

# MAINE STATE LEGISLATURE

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Date: 4/3/12

Majority

L.D. 384  
(Filing No. H-895)

**LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
125TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 310, L.D. 384, Bill, "An Act To Provide Incentives To Foster Economic Growth and Build Infrastructure in the State"

Amend the bill by striking out all of the emergency preamble (page 1, lines 1 to 14 in L.D.) and inserting the following:

**Emergency preamble. Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** this legislation fosters economic growth in the State by providing incentives to motion picture, musical and digital media production companies; and

**Whereas,** motion picture and musical production is especially amenable to incentives because it is highly mobile, environmentally safe, capital and labor intensive and effective in promoting tourism; and

**Whereas,** it is important that these incentives be made available quickly to encourage motion picture and musical production companies to come to Maine as soon as possible, thus benefiting the economy and people of Maine; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,'

Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting the following:

**Sec. 1. 5 MRSA §13090-L,** as amended by PL 2011, c. 285, §1, is repealed.

**Sec. 2. 5 MRSA §13090-M, sub-§1, ¶¶B and E,** as enacted by PL 2011, c. 372, §1, are amended to read:

B. "Digital media project" ~~has the same meaning as in section 13090-L, subsection 2-A, paragraph A~~ means visual and audio content on an electronic, digital medium and created, referred to and distributed electronically. "Digital media project"

**COMMITTEE AMENDMENT**

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1 includes publicly accessible websites, computer multimedia, video and computer  
2 games and digital video discs.

3 E. ~~"Visual media production" has the same meaning as in section 13090-L,~~  
4 ~~subsection 2-A, paragraph D.~~ means a single-medium or multimedia feature film,  
5 television show or series, video, digital media project or photographic project  
6 intended for a local, regional, national or international audience and fixed on film,  
7 videotape, computer disk, laser disc or other delivery medium that can be viewed or  
8 reproduced and that is exhibited in theaters or by individual television stations or  
9 groups of stations, television networks or cable television stations or via other means  
10 or licensed for home viewing or use. "Visual media production" does not include:

11 (1) A news, current events or public programming show or a program that  
12 includes weather or market reports;

13 (2) A talk show;

14 (3) A sports event or activity;

15 (4) A gala presentation or awards show;

16 (5) A finished production that solicits funds; or

17 (6) A production for which records are required to be maintained by 18 United  
18 States Code, Section 2257.

19 **Sec. 3. 5 MRSA §13090-M, sub-§4, ¶E,** as enacted by PL 2011, c. 372, §1, is  
20 amended to read:

21 E. A signed agreement with the department provides that the project or production  
22 will not be the basis for a ~~claim for an income tax credit under Title 36, section~~  
23 ~~5219-Y or reimbursement rebate under Title 36, chapter 919-A section 13090-N.~~

24 **Sec. 4. 5 MRSA §13090-N** is enacted to read:

25 **§13090-N. Motion Picture, Musical and Digital Media Incentive Program**

26 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
27 following terms have the following meanings.

28 A. "Applicant" means a motion picture production company, a musical, theatrical or  
29 sound production company or a digital interactive media production company that  
30 has applied for a rebate under this section.

31 B. "Below-the-line personnel" means nonstarring cast members and the technical  
32 production and postproduction staff of an applicant.

33 C. "Digital interactive media production" means interactive software that is produced  
34 in this State, in whole or in part, for distribution in commercial markets, including  
35 Internet distribution or wireless distribution. "Digital interactive media production"  
36 includes animation, so-called 3D applications, video game cinematics, virtual  
37 production, visual effects and motion capture within feature film, television,  
38 commercials and games. "Digital interactive media production" does not include any  
39 website or content that is produced primarily for private, industrial, corporate or

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- 1 institutional purposes or any content that contains any material or performance
- 2 featuring excessive or gratuitous violence or sexual content, as determined by the
- 3 office.
- 4 D. "Digital interactive media production company" means a company engaged in the
- 5 business of producing digital interactive media productions.
- 6 E. "Fund" means the Motion Picture, Musical and Digital Media Incentive Program
- 7 Fund established in subsection 3.
- 8 F. "Motion picture production" means a nationally or internationally distributed
- 9 feature-length film, video, digital video disc, television program or series or
- 10 commercial made in this State, in whole or in part, for theatrical or digital video disc
- 11 release, for television viewing or as a television pilot. "Motion picture production"
- 12 does not include the production of television coverage of news and athletic events or
- 13 the production of a film, video, digital video disc, television program or series or
- 14 commercial that contains any material or performance featuring excessive or
- 15 gratuitous violence or sexual content, as determined by the office.
- 16 G. "Motion picture production company" means a company engaged in the business
- 17 of producing motion picture productions.
- 18 H. "Musical, theatrical or sound production" means the producing, rehearsing,
- 19 marketing, recording, performing or filming of a live musical, theatrical or sound
- 20 production, or a series of productions, in this State, in whole or in part. "Musical,
- 21 theatrical or sound production" does not include the production of a musical,
- 22 theatrical or sound production that contains any material or performance featuring
- 23 excessive or gratuitous violence or sexual content, as determined by the office.
- 24 I. "Musical, theatrical or sound production company" means a company that is
- 25 engaged in the business of producing musical, theatrical or sound productions.
- 26 J. "Office" means the Department of Economic and Community Development,
- 27 Office of Tourism.
- 28 K. "Program" means the Motion Picture, Musical and Digital Media Incentive
- 29 Program established in subsection 2.
- 30 L. "Qualifying production expenditures" means all preproduction, production and
- 31 postproduction expenditures in this State directly relating to a state-certified
- 32 production, including but not limited to wages for below-the-line personnel; set
- 33 construction and operation; costs associated with photography and sound
- 34 synchronization, lighting and related services and materials; wardrobes, makeup,
- 35 accessories and related services; costs of food and lodging; leasing of vehicles and
- 36 travel costs; editing and related services; rental of facilities and equipment; digital or
- 37 tape editing, film processing and transfer of film to tape or digital format; sound
- 38 mixing; and special and visual effects. "Qualifying production expenditures" does
- 39 not include any expenses that are not related to the state-certified production or any
- 40 expenditures related to the distribution, marketing or promotion of the state-certified
- 41 production.

# COMMITTEE AMENDMENT

1 M. "State-certified production" means a motion picture production, musical,  
2 theatrical or sound production or digital interactive media production that has been  
3 approved by the office to receive a rebate under this section.

4 **2. Program established.** The Motion Picture, Musical and Digital Media Incentive  
5 Program is established in and administered by the office to promote tourism, increase  
6 opportunities for employment and foster economic growth in this State by encouraging  
7 the motion picture, musical, theatrical, sound and digital interactive media industry to use  
8 the State as a production location.

9 **3. Fund established; revenue sources.** The Motion Picture, Musical and Digital  
10 Media Incentive Program Fund is established in the office as a nonlapsing dedicated  
11 account. The fund receives money appropriated by the Legislature for the purposes of this  
12 section and any other gift, grant or revenue from any other source to be used by the office  
13 to provide rebates for state-certified productions as provided for in this section.

14 **4. Qualifications.** In order to be eligible to receive a rebate under this section, a  
15 motion picture production company must spend at least \$75,000 in qualifying production  
16 expenditures, and a musical, theatrical or sound production company or digital interactive  
17 media production company must spend at least \$15,000 in qualifying production  
18 expenditures. In addition, the company must:

19 A. Employ below-the-line personnel, at least 50% of whom are residents of this  
20 State, and, beginning September 1, 2013, employ below-the-line personnel, at least  
21 65% of whom are residents of this State;

22 B. Contract with a travel company located in this State;

23 C. Contract with a payroll processing company licensed by this State pursuant to  
24 Title 10, chapter 222 and located in this State;

25 D. Use a financial institution located and authorized to do business in this State;

26 E. Contract with a casting company located in this State; and

27 F. Agree to display in its production a single card credit or state logo, as prescribed  
28 by the office, stating that the production was filmed, produced or created in this State  
29 with the cooperation of the office.

30 **5. Application for initial and final state certification; eligibility for rebate.** The  
31 following provisions apply to the application process for state certification of a motion  
32 picture production, musical, theatrical or sound production or digital interactive media  
33 production.

34 A. An applicant shall submit to the office an application for initial state certification  
35 prior to commencement of the production and pay an application fee of \$200. The  
36 application must include, when applicable, the following information: the script,  
37 including a synopsis; a general description of the performance, which may include  
38 the book, score and plans for recording or filming the production; a list of the  
39 principal creative elements, including the cast, producer, director, musicians, headline  
40 performers and conductor; estimated start and completion dates; a preliminary  
41 budget, including estimated qualifying production expenditures; and any other  
42 information determined by the office as relevant to its consideration of the production

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1 for state certification. If the information is incomplete, the office may request  
2 additional information prior to further action by the office.

3 B. The office shall notify the applicant within 4 weeks after receipt of the completed  
4 application and fee under paragraph A of its decision to approve or deny the  
5 production for initial state certification.

6 C. No later than 8 weeks following completion of the production, the applicant shall  
7 submit to the office a record of all final qualifying production expenditures and  
8 information required to demonstrate compliance with the requirements of this section  
9 for final state certification of the production. Once the applicant has demonstrated to  
10 the satisfaction of the office that the applicant has fulfilled all of the requirements for  
11 a rebate, the office shall process the rebate for payment to the applicant and notify the  
12 Department of Administrative and Financial Services, Maine Revenue Services that  
13 the applicant has received the rebate.

14 D. The office shall withhold 0.5% of any rebate provided to an applicant under this  
15 section for expenses of the office related to the administration of this section.

16 **6. Rebate amount; ineligibility.** A state-certified production is eligible for a rebate  
17 of 25% of all qualifying production expenditures, subject to the following limitations:

18 A. From May 1, 2012 to June 30, 2013, the total amount of rebates authorized under  
19 this section may not exceed \$25,000,000 in the aggregate; and

20 B. For fiscal year 2013-14 and any subsequent fiscal year, the total amount of rebates  
21 authorized under this section may not exceed \$50,000,000 in the aggregate.

22 A company that receives a rebate under this section is not eligible to claim any other state  
23 economic development incentive, tax reimbursement or exemption during the same year,  
24 except for exemptions claimed under Title 36, Part 3. Any equipment claimed as a  
25 qualifying production expenditure under this program may not be claimed under any  
26 other exemption or reimbursement program under Title 36 during the same fiscal year.

27 **7. Effect of bankruptcy; default on loan.** Any company owned, affiliated or  
28 controlled, in whole or in part, by any company or person that is in default on a loan  
29 made by the State or a loan guaranteed by the State, or any company or person who has  
30 ever declared bankruptcy under which an obligation of the company or person to pay or  
31 repay public funds or money was discharged as a part of such bankruptcy, is not eligible  
32 for a rebate under this section.

33 **8. Rules.** The office may adopt rules necessary for the administration of the  
34 program, including establishing methods to determine whether an applicant qualifies for a  
35 rebate and the amount of the qualifying production expenditures subject to rebate. Rules  
36 adopted pursuant to this subsection are routine technical rules as defined in chapter 375,  
37 subchapter 2-A.

38 **9. Review and report.** Beginning January 15, 2013, and every 2 years thereafter,  
39 the office shall review all aspects of the program, including the level of participation, the  
40 amount rebated from the fund and the amount retained by the office, and submit a report  
41 including the results of the review to the joint standing committee of the Legislature  
42 having jurisdiction over labor, commerce, research and economic development matters.  
43 The report must include any recommendations of the office for improvements or changes

# COMMITTEE AMENDMENT

1 to the program. The committee may report out a bill to implement the recommendations  
2 in the report.

3 **10. Transfer from General Fund undedicated revenue to Motion Picture,**  
4 **Musical and Digital Media Incentive Program Fund.** Notwithstanding any other  
5 provision of law, the State Controller shall transfer \$25,000,000 by January 1, 2013 and  
6 \$50,000,000 by January 1st of each subsequent fiscal year from General Fund  
7 undedicated revenue to the Motion Picture, Musical and Digital Media Incentive Program  
8 Fund, Other Special Revenue Funds account within the Department of Economic and  
9 Community Development to be used to provide rebates for state-certified productions.

10 **Sec. 5. 10 MRSA §1100-T, sub-§2, ¶B,** as amended by PL 2009, c. 470, §2, is  
11 further amended to read:

12 B. The Maine business must be a manufacturer; must provide a product or service  
13 that is sold or rendered, or is projected to be sold or rendered, predominantly outside  
14 of the State; must be engaged in the development or application of advanced  
15 technologies; ~~must be certified as a visual media production company under Title 5,~~  
16 ~~section 13090-L;~~ or must bring capital into the State, as determined by the authority.

17 **Sec. 6. 10 MRSA §1100-T, sub-§2-A, ¶B,** as amended by PL 2009, c. 470, §3,  
18 is further amended to read:

19 B. As used in this subsection, unless the context otherwise indicates, an "eligible  
20 business" means a business located in the State that:

- 21 (1) Is a manufacturer;
- 22 (2) Is engaged in the development or application of advanced technologies;
- 23 (3) Provides a service that is sold or rendered, or is projected to be sold or  
24 rendered, predominantly outside of the State; or
- 25 (4) Brings capital into the State, as determined by the authority; ~~or,~~
- 26 ~~(5) Is certified as a visual media production company under Title 5, section~~  
27 ~~13090-L.~~

28 **Sec. 7. 10 MRSA §1100-T, sub-§2-C, ¶B,** as enacted by PL 2011, c. 454, §6, is  
29 amended to read:

30 B. As used in this subsection, unless the context otherwise indicates, "eligible  
31 business" means a business located in the State that:

- 32 (1) Is a manufacturer;
- 33 (2) Is engaged in the development or application of advanced technologies;
- 34 (3) Provides a service that is sold or rendered, or is projected to be sold or  
35 rendered, predominantly outside of the State; or
- 36 (4) Brings capital into the State, as determined by the authority; ~~or,~~
- 37 ~~(5) Is certified as a visual media production company under Title 5, section~~  
38 ~~13090-L.~~

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**Sec. 8. 36 MRSA §191, sub-§2, ¶MM**, as amended by PL 2009, c. 652, Pt. A, §51, is further amended to read:

MM. The disclosure to an authorized representative of the Department of Economic and Community Development of information required for the administration of the ~~visual media production credit under section 5219-Y~~ Motion Picture, Musical and Digital Media Incentive Program under Title 5, section 13090-N, the employment tax increment financing program under chapter 917, ~~the visual media production reimbursement program under chapter 919-A~~ or the Pine Tree Development Zone program under Title 30-A, chapter 206, subchapter 4;

**Sec. 9. 36 MRSA §5219-Y**, as amended by PL 2011, c. 240, §37, is repealed.

**Sec. 10. 36 MRSA c. 919-A**, as amended, is repealed.

**Sec. 11. Application.** A visual media production company may claim a visual media production credit and reimbursement under the Maine Revised Statutes, former Title 36, section 5219-Y and former Title 36, chapter 919-A after the effective date of this Act if the Department of Economic and Community Development issued a visual media production certificate to the visual media production company prior to the effective date of this Act.

**Sec. 12. Appropriations and allocations.** The following appropriations and allocations are made.

**ECONOMIC AND COMMUNITY DEVELOPMENT, DEPARTMENT OF Motion Picture, Musical and Digital Media Incentive Program Fund N132**

Initiative: Allocates funds for rebates to eligible motion picture production companies.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2011-12</b>	<b>2012-13</b>
All Other	\$0	\$25,000,000
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$0</b>	<b>\$25,000,000</b>

**SUMMARY**

This amendment replaces the bill. It creates the Motion Picture, Musical and Digital Media Incentive Program, which allows for a rebate based on qualifying production expenditures for a motion picture production company that spends at least \$75,000 in qualifying production expenditures or a musical, theatrical or sound production company or digital interactive media production company that spends at least \$15,000 in qualifying production expenditures. In addition, in order to qualify for the rebate, the company must:

1. Employ below-the-line personnel, at least 50% of whom are residents of this State, and, beginning September 1, 2013, employ below-the-line personnel, at least 65% of whom are residents of this State;
2. Contract with a travel company located in this State;



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- 1           3. Contract with a payroll processing company licensed by this State pursuant to the
- 2           Maine Revised Statutes, Title 10, chapter 222 and located in this State;
- 3           4. Use a financial institution located and authorized to do business in this State;
- 4           5. Contract with a casting company located in this State; and
- 5           6. Agree to display in its production a single card credit or state logo, as prescribed
- 6           by the Department of Economic and Community Development, Office of Tourism,
- 7           stating that the production was filmed, produced or created in this State with the
- 8           cooperation of the office.

9           The amendment establishes application requirements for initial and final state  
10          certification and standards for eligibility for the rebate. It allows for a rebate of 25% of  
11          all qualifying production expenditures, subject to the following limitations: from May 1,  
12          2012 to June 30, 2013, the total amount of rebates authorized may not exceed  
13          \$25,000,000 in the aggregate and the total amount of rebates authorized in any  
14          subsequent fiscal year may not exceed \$50,000,000 in the aggregate.

15          It provides that a company that receives a rebate under the program may not claim  
16          any other state economic development incentive, tax reimbursement or exemption in the  
17          same fiscal year.

18          The amendment also repeals the certified visual media production credit and visual  
19          media production reimbursement. It requires that, beginning January 15, 2013, and every  
20          2 years thereafter, the office shall review all aspects of the program, including the level of  
21          participation, the amount rebated from the Motion Picture, Musical and Digital Media  
22          Incentive Program Fund and the amount retained by the office, and submit a report to the  
23          joint standing committee of the Legislature having jurisdiction over labor, commerce,  
24          research and economic development matters. The report must include any  
25          recommendations of the office for improvements or changes to the program. The  
26          amendment authorizes the committee to report out a bill to implement the  
27          recommendations in the report.

28          The amendment requires the State Controller to transfer \$25,000,000 by January 1,  
29          2013 and \$50,000,000 annually thereafter from General Fund undedicated revenue to be  
30          used to provide rebates under the program.

31          The amendment also adds an appropriations and allocations section.

32    **FISCAL NOTE REQUIRED**  
33    **(See attached)**



# 125th MAINE LEGISLATURE

LD 384

LR 1137(02)

## An Act To Provide Incentives To Foster Economic Growth and Build Infrastructure in the State

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-895)  
 Committee: Labor, Commerce, Research and Economic Development  
 Fiscal Note Required: Yes

### Fiscal Note

	FY 2011-12	FY 2012-13	Projections FY 2013-14	Projections FY 2014-15
<b>Net Cost (Savings)</b>				
General Fund	\$0	\$24,895,500	\$49,895,500	\$49,895,500
<b>Appropriations/Allocations</b>				
Other Special Revenue Funds	\$0	\$25,000,000	\$50,000,000	\$50,000,000
<b>Revenue</b>				
General Fund	\$0	(\$24,895,500)	(\$49,895,500)	(\$49,895,500)
Other Special Revenue Funds	\$0	\$25,005,500	\$50,005,500	\$50,005,500

#### Fiscal Detail and Notes

This bill establishes the Motion Picture, Musical and Digital Media Incentive Program Fund to be administered by the Office of Tourism within the Department of Economic and Community Development and provides Other Special Revenue Funds allocations of \$25,000,000 in fiscal year 2012-13 and \$50,000,000 annually beginning in fiscal year 2013-14 to provide rebates to eligible motion picture companies. This fiscal note reflects the maximum amount of rebates that may be authorized in each fiscal year. The actual cost of the rebates to be issued in each fiscal year will depend on actual experience.

This bill also requires the State Controller to transfer \$25,000,000 by January 1, 2013 and \$50,000,000 by January 1st of each subsequent fiscal year from General Fund undedicated revenue to the Motion Picture, Musical and Digital Media Incentive Program Fund for the rebates.

The repeal of the visual media production tax credit increases General Fund revenue by \$104,500 annually beginning fiscal year 2012-13. Revenue sharing will also increase by \$5,500 annually beginning in fiscal year 2012-13.

Additional costs to the Office of Tourism associated with administering the program can be absorbed within existing budgeted resources.