

SENATE BILL NO. 326

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA ECONOMIC DEVELOPMENT INDUSTRY ADVANCEMENT ACT FILM TAX CREDITS; REVISING ELIGIBLE PRODUCTIONS AND POSTPRODUCTION ACTIVITY; PROVIDING AN INCREASED CREDIT FOR HIRING VETERANS AND ENROLLED TRIBAL MEMBERS; EXTENDING THE CREDITS THROUGH 2045; INCREASING THE AGGREGATE CREDIT LIMIT; ALLOCATING THE CREDIT TO CERTAIN ENTITIES; PROVIDING THAT UNUSED ALLOCATED CREDITS MAY BE CLAIMED BY OTHER ENTITIES FOR A FEE; DESIGNATING THE FEE FOR FILM INDUSTRY WORKFORCE TRAINING; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-31-1002, 15-31-1003, 15-31-1004, 15-31-1007, 15-31-1009, AND 15-31-1010, MCA; REPEALING SECTIONS 1 THROUGH 9, CHAPTER 509, LAWS OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

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

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

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

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

1 and the criteria for approving projects with a base investment of less than \$350,000."

3 **Section 5.** Section 15-31-1007, MCA, is amended to read:

4 **"15-31-1007. Tax credit for media production.** (1) Subject to 15-31-1010 and through the tax year
5 ending December 31, ~~2029~~ 2045, a production company and its affiliates are allowed a credit against the taxes
6 imposed by chapter 30 and this chapter for investments in a state-certified production approved by the
7 department of commerce as provided in 15-31-1004 and 15-31-1005. The credit is for the base investment
8 made up to 6 months before state certification through completion of the project. ~~The credit must be claimed for~~
9 ~~the period July 1, 2019, through December 31, 2020, in which the production expenditures were incurred or the~~
10 ~~compensation was paid unless the credit is transferred to the next tax year because the limits provided for in~~
11 ~~15-31-1010 have been met. For periods after December 31, 2020, the Subject to 15-31-1010(3)(a), the credit~~
12 ~~must be claimed for the year in which the production expenditures were incurred or the compensation was paid~~
13 ~~unless the credit is transferred to the next tax year because the limits provided for in 15-31-1010 have been~~
14 ~~met.~~

15 (2) To claim the credit provided for in this section:

16 (a) the production company or its affiliate must have applied to the department of commerce as
17 provided in 15-31-1005 and been approved to claim or transfer the credit; or

18 (b) the taxpayer must be the entity to which a credit approved pursuant to 15-31-1005 and this
19 section was transferred.

20 (3) (a) The credit is equal to 20% of the production expenditures in the state in the tax year, plus
21 the additional amounts provided for in subsection (3)(b), but may not in the aggregate exceed 35% of the
22 production company's base investment in the tax year.

23 (b) Additional amounts for which the credit may be claimed are:

24 (i) 25% of the compensation paid per production or season of a television series to each crew
25 member or production staff member who is a resident, not to exceed a \$150,000 credit per person;

26 (ii) 15% of the compensation paid per production or season of a television series to each crew
27 member or production staff member who is not a resident but for whom Montana income taxes have been
28 withheld, not to exceed a \$150,000 credit per person;

(iii) 20% of the first \$7.5 million of compensation paid per production or season of a television series to each actor, director, producer, or writer for whom Montana income taxes have been withheld;

(iv) 30% of compensation paid per production or season of a television series to a student enrolled in a Montana college or university who works on the production as a paid intern or as a bona fide employee and for college credit. The credit may not exceed \$50,000 per student. If a credit provided for in this subsection (3)(b)(iv) is claimed for an enrolled student, the credits provided for in subsections (3)(b)(i) through (3)(b)(iii) and (3)(b)(v) may not be claimed for the same enrolled student.

(v) 30% of the compensation paid per production or season of a television series to each crew member or production staff member who is a Montana resident veteran of the armed forces of the United States or an enrolled member or descendant of an Indian tribe recognized by the state, not to exceed a \$150,000 credit for each person. If a credit provided for in this subsection (3)(b)(v) is claimed, the credits provided for in subsections (3)(b)(i) through (3)(b)(iv) may not be claimed for the same crew member or production staff.

~~(vi)~~(vi) an additional 10% of payments made to a Montana college or university for stage rentals, equipment rentals, or location fees for filming on campus;

~~(vi)~~(vii) an additional 10% of all in-studio facility and equipment rental expenditures incurred in this state for a production that rents a studio for 20 days or more;

~~(vii)~~(viii) an additional 5% for production expenditures made in an underserved area; and

~~(viii)~~(ix) an additional 5% of the base investment in the state if the state-certified production includes a Montana screen credit furnished by the state as provided in 15-31-1004(7).

(4) If one production company makes a production expenditure to hire another production company to produce a project or contribute elements of a project for pay, the hired production company is considered a service provider for the hiring company and the hiring company is entitled to claim the credit for all expenditures that are incurred in the state.

(5) Any unused credit may be carried forward for 5 years or may be transferred as provided in 15-31-1008. The credit allowed by this section, including a transferred credit, may not be refunded if the taxpayer has a tax liability less than the amount of the credit.

(6) A taxpayer claiming a credit shall include with the tax return the following information:

(a) the amount of tax credit claimed and transferred for the tax year;

(b) the amount of the tax credit previously claimed or transferred;

(c) the amount of the tax credit carried over from a previous tax year; and

(d) the amount of the tax credit to be carried over to a subsequent tax year.

(7) (a) A taxpayer claiming the credit provided for in this section must claim the credit as provided in subsection (7)(b).

(b) (i) An entity taxed as a corporation for Montana income tax purposes shall claim the credit on its corporate income tax return.

(ii) Individuals, estates, and trusts shall claim a credit allowed under this section on their individual income tax return.

(iii) An entity not taxed as a corporation shall claim the credit allowed under this section on member or partner returns as follows:

(A) corporate partners or members shall claim their share of the credit on their corporate income tax returns;

(B) individual partners or members shall claim their share of the credit on their individual income tax returns; and

(C) partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.

(c) In order to prevent disguised sales of the credit provided for in this section, allocations of credits through partnership and membership agreements may not be recognized unless they have a substantial economic effect as that term is defined in 26 U.S.C. 704 and applicable federal regulations.

(8) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the amount of the production expenditure or compensation on which the amount of the credit was computed in determining Montana taxable income under 15-30-2120 or as a deduction under 15-31-114."

Section 6. Section 15-31-1009, MCA, is amended to read:

"15-31-1009. Tax credit for postproduction wages. (1) ~~Through~~ Subject to 15-31-1010 and through the tax year ending December 31, ~~2029~~ 2045, a postproduction company that has incurred qualified

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

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

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

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

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

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

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

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

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

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

15-31-1010. (Effective July 1, 2025) Limitation of tax credits -- allocation -- fee. (1) (a) The 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,~~
12 ~~2025, 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 APPROVED FOR PRODUCTIONS THAT OCCURRED BEFORE JANUARY 1, 2025, UNTIL THE YEAR WHEN ALL THE APPROVED CREDIT FOR PRODUCTIONS THAT OCCURRED IN YEARS PRIOR TO 2025 HAS BEEN USED. THIS SECTION DOES NOT APPLY TO THE CREDIT BALANCE THAT BECOMES AVAILABLE IN SUBSECTION (2)(C).

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

(b) Beginning January 1, 2025, a tax credit PROVIDED FOR IN SUBSECTION (2)(B)(I) FOR A SINGLE QUALIFIED PRODUCTION MAY NOT EXCEED \$24 MILLION. THE TAX CREDIT IN THIS SECTION must be claimed for the year in which the production expenditures were incurred or the compensation was paid PLUS 2 SUBSEQUENT YEARS. The credit may not be used in the next calendar year if the calendar year limit has been reached. The transfer of the credit to the next calendar year does not extend the carry forward periods provided for in 15-31-1007(5) or 15-31-1009(4).

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

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

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

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

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

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