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SECOND SUBSTITUTE SENATE BILL 6558

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AS AMENDED BY THE HOUSE

Passed Legislature - 2006 Regular Session

**State of Washington**                      **59th Legislature**                      **2006 Regular Session**

**By** Senate Committee on Ways & Means (originally sponsored by Senators Brown, Hewitt, Eide, Kohl-Welles, Benson, McAuliffe, Benton, Kline and Keiser)

READ FIRST TIME 02/17/06.

1            AN ACT Relating to the state of Washington's economic, cultural,  
2 and educational standing in the motion picture industry; adding a new  
3 section to chapter 82.04 RCW; and adding a new chapter to Title 43 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** The legislature recognizes the motion  
6 picture industry in Washington as a valuable commodity contributing  
7 greatly to the economic vitality of the state and the cultural  
8 integrity of our communities. The legislature further recognizes the  
9 production of in-state motion pictures, television programs, and  
10 television commercials creates a marked increase in tourism, family  
11 wage jobs, and the sale of local goods and services generating revenue  
12 for the state. Furthermore, with captive national and international  
13 audiences, the world is introduced to the state's pristine scenic  
14 venues and reminded that the Pacific Northwest is a great place to live  
15 and raise a family. The legislature also recognizes the inherent  
16 educational value of promoting arts and culture as well as the benefits  
17 of training young motion picture professionals who will build a  
18 fruitful industry for years to come.

1       The legislature finds in recent years that the state has realized  
2 a drastic decline in motion picture production that precludes economic  
3 expansion and threatens the state's reputation as a production  
4 destination. With the emergence of tax incentives in thirty states  
5 nationwide, in-state producers are taking their projects to more  
6 competitive economic climates, such as Oregon and Vancouver, British  
7 Columbia, where compelling tax incentive packages and subsidies are  
8 already in effect.

9       The legislature also finds that in recent years increasingly  
10 workers in Washington state are without health insurance coverage and  
11 retirement income protections, causing hardships on workers and their  
12 families and higher costs to the state.

13       Therefore, it is the intent of the legislature to recognize both  
14 national and international competition in the motion picture production  
15 marketplace. The legislature is committed to leveling the competitive  
16 playing field and interested in a partnership with the private sector  
17 to regain Washington's place as a premier destination to make motion  
18 pictures, television, and television commercials. While at the same  
19 time the legislature is committed to ensuring that workers in the  
20 motion picture and television industry are covered under health  
21 insurance and retirement income plans.

22       NEW SECTION.   **Sec. 2.** The following definitions apply to this  
23 chapter, unless the context clearly requires otherwise.

24       (1) "Approved motion picture competitiveness program" means a  
25 nonprofit organization under the internal revenue code, section  
26 501(c)(6), with the sole purpose of revitalizing the state's economic,  
27 cultural, and educational standing in the national and international  
28 market of motion picture production by recommending and awarding  
29 financial assistance for costs associated with motion pictures in the  
30 state of Washington.

31       (2) "Contribution" means cash contributions.

32       (3) "Costs" means actual expenses of production and postproduction  
33 expended in Washington state for the production of motion pictures,  
34 including but not limited to payments made for salaries, wages, and  
35 health insurance and retirement benefits, the rental costs of machinery  
36 and equipment and the purchase of services, food, property, lodging,  
37 and permits for work conducted in Washington state.

1 (4) "Department" means the department of community, trade, and  
2 economic development.

3 (5) "Motion picture" means a recorded audio-visual production  
4 intended for distribution to theaters, DVD, video, or the internet, or  
5 television, or one or more episodes of a single television series,  
6 television pilots or presentations, or a commercial. "Motion picture"  
7 does not mean production of a television commercial of an amount less  
8 than two hundred fifty thousand dollars in actual total investment or  
9 one or more segments of a newscast or sporting event.

10 (6) "Funding assistance" means cash expenditures from an approved  
11 motion picture competitiveness program.

12 (7) "Person" has the same meaning as provided in RCW 82.04.030.

13 NEW SECTION. **Sec. 3.** (1) The department shall adopt criteria for  
14 an approved motion picture competitiveness program with the sole  
15 purpose of revitalizing the state's economic, cultural, and educational  
16 standing in the national and international market of motion picture  
17 production. Rules adopted by the department shall allow the program,  
18 within the established criteria, to provide funding assistance only  
19 when it captures economic opportunities for Washington's communities  
20 and businesses and shall only be provided under a contractual  
21 arrangement with a private entity. In establishing the criteria, the  
22 department shall consider:

23 (a) The additional income and tax revenue to be retained in the  
24 state for general purposes;

25 (b) The creation and retention of family wage jobs which provide  
26 health insurance and payments into a retirement plan;

27 (c) The impact of motion picture projects to maximize in-state  
28 labor and the use of in-state film production and film postproduction  
29 companies;

30 (d) The impact upon the local economies and the state economy as a  
31 whole, including multiplier effects;

32 (e) The intangible impact on the state and local communities that  
33 comes with motion picture projects;

34 (f) The regional, national, and international competitiveness of  
35 the motion picture filming industry;

36 (g) The revitalization of the state as a premier venue for motion  
37 picture production and national television commercial campaigns;

1 (h) Partnerships with the private sector to bolster film production  
2 in the state and serve as an educational and cultural purpose for its  
3 citizens;

4 (i) The vitality of the state's motion picture industry as a  
5 necessary and critical factor in promoting the state as a premier  
6 tourist and cultural destination;

7 (j) Giving preference to additional seasons of television series  
8 that have previously qualified;

9 (k) Other factors the department may deem appropriate for the  
10 implementation of this chapter.

11 (2) The board of directors created under section 4 of this act  
12 shall create and administer an account for carrying out the purposes of  
13 subsection (3) of this section.

14 (3) Money received by an approved motion picture competitiveness  
15 program shall be used only for: (a) Health insurance and payments into  
16 a retirement plan, and other costs associated with film production; (b)  
17 a tax credit marketer to market the tax credits authorized under  
18 section 5 of this act; and (c) staff and related expenses to maintain  
19 the program's proper administration and operation.

20 (4) Maximum funding assistance from an approved motion picture  
21 competitiveness program is limited to:

22 (a) Twenty percent of a total actual investment in the state of at  
23 least five hundred thousand dollars, for a single feature film produced  
24 in Washington state;

25 (b) Twenty percent of a total actual investment in the state of at  
26 least three hundred thousand dollars per television episode produced in  
27 Washington state; or

28 (c) Twenty percent of a total actual investment in the state of at  
29 least two hundred fifty thousand dollars for an infomercial or  
30 television commercial associated with a national or regional  
31 advertisement campaign produced in Washington state.

32 (5) No single motion picture production or episodic television  
33 project may be awarded an amount greater than one million dollars from  
34 an approved motion picture competitiveness program.

35 (6) Funding assistance approval must be determined by the approved  
36 motion picture competitiveness program within a maximum of thirty  
37 calendar days from when the application is received, if the application  
38 is submitted after August 15, 2006.

1        NEW SECTION.    **Sec. 4.**    (1)    A Washington motion picture  
2 competitiveness program under this chapter shall be administered by a  
3 board of directors appointed by the governor, and the appointments  
4 shall be made within sixty days following enactment. The department,  
5 after consulting with the board, shall adopt rules for the standards  
6 that shall be used to evaluate the applications for funding assistance  
7 prior to June 30, 2006.

8        (2) The board shall evaluate and award financial assistance to  
9 motion picture projects under rules set forth under section 3 of this  
10 act.

11        (3) The board shall consist of the following members:

12        (a) One member representing the Washington motion picture  
13 production industry;

14        (b) One member representing the Washington motion picture  
15 postproduction industry;

16        (c) Two members representing labor unions affiliated with  
17 Washington motion picture production;

18        (d) One member representing the Washington visitors and convention  
19 bureaus;

20        (e) One member representing the Washington tourism industry;

21        (f) One member representing the Washington restaurant, hotel, and  
22 airline industry; and

23        (g) A chairperson, chosen at large, shall serve at the pleasure of  
24 the governor.

25        (4) The term of the board members, other than the chair, is four  
26 years. A board member appointed by the governor may be removed by the  
27 governor for cause under RCW 43.06.070 and 43.06.080.

28        (5) Five members of the board constitute a quorum.

29        (6) The board shall elect a treasurer and secretary annually, and  
30 other officers as the board members determine necessary, and may adopt  
31 bylaws or rules for its own government.

32        (7) The board shall make any information available at the request  
33 of the department to administer this chapter.

34        (8) Contributions received by a board shall be deposited into the  
35 account described in section 3(2) of this act.

36        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 82.04 RCW  
37 to read as follows:

1 (1) Subject to the limitations in this section, a credit is allowed  
2 against the tax imposed under this chapter for contributions made by a  
3 person to a Washington motion picture competitiveness program.

4 (2) The person must make the contribution before claiming a credit  
5 authorized under this section. Credits earned under this section may  
6 be claimed against taxes due for the calendar year in which the  
7 contribution is made. The amount of credit claimed for a reporting  
8 period shall not exceed the tax otherwise due under this chapter for  
9 that reporting period. No person may claim more than one million  
10 dollars of credit in any calendar year, including credit carried over  
11 from a previous calendar year. No refunds may be granted for any  
12 unused credits.

13 (3) The maximum credit that may be earned for each calendar year  
14 under this section for a person is limited to the lesser of:

15 (a) One million dollars; or

16 (b)(i) Through calendar year 2008, an amount equal to one hundred  
17 percent of the contributions made by the person to a program during the  
18 calendar year; and

19 (ii) For calendar years after 2008, an amount equal to ninety  
20 percent of the contributions made by the person to a program during the  
21 calendar year.

22 (4) Except as provided under subsection (5) of this section, a tax  
23 credit claimed under this section may not be carried over to another  
24 year.

25 (5) Any amount of tax credit otherwise allowable under this section  
26 not claimed by the person in any calendar year may be carried over and  
27 claimed against the person's tax liability for the next succeeding  
28 calendar year. Any credit remaining unused in the next succeeding  
29 calendar year may be carried forward and claimed against the person's  
30 tax liability for the second succeeding calendar year; and any credit  
31 not used in that second succeeding calendar year may be carried over  
32 and claimed against the person's tax liability for the third succeeding  
33 calendar year, but may not be carried over for any calendar year  
34 thereafter.

35 (6) Credits are available on a first in-time basis. The department  
36 shall disallow any credits, or portion thereof, that would cause the  
37 total amount of credits claimed under this section during any calendar  
38 year to exceed three million five hundred thousand dollars. If this

1 limitation is reached, the department shall notify all Washington  
2 motion picture competitiveness programs that the annual statewide limit  
3 has been met. In addition, the department shall provide written notice  
4 to any person who has claimed tax credits in excess of the three  
5 million five hundred thousand dollar limitation in this subsection.  
6 The notice shall indicate the amount of tax due and shall provide that  
7 the tax be paid within thirty days from the date of such notice. The  
8 department shall not assess penalties and interest as provided in  
9 chapter 82.32 RCW on the amount due in the initial notice if the amount  
10 due is paid by the due date specified in the notice, or any extension  
11 thereof.

12 (7) To claim a credit under this section, a person must  
13 electronically file with the department all returns, forms, and any  
14 other information required by the department, in an electronic format  
15 as provided or approved by the department. Any return, form, or  
16 information required to be filed in an electronic format under this  
17 section is not filed until received by the department in an electronic  
18 format. As used in this subsection, "returns" has the same meaning as  
19 "return" in RCW 82.32.050.

20 (8) No application is necessary for the tax credit. The person  
21 must keep records necessary for the department to verify eligibility  
22 under this section.

23 (9) A Washington motion picture competitiveness program shall  
24 provide to the department, upon request, such information needed to  
25 verify eligibility for credit under this section, including information  
26 regarding contributions received by the program.

27 (10) The department shall not allow any credit under this section  
28 before July 1, 2006.

29 (11) For the purposes of this section, "Washington motion picture  
30 competitiveness program" or "program" means an organization established  
31 pursuant to chapter 43.-- RCW (sections 1 through 4 of this act).

32 (12) No credit may be earned for contributions made on or after  
33 July 1, 2011.

34 NEW SECTION. **Sec. 6.** (1) The legislature finds that  
35 accountability and effectiveness are important aspects of setting tax  
36 policy. In order to make policy choices regarding the best use of

1 limited state resources the legislature needs information on how  
2 incentives are used.

3 (2) Each motion picture production receiving funding assistance  
4 under section 3 of this act shall report information to the department  
5 by filing a complete annual survey. The survey is due by March 31st of  
6 the year following any calendar year in which funding assistance under  
7 section 4 of this act is taken. The department may extend the due date  
8 for timely filing of annual surveys under this section if failure to  
9 file was the result of circumstances beyond the control of the motion  
10 picture production receiving the funding assistance.

11 (3) The survey shall include the amount of funding assistance  
12 received. The survey shall also include the following information for  
13 employment positions in Washington by the motion picture production  
14 receiving funding assistance, including indirect employment by  
15 contractors or other affiliates:

16 (a) The number of total employment positions;

17 (b) Full-time, part-time, and temporary employment positions as a  
18 percent of total employment;

19 (c) The number of employment positions according to the following  
20 wage bands: Less than thirty thousand dollars; thirty thousand dollars  
21 or greater, but less than sixty thousand dollars; and sixty thousand  
22 dollars or greater. A wage band containing fewer than three  
23 individuals may be combined with another wage band; and

24 (d) The number of employment positions that have employer-provided  
25 medical, dental, and retirement benefits, by each of the wage bands.

26 (4) The department may request additional information necessary to  
27 measure the results of the funding assistance program, to be submitted  
28 at the same time as the survey.

29 (5) If a person fails to submit an annual survey under subsection  
30 (2) of this section by the due date of the report or any extension the  
31 department shall declare the amount of funding assistance for the  
32 previous calendar year to be immediately due and payable. The  
33 department shall assess interest, but not penalties, on the amounts due  
34 under this section. The interest shall be assessed at the rate  
35 provided for delinquent taxes under chapter 82.32 RCW, retroactively to  
36 the date the funding assistance was received, and shall accrue until  
37 the funding assistance is repaid.

1           (6) The department shall use the information from this section to  
2 prepare summary descriptive statistics. The department shall report  
3 these statistics to the legislature each year by September 1st. The  
4 department shall provide the complete annual surveys to the joint  
5 legislative audit and review committee.

6           NEW SECTION. **Sec. 7.** The provisions of section 5 of this act are  
7 subject to review by the joint legislative audit and review committee.  
8 The joint legislative audit and review committee will make a  
9 recommendation to the house finance committee and the senate ways and  
10 means committee by December 1, 2010, regarding the effectiveness of the  
11 motion picture competitiveness program including, but not limited to,  
12 the amount of state revenue generated, the amount of family wages jobs  
13 with benefits created, adherence to the criteria in section 3 of this  
14 act, and any other factors deemed appropriate by the joint legislative  
15 audit and review committee.

16           NEW SECTION. **Sec. 8.** Sections 1 through 4, 6, and 7 of this act  
17 constitute a new chapter in Title 43 RCW.

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