forth in IC 35-49-2-1).

6 (B) In the case of a qualified music production for which
7 an application for an incentive under the program is
8 submitted before January 1, 2023, production must
9 commence not later than one hundred twenty (120) days
10 after the applicant and the corporation enter into an
11 agreement.

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

17 (D) In the case of a qualified music production described
18 in section 5(a)(1) and 5(a)(3) of this chapter, the applicant
19 has obtained a completion bond for the project.

20 (2) The following obligations of the applicant:

21 (A) The applicant must agree to comply with applicable
22 state and federal laws during the course of the production,
23 including:

24 (i) the federal Fair Labor Standards Act of 1938, as
25 amended (29 U.S.C. 201 et seq.);

26 (ii) the state minimum wage law under IC 22-2-2;

27 (iii) worker's compensation system requirements under
28 IC 22-3-5 and IC 22-3-7; and

29 (iv) unemployment compensation system requirements
30 under IC 22-4-1 through IC 22-4-39.5.

31 (B) The applicant must agree to place in the credits or the
32 liner notes of the qualified music production (if the
33 production contains credits):

34 (i) a statement indicating "performed in Indiana" or
35 "recorded in Indiana"; and

36 (ii) the logo of Music Indiana.

37 (C) The applicant that is recording music in Indiana must
38 agree to submit to Music Indiana a copy of the final
39 qualified music production not later than ten (10) days
40 after the production is complete and is commercially
41 available to the general public.

42 (D) The applicant must agree to provide Music Indiana



1 with specified promotional material for the qualified music
 2 production (such as photos and poster art). In addition, the
 3 applicant must agree to convey to Music Indiana a
 4 copyright license that permits Music Indiana to use the
 5 promotional material for archival purposes, government
 6 relations purposes, and marketing purposes.

7 (E) The applicant must agree to the review and audit of the
 8 qualified production expenditures by the music
 9 commissioner. The music commissioner may determine
 10 whether the qualified production expenditures were
 11 reasonable.

12 (3) The following consents to civil process and procedures in
 13 Indiana:

14 (A) The applicant must consent that the applicant (and any
 15 successor in interest in any part of the applicant) will be
 16 subject to the jurisdiction of Indiana courts.

17 (B) The applicant must consent that service of process in
 18 accordance with the Indiana Rules of Trial Procedure is
 19 proper service and subjects the applicant (and any
 20 successor in interest in any part of the applicant) to the
 21 jurisdiction of Indiana courts.

22 (C) The applicant must consent that any civil action
 23 related to the provisions of this chapter in which the
 24 applicant (or any successor in interest in any part of the
 25 applicant) is a party will be heard in an Indiana court.

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

33 Sec. 9. Incentives under the program are subject to
 34 appropriations to the program by the general assembly. If funds
 35 have not been appropriated for the program by the general
 36 assembly, the corporation shall refund an applicant's application
 37 fees and final administrative review fees.

38 Sec. 10. (a) A qualified applicant that has entered into an
 39 agreement with the corporation under section 8 of this chapter
 40 may file a claim for an incentive under the program with the
 41 corporation as set forth under this section.

42 (b) A qualified applicant shall provide the corporation with any



1 information necessary, including any information considered
 2 necessary by the music commissioner, to determine the qualified
 3 applicant's compliance with the terms of the qualified applicant's
 4 agreement with the corporation and the incentive under the
 5 program to which the qualified applicant is entitled under this
 6 chapter.

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

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

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

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

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

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

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

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

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

35 (2) **Rescind the issuance of an incentive under the program to**
 36 **the applicant (or to the applicant's successor) under this**
 37 **chapter.**

38 (3) **Recapture all or a part of the incentive under the program**
 39 **issued to the applicant (or to the applicant's successor) under**
 40 **this chapter.**

41 **Sec. 13. This chapter expires January 1, 2029.**

42 SECTION 3. [EFFECTIVE JULY 1, 2021] (a) **Before October 1,**



1 2021, and subject to subsection (b), the Indiana destination
2 development corporation, in coordination with the office of
3 management and budget, shall prepare a detailed report
4 concerning music production incentives and provide the report to
5 the interim study committee on fiscal policy established by
6 IC 2-5-1.3-4. The report must be in an electronic format under
7 IC 5-14-6.

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

10 (1) Information concerning music production incentives
11 offered in all other states.

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

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

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

17 (B) the types of productions that should be incentivized;

18 (C) the types of production expenditures that should be
19 considered qualified for purposes of an incentive;

20 (D) the minimum amount of expenditures that should be
21 required in order to be eligible for an incentive; and

22 (E) the maximum amount of incentives that should be
23 offered per state fiscal year.

24 (c) This SECTION expires July 1, 2024.



COMMITTEE REPORT

Madam President: The Senate Committee on Appropriations, to which was referred Senate Bill No. 323, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, delete lines 10 through 27.

Page 3, line 28, delete "(14)" and insert "**(6)**".

Page 3, line 30, delete "(15) or (17)." and insert "**(7) or (8)**".

Page 3, line 31, delete "(15)" and insert "**(7)**".

Page 3, delete lines 33 through 34.

Page 3, line 35, delete "(17)" and insert "**(8)**".

Page 3, delete lines 38 through 42.

Page 4, delete line 1.

and when so amended that said bill do pass.

(Reference is to SB 323 as introduced.)

MISHLER, Chairperson

Committee Vote: Yeas 11, Nays 1.

