

1 SENATE BILL NO. 326  
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7  
8 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA ECONOMIC DEVELOPMENT  
9 INDUSTRY ADVANCEMENT ACT FILM TAX CREDITS; REVISING ELIGIBLE PRODUCTIONS AND  
10 POSTPRODUCTION ACTIVITY; PROVIDING AN INCREASED CREDIT FOR HIRING VETERANS AND  
11 ENROLLED TRIBAL MEMBERS; EXTENDING THE CREDITS THROUGH 2045; INCREASING THE  
12 AGGREGATE CREDIT LIMIT; ALLOCATING THE CREDIT TO CERTAIN ENTITIES; PROVIDING THAT  
13 UNUSED ALLOCATED CREDITS MAY BE CLAIMED BY OTHER ENTITIES FOR A FEE; DESIGNATING THE  
14 FEE FOR FILM INDUSTRY WORKFORCE TRAINING; PROVIDING RULEMAKING AUTHORITY; AMENDING  
15 SECTIONS 15-31-1002, 15-31-1003, 15-31-1004, 15-31-1007, 15-31-1009, AND 15-31-1010, MCA;  
16 REPEALING SECTIONS 1 THROUGH 9, CHAPTER 509, LAWS OF 2021; AND PROVIDING AN IMMEDIATE  
17 EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20  
21 **NEW SECTION. Section 1. Media manufacturing industry workforce training account.** (1) There  
22 is an account in the state special revenue fund provided for in 17-2-102 known as the film industry workforce  
23 training account.

24 (2) The fee collected under 15-31-1010(2)(c) must be deposited in the account.

25 (3) The department of labor and industry shall use money in the account to provide workforce  
26 training for the film industry.

27  
28 **Section 2.** Section 15-31-1002, MCA, is amended to read:

1        **"15-31-1002. Purpose.** (1) The purpose of this part is to ~~enhance Montana's economy by expanding~~

2        ~~film and related media production in the state, by increasing job opportunities for a broad array of workers, and~~

3        ~~by promoting the growth of small businesses. The objectives of this part are to:~~

4            (a) ~~advertise Montana as open for business to qualifying projects;~~

5            (b) ~~develop a broad spectrum of high paying jobs in the state;~~

6            (c) ~~encourage investment of funds to finance media production in the state;~~

7            (d) ~~expand opportunities for existing Montana small businesses and for new small businesses that~~

8        ~~provide goods and services to qualified projects; and~~

9            (e) ~~promote tourism in the state.~~

10          (2) ~~The objectives in subsection (1) will best be achieved by offering tax incentives as provided in~~

11        ~~this part create a more resilient Montana economy by diversifying and driving local growth in the media~~

12        ~~manufacturing sector and ancillary supporting sectors by:~~

13            (1) ~~creating tax credit reservation allocations that put Montana businesses first;~~

14            (2) ~~driving brick and mortar investment into permanent infrastructure in the state;~~

15            (3) ~~increasing career pathway training and full-time equivalent jobs for a broad array of Montana~~

16        ~~resident workers;~~

17            (4) ~~expanding a sustainable media manufacturing sector through film and related media production~~

18        ~~in the state; and~~

19            (5) ~~limiting liability to the state."~~

21        **Section 3.** Section 15-31-1003, MCA, is amended to read:

22        **"15-31-1003. Definitions.** As used in this part, unless the context requires otherwise, the following

23        definitions apply:

24            (1) "Affiliate" means a subsidiary of which more than 50% of the voting stock is owned directly by

25        the parent corporation or another member of the Montana combined group.

26            (2) "Base investment" means the amount expended by a production company as production

27        expenditures and compensation incurred in this state that are directly used in a state-certified production.

28            (3) (a) "Compensation" means Montana wages, salaries, commissions, payments to a loan-out

1 company subject to the provisions of subsection (3)(c), union benefits, fringe benefits, and any other form of  
2 remuneration paid to employees for personal services performed in this state.

3 (b) The term does not include compensation paid that is less than the minimum wage described in  
4 39-3-409.

5 (c) The term includes payments to a loan-out company by a production company if the production  
6 company withheld and remitted Montana income tax at the highest marginal rate in effect under 15-30-2103 on  
7 all payments to the loan-out company for services performed in this state. The amount withheld is considered to  
8 have been withheld by the loan-out company on wages paid to its employees for services performed in this  
9 state. The amounts withheld must be allocated to the loan-out company's employees based on the payments  
10 made to the loan-out company's employees for services performed in Montana. For purposes of this chapter,  
11 loan-out company nonresident employees performing services in this state must be considered taxable  
12 nonresidents and the loan-out company is subject to income taxation in the tax year in which the loan-out  
13 company's employees perform services in this state, notwithstanding any other provisions of Title 15. The  
14 withholding liability is subject to penalties and interest as provided in 15-1-216.

15 (d) With respect to a single crew member or production staff member, excluding an actor, director,  
16 producer, or writer, the portion of any compensation that exceeds \$500,000 for a single production is not  
17 included when calculating the base investment.

18 (e) All payments to a single employee and any legal entity in which the employee has any direct or  
19 indirect ownership interest are considered as having been paid to the employee and must be aggregated  
20 regardless of the means of payment or distribution.

21 (4) "Domiciled company" means a corporation incorporated in the state or a partnership, limited  
22 liability company, or other business entity subject to tax under Title 15, chapter 30 or 31:

23 (a) domiciled and headquartered in the state for a minimum of 1 year for the purpose of performing  
24 qualified production activities or qualified postproduction activities; and

25 (b) that maintains a minimum of 15 resident full-time equivalent jobs that pay wages above the  
26 state average median income and for which Montana income tax is withheld.

27 (4)(5) "Game platform" means the electronic delivery system used to launch or play an interactive  
28 game.

1           (5)(6) "Game sequel" means an interactive game that builds on the theme of a previously released  
2 interactive game, is distinguished by a new title, and features objectives or characters that are recognizably  
3 different from those in the original game.

4           (7)     "Independent film production" means a state-certified production with a production budget  
5     approved by the department of commerce of \$3 million or less.

6           (6)(8) (a) "Loan-out company" means a personal service company contracted with and retained by a  
7 production company to provide individual personnel who are not employees of the production company,  
8 including actors, directors, producers, writers, production designers, production managers, costume designers,  
9 directors of photography, editors, casting directors, first assistant directors, second unit directors, stunt  
10 coordinators, and similar personnel, for performance of services used directly in a qualified production activity.

11          (b)     The term does not include persons retained by a production company to provide tangible  
12 property or outside independent contractor services, such as catering, construction, trailers, equipment, and  
13 transportation.

14          (7)(9) "Multimarket commercial distribution" means paid commercial distribution that extends to  
15 markets outside the state.

16          (8)(10) (a) "Postproduction company" means a company that:  
17            (i)     maintains a business location physically located in this state;  
18            (ii)    is engaged in qualified postproduction activities;  
19            (iii)   meets the requirements of 15-31-1005(4); and  
20            (iv)    has been approved by the department of commerce to claim the credit provided for in 15-31-  
21 1009.

22          (b)     The term does not include any form of business owned, affiliated, or controlled, in whole or in  
23 part, by a company or person that is in default on a tax obligation of the state, a loan made by the state, or a  
24 loan guaranteed by the state.

25          (9)(11) "Prereleased interactive game" means a new game, the offering of an existing game on a new  
26 game platform, or a game sequel that is in the developmental stages of production and that may be available to  
27 individuals for testing purposes but is not generally made available or distributed to consumers or to the general  
28 public.

1                   (10)(12)(a) "Production company" means a company primarily engaged in qualified production activities  
2 that have been approved by the department of commerce.

3                   (b)       The term does not include any form of business owned, affiliated, or controlled, in whole or in  
4 part, by a company or person that is in default on a tax obligation of the state, a loan made by the state, or a  
5 loan guaranteed by the state.

6                   (11)(13)(a) "Production expenditure" means a preproduction or production expenditure incurred in  
7 Montana that is directly used for a qualified production activity including:

8                   (i)       set construction and operation;  
9                   (ii)      wardrobes, makeup, accessories, and related services;  
10                   (iii)     costs associated with photography and sound synchronization expenditures, excluding license  
11 fees, incurred with Montana companies for sound recordings and musical compositions, lighting, or related  
12 services and materials;

13                   (iv)      editing and related services;  
14                   (v)       rental of facilities and equipment;  
15                   (vi)      leasing of vehicles, whether to be photographed or to transport people, equipment, or  
16 materials;

17                   (vii)     lodging costs, including hotel rooms and private housing rentals paid for by the production  
18 company;

19                   (viii)     per diem and living allowance paid to staff, cast, and crew members;  
20                   (ix)      digital, film, or tape editing, film processing, transfers of film to tape or digital format, sound  
21 mixing, computer graphics services, special effects services, visual effects services, and animation services;  
22                   (x)       airfare, if purchased through a Montana travel agency or travel company;  
23                   (xi)      insurance costs and bonding, if purchased through a Montana insurance agency; and  
24                   (xii)     other direct costs of producing the project in accordance with generally accepted entertainment  
25 industry practices and generally accepted accounting principles.

26                   (b)       The term does not include:

27                   (i)       compensation, which qualifies for the credit provided for in 15-31-1007(3)(b)(i) through  
28                   (3)(b)(iv) (3)(b)(v);

(12)(15)"Qualified Montana promotion" means a promotion of this state approved by the department of commerce and consisting of:

13 (a) a qualified movie production that includes a 5-second static or animated logo that promotes  
14 Montana in the end credits for the life of the project and that includes a link to the official state of Montana  
15 website on the project's website;

16 (b) a qualified television production that includes an embedded 5-second Montana promotion  
17 during each broadcast worldwide for the life of the project and that includes a link to the official state of  
18 Montana website on the project's website;

19 (c) a qualified music video that includes the Montana logo at the end of each video and within  
20 online promotions;

21 (d) a qualified interactive game that includes a 15-second Montana advertisement in units sold and  
22 embedded in online promotions; or

23 (e) a qualified television special or sports event for which the network provides complimentary  
24 placement of two 30-second spots per 30 minutes of qualifying television special or sports event programming  
25 promoting Montana destinations and provided by the department of commerce as provided for in 15-31-  
26 1004(7).

27                   (13)(16)"Qualified postproduction activity" means an activity performed in this state on a qualified  
28                    production employing traditional, emerging, and new workflow techniques used in postproduction for picture,

1 sound, and music editing, rerecording and mixing, visual effects, graphic design, original scoring, animation,  
2 musical composition, and other activities performed after initial production and including activities performed on  
3 previously produced and edited content.

4 (14)(17)"Qualified postproduction wage" means wages incurred in this state directly in qualified  
5 postproduction activities for footage shot inside or outside this state.

6 (15)(18)(a) "Qualified production" means a production, for which a minimum of 60% of principal  
7 photography time was completed in the state or the base investment exceeded \$5 million, that is a new film,  
8 video, or digital project including only feature films, series for theaters, television, or streaming, pilots, movies  
9 and scripted shows made for television or streaming, nonscripted television programs, documentaries, televised  
10 commercial advertisements, music videos, corporate videos, industrial films, production for website creation,  
11 television specials, sports events, video games, interactive entertainment, prereleased interactive games, and  
12 sound recording projects used in a feature film, series, pilot, or movie for television.

13 (b) The term includes projects shot, recorded, or originally created in short or long form, animation,  
14 and music, fixed on a delivery system, including film, videotape, computer disc, laser disc, and any element of  
15 the digital domain, from which the program is viewed or reproduced and which is intended for multimarket  
16 commercial distribution via a theater, video on demand, digital or fiber optic distribution platforms, digital video  
17 recording, a digital platform designed for distribution of interactive games, licensing for exhibition by individual  
18 television stations, groups of stations, networks, advertiser-supported sites, cable television stations, streaming  
19 services, or public broadcasting stations.

20 (c) The term does not include the coverage of news, local interest programming, instructional  
21 videos, commercials distributed only on the internet, infomercials, solicitation-based productions, nonscripted  
22 television programs, feature films consisting primarily of stock footage not originally recorded in Montana, or  
23 projects containing obscenity as defined in 45-8-201(2).

24 (16)(19)(a) "Qualified production activity" means a production, for which a minimum of 60% of principal  
25 photography time was completed in the state or the base investment exceeded \$5 million, that is the production  
26 of a new film, video, or digital project in this state and approved by the department of commerce, including only  
27 feature films, series for theaters, television, or streaming, pilots, movies and scripted shows made for television  
28 or streaming, nonscripted television programs, documentaries, televised commercial advertisements, music

1 videos, corporate videos, industrial films, production for website creation, television specials, sports events,  
2 video games, interactive entertainment, prereleased interactive games, and sound recording projects used in a  
3 feature film, series, pilot, or movie for television.

4 (b) The term includes the production of projects filmed or recorded in this state, in whole or in part  
5 and in short or long form, animation and music, fixed on a delivery system, including film, videotape, computer  
6 disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced and  
7 which is intended for multimarket commercial distribution via a theater, video on demand, digital or fiber optic  
8 distribution platforms, digital video recording, a digital platform designed for distribution of interactive games,  
9 licensing for exhibition by individual television stations, groups of stations, networks, advertiser-supported sites,  
10 cable television stations, streaming services, or public broadcasting stations.

11 (c) The term does not include the coverage of news, local interest programming, instructional  
12 videos, commercials distributed only on the internet, infomercials, solicitation-based productions, ~~nonscripted~~  
13 ~~television programs~~, or feature films consisting primarily of stock footage not originally recorded in Montana,  
14 projects containing obscenity as defined in 45-8-201(2), or projects not shot, recorded, or originally created in  
15 Montana.

16 ~~(17)(20)~~"Resident" has the meaning provided in 15-30-2101.

17 ~~(18)(21)~~"State-certified production" means a production engaged in qualified production activities and  
18 certified by the department of commerce as provided in 15-31-1004.

19 ~~(19)(22)~~"Underserved area" means a county in this state in which 14% or more people of all ages are in  
20 poverty as determined by the U.S. bureau of the census estimates for the most current year available."

21

22 **Section 4.** Section 15-31-1004, MCA, is amended to read:

23 **"15-31-1004. Application for state certification.** (1) (a) A production company may not receive the  
24 tax credit provided for in 15-31-1007 unless the production has been certified by the department of commerce  
25 as provided in this section.

26 (b) A postproduction company may not receive the tax credit provided for in 15-31-1009 unless the  
27 postproduction company has been certified by the department of commerce. The postproduction company shall  
28 submit an application that includes the information provided for in subsection (2)(a) for the postproduction

1 credits through partnership and membership agreements may not be recognized unless they have a substantial  
2 economic effect as that term is defined in 26 U.S.C. 704 and applicable federal regulations.

3 (7) A postproduction company may not claim a credit under this section for production  
4 expenditures for which the media production credit provided for in 15-31-1007 is claimed."

5

6 **Section 7.** Section 15-31-1010, MCA, is amended to read:

7 **"15-31-1010. (Temporary) Limitation of tax credits.** (1) (a) The department of commerce may grant  
8 to applicants pursuant to 15-31-1004 the authority to apply for the tax credits provided for in 15-31-1007 and  
9 15-31-1009.

10 (b) The authorization by the department of commerce to apply for a credit does not guarantee the  
11 credit. A taxpayer authorized to apply for a credit pursuant to 15-31-1004 and this section must meet the  
12 requirements of 15-31-1005 through 15-31-1009 and subsection (2) of this section.

13 (c) The department of commerce shall make reasonable efforts to post on its website the amount  
14 of tax credits available and not yet allocated.

15 (2) (a) Total claims for the tax credits provided for in 15-31-1007 and 15-31-1009 may not exceed  
16 [\$12 million] per calendar year.

17 (b) Claims must be allowed on a first come, first served basis. A taxpayer whose claim for a credit  
18 is disallowed because the calendar year limit has been reached may use the credit in the next calendar year  
19 but the transfer of the credit to the next calendar year does not extend the carry forward periods provided for in  
20 15-31-1007(5) or 15-31-1009(4).

21 (c) If a claim is disallowed because the calendar year limit has been reached, the department of  
22 revenue may waive penalties and interest pursuant to 15-1-216.

23 (d) The department of revenue shall make reasonable efforts to post on its website the amount of  
24 credits available and not yet claimed. (Bracketed language is temporarily amended to "\$10 million" on  
25 occurrence of contingency for income tax years 2022, 2023, 2024, and 2025 until July 1, 2025—secs. 7(6), 9,  
26 Ch. 509, L. 2021—see compiler's comment.)

27 **15-31-1010. (Effective July 1, 2025) Limitation of tax credits -- allocation -- fee.** (1) (a) The  
28 department of commerce may grant to applicants pursuant to 15-31-1004 the authority to apply for the tax

1 credits provided for in 15-31-1007 and 15-31-1009.

2 (b) The authorization by the department of commerce to apply for a credit does not guarantee the  
3 credit. A taxpayer authorized to apply for a credit pursuant to 15-31-1004 and this section must meet the  
4 requirements of 15-31-1005 through 15-31-1009 and subsection subsections (2) and (3) of this section.

5 (c) The department of commerce shall make reasonable efforts to post on its website the amount  
6 of tax credits available and not yet allocated.

7 (2) (a) Total claims for the tax credits provided for in 15-31-1007 and 15-31-1009 may not exceed  
8 \$12 \$30 million per calendar year and must be allocated as provided in subsection (2)(b).

9 (b) Claims must be allowed on a first-come, first-served basis within the allocations provided for in  
10 subsection (2)(b).

11 (b) Except as provided in subsection subsections (2)(c) and (2)(d) and beginning January 1, 2025,  
12 credits under 15-31-1007 and 15-31-1009 are allocated as follows:

13 (i) \$12 million is allocated for credits approved prior to December 31, 2024; and

14 (ii) \$18 million is allocated on a first-come, first-served basis as follows:

15 (A)(i) 40% to any production company or postproduction company on a first-come, first-served basis;

16 (B)(ii) 10% for independent film productions;

17 (C)(iii) 25% for media production credits derived from any portion of base investment related to the  
18 rental cost of qualified Montana facilities; and

19 (D)(iv) 25% for domiciled companies.

20 (c) Beginning April 1, 2026, each By April 1 of each year following the year the production

21 expenditures were incurred or the compensation was paid, any balance not claimed under subsections

22 (2)(b)(ii)(B) through (2)(b)(ii)(D)-(2)(b)(iv) for the prior year is available on a first-come, first-served basis for

23 productions occurring in the prior year in addition to the amount allocated under subsection (2)(b)(i). Any

24 unclaimed credit balance that becomes available under this section is subject to a 2% fee.

25 (d) If there are no remaining credits approved prior to December 31, 2024, that were disallowed  
26 because the calendar year limit was reached, the total amount of credits must be allocated as provided in  
27 subsection (2)(b)(ii).

28 (d) Beginning January 1, 2025, the allocation in subsection (2)(b)(i) must be used first for credit

1     approved for productions that occurred before January 1, 2025, until the year when all the approved credit for  
2     productions that occurred in years prior to 2025 has been used. This section does not apply to the credit  
3     balance that becomes available in subsection (2)(c).

4         (3)     (a) A taxpayer whose claim for a credit from a production occurring prior to January 1, 2025, is  
5     approved and audited prior to December 31, 2024, but is disallowed because the calendar year limit has been  
6     reached may use the credit in the next calendar year but the. The transfer of the credit to the next calendar year  
7     does not extend the carry forward periods provided for in 15-31-1007(5) or 15-31-1009(4).

8         (b)     Beginning January 1, 2025, a tax credit provided for in subsection (2)(b)(i) for a single qualified  
9     production may not exceed \$24 million. The tax credit in this section must be claimed for the year in which the  
10     production expenditures were incurred or the compensation was paid plus 2 subsequent years. The credit may  
11     not be used in the next calendar year if the calendar year limit has been reached.

12         (c)     If a claim is disallowed because the calendar year limit has been reached, the department of  
13     revenue may waive penalties and interest pursuant to 15-1-216.

14         (d)     The department of revenue shall make reasonable efforts to post on its website the amount of  
15     credits available and not yet claimed.

16         (4)     The fee provided for in subsection (2)(c) must be deposited in the account provided for in  
17     [section 1] and used for film industry workforce training."

18

19         **NEW SECTION. Section 8. Repealer.** Sections 1, 2, 3, 4, 5, 6, 7, 8, and 9, Chapter 509, Laws of  
20     2021, are repealed.

21

22         **NEW SECTION. Section 9. Notification to tribal governments.** The secretary of state shall send a  
23     copy of [this act] to each federally recognized tribal government in Montana.

24

25         **NEW SECTION. Section 10. Codification instruction.** [Section 1] is intended to be codified as an  
26     integral part of Title 15, chapter 31, part 10, and the provisions of Title 15, chapter 31, part 10, apply to [section  
27     1].

28