54:10A-5.39b et al.

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2018 **CHAPTER:** 56

NJSA: 54:10A-5.39b et al. (Provides corporation business tax and gross income tax credit for certain expenses incurred for production of certain films and digital media content; designated as Garden State Film and Digital Media Jobs Act.)

BILL NO: S122 (Substituted for A1038)

SPONSOR(S) Loretta Weinberg and others

DATE INTRODUCED: 1/9/2018

COMMITTEE: **ASSEMBLY:** Appropriations

SENATE: Budget and Appropriations
Economic Growth

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 6/25/2018

SENATE: 6/21/2018

DATE OF APPROVAL: 7/3/2018

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Third Reprint enacted) Yes

S122

SPONSOR'S STATEMENT: (Begins on page 17 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: Yes

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes 4/2/2018
4/23/2018
7/2/2018

A1038

SPONSOR'S STATEMENT: (Begins on page 17 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: Yes

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

(continued)

FLOOR AMENDMENT STATEMENT:	No	
LEGISLATIVE FISCAL ESTIMATE:	Yes	4/9/2018

VETO MESSAGE: Yes

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:
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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Incentive restored to film in N.J. - Critical of 'Jersey Shore,' Christie had let tax breaks expire," The Star-Ledger, July 4, 2018
"New Jersey to offer millions in tax credits to draw in TV, film producers," NJBIZ, July 3, 2018
"NJ film business 'going to explode,' insiders predict," NJBIZ, July 5, 2018
"MURPHY SIGNS TRANSGENDER, FILM CREDIT BILLS - MAINTAINING TREND OF UNDOING CHRISTIE POLICIES," The Record, July 4, 2018

§1 –
C.54:10A-5.39b
§2 - C.54A:4-12b
§3 - T&E & Notes
to 54:10A-5.39b
& 54A:4-12b
§4 - T&E & Note
to 54:10A-5.39b
§5 - Repealer

P.L. 2018, CHAPTER 56, ***approved July 3, 2018***
Senate, No. 122 ***(Third Reprint)***

AN ACT providing a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content and designated as the Garden State Film and Digital Media Jobs Act, supplementing P.L.1945, c.162 (C.54:10A-1 et seq.) and Title 54A of the New Jersey Statutes [1]and repealing various parts of the statutory law[1].

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to 30 percent of the qualified film production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2023, provided that:

(a) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified film production expenses of the taxpayer during the privilege period exceed $1,000,000 per production;

(b) principal photography of the film commences within the earlier of 180 days from the date of the original application for the tax credit, or 150 days from the date of approval of the application for the tax credit;

(c) the film includes, when determined to be appropriate by the commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination, which

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Senate SBA committee amendments adopted March 13, 2018.
[2]Assembly AAP committee amendments adopted April 5, 2018.
[3]Senate amendments adopted in accordance with Governor's recommendations June 7, 2018.

materials shall include placement of a "Filmed in New Jersey" or "Produced in New Jersey" statement [1], or an approved logo approved by the Commission,[1] in the end credits of the film;

(d) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with subsection f. of this section; and

(e) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection g. of this section.

(2) Notwithstanding the provisions of paragraph (1) of this subsection a. to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to [1]⟦40 percent for the qualified film production expenses of the taxpayer during a privilege period that represent expenses of the taxpayer incurred in an eligible municipality for the production of a film, including post-production costs of the taxpayer incurred in an eligible municipality⟧ 35 percent of the qualified film production expenses of the taxpayer during a privilege period that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County[1].

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to 20 percent of the qualified digital media content production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2023, provided that:

(a) at least $2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey;

(b) at least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;

(c) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with subsection f. of this section; and

(d) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection g. of this section.

(2) Notwithstanding the provisions of paragraph (1) of this subsection b. to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to [1]⟦40

percent for the qualified digital media content production expenses of the taxpayer during a privilege period that represent expenses of the taxpayer incurred in an eligible municipality for the production of digital media content] 25 percent of the qualified digital media content production expenses of the taxpayer during a privilege period that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County[1].

c. No tax credit shall be allowed pursuant to this section for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with the director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the privilege period for which a tax credit authorized pursuant to this section is allowed. The order of priority [1][of the application of] in which[1] the tax credit allowed pursuant to this section and any other tax credits allowed by law [1]may be taken[1] shall be as prescribed by the director. The amount of the tax credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), for a privilege period, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the taxpayer to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the tax credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of this subsection or under other provisions of P.L.1945, c.162 (C.54:10A-1 et seq.) may be carried forward, if necessary, to the seven privilege periods following the privilege period for which the tax credit was allowed.

d. A taxpayer, with an application for a tax credit provided for in subsection a. or subsection b. of this section, may apply to the authority and the director for a tax credit transfer certificate in lieu of the taxpayer being allowed any amount of the tax credit against the tax liability of the taxpayer. The tax credit transfer certificate, upon receipt thereof by the taxpayer from the authority and the director, may be sold or assigned, in full or in part, to any other taxpayer that may have a tax liability under the “Corporation Business Tax Act (1945),” P.L.1945, c.162 (C.54:10A-1 et seq.), or the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in exchange for private financial assistance to be provided by the purchaser or assignee to the taxpayer that has applied for and been granted the tax credit. The tax credit transfer certificate provided to the taxpayer shall include a statement waiving the taxpayer's right to claim that amount of the tax credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) that the taxpayer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the taxpayer of less than 75 percent of the transferred tax credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability under P.L.1945, c.162 (C.54:10A-1 et seq.) shall be subject to the same limitations and conditions that apply to the use of a tax credit pursuant to subsection c. of this section. Any amount of a tax credit transfer certificate obtained by a purchaser or assignee under subsection a. or subsection b. of this section may be applied against the purchaser's or assignee's tax liability under N.J.S.54A:1-1 et seq. and shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsections c. and d. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill).

e. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed a cumulative total of $75,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection a. of this section and subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) are not in excess of the amount of credits available.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed a cumulative total of $10,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey

Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section and subsection b. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section and subsection b. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) are not in excess of the amount of credits available.

f. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. The report shall be [2][based on a compliance audit conducted] prepared[2] by the independent certified public accountant pursuant to [2][procedures agreed upon by the taxpayer, the independent certified public accountant, and the authority and the director] agreed upon procedures prescribed by the authority and the director[2]; and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's [2][compliance audit] report[2], and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

g. A taxpayer shall withhold from each payment to a loan out company or to an independent contractor an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld.

h. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

"Business assistance or incentive" means "business assistance or incentive" as that term is defined pursuant to section 1 of P.L.2007, c.101 (C.54:50-39).

"Commission" means the Motion Picture and Television Development Commission.

"Digital media content" means any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound [1],[1] and video content. "Digital media content" does not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather [1],[1] or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate [1],[1] or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

[1]⟦"Eligible municipality" means a municipality in this State that has experienced the closure of at least two casino hotel facilities that had been licensed and operated, within the boundaries of the municipality, in accordance with the laws of this State.⟧[1]

"Film" means a feature film, a television series [1],[1] or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather [1],[1] and market reports or public programming, talk show, [3]or[3] sports event, [3]⟦or reality show,⟧[3] a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and

N.J.S.2C:34-3, or a production primarily for private, industrial, corporate [1],[1] or institutional purposes [3], or a reality show, except if the production company of the reality show owns, leases, or otherwise occupies a production facility of no less than 20,000 square feet of real property for a minimum term of twenty-four (24) months, and invests no less than $3,000,000 in such a facility within a designated enterprise zone established pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et al.), or a UEZ-impacted business district established pursuant to section 3 of P.L.2001, c.347 (C.52:27H-66.2)[3]. "Film" shall not include [1]**[**a game show,**]** an[1] award show [1]**[**,**]**[1] or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time or full-time equivalent employee" shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

"Highly compensated individual" means an individual who directly or indirectly receives compensation in excess of [1]**[**$1,500,000**]** $500,000[1] for the performance of services used directly in a production. An individual receives compensation indirectly when the taxpayer pays a loan out company that, in turn, pays the individual for the performance of services.

"Independent contractor" means an individual treated as an independent contractor for federal and State tax purposes who is contracted with by the taxpayer for the performance of services used directly in a production.

"Loan out company" means a personal service corporation or other entity that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" does not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

"Partnership" means an entity classified as a partnership for federal income tax purposes.

"Post-production costs" means the costs of the phase of production of a film that follows principal photography, in which raw footage is cut and assembled into a finished film with sound synchronization and visual effects.

"Pre-production costs" means the costs of the phase of production of a film that precedes principal photography, in which a detailed schedule and budget for the production is prepared, the script and location is finalized, and contracts with vendors are negotiated.

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include but shall not be limited to [1]:[1] wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payment made to a loan out company or to an independent contractor shall not be a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection g. of this section. "Qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content shall not be "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include but shall not be limited to: wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection g. of this section. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of [1]**[**$1,500,000**]** $500,000[1] to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines.

"Total digital media content production expenses" means costs for services performed and property used or consumed in the production of digital media content.

"Total film production expenses" means costs for services performed and tangible personal property used or consumed in the production of a film.

[2]i. A business that is not a "taxpayer" as defined and used in the "Corporation Business Tax Act (1945)" P.L.1945, c.162 (C.54:10A-1 et seq.) and therefore is not directly allowed a credit under this section, but is a business entity that is classified as a partnership for federal income tax purposes and is ultimately owned by a business entity that is a "corporation" as defined in subsection (c) of section 4 of P.L.1945, c.162 (C.54:10A-4), or a limited liability company formed under the "Revised Uniform Limited Liability Company Act," P.L.2012, c.50 (C.42:2C-1 et seq.), or qualified to do business in this State as a foreign limited liability company, with one member, and is wholly owned by the business entity that is a "corporation" as defined in subsection (c) of section 4 of P.L.1945, c.162 (C.54:10A-4), but otherwise meets all other requirements of this section, shall be considered an eligible applicant and "taxpayer" as that term is used in this section.[2]

2. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 30 percent of the qualified film production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2023, provided that:

(a) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified film production expenses of the taxpayer during the taxable year exceed $1,000,000 per production;

(b) principal photography of the film commences within the earlier of 180 days from the date of the original application for the tax credit, or 150 days from the date of approval of the application for the tax credit;

(c) the film includes, when determined to be appropriate by the commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination, which materials shall include placement of a "Filmed in New Jersey" or "Produced in New Jersey" statement [1], or an appropriate logo approved by the Commission,[1] in the end credits of the film;

(d) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with subsection [1]**⟦**f.**⟧** g.[1] of this section; and

(e) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection [1]**⟦**g.**⟧** h.[1] of this section.

(2) Notwithstanding the provisions of paragraph (1) of this subsection a. to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to [1]**⟦**40 percent for the qualified film production expenses of the taxpayer during a taxable year that represent expenses of the taxpayer incurred in an eligible municipality for the production of a film, including post-production costs of the taxpayer incurred in an eligible municipality**⟧** 35 percent of the qualified film production expenses of the taxpayer during a taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County[1].

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 20 percent of the qualified digital media content production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2023, provided that:

(a) at least $2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey;

(b) at least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;

(c) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with subsection g. of this section; and

(d) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection h. of this section.

(2) Notwithstanding the provisions of paragraph (1) of this subsection b. to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to [1]⟦40 percent for the qualified digital media content production expenses of the taxpayer during a taxable year that represent expenses of the taxpayer incurred in an eligible municipality for the production of digital media content⟧ 25 percent for the qualified digital media content production expenses of the taxpayer during a taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County[1].

c. No tax credit shall be allowed pursuant to this section for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with the director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the taxable year for which a tax credit authorized pursuant to this section is allowed. The order of priority [1]⟦of the application of⟧ in which[1] the tax credit allowed pursuant to this section and any other tax credits allowed by law [1]may be taken[1] shall be as prescribed by the director. The amount of the tax credit applied under this section against the tax otherwise due under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., for a taxable year, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the taxpayer to an amount less than zero. The amount of the tax credit otherwise allowable under this section which cannot be applied for the taxable year due to the limitations of this subsection or under other provisions of N.J.S.54A:1-1 et seq., may be carried forward, if necessary, to the seven taxable years following the taxable year for which the tax credit was allowed.

d. (1) A business entity that is classified as a partnership for federal income tax purposes shall not be allowed a tax credit pursuant to this section directly, but the amount of tax credit of a taxpayer in respect of a distributive share of entity income, shall be determined by allocating to the taxpayer that proportion of the tax credit acquired by the entity that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the entity for its taxable year ending within or with the taxpayer's taxable year.

(2) A New Jersey S Corporation shall not be allowed a tax credit pursuant to this section directly, but the amount of tax credit of a taxpayer in respect of a pro rata share of S Corporation income, shall be determined by allocating to the taxpayer that proportion of the tax credit acquired by the New Jersey S Corporation that is equal to the taxpayer's share, whether or not distributed, of the total pro rata share of S Corporation income of the New Jersey S Corporation for its privilege period ending within or with the taxpayer's taxable year.

[2]A business entity that is not a gross income "taxpayer" as defined and used in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and therefore is not directly allowed a credit under this section, but otherwise meets all the other requirements of this section, shall be considered an eligible applicant and "taxpayer" as that term is used in this section, and the application of an otherwise allowed credit amount shall be distributed to appropriate gross income taxpayers pursuant to the other requirements of this subsection.[2]

e. A taxpayer, with an application for a tax credit provided for in subsection a. or subsection b. of this section, may apply to the authority and the director for a tax credit transfer certificate in lieu of the taxpayer being allowed any amount of the tax credit against the tax liability of the taxpayer. The tax credit transfer certificate, upon receipt thereof by the taxpayer from the authority and the director, may be sold or assigned, in full or in part, to any other taxpayer that may have a tax liability under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), in exchange for private financial assistance to be provided by the purchaser or assignee to the taxpayer that has applied for and been granted the tax credit. The tax credit transfer certificate provided to the taxpayer shall include a statement waiving the taxpayer's right to claim that amount of the tax credit against the tax imposed pursuant to N.J.S.54A:1-1 et seq. that the taxpayer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the taxpayer of less than 75 percent of the transferred tax credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability under N.J.S.54A:1-1 et seq. shall be subject to the same limitations and conditions that apply to the use of a tax credit pursuant to subsections c. and d. of this section. Any amount of a tax credit transfer certificate obtained by a purchaser or assignee under this subsection e. may be applied against the purchaser's or assignee's tax liability under P.L.1945, c.162 (C.54:10A-1 et seq.) and shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsection c. of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill).

f. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed a cumulative total of $75,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection a. of this section and subsection a. of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) are not in excess of the amount of credits available.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed a cumulative total of $10,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. and the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection b. of this section and subsection b. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section and subsection b. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) are not in excess of the amount of credits available.

g. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. The report shall be [2]**[**based on a compliance audit conducted**]** prepared[2] by the independent certified public accountant pursuant to [2]**[**procedures agreed upon by the taxpayer, the independent certified public accountant, and the authority and the director**]** agreed upon procedures prescribed by the authority and the director[2]; and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's [2]**[**compliance audit**]** report[2], and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

h. A taxpayer shall withhold from each payment to a loan out company or to an independent contractor an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld.

i. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

"Business assistance or incentive" means "business assistance or incentive" as that term is defined pursuant to section 1 of P.L.2007, c.101 (C.54:50-39).

“Commission” means the Motion Picture and Television Development Commission.

“Digital media content” means any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound [1],[1] and video content. “Digital media content” does not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate [1],[1] or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

[1]⟦“Eligible municipality” means a municipality in this State that has experienced the closure of at least two casino hotel facilities that had been licensed and operated, within the boundaries of the municipality, in accordance with the laws of this State.⟧[1]

“Film” means a feature film, a television series [1],[1] or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. “Film” shall not include a production featuring news, current events, weather [1],[1] and market reports or public programming, talk show, sports event, or reality show, a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate [1],[1] or institutional purposes. “Film” shall not include [1]⟦a game show,⟧ <u>an</u>[1] award show [1]⟦,⟧[1] or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

“Full-time or full-time equivalent employee” means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time or full-time equivalent employee" shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

"Highly compensated individual" means an individual who directly or indirectly receives compensation in excess of [1]**[**$1,500,000**]** $500,000[1] for the performance of services used directly in a production. An individual receives compensation indirectly when the taxpayer pays a loan out company that, in turn, pays the individual for the performance of services.

"Independent contractor" means an individual treated as an independent contractor for federal and State tax purposes who is contracted with by the taxpayer for the performance of services used directly in a production.

"Loan out company" means a personal service corporation or other entity that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" does not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

"Partnership" means an entity classified as a partnership for federal income tax purposes.

"Post-production costs" means the costs of the phase of production of a film that follows principal photography, in which raw footage is cut and assembled into a finished film with sound synchronization and visual effects.

"Pre-production costs" means the costs of the phase of production of a film that precedes principal photography, in which a detailed schedule and budget for the production is prepared, the script and location is finalized, and contracts with vendors are negotiated.

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include but shall not be limited to [1]:[1] wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payment made to a loan out company or to an independent contractor shall not be a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this

State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection h. of this section. "Qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content shall not be "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include but shall not be limited to: wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection h. of this section. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of [1]**[**$1,500,000**]** <u>$500,000</u>[1] to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines.

"Total digital media content production expenses" means costs for services performed and property used or consumed in the production of digital media content.

"Total film production expenses" means costs for services performed and tangible personal property used or consumed in the production of a film.

3. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the New Jersey Economic Development Authority and the Director of the Division of Taxation in the Department of the Treasury may adopt immediately upon filing with the Office of Administrative Law such rules and regulations as the authority or

the director shall determine to be necessary to effectuate the purposes of P.L. , c. (C.) (pending before the Legislature as this bill), which rules and regulation shall be effective for a period not exceeding 360 days following the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) and may thereafter be amended, adopted, or readopted by the authority or the director in accordance with the requirements of P.L.1968, 1 c.410 (C.52:14B-1 et seq.).

[3]4. a. A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5) in an amount equal to 2 percent of the qualified film or digital media content production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2023, provided that:

(a) the application is accompanied by a diversity plan outlining specific goals, which may include advertising and recruitment actions, for hiring minority persons and women;

(b) the director and the authority have approved the plan as meeting the requirements established by the director and the authority; and

(c) the director and the authority have verified that the applicant has met or made good-faith efforts in achieving those goals.

The director and the authority shall adopt any rules necessary to implement this provision.

The application shall indicate whether the applicant intends to participate in training, education, and recruitment programs that are organized in cooperation with State colleges and universities, labor organizations, and the motion picture industry and are designed to promote and encourage the training and hiring of New Jersey residents who represent the diversity of the State population.[3]

[3][[1]4.] 5.[3] The following sections are repealed:

Sections 1 and 2 of P.L.2005, c.345 (C.54:10A-5.39 and C.54A:4-12); and

Sections 2 and 3 of P.L.2010, c.20 (C.54:10A-5.39a and C.54A:4-12a).[1]

[1][4.] [3][5.[1]] 6.[3] This act shall take effect immediately.

Provides corporation business tax and gross income tax credit for certain expenses incurred for production of certain films and digital media content; designated as Garden State Film and Digital Media Jobs Act.

SENATE, No. 122

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)
Senator PAUL A. SARLO
District 36 (Bergen and Passaic)

Co-Sponsored by:
Senators Brown, Addiego, Gopal and Ruiz

SYNOPSIS

Provides corporation business tax and gross income tax credit for certain expenses incurred for production of certain films and digital media content; designated as Garden State Film and Digital Media Jobs Act.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 3/14/2018)

AN ACT providing a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content and designated as the Garden State Film and Digital Media Jobs Act, supplementing P.L.1945, c.162 (C.54:10A-1 et seq.) and Title 54A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to 30 percent of the qualified film production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2023, provided that:

(a) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified film production expenses of the taxpayer during the privilege period exceed $1,000,000 per production;

(b) principal photography of the film commences within the earlier of 180 days from the date of the original application for the tax credit, or 150 days from the date of approval of the application for the tax credit;

(c) the film includes, when determined to be appropriate by the commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination, which materials shall include placement of a "Filmed in New Jersey" or "Produced in New Jersey" statement in the end credits of the film;

(d) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with subsection f. of this section; and

(e) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection g. of this section.

(2) Notwithstanding the provisions of paragraph (1) of this subsection a. to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 40 percent for the qualified film production expenses of the taxpayer during a privilege period that represent expenses of the taxpayer incurred in an eligible municipality for the production of a film, including post-production costs of the taxpayer incurred in an eligible municipality.

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to 20 percent of the qualified digital media content production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2023, provided that:

(a) at least $2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey;

(b) at least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;

(c) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with subsection f. of this section; and

(d) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection g. of this section.

(2) Notwithstanding the provisions of paragraph (1) of this subsection b. to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 40 percent for the qualified digital media content production expenses of the taxpayer during a privilege period that represent expenses of the taxpayer incurred in an eligible municipality for the production of digital media content.

c. No tax credit shall be allowed pursuant to this section for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with the director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the privilege period for which a tax credit authorized pursuant to this section is allowed. The order of priority of the application of the tax credit allowed pursuant to this section and any other tax credits allowed by law shall be as prescribed by the director. The amount of the tax credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), for a privilege period, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the taxpayer to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the tax credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of this subsection or under other provisions of P.L.1945, c.162 (C.54:10A-1 et seq.) may be carried forward, if necessary, to the seven privilege periods following the privilege period for which the tax credit was allowed.

d. A taxpayer, with an application for a tax credit provided for in subsection a. or subsection b. of this section, may apply to the authority and the director for a tax credit transfer certificate in lieu of the taxpayer being allowed any amount of the tax credit against the tax liability of the taxpayer. The tax credit transfer certificate, upon receipt thereof by the taxpayer from the authority and the director, may be sold or assigned, in full or in part, to any other taxpayer that may have a tax liability under the “Corporation Business Tax Act (1945),” P.L.1945, c.162 (C.54:10A-1 et seq.), or the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in exchange for private financial assistance to be provided by the purchaser or assignee to the taxpayer that has applied for and been granted the tax credit. The tax credit transfer certificate provided to the taxpayer shall include a statement waiving the taxpayer's right to claim that amount of the tax credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) that the taxpayer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the taxpayer of less than 75 percent of the transferred tax credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability under P.L.1945, c.162 (C.54:10A-1 et seq.) shall be subject to the same limitations and conditions that apply to the use of a tax credit pursuant to subsection c. of this section. Any amount of a tax credit transfer certificate obtained by a purchaser or assignee under subsection a. or subsection b. of this section may be applied against the purchaser's or assignee's tax liability under N.J.S.54A:1-1 et seq. and shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsections c. and d. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill).

e. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed a cumulative total of $75,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection a. of this section and subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) are not in excess of the amount of credits available.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed a cumulative total of $10,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section and subsection b. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section and subsection b. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) are not in excess of the amount of credits available.

f. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. The report shall be based on a compliance audit conducted by the independent certified public accountant pursuant to procedures agreed upon by the taxpayer, the independent certified public accountant, and the authority and the director; and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's compliance audit, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

g. A taxpayer shall withhold from each payment to a loan out company or to an independent contractor an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld.

h. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

"Business assistance or incentive" means "business assistance or incentive" as that term is defined pursuant to section 1 of P.L.2007, c.101 (C.54:50-39).

"Commission" means the Motion Picture and Television Development Commission.

"Digital media content" means any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound and video content. "Digital media content" does not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Eligible municipality" means a municipality in this State that has experienced the closure of at least two casino hotel facilities that had been licensed and operated, within the boundaries of the municipality, in accordance with the laws of this State.

"Film" means a feature film, a television series or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather and market reports or public programming, talk show, sports event, or reality show, a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate or institutional purposes. "Film" shall not include a game show, award show, or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time or full-time equivalent employee" shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

"Highly compensated individual" means an individual who directly or indirectly receives compensation in excess of $1,500,000 for the performance of services used directly in a production. An individual receives compensation indirectly when the taxpayer pays a loan out company that, in turn, pays the individual for the performance of services.

"Independent contractor" means an individual treated as an independent contractor for federal and State tax purposes who is contracted with by the taxpayer for the performance of services used directly in a production.

"Loan out company" means a personal service corporation or other entity that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" does not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

“Partnership” means an entity classified as a partnership for federal income tax purposes.

“Post-production costs” means the costs of the phase of production of a film that follows principal photography, in which raw footage is cut and assembled into a finished film with sound synchronization and visual effects.

“Pre-production costs” means the costs of the phase of production of a film that precedes principal photography, in which a detailed schedule and budget for the production is prepared, the script and location is finalized, and contracts with vendors are negotiated.

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. “Qualified digital media content production expenses” shall include but shall not be limited to wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payment made to a loan out company or to an independent contractor shall not be a “qualified digital media content production expense” unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection g. of this section. “Qualified digital media content production expenses” shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content shall not be “qualified digital media content production expenses.”

“Qualified film production expenses” means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. “Qualified film production expenses” shall include but shall not be limited to: wages and salaries of individuals employed in the production of a film on which the tax imposed by the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. has been paid or is due; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection g. of this section. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of $1,500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines.

"Total digital media content production expenses" means costs for services performed and property used or consumed in the production of digital media content.

"Total film production expenses" means costs for services performed and tangible personal property used or consumed in the production of a film.

2. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 30 percent of the qualified film production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2023, provided that:

(a) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified film production expenses of the taxpayer during the taxable year exceed $1,000,000 per production;

(b) principal photography of the film commences within the earlier of 180 days from the date of the original application for the tax credit, or 150 days from the date of approval of the application for the tax credit;

(c) the film includes, when determined to be appropriate by the commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination, which materials shall include placement of a "Filmed in New Jersey" or "Produced in New Jersey" statement in the end credits of the film;

(d) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with subsection f. of this section; and

(e) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection g. of this section.

(2) Notwithstanding the provisions of paragraph (1) of this subsection a. to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to 40 percent for the qualified film production expenses of the taxpayer during a taxable year that represent expenses of the taxpayer incurred in an eligible municipality for the production of a film, including post-production costs of the taxpayer incurred in an eligible municipality.

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 20 percent of the qualified digital media content production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2023, provided that:

(a) at least $2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey;

(b) at least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;

(c) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with subsection g. of this section; and

(d) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection h. of this section.

(2) Notwithstanding the provisions of paragraph (1) of this subsection b. to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to 40 percent for the qualified digital media content production expenses of the taxpayer during a taxable year that represent expenses of the taxpayer incurred in an eligible municipality for the production of digital media content.

c. No tax credit shall be allowed pursuant to this section for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with the director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the taxable year for which a tax credit authorized pursuant to this section is allowed. The order of priority of the application of the tax credit allowed pursuant to this section and any other tax credits allowed by law shall be as prescribed by the director. The amount of the tax credit applied under this section against the tax otherwise due under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., for a taxable year, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the taxpayer to an amount less than zero. The amount of the tax credit otherwise allowable under this section which cannot be applied for the taxable year due to the limitations of this subsection or under other provisions of N.J.S.54A:1-1 et seq., may be carried forward, if necessary, to the seven taxable years following the taxable year for which the tax credit was allowed.

d. (1) A business entity that is classified as a partnership for federal income tax purposes shall not be allowed a tax credit pursuant to this section directly, but the amount of tax credit of a taxpayer in respect of a distributive share of entity income, shall be determined by allocating to the taxpayer that proportion of the tax credit acquired by the entity that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the entity for its taxable year ending within or with the taxpayer's taxable year.

(2) A New Jersey S Corporation shall not be allowed a tax credit pursuant to this section directly, but the amount of tax credit of a taxpayer in respect of a pro rata share of S Corporation income, shall be determined by allocating to the taxpayer that proportion of the tax credit acquired by the New Jersey S Corporation that is equal to the taxpayer's share, whether or not distributed, of the total pro rata share of S Corporation income of the New Jersey S Corporation for its privilege period ending within or with the taxpayer's taxable year.

e. A taxpayer, with an application for a tax credit provided for in subsection a. or subsection b. of this section, may apply to the authority and the director for a tax credit transfer certificate in lieu of the taxpayer being allowed any amount of the tax credit against the tax liability of the taxpayer. The tax credit transfer certificate, upon receipt thereof by the taxpayer from the authority and the director, may be sold or assigned, in full or in part, to any other taxpayer that may have a tax liability under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), in exchange for private financial assistance to be provided by the purchaser or assignee to the taxpayer that has applied for and been granted the tax credit. The tax credit transfer certificate provided to the taxpayer shall include a statement waiving the taxpayer's right to claim that amount of the tax credit against the tax imposed pursuant to N.J.S.54A:1-1 et seq. that the taxpayer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the taxpayer of less than 75 percent of the transferred tax credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability under N.J.S.54A:1-1 et seq. shall be subject to the same limitations and conditions that apply to the use of a tax credit pursuant to subsections c. and d. of this section. Any amount of a tax credit transfer certificate obtained by a purchaser or assignee under this subsection e. may be applied against the purchaser's or assignee's tax liability under P.L.1945, c.162 (C.54:10A-1 et seq.) and shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsection c. of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill).

f. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed a cumulative total of $75,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024 to apply against the tax imposed pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., and pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection a. of this section and subsection a. of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) are not in excess of the amount of credits available.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed a cumulative total of $10,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024 to apply against the tax imposed pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. and the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection b. of this section and subsection b. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) exceeds the amount of tax credits available in that year, then

taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section and subsection b. of section 2 of P.L.   , c.   (C.   ) (pending before the Legislature as this bill) are not in excess of the amount of credits available.

g. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. The report shall be based on a compliance audit conducted by the independent certified public accountant pursuant to procedures agreed upon by the taxpayer, the independent certified public accountant, and the authority and the director; and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's compliance audit, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

h. A taxpayer shall withhold from each payment to a loan out company or to an independent contractor an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of

Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld.

i. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

"Business assistance or incentive" means "business assistance or incentive" as that term is defined pursuant to section 1 of P.L.2007, c.101 (C.54:50-39).

"Commission" means the Motion Picture and Television Development Commission.

"Digital media content" means any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound and video content. "Digital media content" does not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Eligible municipality" means a municipality in this State that has experienced the closure of at least two casino hotel facilities that had been licensed and operated, within the boundaries of the municipality, in accordance with the laws of this State.

"Film" means a feature film, a television series or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather and market reports or public programming, talk show, sports event, or reality show, a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate or institutional purposes. "Film" shall not include a game show, award show, or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. “Full-time or full-time equivalent employee” shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

“Highly compensated individual” means an individual who directly or indirectly receives compensation in excess of $1,500,000 for the performance of services used directly in a production. An individual receives compensation indirectly when the taxpayer pays a loan out company that, in turn, pays the individual for the performance of services.

“Independent contractor” means an individual treated as an independent contractor for federal and State tax purposes who is contracted with by the taxpayer for the performance of services used directly in a production.

“Loan out company” means a personal service corporation or other entity that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. “Loan out company” does not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

“Partnership” means an entity classified as a partnership for federal income tax purposes.

“Post-production costs” means the costs of the phase of production of a film that follows principal photography, in which raw footage is cut and assembled into a finished film with sound synchronization and visual effects.

“Pre-production costs” means the costs of the phase of production of a film that precedes principal photography, in which a detailed schedule and budget for the production is prepared, the script and location is finalized, and contracts with vendors are negotiated.

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. “Qualified digital media content production expenses” shall include but shall not be limited to wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payment made to a loan out company or to an independent contractor shall not be a “qualified digital media content production expense” unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection h. of this section. “Qualified digital media content production expenses” shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content shall not be “qualified digital media content production expenses.”

“Qualified film production expenses” means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. “Qualified film production expenses” shall include but shall not be limited to: wages and salaries of individuals employed in the production of a film on which the tax imposed by the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. has been paid or is due; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be a “qualified film production expense” unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection h. of this section. “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of $1,500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines.

“Total digital media content production expenses” means costs for services performed and property used or consumed in the production of digital media content.

“Total film production expenses” means costs for services performed and tangible personal property used or consumed in the production of a film.

3. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the New Jersey Economic Development Authority and the Director of the Division of Taxation in the Department of the Treasury may adopt immediately upon filing with the Office of Administrative Law such rules and regulations as the authority or the director shall determine to be necessary to effectuate the purposes of P.L. , c. (C.) (pending before the Legislature as this bill), which rules and regulation shall be effective for a period not exceeding 360 days following the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) and may thereafter be amended, adopted, or readopted by the authority or the director in accordance with the requirements of P.L.1968, 1 c.410 (C.52:14B-1 et seq.).

4. This act shall take effect immediately.

STATEMENT

This bill, designated as the Garden State Film and Digital Media Jobs Act, provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in this State.

Under the bill, a taxpayer, upon approval of an application to the New Jersey Economic Development Authority and the Director of the Division of Taxation in the Department of the Treasury, is allowed a credit against the corporation business tax or gross income tax in an amount equal to 30 percent of the qualified film production expenses, or 20 percent of the qualified digital media content production expenses, of the taxpayer during a privilege period or taxable year commencing on or after July 1, 2018 but before July 1, 2023. The bill increases the amount of the allowable credit to 40 percent of the of the qualified film production expenses or 40 percent of the qualified digital media content production expenses of the taxpayer during those years if the expenses are incurred in an eligible municipality (i.e. Atlantic City) for the film or digital media production.

In order to claim the tax credit for qualified film production expenses, the bill provides that the following conditions must be met:

-- at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified film production expenses of the taxpayer during the privilege period exceed $1,000,000 per production;

-- principal photography of the film commences within the earlier of 180 days from the date of the original application for the tax credit, or 150 days from the date of approval of the application for the tax credit;

-- the film includes, when determined to be appropriate by the commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination, which materials shall include placement of a "Filmed in New Jersey" or "Produced in New Jersey" statement in the end credits of the film;

-- the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State; and

-- the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors.

In order to claim the tax credit for qualified digital media content production expenses, the bill provides that the following conditions must be met:

-- at least $2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey;

-- at least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;

-- the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State; and

-- the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors.

The bill imposes per year limits on the total cumulative amount of tax credits that are allowed during the five-year period in which the tax credits are operative. The bill provides that no more than $75 million of tax credits are allowed to be granted to taxpayers for qualified film production expenses in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024, and no more than $10 million of tax credits are allowed to be granted to taxpayers for qualified digital media content production expenses in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024.

The bill permits the authority and the director to adopt rules and regulations necessary to effectuate the purposes of the bill, and permits the immediate filing of those rules and regulations with the Office of Administrative Law, effective for a period not to exceed 360 days following the effective date of the bill.

The bill is scheduled to take effect immediately upon enactment.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 122

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 13, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 122, with committee amendments.

As amended, this bill is designated as the "Garden State Film and Digital Media Jobs Act" and provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in this State.

Under the bill, a taxpayer, upon approval of an application to the New Jersey Economic Development Authority and the Director of the Division of Taxation in the Department of the Treasury, is allowed a credit against the corporation business tax or gross income tax in an amount equal to 30 percent of the qualified film production expenses or 20 percent of the qualified digital media content production expenses, of the taxpayer during a privilege period or taxable year commencing on or after July 1, 2018 but before July 1, 2023.

The bill increases the amount of the allowable credit to 35 percent of the qualified film production expenses or 25 percent of the qualified digital media content production expenses of the taxpayer during those years if the expenses are incurred for services performed and tangible personal property used or consumed in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County for the film or digital media production.

In order to claim the tax credit for qualified film production expenses, the bill provides that the following conditions must be met:

-- at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified production expenses of the taxpayer during the privilege period exceed $1,000,000 per production;

-- principal photography of the film commences within the earlier of 180 days from the date of the original application for the tax credit, or 150 days from the date of the approval of the application for the tax credit;

-- the film includes, when determined to be appropriate by the Motion Picture and Television Development Commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination, which materials are to include a placement of a "Filmed in New Jersey" or "Produced in New Jersey" statement, or an appropriate logo approved by the Motion Picture and Television Development Commission, in the end credits of the film;

-- the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State; and

-- the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors.

In order to claim the tax credit for qualified digital media content production expenses, the bill provides that the following conditions must be met:

-- at least $2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in this State;

-- at least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in this State;

-- the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State; and

-- the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors.

The bill imposes a limit on the total cumulative amount of tax credits that are allowed during each fiscal year for the five-year period in which tax credits are available. The bill provides that no more than $75 million in tax credits are allowed to be granted to taxpayers for qualified film production expenses for fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024, and no more than $10 million in tax credits are allowed to be granted to taxpayers for qualified digital media content production expenses in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024.

The bill permits the authority and the director to adopt rules and regulations necessary to effectuate the purposes of the bill and permits the immediate filing of those rules and regulations with the Office of Administrative Law, effective for a period not to exceed 360 days following the effective date of the bill.

The bill repeals sections of current law that established a prior corporation business tax and gross income tax credit for film and digital media content production expenses, which were created by P.L.2005, c.345 (for film production expenses) and P.L.2007, c.257 (for digital media content production expenses) and expired in 2015.

COMMITTEE AMENDMENTS:

The amendments permit the placement of an appropriate logo approved by the Motion Picture and Television Development Commission in the end credits of a film instead of a “Filmed in New Jersey” or “Produced in New Jersey” statement.

The amendments provide an enhanced tax credit equal to 35 percent of qualified film production expenses and an enhanced tax credit equal to 25 percent of qualified digital media content production expenses if those expenses are incurred for services performed and tangible personal property used or consumed in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County for the film or digital media production.

The amendments remove a provision which provided a tax credit equal to 40 percent of qualified film productions or qualified digital media content production expenses for expenses incurred in an eligible municipality for the film or digital media content production with tax credits.

The amendments clarify that the Director of the Division of Taxation determines the order in which film and digital media tax credits are applied against a taxpayer’s tax liability.

The amendments remove the definition of eligible municipality.

The amendments permit the awarding of tax credits to game shows that are filmed and produced at nonprofit arts and cultural centers that do not receive State funding.

The amendments lower the income threshold for a “highly compensated individual” from $1,500,000 to $500,000.

The amendments repeal current sections of law that established a prior tax credit for film and digital media content production expenses.

The amendments make various technical corrections.

FISCAL IMPACT:

The Office of Legislative Services (OLS) can project neither the direction nor the magnitude of the bill's net impact on the finances of the State and local governments. The State fiscal net impact is calculated by adding the direct revenue loss from awarding film and digital media production tax credits and their opportunity costs (the fiscal benefits the State forgoes as spending is redirected from one economic activity to another) and subtracting from that sum the indirect revenue gain that will accrue from additional activity that the tax credits will catalyze.

The OLS notes that the bill’s direct State revenue loss will be up to $85 million annually from FY 2019 through FY 2023, but it does not have sufficient information to gauge the bill’s opportunity costs or offsetting indirect revenue gain. The bill establishes two tax credit programs for the five-year period from FY 2019 through FY 2023, which in turn could cause up to $75 million in annual foregone State revenue attributable to the film production tax credit program and another up to $10 million in annual foregone State revenue ascribable to the digital media production tax credit program.

The bill might accrue an indeterminate revenue gain to affected local governments if the bill results in digital media content or film production activity that would not be undertaken absent the assistance.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 122

STATE OF NEW JERSEY
218th LEGISLATURE

DATED: APRIL 2, 2018

SUMMARY

Synopsis:	Provides corporation business tax and gross income tax credit for certain expenses incurred for production of certain films and digital media content; designated as Garden State Film and Digital Media Jobs Act.
Type of Impact:	Potential negative fiscal net impact on State General Fund and Property Tax Relief Fund; potential revenue increase to affected local governments.
Agencies Affected:	Department of the Treasury; Economic Development Authority; Motion Picture and Television Development Commission; Local Governments.

Office of Legislative Services Estimate

Fiscal Impact	Multi-Year Lifespan of Tax Credit Awards
Direct State Revenue Loss	Up to $425,000,000
Indirect State Revenue Gain	Indeterminate
State Opportunity Cost	Indeterminate
Indirect Local Revenue Gain	Indeterminate

- The Office of Legislative Services (OLS) expects the bill to produce a negative fiscal net impact of indeterminate magnitude on the State, considering that the bill does not require tax credit-receiving expenses to yield a net fiscal benefit to the State. The OLS' inability to quantify the fiscal net impact is rooted in imperfect information regarding: a) the number and attributes of newly eligible film and digital media projects and expenses; and b) the State spending that may be crowded out by new incentive awards.

- The bill's direct revenue loss to the State General Fund and Property Tax Relief Fund could total up to $425 million over the multi-year lifespan of qualified film production and qualified digital media content production tax credit awards. These tax credit awards are capped annually at $75 million and $10 million, respectively, and are restricted to a five-year period from FY 2019 through FY 2023.

BILL DESCRIPTION

The bill establishes a five-year tax credit program for certain film and digital media production expenses incurred in this State. For each fiscal year from FY 2019 through FY 2023 no more than $75 million in tax credits may be granted for qualified film production expenses and no more than $10 million in tax credits for qualified digital media content production expenses. The credits are available under the corporation business tax and the gross income tax.

Tax credit amounts equal 30 percent of a taxpayer's qualified film production expenses or 20 percent of a taxpayer's qualified digital media content production expenses. The allowable credit equals 35 percent of the qualified film production expenses or 25 percent of the qualified digital media content production expenses if the qualified expenses are incurred for services performed and tangible personal property used or consumed in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

In order to claim the tax credit for qualified film production expenses, several conditions must be met, including: the film includes, when determined to be appropriate by the Motion Picture and Television Development Commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination; and at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed and goods purchased through vendors authorized to do business in New Jersey, or the qualified production expenses of the taxpayer during a tax year exceed $1 million per production.

In order to claim the tax credit for qualified digital media content production expenses, several conditions must be met, including: at least $2 million of the total digital media content production expenses of the taxpayer are incurred for services performed and goods purchased through vendors authorized to do business in this State; and at least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in this State.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS expects the bill to produce a negative fiscal net impact of indeterminate magnitude on the State, and a potential revenue gain to affected local governments. Conceptually, the fiscal net impact to the State is calculated by adding the direct revenue loss from awarding additional incentive amounts and their opportunity costs (the fiscal benefits the State forgoes as spending is redirected from one economic activity to another) and subtracting from that sum the indirect revenue gain that will accrue from additional economic activity that the additional incentive amounts will catalyze.

Direct State Revenue Loss: The bill's direct revenue loss to the State General Fund and Property Tax Relief Fund could total up to $425 million over the multi-year lifespan of qualified film production and qualified digital media content production tax credit awards.

The bill provides two tax credits: a qualified film production tax credit and a qualified digital media content production tax credit. Tax credit awards are capped annually at $75 million and $10 million, respectively, and are restricted to a five-year period from FY 2019 through FY 2023. The qualified film production tax credit is equal to 30 percent of a taxpayer's qualified expenses during a tax year, and the qualified digital media content production tax credit is equal to 20 percent of a taxpayer's qualified expenses. The bill provides enhanced incentives for qualified film production expenses (35 percent of expenses) and qualified digital media content production expenses (25 percent of expenses) incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

Given that tax credits can only be awarded from July 1, 2018 to June 30, 2023, the OLS notes there would be no additional tax credit awards in FY 2024 and thereafter.

This timeline represents a simplification, though, as the OLS assumes that taxpayers will apply the tax credits against their tax liabilities in the year in which the New Jersey Economic Development Authority (EDA) grants them. In actuality, the use of approved tax credit amounts can be expected to extend over several fiscal years, for not all taxpayers will have a sufficient tax liability against which to apply the tax credits upon receipt and the bill allows taxpayers to carry unused tax credit amounts forward for up to seven tax years.

Indirect State and Local Revenue Gain: The OLS cannot quantify the bill's indirect revenue gain to the State and local governments from the issuance of qualified film production tax credits and qualified digital media content production tax credits because of imperfect information on the number and attributes of newly eligible film and digital media projects and expenses. But, for reasons explained below, the OLS anticipates the bill's indirect State and local government revenue gain to fall below its direct State revenue loss of up to $425 million.

Analytical Framework: Like any government expenditure, incentive awards inject new spending into the economy. Once businesses and individuals receive payments they would not receive absent the incentive awards, at least a portion of these payments will newly circulate in New Jersey's economy and produce so-called "multiplier effects." As the additional financial resources flow through the economy they generate, as a byproduct, additional State and local revenue collections—the indirect revenue gain discussed in this section. Examples are enhanced local property tax collections accruing when an incentive recipient invests the incentive amount in facility improvements, which then appreciate the property's value; or additional State sales and use tax collections from construction workers employed in the facility improvement spending their resultant income on taxable goods and services.

Indirect State fiscal effects offset the State's direct cost of awarding incentives in part or potentially even in whole. Fiscal "multiplier effects" tend to be maximized whenever an incentive award serves as the indispensable impetus for additional spending by the incentive recipient that would not otherwise occur. In this case, the incentive recipient magnifies the positive economic and fiscal impacts of the State's outlay. Depending on project and incentive attributes, the induced project may even yield indirect fiscal State benefits exceeding the cost of the subsidy. The larger the proportion of the public assistance relative to the financial outlay by the subsidized party, however, the lower the probability that the subsidized activity will generate positive net returns to the State.

In contrast, the State's return on investment is negative whenever the State subsidizes a project that a taxpayer would have undertaken with or without public assistance. Because the financial inducement has not caused the project's realization, none of its economic and fiscal feedback effects are attributable to the incentive, and therefore must be excluded from the tabulation of the incentive's indirect fiscal benefits.

Nevertheless, even if the State provides financial assistance to a project that would be realized anyway, some, albeit comparatively small, indirect fiscal benefits may still accrue to the State. These would occur whenever the subsidy beneficiary spends the incentive award in New Jersey on goods and services that the beneficiary would otherwise not have procured. In that event the incentive award still represents an injection of additional cash into New Jersey's economy whose ripple effects include the accumulation of indirect fiscal State benefits.

Lastly, given the high degree of integration of New Jersey's economy with the national and global economies, an addition of spending in New Jersey will eventually leak into other jurisdictions and cease to circulate within the State. Consequently, any tabulation of a subsidy payment's New Jersey feedback effects must disregard feedback effects that other jurisdictions will absorb.

Bill's State Indirect Fiscal Effects: One aspect of the tax credits provided in the bill motivates the OLS to expect that the bill's direct State revenue loss will exceed its indirect State and local government revenue gain. The bill does not subject credit-receiving expenses to a multiplier-based net benefit test calculation, which for other economic development incentive programs is intended to ensure that the EDA will award tax incentives only to projects that are estimated to generate indirect State revenue in excess of a tax incentive's direct State cost. Without the net benefit test requirement, projects will also be eligible for tax credits that taxpayers would have undertaken with or without the State subsidy.

Irrespective of the magnitude of the bill's indirect fiscal benefits, the analysis of its full impact on State finances is incomplete without considering the bill's opportunity costs.

State Opportunity Costs: Given the State's finite resources and its balanced budget requirement, the decision to award film production and digital media content production tax credits under the bill will invariably divert resources from policy alternatives to which they would have been applied absent the inducements. These policy alternatives also produce direct State costs and indirect State revenue collections. The concept of opportunity costs captures the value of these fiscal benefits the State forgoes as it redirects cash flows. Once opportunity costs are factored into the analysis, it is therefore possible for a bill to produce a *net* fiscal loss to the State even if its indirect fiscal benefits exceed its direct cost.

For example, if, instead of this bill, the State invested in road construction, the bill would produce a *net* fiscal effect equal to the difference between the total fiscal impact of the tax credit awards—or the direct State cost of awarding film production and digital media content production tax credits, minus the incentives' indirect State fiscal effects—and that of the forgone road construction investment.

Section: *Revenue, Finance and Appropriations*

Analyst: *Jordan M. DiGiovanni*
Associate Fiscal Analyst

Approved: *Frank W. Haines III*
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 122

STATE OF NEW JERSEY

DATED: APRIL 5, 2018

The Assembly Appropriations Committee reports favorably Senate Bill 122 (1R) with committee amendments.

As amended, this bill is designated as the "Garden State Film and Digital Media Jobs Act" and provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in this State.

Under the bill, a taxpayer, upon approval of an application to the New Jersey Economic Development Authority and the Director of the Division of Taxation in the Department of the Treasury, is allowed a credit against the corporation business tax or gross income tax in an amount equal to 30 percent of the qualified film production expenses or 20 percent of the qualified digital media content production expenses, of the taxpayer during a privilege period or taxable year commencing on or after July 1, 2018 but before July 1, 2023.

The bill increases the amount of the allowable credit to 35 percent of the qualified film production expenses or 25 percent of the qualified digital media content production expenses of the taxpayer during those years if the expenses are incurred for services performed and tangible personal property used or consumed in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County for the film or digital media production.

In order to claim the tax credit for qualified film production expenses, the bill provides that the following conditions must be met:

-- at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified production expenses of the taxpayer during the privilege period exceed $1,000,000 per production;

-- principal photography of the film commences within the earlier of 180 days from the date of the original application for the tax credit, or 150 days from the date of the approval of the application for the tax credit;

-- the film includes, when determined to be appropriate by the Motion Picture and Television Development Commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination, which materials are to include a placement of a “Filmed in New Jersey” or “Produced in New Jersey” statement, or an appropriate logo approved by the Motion Picture and Television Development Commission, in the end credits of the film;

-- the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State; and

-- the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors.

In order to claim the tax credit for qualified digital media content production expenses, the bill provides that the following conditions must be met:

-- at least $2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in this State;

-- at least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in this State;

-- the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State; and

-- the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors.

The bill imposes a limit on the total cumulative amount of tax credits that are allowed during each fiscal year for the five-year period in which tax credits are available. The bill provides that no more than $75 million in tax credits are allowed to be granted to taxpayers for qualified film production expenses for fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024, and no more than $10 million in tax credits are allowed to be granted to taxpayers for qualified digital media content production expenses in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024.

The bill permits the authority and the director to adopt rules and regulations necessary to effectuate the purposes of the bill and permits the immediate filing of those rules and regulations with the Office of Administrative Law, effective for a period not to exceed 360 days following the effective date of the bill.

The bill repeals sections of current law that established a prior corporation business tax and gross income tax credit for film and digital media content production expenses, which were created by P.L.2005, c.345 (for film production expenses) and P.L.2007, c.257 (for digital media content production expenses) and expired in 2015.

As reported by the committee, Senate Bill No. 122 (2R) is identical to Assembly Bill No. 1038 (1R), also reported by the committee with amendments on this same date.

COMMITTEE AMENDMENTS

The committee amendments clarify that the tax credit verification report will be prepare in accordance with agreed upon procedures promulgated by the New Jersey Economic Development Authority and the Director of the Division of Taxation.

The committee amendments clarify that single-member limited liability corporations, partners of partnerships, and owners of New Jersey S Corporations can obtain the benefit of the credits applied for by their related taxpayers.

FISCAL IMPACT

The Office of Legislative Services (OLS) can project neither the direction nor the magnitude of the bill's net impact on the finances of the State and local governments. The State net fiscal impact is calculated by adding the direct revenue loss from awarding film and digital media production tax credits and their opportunity costs (the fiscal benefits the State forgoes as spending as redirected from one economic activity to another) and subtracting from that sum the indirect revenue gain that will accrue from additional activity that the tax credits will analyze.

The OLS notes that the bill's direct State revenue loss will be up to $85 million annually from FY 2019 through FY 2023, but it does not have sufficient information to gauge the bill's opportunity costs or offsetting indirect revenue gain. The bill establishes two tax credit programs for the five-year period from FY 2019 through FY 2023, which in turn could cause up to $75 million in annual foregone State revenue attributable to the film production tax credit program and up to $10 million in annual foregone State revenue ascribable to the digital media production tax credit program.

The bill might accrue an indeterminate revenue gain to affected local governments if the bill results in digital media content or film production activity that would not be undertaken absent the assistance.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 122

STATE OF NEW JERSEY
218th LEGISLATURE

DATED: APRIL 23, 2018

SUMMARY

Synopsis: Provides corporation business tax and gross income tax credit for certain expenses incurred for production of certain films and digital media content; designated as Garden State Film and Digital Media Jobs Act.

Type of Impact: Potential negative fiscal net impact on State General Fund and Property Tax Relief Fund; potential revenue increase to affected local governments.

Agencies Affected: Department of the Treasury;
Economic Development Authority;
Motion Picture and Television Development Commission;
Local Governments.

Office of Legislative Services Estimate

Fiscal Impact	Multi-Year Lifespan of Tax Credit Awards
Direct State Revenue Loss	Up to $425,000,000
Indirect State Revenue Gain	Indeterminate
State Opportunity Cost	Indeterminate
Indirect Local Revenue Gain	Indeterminate

- The Office of Legislative Services (OLS) expects the bill to produce a negative fiscal net impact of indeterminate magnitude on the State, considering that the bill does not require tax credit-receiving expenses to yield a net fiscal benefit to the State. The OLS' inability to quantify the fiscal net impact is rooted in imperfect information regarding: a) the number and attributes of newly eligible film and digital media projects and expenses; and b) the State spending that may be crowded out by new incentive awards.

- The bill's direct revenue loss to the State General Fund and Property Tax Relief Fund could total up to $425 million over the multi-year lifespan of qualified film production and qualified digital media content production tax credit awards. These tax credit awards are capped annually at $75 million and $10 million, respectively, and are restricted to a five-year period from FY 2019 through FY 2023.

BILL DESCRIPTION

The bill establishes a five-year tax credit program for certain film and digital media production expenses incurred in this State. For each fiscal year from FY 2019 through FY 2023 no more than $75 million in tax credits may be granted for qualified film production expenses and no more than $10 million in tax credits for qualified digital media content production expenses. The credits are available under the corporation business tax and the gross income tax.

Tax credit amounts equal 30 percent of a taxpayer's qualified film production expenses or 20 percent of a taxpayer's qualified digital media content production expenses. The allowable credit equals 35 percent of the qualified film production expenses or 25 percent of the qualified digital media content production expenses if the qualified expenses are incurred for services performed and tangible personal property used or consumed in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

In order to claim the tax credit for qualified film production expenses, several conditions must be met, including: the film includes, when determined to be appropriate by the Motion Picture and Television Development Commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination; and at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed and goods purchased through vendors authorized to do business in New Jersey, or the qualified production expenses of the taxpayer during a tax year exceed $1 million per production.

In order to claim the tax credit for qualified digital media content production expenses, several conditions must be met, including: at least $2 million of the total digital media content production expenses of the taxpayer are incurred for services performed and goods purchased through vendors authorized to do business in this State; and at least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in this State.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS expects the bill to produce a negative fiscal net impact of indeterminate magnitude on the State, and a potential revenue gain to affected local governments. Conceptually, the fiscal net impact to the State is calculated by adding the direct revenue loss from awarding additional incentive amounts and their opportunity costs (the fiscal benefits the State forgoes as spending is redirected from one economic activity to another) and subtracting from that sum the indirect revenue gain that will accrue from additional economic activity that the additional incentive amounts will catalyze.

Direct State Revenue Loss: The bill's direct revenue loss to the State General Fund and Property Tax Relief Fund could total up to $425 million over the multi-year lifespan of qualified film production and qualified digital media content production tax credit awards.

The bill provides two tax credits: a qualified film production tax credit and a qualified digital media content production tax credit. Tax credit awards are capped annually at $75 million and $10 million, respectively, and are restricted to a five-year period from FY 2019 through FY 2023. The qualified film production tax credit is equal to 30 percent of a taxpayer's qualified expenses during a tax year, and the qualified digital media content production tax credit is equal to 20 percent of a taxpayer's qualified expenses. The bill provides enhanced incentives for qualified film production expenses (35 percent of expenses) and qualified digital media content production expenses (25 percent of expenses) incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

Given that tax credits can only be awarded from July 1, 2018 to June 30, 2023, the OLS notes there would be no additional tax credit awards in FY 2024 and thereafter.

This timeline represents a simplification, though, as the OLS assumes that taxpayers will apply the tax credits against their tax liabilities in the year in which the New Jersey Economic Development Authority (EDA) grants them. In actuality, the use of approved tax credit amounts can be expected to extend over several fiscal years, for not all taxpayers will have a sufficient tax liability against which to apply the tax credits upon receipt and the bill allows taxpayers to carry unused tax credit amounts forward for up to seven tax years.

Indirect State and Local Revenue Gain: The OLS cannot quantify the bill's indirect revenue gain to the State and local governments from the issuance of qualified film production tax credits and qualified digital media content production tax credits because of imperfect information on the number and attributes of newly eligible film and digital media projects and expenses. But, for reasons explained below, the OLS anticipates the bill's indirect State and local government revenue gain to fall below its direct State revenue loss of up to $425 million.

Analytical Framework: Like any government expenditure, incentive awards inject new spending into the economy. Once businesses and individuals receive payments they would not receive absent the incentive awards, at least a portion of these payments will newly circulate in New Jersey's economy and produce so-called "multiplier effects." As the additional financial resources flow through the economy they generate, as a byproduct, additional State and local revenue collections—the indirect revenue gain discussed in this section. Examples are enhanced local property tax collections accruing when an incentive recipient invests the incentive amount in facility improvements, which then appreciate the property's value; or additional State sales and use tax collections from construction workers employed in the facility improvement spending their resultant income on taxable goods and services.

Indirect State fiscal effects offset the State's direct cost of awarding incentives in part or potentially even in whole. Fiscal "multiplier effects" tend to be maximized whenever an incentive award serves as the indispensable impetus for additional spending by the incentive recipient that would not otherwise occur. In this case, the incentive recipient magnifies the positive economic and fiscal impacts of the State's outlay. Depending on project and incentive attributes, the induced project may even yield indirect fiscal State benefits exceeding the cost of the subsidy. The larger the proportion of the public assistance relative to the financial outlay by the subsidized party, however, the lower the probability that the subsidized activity will generate positive net returns to the State.

In contrast, the State's return on investment is negative whenever the State subsidizes a project that a taxpayer would have undertaken with or without public assistance. Because the financial inducement has not caused the project's realization, none of its economic and fiscal feedback effects are attributable to the incentive, and therefore must be excluded from the tabulation of the incentive's indirect fiscal benefits.

Nevertheless, even if the State provides financial assistance to a project that would be realized anyway, some, albeit comparatively small, indirect fiscal benefits may still accrue to the State. These would occur whenever the subsidy beneficiary spends the incentive award in New Jersey on goods and services that the beneficiary would otherwise not have procured. In that event the incentive award still represents an injection of additional cash into New Jersey's economy whose ripple effects include the accumulation of indirect fiscal State benefits.

Lastly, given the high degree of integration of New Jersey's economy with the national and global economies, an addition of spending in New Jersey will eventually leak into other jurisdictions and cease to circulate within the State. Consequently, any tabulation of a subsidy payment's New Jersey feedback effects must disregard feedback effects that other jurisdictions will absorb.

<u>Bill's State Indirect Fiscal Effects:</u> One aspect of the tax credits provided in the bill motivates the OLS to expect that the bill's direct State revenue loss will exceed its indirect State and local government revenue gain. The bill does not subject credit-receiving expenses to a multiplier-based net benefit test calculation, which for other economic development incentive programs is intended to ensure that the EDA will award tax incentives only to projects that are estimated to generate indirect State revenue in excess of a tax incentive's direct State cost. Without the net benefit test requirement, projects will also be eligible for tax credits that taxpayers would have undertaken with or without the State subsidy.

Irrespective of the magnitude of the bill's indirect fiscal benefits, the analysis of its full impact on State finances is incomplete without considering the bill's opportunity costs.

<u>State Opportunity Costs:</u> Given the State's finite resources and its balanced budget requirement, the decision to award film production and digital media content production tax credits under the bill will invariably divert resources from policy alternatives to which they would have been applied absent the inducements. These policy alternatives also produce direct State costs and indirect State revenue collections. The concept of opportunity costs captures the value of these fiscal benefits the State forgoes as it redirects cash flows. Once opportunity costs are factored into the analysis, it is therefore possible for a bill to produce a *net* fiscal loss to the State even if its indirect fiscal benefits exceed its direct cost.

For example, if, instead of this bill, the State invested in road construction, the bill would produce a *net* fiscal effect equal to the difference between the total fiscal impact of the tax credit awards—or the direct State cost of awarding film production and digital media content production tax credits, minus the incentives' indirect State fiscal effects—and that of the forgone road construction investment.

Section:	*Revenue, Finance and Appropriations*
Analyst:	*Jordan M. DiGiovanni* *Associate Fiscal Analyst*
Approved:	*Frank W. Haines III* *Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Third Reprint]

SENATE, No. 122

STATE OF NEW JERSEY
218th LEGISLATURE

DATED: JULY 2, 2018

SUMMARY

Synopsis: Provides corporation business tax and gross income tax credit for certain expenses incurred for production of certain films and digital media content.

Type of Impact: Potential negative fiscal net impact on State General Fund and Property Tax Relief Fund; potential revenue increase to affected local governments.

Agencies Affected: Department of the Treasury, Economic Development Authority, Motion Picture and Television Development Commission, and local governments.

Office of Legislative Services Estimate

Fiscal Impact	**Multi-Year Lifespan of Tax Credit Awards**
Direct State Revenue Loss	Up to $425,000,000
Indirect State Revenue Gain	Indeterminate
State Opportunity Cost	Indeterminate
Indirect Local Revenue Gain	Indeterminate

- The Office of Legislative Services (OLS) expects the bill to produce a negative fiscal net impact of indeterminate magnitude on the State, considering that the bill does not require tax credit-receiving expenses to yield a net fiscal benefit to the State. The OLS' inability to quantify the fiscal net impact is rooted in imperfect information regarding: a) the number and attributes of newly eligible film and digital media projects and expenses; and b) the State spending that may be crowded out by new incentive awards.

- The bill's direct revenue loss to the State General Fund and Property Tax Relief Fund could total up to $425 million over the multi-year lifespan of qualified film production and qualified digital media content production tax credit awards. These tax credit awards are capped annually at $75 million and $10 million, respectively, and are restricted to a five-year period from FY 2019 through FY 2023.

BILL DESCRIPTION

The bill establishes a five-year tax credit program for certain film and digital media production expenses incurred in this State. For each fiscal year from FY 2019 through FY 2023, no more than $75 million in tax credits may be granted for qualified film production expenses and no more than $10 million in tax credits for qualified digital media content production expenses. The credits are available under the corporation business tax and the gross income tax.

Tax credit amounts equal 30 percent of a taxpayer's qualified film production expenses or 20 percent of a taxpayer's qualified digital media content production expenses. The allowable credit equals 35 percent of the qualified film production expenses or 25 of the qualified digital media content production expenses if the qualified expenses are incurred for services performed and tangible personal property used or consumed in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

In order to claim the tax credit for qualified film production expenses, several conditions must be met, including: the film includes, when determined to be appropriate by the Motion Picture and Television and Development Commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination; and at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed and goods purchased through vendors authorized to do business in New Jersey, or the qualified production expenses of the taxpayer during a tax year exceed $1 million per production.

In order to claim the tax credit for qualified digital media content production expenses, several conditions must be met, including: at least $2 million of the total digital media content production expenses of the taxpayer are incurred for services performed and goods purchased through vendors authorized to do business in this State; and at least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in this State.

This bill allows a taxpayer to receive a corporation business tax credit equal to two percent of the qualified film or digital media content production expenses incurred by the taxpayer if their application is accompanied by a diversity plan outlining specific goals for hiring minority persons and women. The diversity plan must satisfy requirements established by the Director of the Division of Taxation in the Department of the Treasury and the New Jersey Economic Development Authority (EDA). A taxpayer's application must also indicate whether they intend to participate in training, education, and recruitment programs that are designed to promote and encourage the training and hiring of New Jersey residents from diverse backgrounds.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS expects the bill to produce a negative fiscal net impact of indeterminate magnitude on the State, and potential revenue gain to affected local governments. Conceptually, the fiscal net impact to the State is calculated by adding the direct revenue loss from awarding additional incentive amounts and their opportunity costs (the fiscal benefits the State forgoes as spending is redirected from one economic activity to another) and subtracting from that sum the indirect revenue gain that will accrue from additional economic activity that the additional revenue amounts will catalyze.

Direct State Revenue Loss: The bill's direct revenue loss to the State General Fund and the Property Tax Relief Fund could total up to $425 million over the multi-year lifespan of qualified film production and qualified digital media content production content tax credit awards.

The bill provides three tax credits: a qualified film production tax credit, a qualified digital media content production tax credit, and a diversity plan tax credit. Tax credit awards are capped annually at $75 million and $10 million, respectively, and are restricted to a five-year period from FY 2019 through FY 2023. The qualified film production tax credit is equal to 30 percent of a taxpayer's qualified expenses during a tax year, and the qualified digital media content production tax credit is equal to 20 percent of a taxpayer's qualified expenses. The bill provides enhanced incentives for qualified film production expenses (35 percent of expenses) and qualified digital media content production expenses (25 percent of expenses) incurred for services performed and tangible personal property through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County. The bill also provides a corporation business tax credit of two percent of qualified film or digital media content production expenses for taxpayers who file a diversity plan with their tax credit application, provided that the plan meets requirements established by the EDA and the Division of Taxation.

Given that tax credits can only be awarded from July 1, 2018 to June 30, 2023, the OLS notes that there would be no additional tax credit awards in FY 2024 and thereafter.

This timeline represents a simplification, though, as the OLS assumes that taxpayers will apply the tax credits against their tax liabilities in the year in which the EDA grants them. In actuality, the use of approved tax credit amounts can be expected to extend over several fiscal years, for not all taxpayers will have a sufficient tax liability against which to apply the tax credits upon receipt and the bill allows taxpayers to carry unused tax credit amounts forward for up to seven years.

Indirect State and Local Revenue Gain: The OLS cannot quantify the bill's indirect revenue gain to the State and local governments from the issuance of qualified film production tax credits and qualified digital media content production tax credits because of imperfect information on the number and attributes of newly eligible film and digital media projects and expenses. But, for reasons explained below, the OLS anticipates the bill's indirect State and local government revenue gain to fall below its direct State revenue loss of up to $425 million.

Analytical Framework: Like any government expenditure, incentive awards inject new spending into the economy. Once businesses and individuals receive payments they would not receive absent the incentive awards, at least a portion of these payments will newly circulate in New Jersey's economy and produce so-called "multiplier effects." As the additional financial resources flow through the economy they generate, as a byproduct, additional State and local revenue collections—the indirect revenue gain discussed in this section. Examples are enhanced local property tax collections accruing when an incentive recipient invests the incentive amount in facility improvements, which then appreciate the property's value; or additional State sales and use tax collections from construction workers employed in the facility improvement spending their resultant income on taxable goods and services.

Indirect State fiscal effects offset the State's direct cost of awarding incentives in part or potentially even in whole. Fiscal "multiplier effects" tend to be maximized whenever an incentive award serves as the indispensable impetus for additional spending by the incentive recipient that would not otherwise occur. In this case, the incentive recipient magnifies the positive economic and fiscal impacts of the State's outlay. Depending on project and incentive attributes, the induced project may even yield indirect fiscal State benefits exceeding the cost of the subsidy. The larger the proportion of the public assistance relative to the financial outlay by the subsidized party, however, the lower the probability that the subsidized activity will generate positive net returns to the State.

In contrast, the State's return on investment is negative whenever the State subsidizes a project that a taxpayer would have undertaken with or without public assistance. Because the financial inducement has not caused the project's realization, none of its economic and fiscal feedback effects are attributable to the incentive, and therefore must be excluded from the tabulation of the incentive's indirect fiscal benefits.

Nevertheless, even if the State provides financial assistance to a project that would be realized anyway, some, albeit comparatively small, indirect fiscal benefits may still accrue to the State. These would occur whenever the subsidy beneficiary spends the incentive award in New Jersey on goods and services that the beneficiary would otherwise not have procured. In that event the incentive award still represents an injection of additional cash into New Jersey's economy whose ripple effects include the accumulation of indirect fiscal State benefits.

Lastly, given the high degree of integration of New Jersey's economy with the national and global economies, an additional of spending in New Jersey will eventually leak into other jurisdictions and cease to circulate within the State. Consequently, any tabulation of a subsidy payment's New Jersey feedback effects must disregard feedback effects that other jurisdictions will absorb.

<u>Bill's State Indirect Fiscal Effects:</u> One aspect of the tax credits provided in the bill motivates the OLS to expect that the bill's direct State revenue loss will exceeds its indirect State and local government revenue gain. The bill does not subject credit-receiving expenses to a multiplier-based net benefit test calculation, which for other economic development incentive programs is intended to ensure that the EDA will award tax incentives only to projects that are estimated to generate indirect State revenue in excess of a tax incentive's direct State cost. Without the net benefit test requirement, projects will also be eligible for tax credits that taxpayers would have undertaken with or without the State subsidy.

Irrespective of the magnitude of the bill's indirect fiscal benefits, the analysis of its full impact on State finances is incomplete without considering the bill's opportunity costs.

<u>State Opportunity Costs:</u> Given the State's finite resources and its balanced budget requirement, the decision to award film production and digital media content production tax credits under the bill; will invariably divert resources from policy alternatives to which they would have been applied absent the inducements. These policy alternatives also produce direct State costs and indirect State revenue collections. The concept of opportunity costs captures the value of these fiscal benefits the State forgoes as it redirects cash flows. Once opportunity costs are factored into the analysis, it is therefore possible for a bill to produce a *net* fiscal loss to the State even if its direct fiscal benefits exceed its direct cost.

For example, if, instead of this bill, the State invested in road construction, the bill would produce a *net* fiscal effect equal to the difference between the total fiscal impact of the tax credit awards—or the State cost of awarding film production and digital media content production tax credits, minus the incentives' indirect State fiscal effects—and that of the forgone road construction investment.

Section:	*Revenue, Finance, and Appropriations*
Analyst:	*Scott A. Brodsky* *Lead Fiscal Analyst*
Approved:	*Frank W. Haines III* *Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 1038

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:
Assemblyman GORDON M. JOHNSON
District 37 (Bergen)
Assemblyman PAUL D. MORIARTY
District 4 (Camden and Gloucester)
Assemblyman LOUIS D. GREENWALD
District 6 (Burlington and Camden)

Co-Sponsored by:
Assemblymen Calabrese and Giblin

SYNOPSIS

Provides corporation business tax and gross income tax credit for certain expenses incurred for production of certain films and digital media content; designated as Garden State Film and Digital Media Jobs Act.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 4/6/2018)

AN ACT providing a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content and designated as the Garden State Film and Digital Media Jobs Act, supplementing P.L.1945, c.162 (C.54:10A-1 et seq.) and Title 54A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to 30 percent of the qualified film production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2023, provided that:

(a) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified film production expenses of the taxpayer during the privilege period exceed $1,000,000 per production;

(b) principal photography of the film commences within the earlier of 180 days from the date of the original application for the tax credit, or 150 days from the date of approval of the application for the tax credit;

(c) the film includes, when determined to be appropriate by the commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination, which materials shall include placement of a "Filmed in New Jersey" or "Produced in New Jersey" statement in the end credits of the film;

(d) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with subsection f. of this section; and

(e) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection g. of this section.

(2) Notwithstanding the provisions of paragraph (1) of this subsection a. to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 40 percent for the qualified film production expenses of the taxpayer during a privilege period that represent expenses of the taxpayer incurred in an eligible municipality for the production of a film, including post-production costs of the taxpayer incurred in an eligible municipality.

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to 20 percent of the qualified digital media content production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2023, provided that:

(a) at least $2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey;

(b) at least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;

(c) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with subsection f. of this section; and

(d) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection g. of this section.

(2) Notwithstanding the provisions of paragraph (1) of this subsection b. to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 40 percent for the qualified digital media content production expenses of the taxpayer during a privilege period that represent expenses of the taxpayer incurred in an eligible municipality for the production of digital media content.

c. No tax credit shall be allowed pursuant to this section for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with the director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the privilege period for which a tax credit authorized pursuant to this section is allowed. The order of priority of the application of the tax credit allowed pursuant to this section and any other tax credits allowed by law shall be as prescribed by the director. The amount of the tax credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), for a privilege period, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the taxpayer to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the tax credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of this subsection or under other provisions of P.L.1945, c.162 (C.54:10A-1 et seq.) may be carried forward, if necessary, to the seven privilege periods following the privilege period for which the tax credit was allowed.

d. A taxpayer, with an application for a tax credit provided for in subsection a. or subsection b. of this section, may apply to the authority and the director for a tax credit transfer certificate in lieu of the taxpayer being allowed any amount of the tax credit against the tax liability of the taxpayer. The tax credit transfer certificate, upon receipt thereof by the taxpayer from the authority and the director, may be sold or assigned, in full or in part, to any other taxpayer that may have a tax liability under the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in exchange for private financial assistance to be provided by the purchaser or assignee to the taxpayer that has applied for and been granted the tax credit. The tax credit transfer certificate provided to the taxpayer shall include a statement waiving the taxpayer's right to claim that amount of the tax credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) that the taxpayer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the taxpayer of less than 75 percent of the transferred tax credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability under P.L.1945, c.162 (C.54:10A-1 et seq.) shall be subject to the same limitations and conditions that apply to the use of a tax credit pursuant to subsection c. of this section. Any amount of a tax credit transfer certificate obtained by a purchaser or assignee under subsection a. or subsection b. of this section may be applied against the purchaser's or assignee's tax liability under N.J.S.54A:1-1 et seq. and shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsections c. and d. of section 2 of P.L.   , c.   (C.   ) (pending before the Legislature as this bill).

e. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.   , c.   (C.   ) (pending before the Legislature as this bill) shall not exceed a cumulative total of $75,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection a. of this section and subsection a. of section 2 of P.L.   , c.   (C.   ) (pending before the Legislature as this bill) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) are not in excess of the amount of credits available.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed a cumulative total of $10,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section and subsection b. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section and subsection b. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) are not in excess of the amount of credits available.

f. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. The report shall be based on a compliance audit conducted by the independent certified public accountant pursuant to procedures agreed upon by the taxpayer, the independent certified public accountant, and the authority and the director; and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's compliance audit, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

g. A taxpayer shall withhold from each payment to a loan out company or to an independent contractor an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld.

h. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

"Business assistance or incentive" means "business assistance or incentive" as that term is defined pursuant to section 1 of P.L.2007, c.101 (C.54:50-39).

"Commission" means the Motion Picture and Television Development Commission.

"Digital media content" means any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound and video content. "Digital media content" does not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Eligible municipality" means a municipality in this State that has experienced the closure of at least two casino hotel facilities that had been licensed and operated, within the boundaries of the municipality, in accordance with the laws of this State.

"Film" means a feature film, a television series or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather and market reports or public programming, talk show, sports event, or reality show, a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate or institutional purposes. "Film" shall not include a game show, award show, or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time or full-time equivalent employee" shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

"Highly compensated individual" means an individual who directly or indirectly receives compensation in excess of $1,500,000 for the performance of services used directly in a production. An individual receives compensation indirectly when the taxpayer pays a loan out company that, in turn, pays the individual for the performance of services.

"Independent contractor" means an individual treated as an independent contractor for federal and State tax purposes who is contracted with by the taxpayer for the performance of services used directly in a production.

"Loan out company" means a personal service corporation or other entity that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" does not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

"Partnership" means an entity classified as a partnership for federal income tax purposes.

"Post-production costs" means the costs of the phase of production of a film that follows principal photography, in which raw footage is cut and assembled into a finished film with sound synchronization and visual effects.

"Pre-production costs" means the costs of the phase of production of a film that precedes principal photography, in which a detailed schedule and budget for the production is prepared, the script and location is finalized, and contracts with vendors are negotiated.

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include but shall not be limited to wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payment made to a loan out company or to an independent contractor shall not be a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection g. of this section. "Qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content shall not be "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include but shall not be limited to: wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection g. of this section. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of $1,500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines.

"Total digital media content production expenses" means costs for services performed and property used or consumed in the production of digital media content.

"Total film production expenses" means costs for services performed and tangible personal property used or consumed in the production of a film.

2. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 30 percent of the qualified film production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2023, provided that:

(a) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified film production expenses of the taxpayer during the taxable year exceed $1,000,000 per production;

(b) principal photography of the film commences within the earlier of 180 days from the date of the original application for the tax credit, or 150 days from the date of approval of the application for the tax credit;

(c) the film includes, when determined to be appropriate by the commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination, which materials shall include placement of a "Filmed in New Jersey" or "Produced in New Jersey" statement in the end credits of the film;

(d) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with subsection f. of this section; and

(e) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection g. of this section.

(2) Notwithstanding the provisions of paragraph (1) of this subsection a. to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to 40 percent for the qualified film production expenses of the taxpayer during a taxable year that represent expenses of the taxpayer incurred in an eligible municipality for the production of a film, including post-production costs of the taxpayer incurred in an eligible municipality.

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 20 percent of the qualified digital media content production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2023, provided that:

(a) at least $2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey;

(b) at least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;

(c) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with subsection g. of this section; and

(d) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection h. of this section.

(2) Notwithstanding the provisions of paragraph (1) of this subsection b. to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to 40 percent for the qualified digital media content production expenses of the taxpayer during a taxable year that represent expenses of the taxpayer incurred in an eligible municipality for the production of digital media content.

c. No tax credit shall be allowed pursuant to this section for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with the director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the taxable year for which a tax credit authorized pursuant to this section is allowed. The order of priority of the application of the tax credit allowed pursuant to this section and any other tax credits allowed by law shall be as prescribed by the director. The amount of the tax credit applied under this section against the tax otherwise due under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., for a taxable year, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the taxpayer to an amount less than zero. The amount of the tax credit otherwise allowable under this section which cannot be applied for the taxable year due to the limitations of this subsection or under other provisions of N.J.S.54A:1-1 et seq., may be carried forward, if necessary, to the seven taxable years following the taxable year for which the tax credit was allowed.

d. (1) A business entity that is classified as a partnership for federal income tax purposes shall not be allowed a tax credit pursuant to this section directly, but the amount of tax credit of a taxpayer in respect of a distributive share of entity income, shall be determined by allocating to the taxpayer that proportion of the tax credit acquired by the entity that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the entity for its taxable year ending within or with the taxpayer's taxable year.

(2) A New Jersey S Corporation shall not be allowed a tax credit pursuant to this section directly, but the amount of tax credit of a taxpayer in respect of a pro rata share of S Corporation income, shall be determined by allocating to the taxpayer that proportion of the tax credit acquired by the New Jersey S Corporation that is equal to the taxpayer's share, whether or not distributed, of the total pro rata share of S Corporation income of the New Jersey S Corporation for its privilege period ending within or with the taxpayer's taxable year.

e. A taxpayer, with an application for a tax credit provided for in subsection a. or subsection b. of this section, may apply to the authority and the director for a tax credit transfer certificate in lieu of the taxpayer being allowed any amount of the tax credit against the tax liability of the taxpayer. The tax credit transfer certificate, upon receipt thereof by the taxpayer from the authority and the director, may be sold or assigned, in full or in part, to any other taxpayer that may have a tax liability under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., or the “Corporation Business Tax Act (1945),” P.L.1945, c.162 (C.54:10A-1 et seq.), in exchange for private financial assistance to be provided by the purchaser or assignee to the taxpayer that has applied for and been granted the tax credit. The tax credit transfer certificate provided to the taxpayer shall include a statement waiving the taxpayer's right to claim that amount of the tax credit against the tax imposed pursuant to N.J.S.54A:1-1 et seq. that the taxpayer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the taxpayer of less than 75 percent of the transferred tax credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability under N.J.S.54A:1-1 et seq. shall be subject to the same limitations and conditions that apply to the use of a tax credit pursuant to subsections c. and d. of this section. Any amount of a tax credit transfer certificate obtained by a purchaser or assignee under this subsection e. may be applied against the purchaser's or assignee's tax liability under P.L.1945, c.162 (C.54:10A-1 et seq.) and shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsection c. of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill).

f. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed a cumulative total of $75,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection a. of this section and subsection a. of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) are not in excess of the amount of credits available.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed a cumulative total of $10,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. and the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection b. of this section and subsection b. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) exceeds the amount of tax credits available in that year, then

taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section and subsection b. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) are not in excess of the amount of credits available.

g. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. The report shall be based on a compliance audit conducted by the independent certified public accountant pursuant to procedures agreed upon by the taxpayer, the independent certified public accountant, and the authority and the director; and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's compliance audit, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

h. A taxpayer shall withhold from each payment to a loan out company or to an independent contractor an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of

Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld.

i. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

"Business assistance or incentive" means "business assistance or incentive" as that term is defined pursuant to section 1 of P.L.2007, c.101 (C.54:50-39).

"Commission" means the Motion Picture and Television Development Commission.

"Digital media content" means any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound and video content. "Digital media content" does not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Eligible municipality" means a municipality in this State that has experienced the closure of at least two casino hotel facilities that had been licensed and operated, within the boundaries of the municipality, in accordance with the laws of this State.

"Film" means a feature film, a television series or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather and market reports or public programming, talk show, sports event, or reality show, a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate or institutional purposes. "Film" shall not include a game show, award show, or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time or full-time equivalent employee" shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

"Highly compensated individual" means an individual who directly or indirectly receives compensation in excess of $1,500,000 for the performance of services used directly in a production. An individual receives compensation indirectly when the taxpayer pays a loan out company that, in turn, pays the individual for the performance of services.

"Independent contractor" means an individual treated as an independent contractor for federal and State tax purposes who is contracted with by the taxpayer for the performance of services used directly in a production.

"Loan out company" means a personal service corporation or other entity that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" does not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

"Partnership" means an entity classified as a partnership for federal income tax purposes.

"Post-production costs" means the costs of the phase of production of a film that follows principal photography, in which raw footage is cut and assembled into a finished film with sound synchronization and visual effects.

"Pre-production costs" means the costs of the phase of production of a film that precedes principal photography, in which a detailed schedule and budget for the production is prepared, the script and location is finalized, and contracts with vendors are negotiated.

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include but shall not be limited to wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payment made to a loan out company or to an independent contractor shall not be a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection h. of this section. "Qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content shall not be "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include but shall not be limited to: wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection h. of this section. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of $1,500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines.

"Total digital media content production expenses" means costs for services performed and property used or consumed in the production of digital media content.

"Total film production expenses" means costs for services performed and tangible personal property used or consumed in the production of a film.

3. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the New Jersey Economic Development Authority and the Director of the Division of Taxation in the Department of the Treasury may adopt immediately upon filing with the Office of Administrative Law such rules and regulations as the authority or the director shall determine to be necessary to effectuate the purposes of P.L. , c. (C.) (pending before the Legislature as this bill), which rules and regulation shall be effective for a period not exceeding 360 days following the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) and may thereafter be amended, adopted, or readopted by the authority or the director in accordance with the requirements of P.L.1968, 1 c.410 (C.52:14B-1 et seq.).

4. This act shall take effect immediately.

STATEMENT

This bill, designated as the Garden State Film and Digital Media Jobs Act, provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in this State.

Under the bill, a taxpayer, upon approval of an application to the New Jersey Economic Development Authority and the Director of the Division of Taxation in the Department of the Treasury, is allowed a credit against the corporation business tax or gross income tax in an amount equal to 30 percent of the qualified film production expenses, or 20 percent of the qualified digital media content production expenses, of the taxpayer during a privilege period or taxable year commencing on or after July 1, 2018 but before July 1, 2023. The bill increases the amount of the allowable credit to 40 percent of the of the qualified film production expenses or 40 percent of the qualified digital media content production expenses of the taxpayer during those years if the expenses are incurred in an eligible municipality (i.e. Atlantic City) for the film or digital media production.

In order to claim the tax credit for qualified film production expenses, the bill provides that the following conditions must be met:

-- at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified film production expenses of the taxpayer during the privilege period exceed $1,000,000 per production;

-- principal photography of the film commences within the earlier of 180 days from the date of the original application for the tax credit, or 150 days from the date of approval of the application for the tax credit;

-- the film includes, when determined to be appropriate by the commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination, which materials shall include placement of a "Filmed in New Jersey" or "Produced in New Jersey" statement in the end credits of the film;

-- the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State; and

-- the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors.

In order to claim the tax credit for qualified digital media content production expenses, the bill provides that the following conditions must be met:

-- at least $2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey;

-- at least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;

-- the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State; and

-- the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors.

The bill imposes per year limits on the total cumulative amount of tax credits that are allowed during the five-year period in which the tax credits are operative. The bill provides that no more than $75 million of tax credits are allowed to be granted to taxpayers for qualified film production expenses in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024, and no more than $10 million of tax credits are allowed to be granted to taxpayers for qualified digital media content production expenses in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024.

The bill permits the authority and the director to adopt rules and regulations necessary to effectuate the purposes of the bill, and permits the immediate filing of those rules and regulations with the Office of Administrative Law, effective for a period not to exceed 360 days following the effective date of the bill.

The bill is scheduled to take effect immediately upon enactment.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1038

with committee amendments

STATE OF NEW JERSEY

DATED: APRIL 5, 2018

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1038, with committee amendments.

As amended, this bill is designated as the "Garden State Film and Digital Media Jobs Act" and provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in this State.

Under the bill, a taxpayer, upon approval of an application to the New Jersey Economic Development Authority and the Director of the Division of Taxation in the Department of the Treasury, is allowed a credit against the corporation business tax or gross income tax in an amount equal to 30 percent of the qualified film production expenses, or 20 percent of the qualified digital media content production expenses, of the taxpayer during a privilege period or taxable year commencing on or after July 1, 2018 but before July 1, 2023.

The bill increases the amount of the allowable credit to 35 percent of the qualified film production expenses or 25 percent of the qualified digital media content production expenses of the taxpayer during those years if the expenses are incurred for services performed and tangible personal property used or consumed in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County for the film or digital media content production.

In order to claim the tax credit for qualified film production expenses, the bill provides that the following conditions must be met:

-- at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified film production expenses of the taxpayer during the privilege period exceed $1,000,000 per production;

-- principal photography of the film commences within the earlier of 180 days from the date of the original application for the tax credit, or 150 days from the date of approval of the application for the tax credit;

-- the film includes, when determined to be appropriate by the Motion Picture Television and Development Commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination, which materials shall include placement of a "Filmed in New Jersey" or "Produced in New Jersey" statement, or an appropriate logo approved by the Motion Picture and Television Development Commission in the end credits of the film;

-- the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State; and

-- the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors.

In order to claim the tax credit for qualified digital media content production expenses, the bill provides that the following conditions must be met:

-- at least $2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey;

-- at least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;

-- the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State; and

-- the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors.

The bill imposes per year limits on the total cumulative amount of tax credits that are allowed during the five-year period in which the tax credits are operative. The bill provides that no more than $75 million of tax credits are allowed to be granted to taxpayers for qualified film production expenses in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024, and no more than $10 million of tax credits are allowed to be granted to taxpayers for qualified digital media content production expenses in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2024.

The bill permits the authority and the director to adopt rules and regulations necessary to effectuate the purposes of the bill, and permits the immediate filing of those rules and regulations with the Office of Administrative Law, effective for a period not to exceed 360 days following the effective date of the bill.

The bill repeals sections of current law that established a prior corporation business tax and gross income tax credit for film and digital media content production expenses, which were created by P.L.2005, c.345 (for film production expenses) and P.L.2007, c.257 (for digital media content production expenses) and expired in 2015.

As amended and reported by the committee, Assembly Bill No. 1038 (1R) is identical to Senate Bill No. 122 (2R), also reported by the committee with amendments this same date.

COMMITTEE AMENDMENTS:

The amendments permit the placement of an appropriate logo approved by the Motion Picture and Television Development Commission in the end credits of a film instead of a "Filmed in New Jersey" or "Produced in New Jersey" statement.

The amendments provide an enhanced tax credit equal to 35 percent of the qualified film production expenses and an enhanced tax credit equal to 25 percent of qualified digital media content production expenses if those expenses are incurred for services performed and tangible personal property used or consumed in Atlantic, Bergen, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County for the film or digital media production.

The amendments remove a provision which provided a tax credit equal to 40 percent of qualified film productions or qualified digital media content production expenses for expenses incurred in an eligible municipality for the film and digital media content media production.

The amendments clarify that the Director of the Division of Taxation determines the order in which film and digital media tax credits are applied against a taxpayer's tax liability.

The amendments remove the definition of eligible municipality.

The amendments permit the awarding of tax credits to game shows that are filmed and produced at nonprofit arts and cultural centers that do not receive State funding.

The amendments clarify that single-member limited liability corporations, partners of partnerships, and owners of New Jersey S Corporations can obtain the benefit of the credits applied for by their related taxpayers.

The amendments lower the income threshold for a highly compensated individual from $1,500,000 to $500,000.

The amendments repeal current sections of law that established a prior tax credit for film and digital media content production expenses.

The amendments make various technical corrections.

FISCAL IMPACT:

The Office of Legislative Services (OLS) can project neither the direction nor the magnitude of the bill's net impact on the finances of the State and local governments. The State net fiscal impact is calculated by adding the direct revenue loss from awarding film and digital media production tax credits and their opportunity costs (the fiscal benefits the State forgoes as spending as redirected from one economic activity to another) and subtracting from that sum the indirect revenue gain that will accrue from additional activity that the tax credits will analyze.

The OLS notes that the bill's direct State revenue loss will be up to $85 million annually from FY 2019 through FY 2023, but it does not have sufficient information to gauge the bill's opportunity costs or offsetting indirect revenue gain. The bill establishes two tax credit programs for the five-year period from FY 2019 through FY 2023, which in turn could cause up to $75 million in annual foregone State revenue attributable to the film production tax credit program and up to $10 million in annual foregone State revenue ascribable to the digital media production tax credit program.

The bill might accrue an indeterminate revenue gain to affected local governments if the bill results in digital media content or film production activity that would not be undertaken absent the assistance.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 1038

STATE OF NEW JERSEY
218th LEGISLATURE

DATED: APRIL 19, 2018

SUMMARY

Synopsis: Provides corporation business tax and gross income tax credit for certain expenses incurred for production of certain films and digital media content; designated as Garden State Film and Digital Media Jobs Act.

Type of Impact: Potential negative fiscal net impact on State General Fund and Property Tax Relief Fund; potential revenue increase to affected local governments.

Agencies Affected: Department of the Treasury;
Economic Development Authority;
Motion Picture and Television Development Commission;
Local Governments.

Office of Legislative Services Estimate

Fiscal Impact	Multi-Year Lifespan of Tax Credit Awards
Direct State Revenue Loss	Up to $425,000,000
Indirect State Revenue Gain	Indeterminate
State Opportunity Cost	Indeterminate
Indirect Local Revenue Gain	Indeterminate

- The Office of Legislative Services (OLS) expects the bill to produce a negative fiscal net impact of indeterminate magnitude on the State, considering that the bill does not require tax credit-receiving expenses to yield a net fiscal benefit to the State. The OLS' inability to quantify the fiscal net impact is rooted in imperfect information regarding: a) the number and attributes of newly eligible film and digital media projects and expenses; and b) the State spending that may be crowded out by new incentive awards.

- The bill's direct revenue loss to the State General Fund and Property Tax Relief Fund could total up to $425 million over the multi-year lifespan of qualified film production and qualified digital media content production tax credit awards. These tax credit awards are capped annually at $75 million and $10 million, respectively, and are restricted to a five-year period from FY 2019 through FY 2023.

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– OLS –

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BILL DESCRIPTION

The bill establishes a five-year tax credit program for certain film and digital media production expenses incurred in this State. For each fiscal year from FY 2019 through FY 2023 no more than $75 million in tax credits may be granted for qualified film production expenses and no more than $10 million in tax credits for qualified digital media content production expenses. The credits are available under the corporation business tax and the gross income tax.

Tax credit amounts equal 30 percent of a taxpayer's qualified film production expenses or 20 percent of a taxpayer's qualified digital media content production expenses. The allowable credit equals 35 percent of the qualified film production expenses or 25 percent of the qualified digital media content production expenses if the qualified expenses are incurred for services performed and tangible personal property used or consumed in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

In order to claim the tax credit for qualified film production expenses, several conditions must be met, including: the film includes, when determined to be appropriate by the Motion Picture and Television Development Commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination; and at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed and goods purchased through vendors authorized to do business in New Jersey, or the qualified production expenses of the taxpayer during a tax year exceed $1 million per production.

In order to claim the tax credit for qualified digital media content production expenses, several conditions must be met, including: at least $2 million of the total digital media content production expenses of the taxpayer are incurred for services performed and goods purchased through vendors authorized to do business in this State; and at least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in this State.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS expects the bill to produce a negative fiscal net impact of indeterminate magnitude on the State, and a potential revenue gain to affected local governments. Conceptually, the fiscal net impact to the State is calculated by adding the direct revenue loss from awarding additional incentive amounts and their opportunity costs (the fiscal benefits the State forgoes as spending is redirected from one economic activity to another) and subtracting from that sum the indirect revenue gain that will accrue from additional economic activity that the additional incentive amounts will catalyze.

Direct State Revenue Loss: The bill's direct revenue loss to the State General Fund and Property Tax Relief Fund could total up to $425 million over the multi-year lifespan of qualified film production and qualified digital media content production tax credit awards.

The bill provides two tax credits: a qualified film production tax credit and a qualified digital media content production tax credit. Tax credit awards are capped annually at $75 million and $10 million, respectively, and are restricted to a five-year period from FY 2019 through FY 2023. The qualified film production tax credit is equal to 30 percent of a taxpayer's qualified expenses during a tax year, and the qualified digital media content production tax credit is equal to 20 percent of a taxpayer's qualified expenses. The bill provides enhanced incentives for qualified film production expenses (35 percent of expenses) and qualified digital media content production expenses (25 percent of expenses) incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

Given that tax credits can only be awarded from July 1, 2018 to June 30, 2023, the OLS notes there would be no additional tax credit awards in FY 2024 and thereafter.

This timeline represents a simplification, though, as the OLS assumes that taxpayers will apply the tax credits against their tax liabilities in the year in which the New Jersey Economic Development Authority (EDA) grants them. In actuality, the use of approved tax credit amounts can be expected to extend over several fiscal years, for not all taxpayers will have a sufficient tax liability against which to apply the tax credits upon receipt and the bill allows taxpayers to carry unused tax credit amounts forward for up to seven tax years.

Indirect State and Local Revenue Gain: The OLS cannot quantify the bill's indirect revenue gain to the State and local governments from the issuance of qualified film production tax credits and qualified digital media content production tax credits because of imperfect information on the number and attributes of newly eligible film and digital media projects and expenses. But, for reasons explained below, the OLS anticipates the bill's indirect State and local government revenue gain to fall below its direct State revenue loss of up to $425 million.

Analytical Framework: Like any government expenditure, incentive awards inject new spending into the economy. Once businesses and individuals receive payments they would not receive absent the incentive awards, at least a portion of these payments will newly circulate in New Jersey's economy and produce so-called "multiplier effects." As the additional financial resources flow through the economy they generate, as a byproduct, additional State and local revenue collections—the indirect revenue gain discussed in this section. Examples are enhanced local property tax collections accruing when an incentive recipient invests the incentive amount in facility improvements, which then appreciate the property's value; or additional State sales and use tax collections from construction workers employed in the facility improvement spending their resultant income on taxable goods and services.

Indirect State fiscal effects offset the State's direct cost of awarding incentives in part or potentially even in whole. Fiscal "multiplier effects" tend to be maximized whenever an incentive award serves as the indispensable impetus for additional spending by the incentive recipient that would not otherwise occur. In this case, the incentive recipient magnifies the positive economic and fiscal impacts of the State's outlay. Depending on project and incentive attributes, the induced project may even yield indirect fiscal State benefits exceeding the cost of the subsidy. The larger the proportion of the public assistance relative to the financial outlay by the subsidized party, however, the lower the probability that the subsidized activity will generate positive net returns to the State.

In contrast, the State's return on investment is negative whenever the State subsidizes a project that a taxpayer would have undertaken with or without public assistance. Because the financial inducement has not caused the project's realization, none of its economic and fiscal feedback effects are attributable to the incentive, and therefore must be excluded from the tabulation of the incentive's indirect fiscal benefits.

Nevertheless, even if the State provides financial assistance to a project that would be realized anyway, some, albeit comparatively small, indirect fiscal benefits may still accrue to the State. These would occur whenever the subsidy beneficiary spends the incentive award in New Jersey on goods and services that the beneficiary would otherwise not have procured. In that event the incentive award still represents an injection of additional cash into New Jersey's economy whose ripple effects include the accumulation of indirect fiscal State benefits.

Lastly, given the high degree of integration of New Jersey's economy with the national and global economies, an addition of spending in New Jersey will eventually leak into other jurisdictions and cease to circulate within the State. Consequently, any tabulation of a subsidy payment's New Jersey feedback effects must disregard feedback effects that other jurisdictions will absorb.

Bill's State Indirect Fiscal Effects: One aspect of the tax credits provided in the bill motivates the OLS to expect that the bill's direct State revenue loss will exceed its indirect State and local government revenue gain. The bill does not subject credit-receiving expenses to a multiplier-based net benefit test calculation, which for other economic development incentive programs is intended to ensure that the EDA will award tax incentives only to projects that are estimated to generate indirect State revenue in excess of a tax incentive's direct State cost. Without the net benefit test requirement, projects will also be eligible for tax credits that taxpayers would have undertaken with or without the State subsidy.

Irrespective of the magnitude of the bill's indirect fiscal benefits, the analysis of its full impact on State finances is incomplete without considering the bill's opportunity costs.

State Opportunity Costs: Given the State's finite resources and its balanced budget requirement, the decision to award film production and digital media content production tax credits under the bill will invariably divert resources from policy alternatives to which they would have been applied absent the inducements. These policy alternatives also produce direct State costs and indirect State revenue collections. The concept of opportunity costs captures the value of these fiscal benefits the State forgoes as it redirects cash flows. Once opportunity costs are factored into the analysis, it is therefore possible for a bill to produce a *net* fiscal loss to the State even if its indirect fiscal benefits exceed its direct cost.

For example, if, instead of this bill, the State invested in road construction, the bill would produce a *net* fiscal effect equal to the difference between the total fiscal impact of the tax credit awards—or the direct State cost of awarding film production and digital media content production tax credits, minus the incentives' indirect State fiscal effects—and that of the forgone road construction investment.

Section: *Revenue, Finance and Appropriations*

Analyst: *Jordan M. DiGiovanni*
Associate Fiscal Analyst

Approved: *Frank W. Haines III*
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE BILL NO. 122
(Second Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 122 (Second Reprint) with my recommendations for reconsideration.

I commend the bill's sponsors for their efforts to restore New Jersey's film tax credit program. The film and digital media industry has the potential to be a dynamic part of New Jersey's economy by promoting union jobs and creating residual economic benefits to local communities. Given the diversity of New Jersey's geography, cultures, and leisure and entertainment options, New Jersey is uniquely suited to compete for nearly any film or television production opportunity. In recent years, this natural advantage has been squandered as productions have increasingly located elsewhere, including in neighboring states like New York and Pennsylvania that offer robust tax incentive programs. Relaunching New Jersey's film tax credit program in a thoughtful and targeted manner will allow New Jersey to regain a competitive footing in the entertainment industry.

While I fully support efforts to incentivize the film and digital media industry in New Jersey, aspects of this bill could be improved upon. First, I am recommending that an additional tax incentive be offered to productions that make significant efforts towards hiring a diverse cast and crew. Specifically, productions will have to put forth a plan that includes specific goals to achieve diversity, and will only receive the additional incentive if the Economic Development Authority verifies that the production has met or made good-faith efforts in achieving those goals. One of New Jersey's greatest strengths is that it is one of the most diverse states in the nation. I want to make the economic opportunities of the film and entertainment industry available to all of our communities, and to ensure that the film and television projects receiving our support reflect the diversity of our State.

Second, while I understand the rationale for generally excluding reality television shows from eligibility for tax credits, I also recognize that not all reality television shows are the same. For instance, those that make substantial capital investments in our communities generate ripple benefits in local economies and create the potential for tourism and sightseeing opportunities. As a result, I am recommending that the bill allow for a reality television show to be eligible for tax credits if the production company of the show commits to owning or leasing a production facility in an Urban Enterprise Zone. I am including certain benchmarks to ensure that the facility is significant in terms of size and capital investment, and to require that the production company be committed to the facility for at least two years. I believe that reality television shows that make this commitment are creating the type of economic benefit to the State that warrants eligibility for the same types of incentives available to other types of productions.

Accordingly, I herewith return Senate Bill No. 122 (Second Reprint) and recommend that it be amended as follows:

<u>Page 7, Section 1, Line 33</u>:	After "show," insert "or"
<u>Page 7, Section 1, Line 33</u>:	Delete "or reality"
<u>Page 7, Section 1, Line 34</u>:	Delete "show,"
<u>Page 7, Section 1, Line 37</u>:	After "purposes" insert ", or a reality show, except if the production company of the reality show owns, leases, or otherwise occupies a production facility of no less than 20,000 square feet of real property for a minimum term of twenty-four (24) months, and invests no less than $3,000,000 in such a facility within a designated enterprise zone established pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et al.), or a UEZ-impacted business district established pursuant to section 3 of P.L.2001, c.347 (C.52:27H-66.2)"
<u>Page 18, Line 36</u>:	Insert new section: "4. A taxpayer, upon

approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to 2 percent of the qualified film or digital media content production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2023, provided that:

(a) the application is accompanied by a diversity plan outlining specific goals, which may include advertising and recruitment actions, for hiring minority persons and women;

(b) the director and the authority have approved the plan as meeting the requirements established by the director and the authority; and

(c) the director and the authority have verified that the applicant has met or made good-faith efforts in achieving those goals.

The director and the authority shall adopt any rules necessary to implement this provision.

The application shall indicate whether the applicant intends to participate in training, education, and recruitment programs that are organized in cooperation with State colleges and universities, labor organizations, and the motion picture industry and are designed to promote and encourage the training and hiring of New Jersey residents who represent the diversity of the State population."

Page 18, Section 4, Line 37: Delete "4." and insert "5."

Page 18, Section 5, Line 43: Delete "5." and insert "6."

Respectfully,

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

Governor Murphy Conditionally Vetoes Senate Bill No. 122

05/30/2018

TRENTON – Governor Phil Murphy today conditionally vetoed Senate Bill No. 122, the Garden State Film and Digital Media Jobs Act, which provides corporation business tax and gross income tax credits for expenses incurred as part of the production of certain films and digital media content.

“I want to thank the Legislature for passing the Garden State Film and Digital Media Jobs Act, which will help revitalize the film and media industries in New Jersey,” **said Governor Murphy**. “Filming movies and TV shows in New Jersey creates good-paying jobs, generates economic growth, and centers our state as a home for 21st-century growth industries.”

“This is why I’m eager to work with the Legislature to strengthen the legislation by adding incentives for diverse hiring in the film industry and extending eligibility for certain reality TV shows that invest in New Jersey’s economy and promote tourism to the Garden State.”

“A vibrant TV and film industry in New Jersey will create jobs, spur economic activity and bolster the State’s cultural identity,” **said Senate Majority Leader Loretta Weinberg**. “I was happy to work with the Governor on this important legislation because we all recognize the value of the film industry to New Jersey, and I believe that his suggested changes will advance our shared goals of supporting and promoting an industry that is important to New Jersey.”

“I support Governor Murphy’s proposed changes to the Garden State Film and Digital Media Jobs Act,” **said Assemblyman Gordon Johnson**. “By encouraging diversity within the television and film industry, we will ensure that the economic benefits created by bringing these productions back to New Jersey reach every community in our state.”

“We support the revisions recommended by the Governor because they will advance our objective of reinvigorating the film and digital media industries in New Jersey,” **said Senator Paul Sarlo**. “This new program will ensure that New Jersey is able to compete with our neighbors for high-paying technology-based jobs that are crucial to our evolving 21st century economy.”

“Film credits are a strategic investment for New Jersey, making us a leader in this industry and creating long-term jobs throughout our state. Governor Murphy’s proposed changes to the Garden State Film and Digital Media Jobs Act will stimulate our state’s economy and bring new life and diversity to the birthplace of the film industry,” **said Majority Leader Louis Greenwald**.

“Governor Murphy’s changes are reasonable and appropriate, and I look forward to the jobs and economic activity this legislation will create,” **said Assemblyman Paul Moriarty**.

“The Governor has taken an excellent piece of legislation and made it even better,” **said Michael Uslan, Chairman of the New Jersey Motion Picture and Television Commission**.

"Thousands of union members employed in the film and television industry work in New Jersey and this is the incentive program they have been hoping for," s**aid David Smith, Vice Chairman of the New Jersey Motion Picture and Television Commission**. "It allows them to work in their home state."

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May 30, 2018

SENATE BILL NO. 122
(Second Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 122 (Second Reprint) with my recommendations for reconsideration.

I commend the bill's sponsors for their efforts to restore New Jersey's film tax credit program. The film and digital media industry has the potential to be a dynamic part of New Jersey's economy by promoting union jobs and creating residual economic benefits to local communities. Given the diversity of New Jersey's geography, cultures, and leisure and entertainment options, New Jersey is uniquely suited to compete for nearly any film or television production opportunity. In recent years, this natural advantage has been squandered as productions have increasingly located elsewhere, including in neighboring states like New York and Pennsylvania that offer robust tax incentive programs. Relaunching New Jersey's film tax credit program in a thoughtful and targeted manner will allow New Jersey to regain a competitive footing in the entertainment industry.

While I fully support efforts to incentivize the film and digital media industry in New Jersey, aspects of this bill could be improved upon. First, I am recommending that an additional tax incentive be offered to productions that make significant efforts towards hiring a diverse cast and crew. Specifically, productions will have to put forth a plan that includes specific goals to achieve diversity, and will only receive the additional incentive if the Economic Development Authority verifies that the production has met or made good-faith efforts in achieving those goals. One of New Jersey's greatest strengths is that it is one of the most diverse states in the nation. I want to make the economic opportunities of the film and entertainment industry available to all of our communities, and to ensure that the film and television projects receiving our support reflect the diversity of our State.

Second, while I understand the rationale for generally excluding reality television shows from eligibility for tax credits, I also recognize that not all reality television shows are the same. For instance, those that make substantial capital investments in our communities generate ripple benefits in local economies and create the potential for tourism and sightseeing opportunities. As a result, I am recommending that the bill allow for a reality television show to be eligible for tax credits if the production company of the show commits to owning or leasing a production facility in an Urban Enterprise Zone. I am including certain benchmarks to ensure that the facility is significant in terms of size and capital investment, and to require that the production company be committed to the facility for at least two years. I believe that reality television shows that make this commitment are creating the type of economic benefit to the State that warrants eligibility for the same types of incentives available to other types of productions.

Accordingly, I herewith return Senate Bill No. 122 (Second Reprint) and recommend that it be amended as follows:

<u>Page 7, Section 1, Line 33</u>:	After "show," insert "or"
<u>Page 7, Section 1, Line 33</u>:	Delete "or reality"
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(b) the director and the authority have approved the plan as meeting the requirements established by the director and the authority; and

(c) the director and the authority have verified that the applicant has met or made good-faith efforts in achieving those goals.

The director and the authority shall adopt any rules necessary to implement this provision.

The application shall indicate whether the applicant intends to participate in training, education, and recruitment programs that are organized in cooperation with State colleges and universities, labor organizations, and the motion picture industry and are designed to promote and encourage the training and hiring of New Jersey residents who represent the diversity of the State population."

<u>Page 18, Section 4, Line 37</u>: Delete "4." and insert "5."

<u>Page 18, Section 5, Line 43</u>: Delete "5." and insert "6."

Respectfully,

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

Governor Murphy Signs the Garden State Film and Digital Media Jobs Act

07/3/2018

TRENTON - Governor Phil Murphy today signed Senate Bill No. 122, the Garden State Film and Digital Media Jobs Act, after the Legislature concurred with recommendations that he made to the bill. The bill provides film and television production companies with business tax and gross income tax credits for certain expenses incurred while filming in New Jersey. The legislation will encourage production companies to locate in New Jersey, spurring economic growth and industry development.

“The film and digital media industry is poised to become a dynamic part of New Jersey’s economy, one that will create good-paying union jobs and countless residual benefits to the economy,” **Governor Murphy said**. “By signing this legislation, we are allowing these companies to take advantage of New Jersey’s unique culture, location, and geography. I look forward to seeing the many projects that will come out of our great state thanks to the Garden State Film and Digital Media Jobs Act.”

The bill was sponsored in the Senate by Senate Majority Leader Loretta Weinberg and Senator Paul Sarlo and in the Assembly by Assemblyman Gordon Johnson, Assemblyman Paul Moriarty, and Assembly Majority Leader Lou Greenwald.

“We have been fighting for these credits for eight years,” **said Senate Majority Leader Loretta Weinberg**. “I am grateful that Governor Murphy saw the value in them. The film industry has deep roots in New Jersey. Fort Lee is where the movie industry began. These credits will ensure that New Jersey remains a player in this constantly evolving industry.”

“I want to thank Governor Murphy for signing this important legislation. We will now be able to advance our objective of reinvigorating the film and digital media industries In New Jersey,” **said Senate Budget and Appropriations Committee Chairman Paul Sarlo**. “There is a natural synergy between digital technology and the film industry. We want to position New Jersey at the forefront of new developments, new technologies and future opportunities.”

“Not only will this bring more jobs and revenue to New Jersey through the increased number of films that will be shot here, but crew members will then eat, sleep, and do countless other things in our great state,” **said Assemblyman Johnson**. “This will help Main Street first and foremost.”

“There are so many parts of our beautiful state which could be utilized for film, and so many of our residents who could contribute to these films,” **said Assemblyman Moriarty**. “This new law will put the infrastructure in place to realize these possibilities.”

“With the invention of the world’s first movie camera by our very own Thomas Edison, New Jersey is known as the birthplace of the film industry, yet we’ve seen a decline in film and television productions over the last several years,” **said Assembly Majority Leader Greenwald**. “This is a strategic investment that will not only make New Jersey a leader in this industry once more, but it aims to create long-term jobs throughout our state and will stimulate our economy."

In addition to the creation of financial incentives for film and digital media companies, the bill also incentivizes companies to make significant efforts to hire diverse cast and crews. The Economic Development Authority will verify that production companies have made good-faith efforts toward that goal before receiving additional incentives.

The law will take effect immediately.

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