

**Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 18-0322.01 Esther van Mourik x4215

SENATE BILL 18-103

SENATE SPONSORSHIP

Todd and Smallwood, Donovan

HOUSE SPONSORSHIP

Kraft-Tharp and Leonard, Winter

Senate Committees
Finance

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE ISSUANCE OF PERFORMANCE-BASED INCENTIVES FOR**
102 **FILM PRODUCTION ACTIVITIES IN THE STATE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Legislative Audit Committee. The bill strengthens the requirements necessary to earn performance-based incentives for film production activities in the state by:

- ! Requiring a production company that originates production activities in Colorado to have engaged in production activities in the state for other projects in the 12 months

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
2nd Reading Unamended
February 13, 2018

prior to applying for the performance-based incentive for a new project, and if the production company creates a business entity for the sole purpose of conducting production activities in the state, requiring the manager of the business to be a resident of the state for 12 consecutive months as of the date of applying for a performance-based incentive as well as defining a manager as someone with decision-making authority to give permission or "go-ahead" to move forward with a project;

- ! Requiring a production company to provide documentation to prove that the production company meets the statutory definition of "originates";
- ! Requiring the production company's certified public accountant to provide in his or her written report documentation of the production company's expenditures, including the qualified local expenditures, and documentation that proves that the production company hired the necessary workforce to qualify for the performance-based incentive;
- ! Requiring the office of economic development (office) to conduct a review of the certified public accountant's written report to ensure the statutory requirements are met;
- ! Requiring the office to develop a list of certified public accountants that meet the statutory requirements and make the list available to all production companies as well as post it on the office of economic development's website; and
- ! Specifying that the office shall not issue a performance-based incentive to a production company until the production company and the office have entered into a contract in accordance with the procurement code.

The bill also specifies that if a performance-based incentive is erroneously or improperly issued to a production company for any reason, the office is required to engage the services of the attorney general to recover from the production company any amount of the performance-based incentive that was erroneously or improperly issued.

The bill also requires the Colorado economic development commission to annually schedule an orientation with the staff of the office in order to receive an official overview of the statutory requirements for a production company to earn a performance-based incentive for film production in Colorado.

1 *Be it enacted by the General Assembly of the State of Colorado:*

1 **SECTION 1.** In Colorado Revised Statutes, 24-48.5-114, **amend**
2 (4) as follows:

3 **24-48.5-114. Film, television, and media - definitions.** As used
4 in this section and sections 24-48.5-115 and 24-48.5-116, unless the
5 context otherwise requires:

6 (4) "Originates" means the production company has been a
7 resident of the state or registered with the secretary of state for at least
8 twelve consecutive months AND, AS OF THE DATE OF APPLYING FOR A
9 PERFORMANCE-BASED INCENTIVE AS SPECIFIED IN SECTION 24-48.5-116,
10 HAS ENGAGED IN PRODUCTION ACTIVITIES IN THE STATE FOR OTHER
11 PROJECTS IN THE PAST TWELVE CONSECUTIVE MONTHS; except that, if the
12 production company creates a business entity for the sole purpose of
13 conducting production activities in the state, then such business entity
14 need not be registered with the secretary of state for twelve consecutive
15 months, but the ~~owner~~ MANAGER of the business entity must be a resident
16 of the state for at least twelve consecutive months AS OF THE DATE OF
17 APPLYING FOR A PERFORMANCE-BASED INCENTIVE AS SPECIFIED IN
18 SECTION 24-48.5-115. FOR PURPOSES OF THIS SUBSECTION (4), "MANAGER
19 OF THE BUSINESS ENTITY" MEANS A MANAGER WITH DECISION-MAKING
20 AUTHORITY TO MAKE FINANCIAL OR LEGAL COMMITMENTS ON BEHALF OF
21 THE PRODUCTION OR BUSINESS.

22 **SECTION 2.** In Colorado Revised Statutes, 24-48.5-116, **amend**
23 (2) as follows:

24 **24-48.5-116. Film, television, and media - performance-based**
25 **incentive for film production in Colorado - Colorado office of film,**
26 **television, and media operational account cash fund - creation -**
27 **definition.** (2) (a) In order for a production company to claim a

1 performance-based incentive for production activities in Colorado
2 pursuant to this section, the production company shall apply to the office,
3 in a manner to be determined by the office, prior to beginning production
4 activities in the state FOR THE PROJECT FOR WHICH THE PRODUCTION
5 COMPANY IS SEEKING A PERFORMANCE-BASED INCENTIVE. The application
6 ~~shall~~ MUST include a statement of intent by the production company to
7 produce a film in Colorado for which the production company will be
8 eligible to receive the incentive. The production company shall submit,
9 in conjunction with the application, any documentation necessary to
10 demonstrate that:

11 (I) The production company's projected qualified local
12 expenditures will satisfy the expenditures specified in ~~paragraph (a) or (b)~~
13 ~~of subsection (1)~~ SUBSECTIONS (1)(a) AND (1)(b) of this section, as
14 applicable; AND

15 (II) IF THE PRODUCTION COMPANY SEEKS AN INCENTIVE SPECIFIED
16 IN SUBSECTION (1)(a) OF THIS SECTION, THE PRODUCTION COMPANY MEETS
17 THE DEFINITION OF "ORIGINATES" SET FORTH IN SECTION 24-48.5-114 (4),
18 INCLUDING COPIES OF INCOME TAX FORMS, PROOF OF VOTER
19 REGISTRATION, OR COPIES OF UTILITY BILLS, TO PROVIDE DOCUMENTARY
20 EVIDENCE THAT AS OF THE DATE OF APPLYING FOR A PERFORMANCE-BASED
21 INCENTIVE:

22 (A) THE PRODUCTION COMPANY ENGAGED IN PRODUCTION
23 ACTIVITIES IN THE STATE FOR OTHER PROJECTS IN THE PAST TWELVE
24 CONSECUTIVE MONTHS; OR

25 (B) IF THE PRODUCTION COMPANY CREATED A BUSINESS ENTITY
26 FOR THE SOLE PURPOSE OF CONDUCTING PRODUCTION ACTIVITIES IN THE
27 STATE, THE MANAGER OF THE BUSINESS ENTITY IS A RESIDENT IN THE

1 STATE FOR THE PAST TWELVE CONSECUTIVE MONTHS.

2 (b) The office shall review each application submitted by a
3 production company before the production company begins work on a
4 film in Colorado. Based on the information provided in the production
5 company's application, the office shall make an initial determination of
6 whether the production company will be eligible to receive a
7 performance-based incentive and estimate the amount of the incentive
8 that will be due to the production company. The office, with approval of
9 the Colorado economic development commission created in section
10 24-46-102, shall grant conditional written approval to a production
11 company that, based on the information provided by the production
12 company and based on an analysis of such information by the office and
13 the Colorado economic development commission, will satisfy the
14 requirements of this section and be eligible to claim an incentive. THE
15 OFFICE SHALL NOT ISSUE A PERFORMANCE-BASED INCENTIVE TO A
16 PRODUCTION COMPANY UNTIL THE PRODUCTION COMPANY AND THE
17 OFFICE HAVE ENTERED INTO A CONTRACT IN ACCORDANCE WITH THE
18 "PROCUREMENT CODE", ARTICLES 101 TO 112 OF THIS TITLE 24.

19 (c) (I) Upon completion of production activities in Colorado, a
20 production company that received conditional approval for a
21 performance-based incentive from the office shall retain a certified public
22 accountant to review and report in writing, and in accordance with
23 professional standards, regarding the accuracy of the financial documents
24 that detail the expenses incurred in the course of the film production
25 activities in Colorado. ~~H~~ THE CERTIFIED PUBLIC ACCOUNTANT'S WRITTEN
26 REPORT SHALL INCLUDE DOCUMENTATION OF THE PRODUCTION
27 COMPANY'S ACTUAL EXPENDITURES, INCLUDING ITS ACTUAL QUALIFIED

1 LOCAL EXPENDITURES, AND ANY DOCUMENTATION NECESSARY TO SHOW
2 THAT THE PRODUCTION COMPANY EMPLOYED A WORKFORCE FOR THE
3 IN-STATE PRODUCTION ACTIVITIES MADE UP OF AT LEAST FIFTY PERCENT
4 COLORADO RESIDENTS. WHEN the production company provides a copy
5 of the certified public accountant's written report and the production
6 company certifies in writing to the office that the amount of the
7 production company's actual qualified local expenditures equals or
8 exceeds the minimum total amount of the production company's qualified
9 local expenditures as specified in subsection (1) of this section, the office
10 shall CONDUCT A REVIEW OF THE CERTIFIED PUBLIC ACCOUNTANT'S
11 WRITTEN REPORT TO ENSURE THE REQUIREMENTS OF THIS SECTION ARE
12 MET. IF THE OFFICE IS SATISFIED THAT THE REQUIREMENTS OF THIS
13 SECTION ARE MET, AND THE OFFICE CONFIRMS THAT THE CERTIFIED PUBLIC
14 ACCOUNTANT WHO PROVIDED THE WRITTEN REPORT IS FROM THE LIST
15 DESCRIBED IN SUBSECTION (2)(c)(II)(C) OF THIS SECTION, THEN THE
16 OFFICE MAY issue an incentive to the production company.

17 (II) (A) For purposes of this ~~paragraph (c)~~ SUBSECTION (2)(c),
18 "certified public accountant" means a certified public accountant licenced
19 to practice in this state or a certified public accounting firm that is
20 registered in this state.

21 (B) Any services of a certified public accountant provided to meet
22 the requirements of this ~~paragraph (c)~~ SUBSECTION (2)(c) shall be
23 performed in Colorado.

24 (C) THE OFFICE SHALL DEVELOP A LIST OF CERTIFIED PUBLIC
25 ACCOUNTANTS THAT MEET THE REQUIREMENTS OF THIS SECTION. SUCH
26 LIST MUST BE MADE AVAILABLE TO ALL PRODUCTION COMPANIES AND
27 MUST BE POSTED ON THE OFFICE OF ECONOMIC DEVELOPMENT'S WEBSITE.

1 (d) The office shall develop procedures for the administration of
2 this section, including application guidelines for production companies
3 applying to receive a performance-based incentive and for the office to
4 issue payment of the incentives pursuant to this section.

5 (e) IF A PERFORMANCE-BASED INCENTIVE IS ERRONEOUSLY OR
6 IMPROPERLY ISSUED TO A PRODUCTION COMPANY FOR ANY REASON,
7 INCLUDING FOR INELIGIBILITY, OVERPAYMENT, OR IMPROPER PAYMENT,
8 THE OFFICE SHALL ENGAGE THE SERVICES OF THE ATTORNEY GENERAL TO
9 RECOVER FROM THE PRODUCTION COMPANY ANY AMOUNT OF THE
10 PERFORMANCE-BASED INCENTIVE THAT WAS ERRONEOUSLY OR
11 IMPROPERLY ISSUED. THE STATE TREASURER SHALL CREDIT ANY SUCH
12 RECOVERED PERFORMANCE-BASED INCENTIVES TO THE FUND.

13 **SECTION 3.** In Colorado Revised Statutes, 24-46-102, **add** (4)
14 as follows:

15 **24-46-102. Colorado economic development commission -**
16 **creation - membership - definition.** (4) NO LATER THAN JULY 1, 2018,
17 AND EACH JULY 1 THEREAFTER, THE COMMISSION SHALL SCHEDULE AN
18 ORIENTATION WITH OFFICE OF ECONOMIC DEVELOPMENT STAFF IN ORDER
19 TO RECEIVE AN OFFICIAL OVERVIEW OF THE STATUTORY REQUIREMENTS
20 FOR A PRODUCTION COMPANY TO EARN A PERFORMANCE-BASED INCENTIVE
21 FOR FILM PRODUCTION IN COLORADO AS SET FORTH IN SECTIONS
22 24-48.5-114 AND 24-48.5-116.

23 **SECTION 4. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, and safety.