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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5539

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State of Washington

62nd Legislature

2012 Regular Session

By Senate Ways & Means (originally sponsored by Senators Kohl-Welles, Prentice, White, Kilmer, Brown, and McAuliffe)

READ FIRST TIME 03/25/11.

1 AN ACT Relating to Washington's motion picture competitiveness;  
2 amending RCW 43.365.020, 43.365.030, 82.04.4489, and 43.365.040; and  
3 reenacting and amending RCW 43.365.010.

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

5 **Sec. 1.** RCW 43.365.010 and 2009 c 565 s 46 are each reenacted and  
6 amended to read as follows:

7 The following definitions apply to this chapter, unless the context  
8 clearly requires otherwise.

9 (1) "Approved motion picture competitiveness program" means a  
10 nonprofit organization under the internal revenue code, section  
11 501(c)(6), with the sole purpose of revitalizing the state's economic,  
12 cultural, and educational standing in the national and international  
13 market of motion picture production and assisting and providing  
14 services for attracting the film industry, by recommending and awarding  
15 financial assistance for costs associated with motion pictures in the  
16 state of Washington.

17 (2) "Contribution" means cash contributions.

18 (3) "Costs" means actual expenses of production and postproduction  
19 expended in Washington state for the production of motion pictures,

1 including but not limited to payments made for salaries, wages, and  
2 health insurance and retirement benefits, the rental costs of machinery  
3 and equipment and the purchase of services, food, property, lodging,  
4 and permits for work conducted in Washington state.

5 (4) "Department" means the department of commerce.

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

8 (6) "Motion picture" means a recorded audio-visual production  
9 intended for distribution to ~~((theaters, DVD, video, or the internet,~~  
10 ~~or television, or one or more episodes of a single television series,~~  
11 ~~television pilots or presentations, or a commercial. "Motion picture"~~  
12 ~~does not mean production of a television commercial of an amount less~~  
13 ~~than two hundred fifty thousand dollars in actual total investment or~~  
14 ~~one or more segments of a newscast or sporting event)) the public for~~  
15 exhibition in public and/or private settings by means of any and all  
16 delivery systems and/or delivery platforms now or hereafter known,  
17 including without limitation, screenings in motion picture theaters,  
18 broadcasts and cablecast transmissions for viewing on televisions,  
19 computer screens, and other audio-visual receivers, viewings on screens  
20 by means of digital video disc (DVD) players, video on demand (VOD)  
21 services, and digital video recording (DVR) services, direct internet  
22 transmission, and viewing on digital computer-based systems which  
23 respond to the users' actions (interactive media).

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

25 **Sec. 2.** RCW 43.365.020 and 2009 c 100 s 1 are each amended to read  
26 as follows:

27 (1) The department ~~((shall))~~ must adopt criteria for ~~((an))~~ the  
28 approved motion picture competitiveness program with the sole purpose  
29 of revitalizing the state's economic, cultural, and educational  
30 standing in the national and international market of motion picture  
31 production. Rules adopted by the department shall allow the program,  
32 within the established criteria, to provide funding assistance only  
33 when it captures economic opportunities for Washington's communities  
34 and businesses and shall only be provided under a contractual  
35 arrangement with a private entity. In establishing the criteria, the  
36 department shall consider:

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

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

5 (c) The impact of motion picture projects to maximize in-state  
6 labor and the use of in-state film production and film postproduction  
7 companies;

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

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

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

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

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

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

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

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

26 (2) The board of directors created under RCW 43.365.030 shall  
27 create and administer an account for carrying out the purposes of  
28 subsection (3) of this section.

29 (3) Money received by ~~((an))~~ the approved motion picture  
30 competitiveness program shall be used only for:

31 (a) Health insurance and payments into a retirement plan, and other  
32 costs associated with film production; and

33 (b) ~~((a tax credit marketer to market the tax credits authorized  
34 under RCW 82.04.4489; and (c)))~~ Staff and related expenses to maintain  
35 the program's proper administration and operation.

36 (4) Except as provided otherwise in subsection (7) of this section,  
37 maximum funding assistance from ((an)) the approved motion picture

1 competitiveness program is limited to an amount up to thirty percent of  
2 the total actual investment in the state of at least:

3 (a) Five hundred thousand dollars for a single ~~((feature-film))~~  
4 motion picture produced in Washington state; or

5 (b) ~~((Three-hundred-thousand-dollars-per-television-episode~~  
6 ~~produced in Washington state; or~~

7 ~~(e))~~ One hundred fifty thousand dollars for ~~((an-infomercial-or))~~  
8 a television commercial associated with a national or regional  
9 advertisement campaign produced in Washington state.

10 (5) Except as provided otherwise in subsection (7) of this section,  
11 maximum funding assistance from the approved motion picture  
12 competitiveness program is limited to an amount up to thirty-five  
13 percent of the total actual investment of at least three hundred  
14 thousand dollars per episode produced in Washington state. A minimum  
15 of six episodes of a series must be produced to qualify under this  
16 subsection. A maximum of up to thirty percent of the total actual  
17 investment from the approved motion picture competitiveness program may  
18 be awarded to an episodic series of less than six episodes.

19 (6) With respect to costs associated with nonstate labor for motion  
20 pictures and episodic services, funding assistance from the approved  
21 motion picture competitiveness program is limited to an amount up to  
22 fifteen percent of the total actual investment used for costs  
23 associated with nonstate labor. To qualify under this subsection, the  
24 production must have a labor force of at least eighty-five percent of  
25 Washington residents. The board may establish additional criteria to  
26 maximize the use of in-state labor.

27 (7)(a) The approved motion picture competitiveness program may  
28 allocate an annual aggregate of no more than ten percent of the  
29 qualifying contributions by the program under RCW 82.04.4489 to provide  
30 funding support for filmmakers who are Washington residents, new forms  
31 of production, and emerging technologies.

32 (i) Up to thirty percent of the actual investment for a motion  
33 picture with an actual investment lower than that of motion pictures  
34 under subsection (4)(a) of this section; or

35 (ii) Up to thirty percent of the actual investment of an  
36 interactive motion picture intended for multiplatform exhibition and  
37 distribution.

1        (b) Subsections (4) and (5) of this section do not apply to this  
2 subsection.

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

7        **Sec. 3.** RCW 43.365.030 and 2008 c 85 s 2 are each amended to read  
8 as follows:

9        (1) A Washington motion picture competitiveness program under this  
10 chapter (~~(shall)~~) must be administered by a board of directors  
11 appointed by the governor, and the appointments (~~(shall)~~) must be made  
12 within sixty days following enactment. The department, after  
13 consulting with the board, (~~(shall)~~) must adopt rules for the standards  
14 that shall be used to evaluate the applications for funding assistance  
15 prior to June 30, 2006.

16        (2) The board (~~(shall)~~) must evaluate and award financial  
17 assistance to motion picture projects under rules set forth under RCW  
18 43.365.020.

19        (3) The board (~~(shall)~~) must consist of the following members:

20        (a) One member representing the Washington motion picture  
21 production industry;

22        (b) One member representing the Washington motion picture  
23 postproduction industry;

24        (c) One member representing the Washington interactive media or  
25 emerging motion picture industry;

26        (d) Two members representing labor unions affiliated with  
27 Washington motion picture production;

28        (~~(+d)~~) (e) One member representing the Washington visitors and  
29 convention bureaus;

30        (~~(+e)~~) (f) One member representing the Washington tourism  
31 industry;

32        (~~(+f)~~) (g) One member representing the Washington restaurant,  
33 hotel, and airline industry; and

34        (~~(+g)~~) (h) A chairperson, chosen at large, (~~(shall)~~) must serve at  
35 the pleasure of the governor.

36        (4) The term of the board members, other than the chair, is four  
37 years, except as provided in subsection (5) of this section.

1 (5) The governor (~~shall~~) must appoint board members in 2010 to  
2 two-year or four-year staggered terms. Once the initial two-year or  
3 four-year terms expire, all subsequent terms (~~shall be~~) are for four  
4 years. The terms of the initial board members (~~shall be~~) are as  
5 follows:

6 (a) The board positions in subsection (3)(b), (~~(d), and (f)~~) (e),  
7 and (g) of this section, and one position from subsection (3)(~~e~~)  
8 (d) of this section (~~shall~~) must be appointed to two-year terms; and

9 (b) The remaining board positions in subsection (3) of this section  
10 shall be appointed to four-year terms.

11 (6) A board member appointed by the governor may be removed by the  
12 governor for cause under RCW 43.06.070 and 43.06.080.

13 (7) Five members of the board constitute a quorum.

14 (8) The board (~~shall~~) must elect a treasurer and secretary  
15 annually, and other officers as the board members determine necessary,  
16 and may adopt bylaws or rules for its own government.

17 (9) The board (~~shall~~) must make any information available at the  
18 request of the department to administer this chapter.

19 (10) Contributions received by a board (~~shall~~) must be deposited  
20 into the account described in RCW 43.365.020(2).

21 **Sec. 4.** RCW 82.04.4489 and 2008 c 85 s 3 are each amended to read  
22 as follows:

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

26 (2) The person must make the contribution before claiming a credit  
27 authorized under this section. Credits earned under this section may  
28 be claimed against taxes due for the calendar year in which the  
29 contribution is made. The amount of credit claimed for a reporting  
30 period (~~shall~~) may not exceed the tax otherwise due under this  
31 chapter for that reporting period. No person may claim more than one  
32 million dollars of credit in any calendar year, including credit  
33 carried over from a previous calendar year. No refunds may be granted  
34 for any unused credits.

35 (3) The maximum credit that may be earned for each calendar year  
36 under this section for a person is limited to the lesser of one million

1 dollars or an amount equal to one hundred percent of the contributions  
2 made by the person to a program during the calendar year.

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

6 (5) Any amount of tax credit otherwise allowable under this section  
7 not claimed by the person in any calendar year may be carried over and  
8 claimed against the person's tax liability for the next succeeding  
9 calendar year. Any credit remaining unused in the next succeeding  
10 calendar year may be carried forward and claimed against the person's  
11 tax liability for the second succeeding calendar year; and any credit  
12 not used in that second succeeding calendar year may be carried over  
13 and claimed against the person's tax liability for the third succeeding  
14 calendar year, but may not be carried over for any calendar year  
15 thereafter.

16 (6) Credits are available on a first in-time basis. The department  
17 (~~shall~~) must disallow any credits, or portion thereof, that would  
18 cause the total amount of credits claimed under this section during any  
19 calendar year to exceed three million five hundred thousand dollars.  
20 If this limitation is reached, the department (~~shall~~) must notify all  
21 Washington motion picture competitiveness programs that the annual  
22 statewide limit has been met. In addition, the department (~~shall~~)  
23 must provide written notice to any person who has claimed tax credits  
24 in excess of the (~~three-million-five-hundred-thousand-dollar~~)  
25 limitation in this subsection. The notice (~~shall~~) must indicate the  
26 amount of tax due and (~~shall~~) provide that the tax be paid within  
27 thirty days from the date of (~~such~~) the notice. The department  
28 (~~shall~~) may not assess penalties and interest as provided in chapter  
29 82.32 RCW on the amount due in the initial notice if the amount due is  
30 paid by the due date specified in the notice, or any extension thereof.

31 (7) To claim a credit under this section, a person must  
32 electronically file with the department all returns, forms, and any  
33 other information required by the department, in an electronic format  
34 as provided or approved by the department. Any return, form, or  
35 information required to be filed in an electronic format under this  
36 section is not filed until received by the department in an electronic  
37 format. As used in this subsection, "returns" has the same meaning as  
38 "return" in RCW 82.32.050.

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

4 (9) A Washington motion picture competitiveness program (~~shall~~)  
5 must provide to the department, upon request, such information needed  
6 to verify eligibility for credit under this section, including  
7 information regarding contributions received by the program.

8 (10) The department (~~shall~~) may not allow any credit under this  
9 section before July 1, 2006.

10 (11) For the purposes of this section, "Washington motion picture  
11 competitiveness program" or "program" means an organization established  
12 pursuant to chapter 43.365 RCW.

13 (12) No credit may be earned for contributions made on or after  
14 July 1, (~~2011~~) 2017.

15 **Sec. 5.** RCW 43.365.040 and 2009 c 518 s 14 are each amended to  
16 read as follows:

17 (1) The legislature finds that accountability and effectiveness are  
18 important aspects of setting tax policy. In order to make policy  
19 choices regarding the best use of limited state resources the  
20 legislature needs information on how incentives are used.

21 (2) Each motion picture production receiving funding assistance  
22 under RCW 43.365.020 (~~shall~~) must report information to the  
23 department by filing a complete annual survey. The survey is due by  
24 March 31st of the year following any calendar year in which funding  
25 assistance under RCW 43.365.020 is taken. The department may extend  
26 the due date for timely filing of annual surveys under this section if  
27 failure to file was the result of circumstances beyond the control of  
28 the motion picture production receiving the funding assistance.

29 (3) (~~The survey shall include~~) The Washington motion picture  
30 competitiveness program established in RCW 43.365.030, in collaboration  
31 with the department and the department of revenue, and in consultation  
32 with the joint legislative audit and review committee, must develop a  
33 survey form and instructions that accompany the survey form by November  
34 1, 2012. The instructions must provide sufficient detail to ensure  
35 consistent reporting. The survey must be designed to acquire data to  
36 allow the state to better measure the effectiveness of the program and



1 to provide transparency of the motion picture competitiveness program.

2 The survey must include:

3 (a) The total amount of taxes paid;

4 (b) The amount of taxes paid classified by type, which may include,  
5 but is not limited to, sales taxes, use taxes, business and occupation  
6 taxes, unemployment insurance taxes, and workers' compensation  
7 premiums;

8 (c) The amount of funding assistance received(~~(. The survey shall~~  
9 also include)); and

10 (d) The following information for employment positions in  
11 Washington by the motion picture production receiving funding  
12 assistance, including indirect employment by contractors or other  
13 affiliates:

14 ~~((a))~~ (i) The number of total employment positions;

15 ~~((b) Full-time, part-time, and temporary employment positions as~~  
16 ~~a percent of total employment;~~

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

22 ~~(d))~~ (ii) The average number of hours worked by employed  
23 individuals;

24 (iii) The average base pay of individuals employed by motion  
25 picture companies, including contributions to health care benefits and  
26 retirement plans;

27 (iv) The number of employment positions that have employer-provided  
28 medical, dental, and retirement benefits(~~(, by each of the wage~~  
29 bands)); and

30 (v) The number of employment positions filled by Washington state  
31 residents, and residency information for employment positions filled by  
32 people from other locations.

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

36 (5) If a person fails to submit an annual survey under subsection  
37 (2) of this section by the due date of the report or any extension the  
38 department (~~shall~~) must declare the amount of funding assistance for

1 the previous calendar year to be immediately due and payable. The  
2 department (~~shall~~) must assess interest, but not penalties, on the  
3 amounts due under this section. The interest (~~shall be~~) is assessed  
4 at the rate provided for delinquent taxes under chapter 82.32 RCW,  
5 retroactively to the date the funding assistance was received, and  
6 (~~shall~~) accrues until the funding assistance is repaid.

7 (6) The department (~~shall~~) must use the information from this  
8 section to prepare summary descriptive statistics. The department  
9 (~~shall~~) must report these statistics to the legislature each even-  
10 numbered year by September 1st. The department (~~shall~~) must provide  
11 the complete annual surveys to the joint legislative audit and review  
12 committee.

13 (7) The motion picture competitiveness program must monitor the  
14 survey information submitted by production companies for completeness  
15 and accuracy.

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