

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1103

A bill to amend 1984 PA 270, entitled
"Michigan strategic fund act,"
by amending section 29h (MCL 125.2029h), as added by 2011 PA 291.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 29h. (1) The Michigan film office shall create and
2 operate the film and digital media production assistance program.
3 The film and digital media production assistance program may
4 provide funds to eligible production companies for direct
5 production expenditures ~~, Michigan personnel expenditures, crew~~
6 ~~personnel expenditures,~~ or qualified personnel expenditures for
7 state certified qualified productions.
- 8 (2) If the office receives applications that would exceed what
9 the office can award in any year, the office may prioritize that
10 application for funding in the subsequent year.

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(3) The film and digital media production assistance program shall provide for all of the following:

(a) Funding shall be provided only to reimburse direct production expenditures ~~, Michigan personnel expenditures, crew personnel expenditures,~~ or qualified personnel expenditures.

(b) To be eligible to apply for funding, the eligible production company shall have direct production expenditures ~~, Michigan~~ **OR QUALIFIED** personnel expenditures, or a combination of direct production expenditures and ~~Michigan~~ **QUALIFIED** personnel expenditures, of \$100,000.00 or more.

(c) To be eligible to apply for funding, the eligible production company shall not be delinquent in a tax or other obligation owed to this state or be owned or under common control of an entity that is delinquent in a tax or other obligation owed to this state.

(d) **[FOR STATE CERTIFIED QUALIFIED PRODUCTION EXPENDITURES ON OR BEFORE DECEMBER 1, 2014, FUNDING AS PROVIDED IN THE AGREEMENT IF THAT AGREEMENT WAS ENTERED INTO ON OR BEFORE DECEMBER 1, 2014.]** For state certified qualified production expenditures after ~~September 30, 2011,~~ **DECEMBER 1, 2014,** an agreement under this section shall provide for funding equal to the sum of the following:

(i) ~~27%~~ **25%** of direct production expenditures **AND QUALIFIED PERSONNEL EXPENDITURES.**

~~—— (ii) Michigan personnel expenditures as follows:~~

~~—— (A) 32% after September 30, 2011 and before January 1, 2015.~~

~~—— (B) 27% after December 31, 2014.~~

~~—— (iii) Crew personnel expenditures as follows:~~

~~—— (A) 25% after September 30, 2011 and before January 1, 2013.~~

~~—— (B) 20% after December 31, 2012 and before January 1, 2014.~~

1 ~~—— (C) 15% after December 31, 2013 and before January 1, 2015.~~

2 ~~—— (D) 10% after December 31, 2014.~~

3 ~~—— (iv) Qualified personnel expenditures as follows:~~

4 ~~—— (A) 27% after September 30, 2011 and before January 1, 2015.~~

5 ~~—— (B) 12% after December 31, 2014.~~

6 (ii) ~~(v)~~ In addition to the expenditures described in
 7 subparagraphs ~~(i), (ii), (iii), and (iv)~~, **SUBPARAGRAPH (i)**, 3% of direct
 8 production expenditures and Michigan **QUALIFIED** personnel
 9 expenditures at a qualified facility or **10% OF DIRECT PRODUCTION**
 10 **EXPENDITURES AND QUALIFIED PERSONNEL EXPENDITURES AT A**
 11 postproduction facility for a qualified production produced at the
 12 facility.

13 ~~—— (e) Payments and compensation for all producers of a qualified~~
 14 ~~production residing in this state shall not exceed 10% of the~~
 15 ~~direct production expenditures and Michigan personnel expenditures~~
 16 ~~for the qualified production.~~

17 ~~—— (f) Payments and compensation for all producers of a qualified~~
 18 ~~production who are not residents of this state shall not exceed 5%~~
 19 ~~of the direct production expenditures and Michigan personnel~~
 20 ~~expenditures for the qualified production.~~

21 (E) ~~(g)~~ A television show may submit an application for ~~no~~ **1**
 22 **OR** more than ~~2~~ successive seasons, notwithstanding the fact that
 23 the successive seasons have not been ordered. The successive
 24 season's direct production expenditure, Michigan **EXPENDITURES AND**
 25 **QUALIFIED** personnel expenditure, nonresident above the line
 26 personnel expenditure, and nonresident below the line crew
 27 expenditure amounts **EXPENDITURES** shall be based on the current

1 season's estimated expenditures. Upon the completion of production
2 of each season, a television show may submit an application for ne
3 ~~more than 1~~ **SUCCESSIVE** additional ~~season~~. **SEASONS. IF A TELEVISION**
4 **SHOW RECEIVED FUNDING UNDER THIS SECTION AND COMPLETED THE**
5 **PRODUCTION OF THAT TELEVISION SHOW SEASON, THE TELEVISION SHOW**
6 **SHALL RECEIVE A PREFERENCE FOR FUNDING THE IMMEDIATELY SUCCEEDING**
7 **SEASON FOR THAT TELEVISION SHOW.**

8 (F) ~~(h)~~ As a separate and distinct part of the film and
9 digital media production assistance program, the office may create
10 a program to directly support and promote qualified facilities and
11 other infrastructure throughout this state.

12 ~~—— (i) That not less than 5% of the funding awarded under this~~
13 ~~section is awarded for postproduction expenditures for qualified~~
14 ~~productions.~~

15 (G) **THAT NOT LESS THAN 10% OF THE FUNDING AWARDED UNDER THIS**
16 **SECTION IS AWARDED FOR QUALIFIED PRODUCTIONS THAT ARE MOTION**
17 **PICTURES, DOCUMENTARIES, OR TELEVISION SERIES WITH A BUDGET OF LESS**
18 **THAN \$15,000,000.00.**

19 (4) An eligible production company intending to produce a
20 qualified production in this state may submit an application for
21 funding under this section to the Michigan film office. The request
22 shall be submitted in a form prescribed by the office and shall be
23 accompanied by an application fee equal to 0.2% of the funding
24 requested but not less than \$200.00 and not more than \$5,000.00 and
25 all of the information and records requested by the office. An
26 application fee received by the office under this subsection shall
27 be deposited in the Michigan film promotion fund. The office shall

1 not process the application until it is complete. **IF AN ELIGIBLE**
2 **PRODUCTION COMPANY IS PRODUCING A QUALIFIED PRODUCTION AT A**
3 **QUALIFIED FACILITY, A COPY OF THE AGREEMENT BETWEEN THE ELIGIBLE**
4 **PRODUCTION COMPANY AND THE QUALIFIED FACILITY SHALL BE PROVIDED TO**
5 **THE OFFICE BEFORE THE OFFICE ENTERS INTO AN AGREEMENT TO AWARD**
6 **FUNDING UNDER THIS SECTION.** The office shall process each
7 application within 21 days after the application is complete as
8 determined by the office. As part of the application, the company
9 shall estimate direct production expenditures ~~, Michigan personnel~~
10 ~~expenditures, crew personnel expenditures,~~ and qualified personnel
11 expenditures for an identified qualified production. If the office
12 determines to award funding under this section to an eligible
13 production company, the office with the concurrence of the fund
14 president **OR HIS OR HER DESIGNEE** shall enter into an agreement
15 under this section. The agreement shall include, but is not limited
16 to, all of the following:

17 (a) A requirement that the eligible production company
18 commence work in this state on the identified qualified production
19 within 90 days of the date of the agreement or else the agreement
20 shall expire. However, upon request submitted by the company based
21 on good cause, the office may extend the period for commencement of
22 work in this state for up to an additional 90 days.

23 (b) A statement identifying the company and the qualified
24 production that the company intends to produce in whole or in part
25 in this state.

26 (c) A unique number assigned to the qualified production by
27 the office.

1 (d) A requirement that the qualified production not depict
2 obscene matter or an obscene performance.

3 (e) If the qualified production is a long-form narrative film
4 production, a requirement that the qualified production include
5 within its presentation worldwide for the life of the qualified
6 production an acknowledgment as provided by the office that
7 promotes the pure Michigan tourism campaign or any successor
8 campaign. If the qualified production is a television show, a
9 requirement that the qualified production include within each
10 broadcast of 30 minutes or longer an acknowledgment as provided by
11 the office that promotes the pure Michigan tourism campaign or any
12 successor campaign. If the qualified production is a music video, a
13 requirement that the music video include an acknowledgment as
14 provided by the office that promotes the pure Michigan tourism
15 campaign or any successor campaign. If the qualified production is
16 an interactive game, a requirement that the qualified production
17 include with each unit distributed and online promotions an
18 acknowledgment as provided by the office that promotes the pure
19 Michigan tourism campaign or any successor campaign. If the
20 qualified production is a long-form narrative film production, the
21 office also may require that, if the qualified production is
22 distributed by digital video disc or other digital media for the
23 secondary market, the qualified production include a video between
24 30 and 60 seconds long in a form approved by the office that
25 promotes the pure Michigan tourism campaign or any successor
26 campaign.

27 (f) A requirement that the company provide the office with the

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1 information and independent certification the office deems
2 necessary to verify direct production expenditures ~~, Michigan~~
3 ~~personnel expenditures, crew personnel expenditures, AND~~ qualified
4 personnel expenditures, and eligibility for funding under this
5 section, which may include a report of direct production
6 expenditures ~~, Michigan personnel expenditures, crew personnel~~
7 ~~expenditures,~~ and qualified personnel expenditures for the
8 qualified production audited and certified by an independent
9 certified public accountant.

10 (g) If determined to be necessary by the office, a provision
11 for addressing expenditures in excess of those identified in the
12 agreement.

13 (H) A REQUIREMENT THAT RESIDUAL PAYMENTS TO ABOVE THE LINE
14 PERSONNEL, PERSONAL SERVICE CORPORATIONS, LOAN OUT COMPANIES,
15 PROFESSIONAL EMPLOYER ORGANIZATIONS, LIMITED LIABILITY COMPANIES,
16 CORPORATIONS, OR OTHER ENTITIES FOR A QUALIFIED PRODUCTION ARE
17 SUBJECT TO TAXATION IN THIS STATE UNDER THE INCOME TAX ACT OF 1967,
18 1967 PA 281, MCL 206.1 TO 206.713. WITH RESPECT TO RESIDUAL
19 PAYMENTS NOT OTHERWISE SUBJECT TO WITHHOLDING UNDER SECTION 703 OF
20 THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.703, THE ELIGIBLE
21 PRODUCTION COMPANY, AFFILIATE ENTITY, OR ITS SUCCESSOR COMPANY
22 SHALL ELECT TO EITHER, FOR A PERIOD OF NOT LESS THAN [12] YEARS
23 FOLLOWING THEATRICAL RELEASE OF THE QUALIFIED PRODUCTION, WITHHOLD
24 TAXES FROM THOSE RESIDUAL PAYMENTS AND PAY TO THIS STATE THE AMOUNT
25 PROVIDED UNDER SECTION 51 OF THE INCOME TAX ACT OF 1967, 1967 PA
26 281, MCL 206.51, OR REQUIRE ABOVE THE LINE PERSONNEL PAID DIRECTLY
27 OR THROUGH, EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION,

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1 PERSONAL SERVICES CORPORATIONS, LOAN OUT COMPANIES, PROFESSIONAL
2 EMPLOYER ORGANIZATIONS, LIMITED LIABILITY COMPANIES, CORPORATIONS,
3 OR OTHER ENTITIES FOR THE SERVICES OF ABOVE THE LINE PERSONNEL
4 RECEIVING PAYMENTS FOR DIRECT PRODUCTION EXPENDITURES OR QUALIFIED
5 PERSONNEL EXPENDITURES UNDER THIS SECTION TO REGISTER TO DO
6 BUSINESS UNDER THE LAWS OF THIS STATE. TO THE EXTENT THAT THE
7 PRODUCTION COMPANY ELECTS NOT TO WITHHOLD, IT SHALL NOTIFY THE
8 ABOVE THE LINE PERSONNEL OF THEIR REGISTRATION OBLIGATIONS IN
9 WRITING AT THE TIME OF ENGAGEMENT FOR THEIR SERVICES. RESIDUAL
10 PAYMENTS SHALL INCLUDE DEFERRED, RESIDUAL, OR CONTINGENT
11 COMPENSATION, ROYALTIES, OR PROFIT PARTICIPATION RELATING TO THE
12 QUALIFIED PRODUCTION. A PERSONAL SERVICE CORPORATION, LOAN OUT
13 COMPANY, PROFESSIONAL EMPLOYER ORGANIZATION, LIMITED LIABILITY
14 COMPANY, CORPORATION, OR OTHER ENTITY IS EXEMPT FROM THE
15 REQUIREMENT TO BE [REGISTERED TO DO BUSINESS] UNDER THE LAWS OF THIS
STATE IF IT
16 RECEIVES LESS THAN \$250,000.00 FOR THE ABOVE THE LINE SERVICES OF
17 AN ACTOR DURING THE PERIOD THAT THE QUALIFIED PRODUCTION IS
18 PRODUCED IN THIS STATE AND ANY RELATED RESIDUAL PAYMENTS ARE BASED
19 SOLELY ON A COLLECTIVE BARGAINING AGREEMENT. AS USED IN THIS
20 SUBDIVISION, "LOAN OUT COMPANY" MEANS A PERSONAL SERVICE CORPORATION
21 OR OTHER ENTITY CONTRACTED WITH AND RETAINED BY THE PRODUCTION
22 COMPANY TO PROVIDE INDIVIDUAL PERSONNEL, INCLUDING ARTISTS, CREW,
23 ACTORS, DIRECTORS, AND PRODUCERS, FOR THE PERFORMANCE OF SERVICES
24 USED DIRECTLY IN A PRODUCTION, BUT NOT INCLUDING ENTITIES RETAINED
25 BY THE PRODUCTION COMPANY TO PROVIDE TANGIBLE PROPERTY OR OUTSIDE
26 CONTRACTOR SERVICE, INCLUDING CATERING, CONSTRUCTION, TRAILERS,
27 EQUIPMENT, AND TRANSPORTATION.

1 (5) In determining whether to award funding under this
2 section, the Michigan film office shall consider all of the
3 following:

4 (a) The potential that, in the absence of funding, the
5 qualified production will be produced in a location other than this
6 state.

7 (b) The extent to which the qualified production may have the
8 effect of promoting this state as a tourist destination.

9 (c) The extent to which the qualified production may have the
10 effect of promoting economic development or job creation in this
11 state.

12 (d) The extent to which state funding will attract private
13 investment for the production of qualified productions in this
14 state.

15 (e) The record of the eligible production company in
16 completing commitments to engage in a qualified production.

17 (f) The extent to which the qualified production will employ
18 Michigan residents.

19 **(G) WHETHER THE ELIGIBLE PRODUCTION COMPANY WILL HOLD A**
20 **PREMIERE IN THIS STATE FOR THE QUALIFIED PRODUCTION.**

21 **(H) WHETHER THE ELIGIBLE PRODUCTION COMPANY WILL MAKE FILM**
22 **TRAILERS AND CLIPS AVAILABLE TO THE OFFICE FOR THE PURE MICHIGAN**
23 **TOURISM CAMPAIGN OR ANY SUCCESSOR CAMPAIGN TO PROMOTE THE QUALIFIED**
24 **PRODUCTION AND THE PURE MICHIGAN TOURISM CAMPAIGN OR ANY SUCCESSOR**
25 **CAMPAIGN.**

26 (6) If the Michigan film office determines that an eligible
27 production company has complied with the terms of an agreement

1 entered into under this section, the office shall award funding as
2 provided in this section. A person that willfully submits
3 information under this section that the person knows to be
4 fraudulent or false shall, in addition to any other penalties
5 provided by law, be liable for a civil penalty equal to the amount
6 of funding provided to the person under this section. A penalty
7 collected under this section shall be deposited in the Michigan
8 film promotion fund.

9 (7) Information, records, or other data received, prepared,
10 used, or retained by the Michigan film office under this section
11 that are submitted by an eligible production company and considered
12 by the applicant and acknowledged by the office as confidential
13 shall not be subject to the disclosure requirements of the freedom
14 of information act, 1976 PA 442, MCL 15.231 to 15.246. Information,
15 records, or other data shall only be considered confidential to the
16 extent that the information or records describe the commercial and
17 financial operations or intellectual property of the company, the
18 information or records have not been publicly disseminated at any
19 time, and disclosure of the information or records may put the
20 company at a competitive disadvantage. For purposes of this
21 subsection, information or records that describe commercial and
22 financial operations do not include that portion of information or
23 records that include any expenses that qualify under this section
24 as direct production expenditures or **QUALIFIED** personnel
25 expenditures.

26 (8) ~~Not later than March 1, 2012, the~~ **THE** office shall produce
27 a performance dashboard for the assistance authorized by this

1 section. The performance dashboard shall be made available by the
2 office on the fund's website and shall be updated at least
3 annually. The performance dashboard shall include the following
4 measures:

5 (a) Direct and indirect economic impacts in this state of the
6 assistance authorized by this section.

7 (b) Direct and indirect job creation attributable to the
8 assistance authorized by this section.

9 (c) Direct and indirect private investment in this state
10 attributable to the assistance authorized by this section.

11 (d) Any other measures considered relevant by the office or
12 the Michigan film advisory council.

13 (e) The name of each eligible production company and the
14 amount of each incentive dispersed for each state certified
15 qualified production.

16 ~~—— (9) The Michigan film office shall not award funding after~~
17 ~~September 30, 2017.~~

18 (9) FUNDING UNDER THIS SECTION FOR ABOVE THE LINE PERSONNEL
19 SHALL NOT EXCEED 30% OF TOTAL FUNDING UNDER THIS SECTION FOR EACH
20 QUALIFIED PRODUCTION.

21 (10) TO BE ELIGIBLE FOR FUNDING UNDER THIS SECTION, EXCEPT AS
22 OTHERWISE PROVIDED IN SUBSECTION (11), MICHIGAN RESIDENTS SHALL BE
23 HIRED TO WORK ON QUALIFIED PRODUCTIONS AS FOLLOWS:

24 (A) THROUGH SEPTEMBER 30, 2017, AT A RATIO OF NOT LESS THAN 1
25 MICHIGAN RESIDENT FOR EVERY NONRESIDENT HIRED.

26 (B) BEGINNING OCTOBER 1, 2017 THROUGH SEPTEMBER 30, 2020, AT A
27 RATIO OF NOT LESS THAN 1.5 MICHIGAN RESIDENTS FOR EVERY NONRESIDENT

1 HIRED.

2 (C) BEGINNING OCTOBER 1, 2020 THROUGH SEPTEMBER 30, 2022, AT A
3 RATIO OF NOT LESS THAN 2 MICHIGAN RESIDENTS FOR EVERY NONRESIDENT
4 HIRED.

5 (D) BEGINNING OCTOBER 1, 2022, AT A RATIO OF NOT LESS THAN 3
6 MICHIGAN RESIDENTS FOR EVERY NONRESIDENT HIRED.

7 (11) A PRODUCER MAY APPLY TO THE MICHIGAN ECONOMIC DEVELOPMENT
8 CORPORATION FOR A WAIVER OF THE MICHIGAN RESIDENT HIRING
9 REQUIREMENTS DESCRIBED IN SUBSECTION (10), BASED ON THE
10 UNAVAILABILITY OF QUALIFIED MICHIGAN RESIDENTS. THE MICHIGAN
11 ECONOMIC DEVELOPMENT CORPORATION MAY WAIVE THE MICHIGAN RESIDENT
12 HIRING REQUIREMENT DESCRIBED IN SUBSECTION (10) IF THE MICHIGAN
13 ECONOMIC DEVELOPMENT CORPORATION DETERMINES THAT THERE IS AN
14 INSUFFICIENT NUMBER OF QUALIFIED MICHIGAN RESIDENTS FOR THE
15 QUALIFIED PRODUCTION.

16 (12) ~~(10)~~—The legislature finds and declares that funding
17 authorized under this section to encourage diversification of the
18 economy, to encourage film production, to encourage investment, and
19 to encourage the creation of jobs in this state is a public purpose
20 and of paramount concern in the interest of the health, safety, and
21 general welfare of the citizens of this state. It is the intent of
22 the legislature that the economic benefits, film production,
23 investment, and the creation of jobs resulting from this section
24 shall accrue substantially within this state.

25 (13) ~~(11)~~—The fund board may authorize the use of money
26 appropriated for the program authorized by this section for
27 administration of the program. However, the fund board shall not

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1 use more than 4% of the annual appropriation for administering the
2 program authorized under this section.

3 ~~(14) (12) Beginning on September 30, 2011 and at~~ **AT** the end of
4 each fiscal year, ~~thereafter,~~ the commissioner shall certify the
5 total amount of unclaimed certificates of completion, agreements
6 where work has not commenced as required in subsection (4), and
7 agreements for qualified productions the commissioner reasonably
8 believes will not be completed. Funding allocated for qualified
9 productions described in the preceding sentence may be reallocated.

**[(15) THE MICHIGAN FILM OFFICE SHALL NOT AWARD FUNDING 7 YEARS
AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
SUBSECTION.]**

10 **(16)]** ~~(13)~~ As used in this section:

11 (a) "Above the line personnel" means a producer, director,
12 writer, actor, other than extras **AND STUNT PERFORMERS**, or other
13 similar personnel whose compensation is negotiated prior to the
14 start of the production.

15 (b) "Below the line crew" means persons employed by an
16 eligible production company for state certified qualified
17 production expenditures made after production begins and before
18 production is completed, including, but not limited to, a best boy,
19 boom operator, camera loader, camera operator, assistant camera
20 operator, compositor, **COOK, DRIVER**, dialogue editor, film editor,
21 assistant film editor, focus puller, Foley operator, Foley editor,
22 gaffer, grip, key grip, lighting crew, lighting board operator,
23 lighting technician, music editor, sound editor, sound effects
24 editor, sound mixer, steadicam operator, first assistant camera
25 operator, second assistant camera operator, digital imaging
26 technician, camera operator working with a director of photography,
27 electric best boy, grip best boy, dolly grip, rigging grip,

1 assistant key for makeup, assistant key for hair, assistant script
2 supervisor, set construction foreperson, lead set dresser,
3 assistant key for wardrobe, scenic foreperson, assistant
4 propmaster, assistant audio mixer, assistant boom person, assistant
5 key for special effects, **STUNT PERFORMER**, and other similar
6 personnel. Below the line crew does not include a producer,
7 director, writer, actor, or other similar personnel.

8 ~~—— (c) "Crew personnel expenditure" means an expenditure made in~~
9 ~~this state directly attributable to the production or development~~
10 ~~of a qualified production that is a transaction subject to taxation~~
11 ~~in this state and is a payment or compensation for nonresident~~
12 ~~below the line crew, talent, management, or labor, not to exceed~~
13 ~~\$2,000,000.00 for any 1 employee or contractual or salaried~~
14 ~~employee of a qualified production, including both of the~~
15 ~~following:~~

16 ~~—— (i) Payment of wages, benefits, or fees for talent, management,~~
17 ~~or labor.~~

18 ~~—— (ii) Payment to a personal services corporation or professional~~
19 ~~employer organization for the services of a performing artist or~~
20 ~~crew member if the personal services corporation or professional~~
21 ~~employer organization is subject to taxation in this state on the~~
22 ~~portion of the payment qualifying for funding under this section~~
23 ~~and the payments received by the performing artist or crew member~~
24 ~~that are subject to taxation under the income tax act of 1967, 1967~~
25 ~~PA 281, MCL 206.1 to 206.713, and are withheld and paid to this~~
26 ~~state in the amount provided under section 351 or 703 of the income~~
27 ~~tax act of 1967, 1967 PA 281, MCL 206.351 and 206.703.~~

1 (C) ~~(d)~~—"Direct production expenditure" means a development,
2 preproduction, production, or postproduction expenditure made in
3 this state directly attributable to the production or development
4 of a qualified production that is a transaction subject to taxation
5 in this state. Direct production expenditure does not include out-
6 of-state production costs that are made in this state even if the
7 costs are passed through a third-party company in this state or
8 payments made by an eligible production company to its parent
9 company, affiliate, subsidiary, or joint venture partner except
10 where the payments are for transactions entered into pursuant to
11 arm's-length negotiations and which reflect a commercially
12 reasonable price for the goods and services purchased. A direct
13 production expenditure must have true economic substance within the
14 state. Direct production expenditure does not include a prize
15 payable to participants in a game show; an expenditure for
16 entertainment, amusement, or recreation; or an expenditure of more
17 than \$2,500.00 for the purchase of artwork or jewelry used in a
18 production. Direct production expenditure does not include a
19 ~~Michigan personnel expenditure, a qualified personnel expenditure.~~
20 ~~, or a crew personnel expenditure.~~ Direct production expenditure
21 includes payments to vendors doing business in this state to
22 purchase or use tangible personal property in producing the
23 qualified production or to purchase services relating to the
24 production or development of the qualified production, including
25 all of the following:

26 (i) Production work, production equipment, production software,
27 development work, postproduction work, postproduction equipment,

1 postproduction software, set design, set construction, set
2 operations, props, lighting, wardrobe, makeup, makeup accessories,
3 photography, sound synchronization, special effects, visual
4 effects, audio effects, digital effects, film processing, music,
5 sound mixing, editing, interactive game development and
6 programming, and related services and materials.

7 (ii) Use of facilities or equipment, use of soundstages or
8 studios, location fees, and related services and materials.

9 (iii) Catering, food, lodging, and related services and
10 materials.

11 (iv) Use of vehicles, which may include chartered aircraft
12 based in this state used for transportation in this state directly
13 attributable to production of a qualified production, but may not
14 include the chartering of aircraft for transportation outside of
15 this state.

16 (v) Commercial airfare if purchased through a travel agency or
17 travel company based in this state for travel to this state or
18 within this state directly attributable to production or
19 development of a qualified production.

20 (vi) Insurance coverage or bonding if purchased from an
21 insurance agent based in this state.

22 (vii) Interest on a loan, if the entity from which the
23 financing is obtained is a public, private, or institutional entity
24 with the requisite level of physical presence in this state that is
25 not related to or affiliated with the eligible production company
26 or any above the line personnel or cast members, and whose
27 principal business activity is the lending of money to individuals

1 and businesses. In addition, the financing shall be a good faith
2 loan, payable by the eligible production company, evidenced by an
3 enforceable promissory note or other debt instrument with clear
4 repayment obligations and bearing a market-related rate of
5 interest.

6 (viii) Other expenditures for production of a qualified
7 production in accordance with generally accepted entertainment
8 industry practices.

9 (D) ~~(e)~~—"Eligible production company" or "company" means an
10 entity in the business of producing qualified productions or for
11 interactive games in the business of developing interactive games,
12 but does not include an entity that is more than 30% owned,
13 affiliated, or controlled by an entity or individual who is in
14 default on a loan made by this state, a loan guaranteed by this
15 state, or a loan made or guaranteed by any other state. For an
16 interactive game, an eligible production company need not possess
17 ownership of or legal control over all of the intellectual property
18 rights or other rights necessary to complete the qualified
19 production in its entirety nor be the same entity that distributes
20 or publishes the interactive game.

21 (E) ~~(f)~~—"Made in this state" means ~~, for purposes of~~
22 ~~subdivision (e) only,~~ all of the following:

23 (i) Tangible personal property and services acquired by the
24 eligible production company from a source within this state. If an
25 item of tangible personal property is not available from a source
26 within this state and a vendor with the requisite physical presence
27 in this state that regularly sells or leases property of that kind

1 obtains the property from an out-of-state vendor and sells or
2 leases it to an eligible production company, that expenditure is
3 considered made in this state and is a direct production
4 expenditure and not an out-of-state production cost.

5 (ii) Services wholly performed within this state.

6 ~~—— (g) "Michigan personnel expenditure" means an expenditure made~~
7 ~~in this state directly attributable to the production or~~
8 ~~development of a qualified production that is a transaction subject~~
9 ~~to taxation in this state and is a payment or compensation payable~~
10 ~~to below the line crew for below the line crew members who are~~
11 ~~residents of this state and above the line personnel for above the~~
12 ~~line personnel who are residents of this state, not to exceed~~
13 ~~\$2,000,000.00 for any 1 employee or contractual or salaried~~
14 ~~employee who performs service in this state for the production of a~~
15 ~~qualified production, including both of the following:~~

16 ~~—— (i) Payment of wages, benefits, or fees.~~

17 ~~—— (ii) Payment to a personal services corporation or professional~~
18 ~~employer organization for the services of a performing artist or~~
19 ~~crew member if the personal services corporation or professional~~
20 ~~employer organization is subject to taxation in this state on the~~
21 ~~portion of the payment qualifying for funding under this section~~
22 ~~and the payments received by the performing artist or crew member~~
23 ~~that are subject to taxation under the income tax act of 1967, 1967~~
24 ~~PA 281, MCL 206.1 to 206.713, are withheld and paid to this state~~
25 ~~in the amount provided under section 351 or 703 of the income tax~~
26 ~~act of 1967, 1967 PA 281, MCL 206.351 and 206.703.~~

27 (F) ~~(h)~~—"Obscene matter or an obscene performance" means

1 matter described in 1984 PA 343, MCL 752.361 to 752.374.

2 (G) ~~(i)~~—"Postproduction expenditure" means a direct
3 expenditure for editing, Foley recording, automatic dialogue
4 replacement, sound editing, special or visual effects including
5 computer-generated imagery or other effects, scoring and music
6 editing, beginning and end credits, negative cutting, soundtrack
7 production, dubbing, subtitling, or addition of sound or visual
8 effects. Postproduction expenditure includes direct expenditures
9 for advertising, marketing, or related expenses.

10 (H) ~~(j)~~—"Postproduction facility" means a permanent facility
11 within this state equipped for the postproduction of motion
12 pictures, television shows, or digital media production that meets
13 all of the following requirements:

14 (i) Includes at least 3,000 square feet of contiguous space.

15 (ii) Includes at least 8 work stations.

16 (iii) Has been a qualified film and digital media infrastructure
17 project from which an investment expenditure certificate was issued
18 under section 457 of the Michigan business tax act, 2007 PA 36, MCL
19 208.1457, or has been the location of a state certified qualified
20 production for which a postproduction certificate of completion was
21 issued under section 455 of the Michigan business tax act, 2007 PA
22 36, MCL 208.1455, or both.

23 (I) ~~(k)~~—"Producer" means an individual without regard to his
24 or her actual title or screen credit involved in or responsible for
25 any of the following:

26 (i) Funding for financing in whole or in part, or arranging for
27 the funding, or financing, of the qualified production.

1 (ii) Obtaining the creative rights to or the intellectual
2 property for development or production of the qualified production.

3 (iii) Hiring above the line personnel.

4 (iv) Supervising the overall production of the qualified
5 production.

6 (v) Arranging for the exhibition of the qualified production.

7 **(J)** ~~(H)~~—"Qualified facility" means a permanent facility within
8 this state equipped for the production of motion pictures,
9 television shows, or digital media production that meets all of the
10 following requirements:

11 (i) Includes more than 1 soundstage.

12 (ii) Includes not less than 3,000 square feet of contiguous,
13 column-free space for production activities with a height of at
14 least 12 feet.

15 (iii) Includes any grid and sufficient built-in electric service
16 for shooting without the need of portable electric generators.

17 (iv) Has been a qualified film and digital media infrastructure
18 project for which an investment expenditure certificate was issued
19 under section 457 of the Michigan business tax act, 2007 PA 36, MCL
20 208.1457, or has been the location of a state certified qualified
21 production for which a postproduction certificate of completion was
22 issued under section 455 of the Michigan business tax act, 2007 PA
23 36, MCL 208.1455, or both.

24 **(K)** ~~(m)~~—"Qualified personnel expenditure" means an expenditure
25 made in this state directly attributable to the production or
26 development of a qualified production that is a transaction subject
27 to taxation in this state and is a payment or compensation for

~~nonresident above the line personnel, talent, management, or labor,~~
~~not to exceed \$2,000,000.00 for any 1 employee or contractual or~~
~~salaries employee of a qualified production, including both of the~~
following:

(i) Payment of wages, benefits, or fees for talent, management,
or labor.

(ii) Payment to a personal services corporation or professional
employer organization for the services of a performing artist or
crew member if the personal services corporation or professional
employer organization is subject to taxation in this state on the
portion of the payment qualifying for funding under this section
and the payments received by the performing artist or crew member
that are subject to taxation under the income tax act of 1967, 1967
PA 281, MCL 206.1 to 206.713, and are withheld and paid to this
state in the amount provided under section ~~351~~ or 703 of the income
tax act of 1967, 1967 PA 281, MCL ~~206.351~~ and 206.703.

(I) ~~(n)~~ "State certified qualified production" or "qualified
production" means single media or multimedia entertainment content
created in whole or in part in this state for distribution or
exhibition to the general public in 2 or more states by any means
and media in any digital media format, film, or video tape,
including, but not limited to, a motion picture, a documentary, a
television series, a television miniseries, a television special,
interstitial television programming, long-form television,
interactive television, music videos, interactive games such as
video games or wireless games, including console, computer, mobile,
and online games, internet programming, an internet video, a sound

1 recording, a video, digital animation, or an interactive website.

2 Qualified production also includes any trailer, pilot, video
3 teaser, or demo created primarily to stimulate the sale, marketing,
4 promotion, or exploitation of future investment in a production.

5 Qualified production does not include any of the following:

6 (i) A production for which records are required to be
7 maintained with respect to any performer in the production under 18
8 USC 2257.

9 (ii) A production that includes obscene matter or an obscene
10 performance.

11 (iii) A production that primarily consists of televised news or
12 current events.

13 (iv) A production that primarily consists of a live sporting
14 event.

15 (v) A production that primarily consists of political
16 advertising.

17 (vi) A radio program.

18 (vii) A weather show.

19 (viii) A financial market report.

20 (ix) An awards show or other gala event production.

21 (x) A production with the primary purpose of fund-raising.

22 (xi) A production that primarily is for employee training or
23 in-house corporate advertising or other similar production.

24 (xii) A commercial.