

[Third Reprint]

ASSEMBLY, No. 5580

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED JUNE 13, 2019

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District 37 (Bergen)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

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District 36 (Bergen and Passaic)

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**Assemblyman Karabinchak, Assemblywomen Vainieri Huttler, Sumter,
Assemblymen Armato, Mazzeo, Senators Lagana, Brown, Gill and
Greenstein**

SYNOPSIS

Extends availability period for tax credits for certain expenses incurred for production of certain film and digital media content, raises annual cap related to film production, and provides for annual administration of film tax credits.

CURRENT VERSION OF TEXT

As amended by the Senate on January 13, 2020.

(Sponsorship Updated As Of: 1/14/2020)

1 AN ACT ¹**[**extending the period of time for which **]** related to the
 2 provisions of¹ certain ¹**[**films **]** film¹ and digital media content
 3 tax credits ¹**[**may be applied **]**¹, and amending P.L.2018, c.56.

4
 5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 6 *of New Jersey:*

7
 8 1. Section 1 of P.L.2018, c.56 (C.54:10A-5.39b) is amended to
 9 read as follows:

10 1. a. (1) A taxpayer, upon approval of an application to the
 11 authority and the director, shall be allowed a credit against the tax
 12 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in
 13 an amount equal to 30 percent of the qualified film production
 14 expenses of the taxpayer during a privilege period commencing on
 15 or after July 1, 2018 but before July 1, **[2023]** 2028, provided that:

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

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

26 (c) the film includes, when determined to be appropriate by the
 27 commission, at no cost to the State, marketing materials promoting
 28 this State as a film and entertainment production destination, which
 29 materials shall include placement of a "Filmed in New Jersey" or
 30 "Produced in New Jersey" statement, or an approved logo approved
 31 by the ¹**[**Commission **]** commission¹, in the end credits of the film;

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

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

38 (2) Notwithstanding the provisions of paragraph (1) of ¹**[**this **]**¹
 39 subsection a. ¹of this section¹ to the contrary, the tax credit allowed
 40 pursuant to this subsection against the tax imposed pursuant to
 41 section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount
 42 equal to 35 percent of the qualified film production expenses of the
 43 taxpayer during a privilege period that are incurred for services
 44 performed and tangible personal property purchased through

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:

¹Assembly AAP committee amendments adopted November 14, 2019.

²Assembly floor amendments adopted November 25, 2019.

³Senate floor amendments adopted January 13, 2020.

1 vendors whose primary place of business is located in Atlantic,
2 Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer
3 or Salem County.

4 b. (1) A taxpayer, upon approval of an application to the
5 authority and the director, shall be allowed a credit against the tax
6 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in
7 an amount equal to 20 percent of the qualified digital media content
8 production expenses of the taxpayer during a privilege period
9 commencing on or after July 1, 2018 but before July 1, **[2023]**
10 2028, provided that:

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

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

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

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

24 (2) Notwithstanding the provisions of paragraph (1) of **1****[this]**¹
25 subsection b. ¹of this section¹ to the contrary, the tax credit allowed
26 pursuant to this subsection against the tax imposed pursuant to
27 section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount
28 equal to 25 percent of the qualified digital media content production
29 expenses of the taxpayer during a privilege period that are incurred
30 for services performed and tangible personal property purchased
31 through vendors whose primary place of business is located in
32 Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester,
33 Mercer, or Salem County.

34 c. No tax credit shall be allowed pursuant to this section for
35 any costs or expenses included in the calculation of any other tax
36 credit or exemption granted pursuant to a claim made on a tax
37 return filed with the director, or included in the calculation of an
38 award of business assistance or incentive, for a period of time that
39 coincides with the privilege period for which a tax credit authorized
40 pursuant to this section is allowed. The order of priority in which
41 the tax credit allowed pursuant to this section and any other tax
42 credits allowed by law may be taken shall be as prescribed by the
43 director. The amount of the tax credit applied under this section
44 against the tax imposed pursuant to section 5 of P.L.1945, c.162
45 (C.54:10A-5), for a privilege period, when taken together with any
46 other payments, credits, deductions, and adjustments allowed by
47 law shall not reduce the tax liability of the taxpayer to an amount
48 less than the statutory minimum provided in subsection (e) of

1 section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the tax
2 credit otherwise allowable under this section which cannot be
3 applied for the privilege period due to the limitations of this
4 subsection or under other provisions of P.L.1945, c.162 (C.54:10A-
5 1 et seq.) may be carried forward, if necessary, to the seven
6 privilege periods following the privilege period for which the tax
7 credit was allowed.

8 d. A taxpayer, with an application for a tax credit provided for
9 in subsection a. or subsection b. of this section, may apply to the
10 authority and the director for a tax credit transfer certificate in lieu
11 of the taxpayer being allowed any amount of the tax credit against
12 the tax liability of the taxpayer. The tax credit transfer certificate,
13 upon receipt thereof by the taxpayer from the authority and the
14 director, may be sold or assigned, in full or in part, to any other
15 taxpayer that may have a tax liability under the "Corporation
16 Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or
17 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in
18 exchange for private financial assistance to be provided by the
19 purchaser or assignee to the taxpayer that has applied for and been
20 granted the tax credit. The tax credit transfer certificate provided to
21 the taxpayer shall include a statement waiving the taxpayer's right
22 to claim that amount of the tax credit against the tax imposed
23 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) that the
24 taxpayer has elected to sell or assign. The sale or assignment of any
25 amount of a tax credit transfer certificate allowed under this section
26 shall not be exchanged for consideration received by the taxpayer of
27 less than 75 percent of the transferred tax credit amount. Any
28 amount of a tax credit transfer certificate used by a purchaser or
29 assignee against a tax liability under P.L.1945, c.162 (C.54:10A-1
30 et seq.) shall be subject to the same limitations and conditions that
31 apply to the use of a tax credit pursuant to subsection c. of this
32 section. Any amount of a tax credit transfer certificate obtained by
33 a purchaser or assignee under subsection a. or subsection b. of this
34 section may be applied against the purchaser's or assignee's tax
35 liability under N.J.S.54A:1-1 et seq. and shall be subject to the
36 same limitations and conditions that apply to the use of a credit
37 pursuant to subsections c. and d. of section 2 of P.L.2018, c.56
38 (C.54A:4-12b).

39 e. (1) ³~~2(a)~~²³ The value of tax credits, including tax credits
40 allowed through the granting of tax credit transfer certificates,
41 approved by the director and the authority pursuant to subsection a.
42 of this section and pursuant to subsection a. of section 2 of
43 P.L.2018, c.56 (C.54A:4-12b) shall not exceed a cumulative total of
44 ¹~~[\$75,000,000]~~ \$100,000,000¹ in fiscal year 2019 and in each
45 fiscal year thereafter prior to fiscal year ¹~~[2024]~~ 2029¹ to apply
46 against the tax imposed pursuant to section 5 of P.L.1945, c.162
47 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey
48 Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative

1 total amount of tax credits, and tax credit transfer certificates,
2 allowed to taxpayers for privilege periods or taxable years
3 commencing during a single fiscal year under subsection a. of this
4 section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-
5 12b) exceeds the amount of tax credits available in that fiscal year,
6 then taxpayers who have first applied for and have not been allowed
7 a tax credit or tax credit transfer certificate amount for that reason
8 shall be allowed, in the order in which they have submitted an
9 application, the amount of tax credit or tax credit transfer certificate
10 on the first day of the next succeeding fiscal year in which tax
11 credits and tax credit transfer certificates under subsection a. of this
12 section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-
13 12b) are not in excess of the amount of credits available.

14 ¹Notwithstanding any provision of paragraph (1) ³[(a)]² of this
15 subsection to the contrary, for any fiscal year in which the amount
16 of tax credits approved pursuant to this paragraph is less than the
17 cumulative total amount of tax credits permitted to be approved in
18 that fiscal year, the authority shall certify the amount of the
19 remaining tax credits available for approval in that fiscal year, and
20 shall increase the cumulative total amount of tax credits permitted
21 to be approved in the subsequent fiscal year by the certified amount
22 remaining from the prior fiscal year. The authority shall also
23 certify, for each fiscal year, the amount of tax credits that were
24 previously approved, but that the taxpayer is not able to redeem or
25 transfer to another taxpayer under this section, and shall increase
26 the cumulative total amount of tax credits permitted to be approved
27 in the subsequent fiscal year by the amount of tax credits previously
28 approved, but not subject to redemption or transfer. The combined
29 increase to the cumulative total permitted to be approved in a
30 subsequent fiscal year pursuant to this paragraph shall not exceed
31 \$50,000,000.¹

32 ³[(b) Any taxpayer with an application for a tax credit
33 approved by the authority and the director pursuant to subsection a.
34 or subsection b. of this section that leases a New Jersey production
35 facility with a total square footage of at least 50,000 square feet,
36 which includes a sound stage and production support space such as
37 production offices or a backlot, for a period of five or more
38 successive years and spends an annual average of \$50,000,000 of
39 qualified film production expenses during the duration of that lease
40 shall not be subject to the annual limitation on the cumulative total
41 of tax credits provided for in paragraph (1) (a) of this subsection;
42 provided however, the cumulative total of tax credits granted in the
43 nine year period from fiscal year 2020 through fiscal year 2028
44 pursuant to subsection a. of this section and subsection a. of section
45 2 of P.L.2018, c.56 (C.54A:4-12b) shall not exceed \$900,000,000
46 plus the amount of remaining tax credits from Fiscal Year 2019 as
47 certified pursuant to this subsection.

1 The qualified film production expenses of any taxpayer
2 qualifying for a credit under paragraph (1) (b) of this subsection
3 shall include any qualified film production expenses of that
4 taxpayer's affiliates.

5 Any taxpayer qualifying for a credit under paragraph (1) (b) of
6 this subsection shall not be eligible to apply for a tax credit transfer
7 certificate under subsection d. of this section.

8 The order of priority in which the tax credit allowed under
9 paragraph (1) (b) of this subsection and any other tax credits
10 allowed by law may be taken shall be as prescribed by the director.

11 The amount of tax credits allowed under paragraph (1) (b) of this
12 subsection that are applied against the tax imposed pursuant to
13 section 5 of P.L.1945, c.162 (C.54:10A-5), for any privilege period
14 shall not exceed 50 percent of the tax liability otherwise due, and
15 when taken together with any other payments, credits, deductions,
16 and adjustments allowed by law shall not reduce the tax liability of
17 the taxpayer to an amount less than the statutory minimum provided
18 in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). The
19 amount of the tax credits otherwise allowable under paragraph (1)
20 (b) of this subsection which cannot be applied for the privilege
21 period due to the limitations of this subsection or under other
22 provisions of P.L.1945, c.162 (C.54:10A-1 et seq.) may be carried
23 forward, if necessary, to the seven privilege periods following the
24 privilege period for which the tax credit was allowed.²³

25 (2) The value of tax credits, including tax credits allowed
26 through the granting of tax credit transfer certificates, approved by
27 the authority and the director pursuant to subsection b. of this
28 section and pursuant to subsection b. of section 2 of P.L.2018, c.56
29 (C.54A:4-12b) shall not exceed a cumulative total of \$10,000,000 in
30 fiscal year 2019 and in each fiscal year thereafter prior to fiscal year
31 ¹~~2024~~ ²⁰²⁹¹ to apply against the tax imposed pursuant to section
32 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to
33 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If
34 the total amount of tax credits and tax credit transfer certificates
35 allowed to taxpayers for privilege periods or taxable years
36 commencing during a single fiscal year under subsection b. of this
37 section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-
38 12.b) exceeds the amount of tax credits available in that year, then
39 taxpayers who have first applied for and have not been allowed a
40 tax credit or tax credit transfer certificate amount for that reason
41 shall be allowed, in the order in which they have submitted an
42 application, the amount of tax credit or tax credit transfer certificate
43 on the first day of the next succeeding fiscal year in which tax
44 credits and tax credit transfer certificates under subsection b. of this
45 section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-
46 12.b) are not in excess of the amount of credits available.

47 f. A taxpayer shall submit to the authority and the director a
48 report prepared by an independent certified public accountant

1 licensed in this State to verify the taxpayer's tax credit claim
2 following the completion of the production. The report shall be
3 prepared by the independent certified public accountant pursuant to
4 agreed upon procedures prescribed by the authority and the
5 director¹ and shall include such information and
6 documentation as shall be determined to be necessary by the
7 authority and the director to substantiate the qualified film
8 production expenses or the qualified digital media content
9 production expenses of the taxpayer. Upon receipt of the report, the
10 authority and the director shall review the findings of the
11 independent certified public accountant's report, and shall make a
12 determination as to the qualified film production expenses or the
13 qualified digital media content production expenses of the taxpayer.
14 The determination shall be provided in writing to the taxpayer, and
15 a copy of the written determination shall be included in the filing of
16 a return that includes a claim for a tax credit allowed pursuant to
17 this section.

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

38 h. As used in this section:

39 "Authority" means the New Jersey Economic Development
40 Authority.

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

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

46 "Digital media content" means any data or information that is
47 produced in digital form, including data or information created in
48 analog form but reformatted in digital form, text, graphics,

1 photographs, animation, sound, and video content. "Digital media
2 content" ¹~~【does】~~ shall¹ not mean content offerings generated by the
3 end user (including postings on electronic bulletin boards and chat
4 rooms); content offerings comprised primarily of local news,
5 events, weather, or local market reports; public service content;
6 electronic commerce platforms (such as retail and wholesale
7 websites); websites or content offerings that contain obscene
8 material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3;
9 websites or content that are produced or maintained primarily for
10 private, industrial, corporate, or institutional purposes; or digital
11 media content acquired or licensed by the taxpayer for distribution
12 or incorporation into the taxpayer's digital media content.

13 "Film" means a feature film, a television series, or a television
14 show of 22 minutes or more in length, intended for a national
15 audience, or a television series or a television show of 22 minutes
16 or more in length intended for a national or regional audience,
17 including, but not limited to, a game show, award show, or other
18 gala event filmed and produced at a nonprofit arts and cultural
19 venue receiving State funding. "Film" shall not include a
20 production featuring news, current events, weather, and market
21 reports or public programming, talk show, or sports event, a
22 production that solicits funds, a production containing obscene
23 material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a
24 production primarily for private, industrial, corporate, or
25 institutional purposes, or a reality show, except if the production
26 company of the reality show owns, leases, or otherwise occupies a
27 production facility of no less than 20,000 square feet of real
28 property for a minimum term of ¹~~【twenty-four (24)】~~ 24¹ months,
29 and invests no less than \$3,000,000 in such a facility within a
30 designated enterprise zone established pursuant to the "New Jersey
31 Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et al.),
32 or a UEZ-impacted business district established pursuant to section
33 3 of P.L.2001, c.347 (C.52:27H-66.2). "Film" shall not include an
34 award show or other gala event that is not filmed and produced at a
35 nonprofit arts and cultural venue receiving State funding.

36 "Full-time or full-time equivalent employee" means an individual
37 employed by the taxpayer for consideration for at least 35 hours a
38 week, or who renders any other standard of service generally
39 accepted by custom or practice as full-time or full-time equivalent
40 employment, whose wages are subject to withholding as provided in
41 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or
42 who is a partner of a taxpayer, who works for the partnership for at
43 least 35 hours a week, or who renders any other standard of service
44 generally accepted by custom or practice as full-time or full-time
45 equivalent employment, and whose distributive share of income,
46 gain, loss, or deduction, or whose guaranteed payments, or any
47 combination thereof, is subject to the payment of estimated taxes, as
48 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1

1 et seq. "Full-time or full-time equivalent employee" shall not
2 include an individual who works as an independent contractor or on
3 a consulting basis for the taxpayer.

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

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

14 "Loan out company" means a personal service corporation or
15 other entity that is contracted with by the taxpayer to provide
16 specified individual personnel, such as artists, crew, actors,
17 producers, or directors for the performance of services used directly
18 in a production. "Loan out company" ¹**【does】 shall**¹ not include
19 entities contracted with by the taxpayer to provide goods or
20 ancillary contractor services such as catering, construction, trailers,
21 equipment, or transportation.

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

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

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

33 "Qualified digital media content production expenses" means an
34 expense incurred in New Jersey for the production of digital media
35 content. "Qualified digital media content production expenses"
36 shall include but ¹**【shall】**¹ not be limited to: wages and salaries of
37 individuals employed in the production of digital media content on
38 which the tax imposed by the "New Jersey Gross Income Tax Act,"
39 N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of
40 computer software and hardware, data processing, visualization
41 technologies, sound synchronization, editing, and the rental of
42 facilities and equipment. Payment made to a loan out company or
43 to an independent contractor shall not be ¹**deemed**¹ a "qualified
44 digital media content production expense" unless the payment is
45 made in connection with a trade, profession, or occupation carried
46 on in this State or for the rendition of personal services performed
47 in this State and the taxpayer has made the withholding required
48 ¹**【by】 pursuant to**¹ subsection g. of this section. "Qualified digital

1 media content production expenses" shall not include expenses
2 incurred in marketing, promotion, or advertising digital media or
3 other costs not directly related to the production of digital media
4 content. Costs related to the acquisition or licensing of digital
5 media content by the taxpayer for distribution or incorporation into
6 the taxpayer's digital media content shall not be 'deemed'
7 "qualified digital media content production expenses."

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

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

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

39 i. A business that is not a "taxpayer" as defined and used in the
40 "Corporation Business Tax Act (1945)" P.L.1945, c.162 (C.54:10A-
41 1 et seq.) and therefore is not directly allowed a credit under this
42 section, but is a business entity that is classified as a partnership for
43 federal income tax purposes and is ultimately owned by a business
44 entity that is a "corporation" as defined in subsection (c) of section
45 4 of P.L.1945, c.162 (C.54:10A-4), or a limited liability company
46 formed under the "Revised Uniform Limited Liability Company
47 Act," P.L.2012, c.50 (C.42:2C-1 et seq.), or qualified to do business
48 in this State as a foreign limited liability company, with one

1 member, and is wholly owned by the business entity that is a
2 "corporation" as defined in subsection (c) of section 4 of P.L.1945,
3 c.162 (C.54:10A-4), but otherwise meets all other requirements of
4 this section, shall be considered an eligible applicant and "taxpayer"
5 as that term is used in this section.

6 (cf: P.L.2018, c.56, s.1)

7

8 2. Section 2 of P.L.2018, c.56 (C.54A:4-12b) is amended to
9 read as follows:

10 2. a. (1) A taxpayer, upon approval of an application to the
11 authority and the director, shall be allowed a credit against the tax
12 otherwise due for the taxable year under the "New Jersey Gross
13 Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 30
14 percent of the qualified film production expenses of the taxpayer
15 during a taxable year commencing on or after July 1, 2018 but
16 before July 1, ~~2023~~ 2028, provided that:

17 (a) at least 60 percent of the total film production expenses,
18 exclusive of post-production costs, of the taxpayer are incurred for
19 services performed, and goods purchased through vendors
20 authorized to do business, in New Jersey, or the qualified film
21 production expenses of the taxpayer during the taxable year exceed
22 \$1,000,000 per production;

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

27 (c) the film includes, when determined to be appropriate by the
28 commission, at no cost to the State, marketing materials promoting
29 this State as a film and entertainment production destination, which
30 materials shall include placement of a "Filmed in New Jersey" or
31 "Produced in New Jersey" statement, or an appropriate logo
32 approved by the ~~Commission~~ commission¹, in the end credits of
33 the film;

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

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

40 (2) Notwithstanding the provisions of paragraph (1) of ~~this~~¹
41 subsection a. ~~of this section~~¹ to the contrary, the tax credit allowed
42 pursuant to this subsection against the tax otherwise due for the
43 taxable year under the "New Jersey Gross Income Tax Act,"
44 N.J.S.54A:1-1 et seq., shall be in an amount equal to 35 percent of
45 the qualified film production expenses of the taxpayer during a
46 taxable year that are incurred for services performed and tangible
47 personal property purchased through vendors whose primary place

1 of business is located in Atlantic, Burlington, Camden, Cape May,
2 Cumberland, Gloucester, Mercer, or Salem County.

3 b. (1) A taxpayer, upon approval of an application to the
4 authority and the director, shall be allowed a credit against the tax
5 otherwise due for the taxable year under the "New Jersey Gross
6 Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 20
7 percent of the qualified digital media content production expenses
8 of the taxpayer during a taxable year commencing on or after July
9 1, 2018 but before July 1, **[2023]** 2028, provided that:

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

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

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

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

23 (2) Notwithstanding the provisions of paragraph (1) of **1****[this]**¹
24 subsection b. ¹of this section¹ to the contrary, the tax credit allowed
25 pursuant to this subsection against the tax otherwise due for the
26 taxable year under the "New Jersey Gross Income Tax Act,"
27 N.J.S.54A:1-1 et seq., shall be in an amount equal to 25 percent for
28 the qualified digital media content production expenses of the
29 taxpayer during a taxable year that are incurred for services
30 performed and tangible personal property purchased through
31 vendors whose primary place of business is located in Atlantic,
32 Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer,
33 or Salem County.

34 c. No tax credit shall be allowed pursuant to this section for
35 any costs or expenses included in the calculation of any other tax
36 credit or exemption granted pursuant to a claim made on a tax
37 return filed with the director, or included in the calculation of an
38 award of business assistance or incentive, for a period of time that
39 coincides with the taxable year for which a tax credit authorized
40 pursuant to this section is allowed. The order of priority in which
41 the tax credit allowed pursuant to this section and any other tax
42 credits allowed by law may be taken shall be as prescribed by the
43 director. The amount of the tax credit applied under this section
44 against the tax otherwise due under the "New Jersey Gross Income
45 Tax Act," N.J.S.54A:1-1 et seq., for a taxable year, when taken
46 together with any other payments, credits, deductions, and
47 adjustments allowed by law shall not reduce the tax liability of the
48 taxpayer to an amount less than zero. The amount of the tax credit

1 otherwise allowable under this section which cannot be applied for
2 the taxable year due to the limitations of this subsection or under
3 other provisions of N.J.S.54A:1-1 et seq., may be carried forward, if
4 necessary, to the seven taxable years following the taxable year for
5 which the tax credit was allowed.

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

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

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

33 e. A taxpayer, with an application for a tax credit provided for
34 in subsection a. or subsection b. of this section, may apply to the
35 authority and the director for a tax credit transfer certificate in lieu
36 of the taxpayer being allowed any amount of the tax credit against
37 the tax liability of the taxpayer. The tax credit transfer certificate,
38 upon receipt thereof by the taxpayer from the authority and the
39 director, may be sold or assigned, in full or in part, to any other
40 taxpayer that may have a tax liability under the "New Jersey Gross
41 Income Tax Act," N.J.S.54A:1-1 et seq., or the "Corporation
42 Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), in
43 exchange for private financial assistance to be provided by the
44 purchaser or assignee to the taxpayer that has applied for and been
45 granted the tax credit. The tax credit transfer certificate provided to
46 the taxpayer shall include a statement waiving the taxpayer's right
47 to claim that amount of the tax credit against the tax imposed
48 pursuant to N.J.S.54A:1-1 et seq. that the taxpayer has elected to

1 sell or assign. The sale or assignment of any amount of a tax credit
2 transfer certificate allowed under this section shall not be
3 exchanged for consideration received by the taxpayer of less than
4 75 percent of the transferred tax credit amount. Any amount of a
5 tax credit transfer certificate used by a purchaser or assignee against
6 a tax liability under N.J.S.54A:1-1 et seq. shall be subject to the
7 same limitations and conditions that apply to the use of a tax credit
8 pursuant to subsections c. and d. of this section. Any amount of a
9 tax credit transfer certificate obtained by a purchaser or assignee
10 under ¹~~["this"]~~ ¹subsection e. ¹~~of this section~~ ¹may be applied against
11 the purchaser's or assignee's tax liability under P.L.1945, c.162
12 (C.54:10A-1 et seq.) and shall be subject to the same limitations
13 and conditions that apply to the use of a credit pursuant to
14 subsection c. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b).

15 f. (1) The value of tax credits, including tax credits allowed
16 through the granting of tax credit transfer certificates, approved by
17 the director and the authority pursuant to subsection a. of this
18 section and pursuant to subsection a. of section 1 of P.L.2018, c.56
19 (C.54:10A-5.39b) shall not exceed a cumulative total of
20 ¹~~["\$75,000,000"]~~ ¹\$100,000,000 in fiscal year 2019 and in each
21 fiscal year thereafter prior to fiscal year ¹~~["2024"]~~ ¹2029 to apply
22 against the tax imposed pursuant to the "New Jersey Gross Income
23 Tax Act," N.J.S.54A:1-1 et seq., and pursuant to section 5 of
24 P.L.1945, c.162 (C.54:10A-5). If the cumulative total amount of tax
25 credits, and tax credit transfer certificates, allowed to taxpayers for
26 taxable years or privilege periods commencing during a single fiscal
27 year under subsection a. of this section and subsection a. of section
28 1 of P.L.2018, c.56 (C.54:10A-5.39b) exceeds the amount of tax
29 credits available in that fiscal year, then taxpayers who have first
30 applied for and have not been allowed a tax credit or tax credit
31 transfer certificate amount for that reason shall be allowed, in the
32 order in which they have submitted an application, the amount of
33 tax credit or tax credit transfer certificate on the first day of the next
34 succeeding fiscal year in which tax credits and tax credit transfer
35 certificates under subsection a. of this section and subsection a. of
36 section 1 of P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of
37 the amount of credits available.

38 ¹Notwithstanding any provision of paragraph (1) of this
39 subsection to the contrary, for any fiscal year in which the amount
40 of tax credits approved pursuant to this paragraph is less than the
41 cumulative total amount of tax credits permitted to be approved in
42 that fiscal year, the authority shall certify the amount of the
43 remaining tax credits available for approval in that fiscal year, and
44 shall increase the cumulative total amount of tax credits permitted
45 to be approved in the subsequent fiscal year by the certified amount
46 remaining from the prior fiscal year. The authority shall also
47 certify, for each fiscal year, the amount of tax credits that were
48 previously approved, but that the taxpayer is not able to redeem or

1 transfer to another taxpayer under this section, and shall increase
2 the cumulative total amount of tax credits permitted to be approved
3 in the subsequent fiscal year by the amount of tax credits previously
4 approved, but not subject to redemption or transfer. The combined
5 increase to the cumulative total permitted to be approved in a
6 subsequent fiscal year pursuant to this paragraph shall not exceed
7 \$50,000,000.¹

8 (2) The value of tax credits, including tax credits allowed
9 through the granting of tax credit transfer certificates, approved by
10 the authority and the director pursuant to subsection b. of this
11 section and pursuant to subsection b. of section 1 of P.L.2018, c.56
12 (C.54:10A-5.39b) shall not exceed a cumulative total of
13 \$10,000,000 in fiscal year 2019 and in each fiscal year thereafter
14 prior to fiscal year ¹~~2024~~ ¹2029¹ to apply against the tax imposed
15 pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
16 et seq. and the tax imposed pursuant to section 5 of P.L.1945, c.162
17 (C.54:10A-5). If the total amount of tax credits and tax credit
18 transfer certificates allowed to taxpayers for taxable years or
19 privilege periods commencing during a single fiscal year under
20 subsection b. of this section and subsection b. of section ¹~~2~~
21 ~~P.L.2018, c.56 (C.54:4-12b)~~ ¹1 of P.L.2018, c.56, s.1 (C.54:10A-
22 ~~5.39b~~)¹ exceeds the amount of tax credits available in that year,
23 then taxpayers who have first applied for and have not been allowed
24 a tax credit or tax credit transfer certificate amount for that reason
25 shall be allowed, in the order in which they have submitted an
26 application, the amount of tax credit or tax credit transfer certificate
27 on the first day of the next succeeding fiscal year in which tax
28 credits and tax credit transfer certificates under subsection b. of this
29 section and subsection b. of section ¹~~2~~ of P.L.2018, c.56 (C.54:4-
30 ~~12b~~) ¹1 of P.L.2018, c.56, s.1 (C.54:10A-5.39b)¹ are not in excess
31 of the amount of credits available.

32 g. A taxpayer shall submit to the authority and the director a
33 report prepared by an independent certified public accountant
34 licensed in this State to verify the taxpayer's tax credit claim
35 following the completion of the production. The report shall be
36 prepared by the independent certified public accountant pursuant to
37 agreed upon procedures prescribed by the authority and the director
38 ¹~~;~~ ¹ and shall include such information and documentation as
39 shall be determined to be necessary by the authority and the director
40 to substantiate the qualified film production expenses or the
41 qualified digital media content production expenses of the taxpayer.
42 Upon receipt of the report, the authority and the director shall
43 review the findings of the independent certified public accountant's
44 report, and shall make a determination as to the qualified film
45 production expenses or the qualified digital media content
46 production expenses of the taxpayer. The determination shall be
47 provided in writing to the taxpayer, and a copy of the written

1 determination shall be included in the filing of a return that includes
2 a claim for a tax credit allowed pursuant to this section.

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

23 i. As used in this section:

24 "Authority" means the New Jersey Economic Development
25 Authority.

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

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

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

46 "Film" means a feature film, a television series, or a television
47 show of 22 minutes or more in length, intended for a national
48 audience, or a television series or a television show of 22 minutes

1 or more in length intended for a national or regional audience,
2 including, but not limited to, a game show, award show, or other
3 gala event filmed and produced at a nonprofit arts and cultural
4 venue receiving State funding. "Film" shall not include a
5 production featuring news, current events, weather, and market
6 reports or public programming, talk show, sports event, or reality
7 show, a production that solicits funds, a production containing
8 obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-
9 3, or a production primarily for private, industrial, corporate, or
10 institutional purposes. "Film" shall not include an award show or
11 other gala event that is not filmed and produced at a nonprofit arts
12 and cultural venue receiving State funding.

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

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

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

39 "Loan out company" means a personal service corporation or
40 other entity that is contracted with by the taxpayer to provide
41 specified individual personnel, such as artists, crew, actors,
42 producers, or directors for the performance of services used directly
43 in a production. "Loan out company" **1**shall¹ not include
44 entities contracted with by the taxpayer to provide goods or
45 ancillary contractor services such as catering, construction, trailers,
46 equipment, or transportation.

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

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

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

10 "Qualified digital media content production expenses" means an
11 expense incurred in New Jersey for the production of digital media
12 content. "Qualified digital media content production expenses"
13 shall include but ¹**【shall】**¹ not be limited to: wages and salaries of
14 individuals employed in the production of digital media content on
15 which the tax imposed by the "New Jersey Gross Income Tax Act,"
16 N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of
17 computer software and hardware, data processing, visualization
18 technologies, sound synchronization, editing, and the rental of
19 facilities and equipment. Payment made to a loan out company or
20 to an independent contractor shall not be ¹deemed¹ a "qualified
21 digital media content production expense" unless the payment is
22 made in connection with a trade, profession, or occupation carried
23 on in this State or for the rendition of personal services performed
24 in this State and the taxpayer has made the withholding required
25 ¹**【by】 pursuant to**¹ subsection h. of this section. "Qualified digital
26 media content production expenses" shall not include expenses
27 incurred in marketing, promotion, or advertising digital media or
28 other costs not directly related to the production of digital media
29 content. Costs related to the acquisition or licensing of digital
30 media content by the taxpayer for distribution or incorporation into
31 the taxpayer's digital media content shall not be ¹deemed¹
32 "qualified digital media content production expenses."

33 "Qualified film production expenses" means an expense incurred
34 in New Jersey for the production of a film including pre-production
35 costs and post-production costs incurred in New Jersey. "Qualified
36 film production expenses" shall include but ¹**【shall】**¹ not be limited
37 to: wages and salaries of individuals employed in the production of
38 a film on which the tax imposed by the "New Jersey Gross Income
39 Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; and the
40 costs for tangible personal property used, and services performed,
41 directly and exclusively in the production of a film, such as
42 expenditures for film production facilities, props, makeup,
43 wardrobe, film processing, camera, sound recording, set
44 construction, lighting, shooting, editing, and meals. Payment made
45 to a loan out company or to an independent contractor shall not be
46 ¹deemed¹ a "qualified film production expense" unless the payment
47 is made in connection with a trade, profession, or occupation

1 carried on in this State or for the rendition of personal services
2 performed in this State and the taxpayer has made the withholding
3 required by subsection h. of this section. "Qualified film production
4 expenses" shall not include: expenses incurred in marketing or
5 advertising a film; and payment in excess of \$500,000 to a highly
6 compensated individual for costs for a story, script, or scenario used
7 in the production of a film and wages or salaries or other
8 compensation for writers, directors, including music directors,
9 producers, and performers, other than background actors with no
10 scripted lines.

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

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

17 (cf: P.L.2018, c.56, s.2)

18

19 3. Section 4 of P.L.2018, c.56 is amended to read as follows:

20 4. **[a.]** A taxpayer, upon approval of an application to the
21 authority and the director, shall be allowed a credit against the tax
22 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in
23 an amount equal to 2 percent of the qualified film or digital media
24 content production expenses of the taxpayer during a privilege
25 period commencing on or after July 1, 2018 but before July 1,
26 **[2023] 2028**, provided that:

27 **[(a)] a.** the application is accompanied by a diversity plan
28 outlining specific goals, which may include advertising and
29 recruitment actions, for hiring minority persons and women;

30 **[(b)] b.** the director and the authority have approved the plan
31 as meeting the requirements established by the director and the
32 authority; and

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

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

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

44

45 ³**[24.** (New Section) Within 2 years of the effective date of
46 P.L. , c. (C.) (pending before the Legislature as this bill),
47 and every second year thereafter that tax credits are granted

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1 pursuant to P.L.2018, c.56 (C.54:10A-5.39b et al.), the authority
2 shall assess and report to the Governor, and pursuant to section 2 of
3 P.L.1991, c.164 (C.52:14-19.1), the Legislature, the benefits the
4 film and digital media tax credits create for the State relative to the
5 costs of the tax credits to the State.²³

6

7 ²[4.] ³[5.²]4.³ This act shall take effect immediately.