

HOUSE BILL No. 4122

January 29, 2015, Introduced by Reps. Lauwers, Johnson, Somerville, Leutheuser, Rendon, Kelly, Bumstead, Victory, Barrett, Howrylak, Glenn and Chatfield and referred to the Committee on Tax Policy.

A bill to amend 1984 PA 270, entitled
"Michigan strategic fund act,"
by amending section 29h (MCL 125.2029h), as amended by 2014 PA 396.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 29h. (1) ~~The~~**THROUGH SEPTEMBER 30, 2015, THE** Michigan
2 film office shall create and operate the film and digital media
3 production assistance program. ~~The~~**THROUGH SEPTEMBER 30, 2015, THE**
4 film and digital media production assistance program may provide
5 funds to eligible production companies for direct production
6 expenditures or qualified personnel expenditures for state
7 certified qualified productions. **BEGINNING OCTOBER 1, 2015, THE**
8 **MICHIGAN FILM OFFICE AND THE FUND SHALL NOT OPERATE THE FILM AND**
9 **DIGITAL MEDIA PRODUCTION ASSISTANCE PROGRAM OR PROVIDE FUNDING FOR**
10 **DIRECT PRODUCTION EXPENDITURES, MICHIGAN PERSONNEL EXPENDITURES,**
11 **CREW PERSONNEL EXPENDITURES, OR QUALIFIED PERSONNEL EXPENDITURES**

1 **UNDER THIS SECTION.**

2 (2) If the office receives applications that would exceed what
3 the office can award in any year, the office may prioritize that
4 application for funding in the subsequent year.

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

7 (a) Funding shall be provided only to reimburse direct
8 production expenditures or qualified personnel expenditures.

9 (b) To be eligible to apply for funding, the eligible
10 production company shall have direct production expenditures or
11 qualified personnel expenditures, or a combination of direct
12 production expenditures and qualified personnel expenditures, of
13 \$100,000.00 or more.

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

19 (d) ~~For~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, FOR**
20 state certified qualified production expenditures on or before
21 December 1, 2014, funding as provided in the agreement if that
22 agreement was entered into on or before December 1, 2014. ~~For~~
23 **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, FOR** state certified
24 qualified production expenditures after December 1, 2014 **THROUGH**
25 **SEPTEMBER 30, 2015**, an agreement under this section shall provide
26 for funding equal to the sum of the following:

27 (i) 25% of direct production expenditures and qualified

1 personnel expenditures.

2 (ii) In addition to the expenditures described in subparagraph
3 (i), 3% of direct production expenditures and qualified personnel
4 expenditures at a qualified facility or 10% of direct production
5 expenditures and qualified personnel expenditures at a
6 postproduction facility for a qualified production produced at the
7 facility.

8 (e) A television show may submit an application for 1 or more
9 successive seasons, notwithstanding the fact that the successive
10 seasons have not been ordered. The successive season's direct
11 production expenditures and qualified personnel expenditures shall
12 be based on the current season's estimated expenditures. Upon the
13 completion of production of each season, a television show may
14 submit an application for successive additional seasons. If a
15 television show received funding under this section and completed
16 the production of that television show season, the television show
17 shall receive a preference for funding the immediately succeeding
18 season for that television show.

19 (f) As a separate and distinct part of the film and digital
20 media production assistance program, the office may create a
21 program to directly support and promote qualified facilities and
22 other infrastructure throughout this state.

23 (g) That not less than 10% of the funding awarded under this
24 section is awarded for qualified productions that are motion
25 pictures, documentaries, or television series with a budget of less
26 than \$15,000,000.00.

27 (4) An eligible production company intending to produce a

1 qualified production in this state may submit an application for
2 funding under this section to the Michigan film office. The request
3 shall be submitted in a form prescribed by the office and shall be
4 accompanied by an application fee equal to 0.2% of the funding
5 requested but not less than \$200.00 and not more than \$5,000.00 and
6 all of the information and records requested by the office. An
7 application fee received by the office under this subsection shall
8 be deposited in the Michigan film promotion fund. The office shall
9 not process the application until it is complete. If an eligible
10 production company is producing a qualified production at a
11 qualified facility, a copy of the agreement between the eligible
12 production company and the qualified facility shall be provided to
13 the office before the office enters into an agreement to award
14 funding under this section. The office shall process each
15 application within 21 days after the application is complete as
16 determined by the office. As part of the application, the company
17 shall estimate direct production expenditures and qualified
18 personnel expenditures for an identified qualified production. If
19 the office determines to award funding under this section to an
20 eligible production company, the office with the concurrence of the
21 fund president or his or her designee shall enter into an agreement
22 under this section. The agreement shall include, but is not limited
23 to, all of the following:

24 (a) A requirement that the eligible production company
25 commence work in this state on the identified qualified production
26 within 90 days of the date of the agreement or else the agreement
27 shall expire. However, upon request submitted by the company based

1 on good cause, the office may extend the period for commencement of
2 work in this state for up to an additional 90 days.

3 (b) A statement identifying the company and the qualified
4 production that the company intends to produce in whole or in part
5 in this state.

6 (c) A unique number assigned to the qualified production by
7 the office.

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

10 (e) If the qualified production is a long-form narrative film
11 production, a requirement that the qualified production include
12 within its presentation worldwide for the life of the qualified
13 production an acknowledgment as provided by the office that
14 promotes the ~~pure~~**PURE** Michigan tourism campaign or any successor
15 campaign. If the qualified production is a television show, a
16 requirement that the qualified production include within each
17 broadcast of 30 minutes or longer an acknowledgment as provided by
18 the office that promotes the ~~pure~~**PURE** Michigan tourism campaign or
19 any successor campaign. If the qualified production is a music
20 video, a requirement that the music video include an acknowledgment
21 as provided by the office that promotes the ~~pure~~**PURE** Michigan
22 tourism campaign or any successor campaign. If the qualified
23 production is an interactive game, a requirement that the qualified
24 production include with each unit distributed and online promotions
25 an acknowledgment as provided by the office that promotes the ~~pure~~
26 **PURE** Michigan tourism campaign or any successor campaign. If the
27 qualified production is a long-form narrative film production, the

1 office also may require that, if the qualified production is
2 distributed by digital video disc or other digital media for the
3 secondary market, the qualified production include a video between
4 30 and 60 seconds long in a form approved by the office that
5 promotes the ~~pure~~**PURE** Michigan tourism campaign or any successor
6 campaign.

7 (f) A requirement that the company provide the office with the
8 information and independent certification the office deems
9 necessary to verify direct production expenditures and qualified
10 personnel expenditures, and eligibility for funding under this
11 section, which may include a report of direct production
12 expenditures and qualified personnel expenditures for the qualified
13 production audited and certified by an independent certified public
14 accountant.

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

18 (h) A requirement that residual payments to above the line
19 personnel, personal service corporations, loan out companies,
20 professional employer organizations, limited liability companies,
21 corporations, or other entities for a qualified production are
22 subject to taxation in this state under the income tax act of 1967,
23 1967 PA 281, MCL 206.1 to 206.713. With respect to residual
24 payments not otherwise subject to withholding under section 703 of
25 the income tax act of 1967, 1967 PA 281, MCL 206.703, the eligible
26 production company, affiliate entity, or its successor company
27 shall elect to either, for a period of not less than 12 years

1 following theatrical release of the qualified production, withhold
2 taxes from those residual payments and pay to this state the amount
3 provided under section 51 of the income tax act of 1967, 1967 PA
4 281, MCL 206.51, or require above the line personnel paid directly
5 or through, except as otherwise provided in this subdivision,
6 personal services corporations, loan out companies, professional
7 employer organizations, limited liability companies, corporations,
8 or other entities for the services of above the line personnel
9 receiving payments for direct production expenditures or qualified
10 personnel expenditures under this section to register to do
11 business under the laws of this state. To the extent that the
12 production company elects not to withhold, it shall notify the
13 above the line personnel of their registration obligations in
14 writing at the time of engagement for their services. Residual
15 payments shall include deferred, residual, or contingent
16 compensation, royalties, or profit participation relating to the
17 qualified production. A personal service corporation, loan out
18 company, professional employer organization, limited liability
19 company, corporation, or other entity is exempt from the
20 requirement to be registered to do business under the laws of this
21 state if it receives less than \$250,000.00 for the above the line
22 services of an actor during the period that the qualified
23 production is produced in this state and any related residual
24 payments are based solely on a collective bargaining agreement. As
25 used in this subdivision, "loan out company" means a personal
26 service corporation or other entity contracted with and retained by
27 the production company to provide individual personnel, including

1 artists, crew, actors, directors, and producers, for the
2 performance of services used directly in a production, but not
3 including entities retained by the production company to provide
4 tangible property or outside contractor service, including
5 catering, construction, trailers, equipment, and transportation.

6 (5) In determining whether to award funding under this
7 section, the Michigan film office shall consider all of the
8 following:

9 (a) The potential that, in the absence of funding, the
10 qualified production will be produced in a location other than this
11 state.

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

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

17 (d) The extent to which state funding will attract private
18 investment for the production of qualified productions in this
19 state.

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

22 (f) The extent to which the qualified production will employ
23 Michigan residents.

24 (g) Whether the eligible production company will hold a
25 premiere in this state for the qualified production.

26 (h) Whether the eligible production company will make film
27 trailers and clips available to the office for the ~~Pure Michigan~~

1 tourism campaign or any successor campaign to promote the qualified
2 production and the Pure Michigan tourism campaign or any successor
3 campaign.

4 (6) If the Michigan film office determines that an eligible
5 production company has complied with the terms of an agreement
6 entered into under this section, the office shall award funding as
7 provided in this section. A person that willfully submits
8 information under this section that the person knows to be
9 fraudulent or false shall, in addition to any other penalties
10 provided by law, be liable for a civil penalty equal to the amount
11 of funding provided to the person under this section. A penalty
12 collected under this section shall be deposited in the Michigan
13 film promotion fund.

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

1 records that include any expenses that qualify under this section
2 as direct production expenditures or qualified personnel
3 expenditures.

4 (8) The office shall produce a performance dashboard for the
5 assistance authorized by this section. The performance dashboard
6 shall be made available by the office on the fund's website and
7 shall be updated at least annually. The performance dashboard shall
8 include the following measures:

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

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

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

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

17 (e) The name of each eligible production company and the
18 amount of each incentive ~~dispersed~~**DISBURSED** for each state
19 certified qualified production.

20 (9) Funding under this section for above the line personnel
21 shall not exceed 30% of total funding under this section for each
22 qualified production.

23 (10) To be eligible for funding under this section, except as
24 otherwise provided in subsection (11), Michigan residents shall be
25 hired to work on qualified productions ~~as follows:~~

26 ~~—(a) Through~~**THROUGH** September 30, ~~2017,~~**2015**, at a ratio of
27 not less than 1 Michigan resident for every nonresident hired.

1 ~~—— (b) Beginning October 1, 2017 through September 30, 2020, at a~~
2 ~~ratio of not less than 1.5 Michigan residents for every nonresident~~
3 ~~hired.~~

4 ~~—— (c) Beginning October 1, 2020 through September 30, 2022, at a~~
5 ~~ratio of not less than 2 Michigan residents for every nonresident~~
6 ~~hired.~~

7 ~~—— (d) Beginning October 1, 2022, at a ratio of not less than 3~~
8 ~~Michigan residents for every nonresident hired.~~

9 (11) A producer may apply to the Michigan economic development
10 corporation for a waiver of the Michigan resident hiring
11 requirements described in subsection (10), based on the
12 unavailability of qualified Michigan residents. The Michigan
13 economic development corporation may waive the Michigan resident
14 hiring requirement described in subsection (10) if the Michigan
15 economic development corporation determines that there is an
16 insufficient number of qualified Michigan residents for the
17 qualified production.

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

27 (13) The fund board may authorize the use of money

1 appropriated for the program authorized by this section for
2 administration of the program. However, the fund board shall not
3 use more than 4% of the annual appropriation for administering the
4 program authorized under this section.

5 (14) At the end of each fiscal year, the commissioner shall
6 certify the total amount of unclaimed certificates of completion,
7 agreements where work has not commenced as required in subsection
8 (4), and agreements for qualified productions the commissioner
9 reasonably believes will not be completed. Funding allocated for
10 qualified productions described in the preceding sentence may be
11 reallocated.

12 ~~— (15) The Michigan film office shall not award funding 7 years~~
13 ~~after the effective date of the amendatory act that added this~~
14 ~~subsection.~~

15 (15) ~~(16)~~ As used in this section:

16 (a) "Above the line personnel" means a producer, director,
17 writer, actor, other than extras and stunt performers, or other
18 similar personnel whose compensation is negotiated prior to the
19 start of the production.

20 (b) "Below the line crew" means persons employed by an
21 eligible production company for state certified qualified
22 production expenditures made after production begins and before
23 production is completed, including, but not limited to, a best boy,
24 boom operator, camera loader, camera operator, assistant camera
25 operator, compositor, cook, driver, dialogue editor, film editor,
26 assistant film editor, focus puller, Foley operator, Foley editor,
27 gaffer, grip, key grip, lighting crew, lighting board operator,

1 lighting technician, music editor, sound editor, sound effects
2 editor, sound mixer, steadicam operator, first assistant camera
3 operator, second assistant camera operator, digital imaging
4 technician, camera operator working with a director of photography,
5 electric best boy, grip best boy, dolly grip, rigging grip,
6 assistant key for makeup, assistant key for hair, assistant script
7 supervisor, set construction foreperson, lead set dresser,
8 assistant key for wardrobe, scenic foreperson, assistant
9 propmaster, assistant audio mixer, assistant boom person, assistant
10 key for special effects, stunt performer, and other similar
11 personnel. Below the line crew does not include a producer,
12 director, writer, actor, or other similar personnel.

13 (c) "Direct production expenditure" means a development,
14 preproduction, production, or postproduction expenditure made in
15 this state directly attributable to the production or development
16 of a qualified production that is a transaction subject to taxation
17 in this state. Direct production expenditure does not include out-
18 of-state production costs that are made in this state even if the
19 costs are passed through a third-party company in this state or
20 payments made by an eligible production company to its parent
21 company, affiliate, subsidiary, or joint venture partner except
22 where the payments are for transactions entered into pursuant to
23 arm's-length negotiations and which reflect a commercially
24 reasonable price for the goods and services purchased. A direct
25 production expenditure must have true economic substance within the
26 state. Direct production expenditure does not include a prize
27 payable to participants in a game show; an expenditure for

1 entertainment, amusement, or recreation; or an expenditure of more
2 than \$2,500.00 for the purchase of artwork or jewelry used in a
3 production. Direct production expenditure does not include a
4 qualified personnel expenditure. Direct production expenditure
5 includes payments to vendors doing business in this state to
6 purchase or use tangible personal property in producing the
7 qualified production or to purchase services relating to the
8 production or development of the qualified production, including
9 all of the following:

10 (i) Production work, production equipment, production software,
11 development work, postproduction work, postproduction equipment,
12 postproduction software, set design, set construction, set
13 operations, props, lighting, wardrobe, makeup, makeup accessories,
14 photography, sound synchronization, special effects, visual
15 effects, audio effects, digital effects, film processing, music,
16 sound mixing, editing, interactive game development and
17 programming, and related services and materials.

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

20 (iii) Catering, food, lodging, and related services and
21 materials.

22 (iv) Use of vehicles, which may include chartered aircraft
23 based in this state used for transportation in this state directly
24 attributable to production of a qualified production, but may not
25 include the chartering of aircraft for transportation outside of
26 this state.

27 (v) Commercial airfare if purchased through a travel agency or

1 travel company based in this state for travel to this state or
2 within this state directly attributable to production or
3 development of a qualified production.

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

6 (vii) Interest on a loan, if the entity from which the
7 financing is obtained is a public, private, or institutional entity
8 with the requisite level of physical presence in this state that is
9 not related to or affiliated with the eligible production company
10 or any above the line personnel or cast members, and whose
11 principal business activity is the lending of money to individuals
12 and businesses. In addition, the financing shall be a good faith
13 loan, payable by the eligible production company, evidenced by an
14 enforceable promissory note or other debt instrument with clear
15 repayment obligations and bearing a market-related rate of
16 interest.

17 (viii) Other expenditures for production of a qualified
18 production in accordance with generally accepted entertainment
19 industry practices.

20 (d) "Eligible production company" or "company" means an entity
21 in the business of producing qualified productions or for
22 interactive games in the business of developing interactive games,
23 but does not include an entity that is more than 30% owned,
24 affiliated, or controlled by an entity or individual who is in
25 default on a loan made by this state, a loan guaranteed by this
26 state, or a loan made or guaranteed by any other state. For an
27 interactive game, an eligible production company need not possess

1 ownership of or legal control over all of the intellectual property
2 rights or other rights necessary to complete the qualified
3 production in its entirety nor be the same entity that distributes
4 or publishes the interactive game.

5 (e) "Made in this state" means all of the following:

6 (i) Tangible personal property and services acquired by the
7 eligible production company from a source within this state. If an
8 item of tangible personal property is not available from a source
9 within this state and a vendor with the requisite physical presence
10 in this state that regularly sells or leases property of that kind
11 obtains the property from an out-of-state vendor and sells or
12 leases it to an eligible production company, that expenditure is
13 considered made in this state and is a direct production
14 expenditure and not an out-of-state production cost.

15 (ii) Services wholly performed within this state.

16 (f) "Obscene matter or an obscene performance" means matter
17 described in 1984 PA 343, MCL 752.361 to 752.374.

18 (g) "Postproduction expenditure" means a direct expenditure
19 for editing, Foley recording, automatic dialogue replacement, sound
20 editing, special or visual effects including computer-generated
21 imagery or other effects, scoring and music editing, beginning and
22 end credits, negative cutting, soundtrack production, dubbing,
23 subtitling, or addition of sound or visual effects. Postproduction
24 expenditure includes direct expenditures for advertising,
25 marketing, or related expenses.

26 (h) "Postproduction facility" means a permanent facility
27 within this state equipped for the postproduction of motion

1 pictures, television shows, or digital media production that meets
2 all of the following requirements:

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

4 (ii) Includes at least 8 work stations.

5 (iii) Has been a qualified film and digital media infrastructure
6 project from which an investment expenditure certificate was issued
7 under section 457 of the Michigan business tax act, 2007 PA 36, MCL
8 208.1457, or has been the location of a state certified qualified
9 production for which a postproduction certificate of completion was
10 issued under section 455 of the Michigan business tax act, 2007 PA
11 36, MCL 208.1455, or both.

12 (i) "Producer" means an individual without regard to his or
13 her actual title or screen credit involved in or responsible for
14 any of the following:

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

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

19 (iii) Hiring above the line personnel.

20 (iv) Supervising the overall production of the qualified
21 production.

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

23 (j) "Qualified facility" means a permanent facility within
24 this state equipped for the production of motion pictures,
25 television shows, or digital media production that meets all of the
26 following requirements:

27 (i) Includes more than 1 soundstage.

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

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

6 (iv) Has been a qualified film and digital media infrastructure
7 project for which an investment expenditure certificate was issued
8 under section 457 of the Michigan business tax act, 2007 PA 36, MCL
9 208.1457, or has been the location of a state certified qualified
10 production for which a postproduction certificate of completion was
11 issued under section 455 of the Michigan business tax act, 2007 PA
12 36, MCL 208.1455, or both.

13 (k) "Qualified personnel expenditure" means an expenditure
14 made in this state directly attributable to the production or
15 development of a qualified production that is a transaction subject
16 to taxation in this state and is a payment or compensation for
17 personnel, talent, management, or labor, including both of the
18 following:

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

21 (ii) Payment to a personal services corporation or professional
22 employer organization for the services of a performing artist or
23 crew member if the personal services corporation or professional
24 employer organization is subject to taxation in this state on the
25 portion of the payment qualifying for funding under this section
26 and the payments received by the performing artist or crew member
27 that are subject to taxation under the income tax act of 1967, 1967

1 PA 281, MCL 206.1 to 206.713, and are withheld and paid to this
2 state in the amount provided under section 703 of the income tax
3 act of 1967, 1967 PA 281, MCL 206.703.

4 (l) "State certified qualified production" or "qualified
5 production" means single media or multimedia entertainment content
6 created in whole or in part in this state for distribution or
7 exhibition to the general public in 2 or more states by any means
8 and media in any digital media format, film, or video tape,
9 including, but not limited to, a motion picture, a documentary, a
10 television series, a television miniseries, a television special,
11 interstitial television programming, long-form television,
12 interactive television, music videos, interactive games such as
13 video games or wireless games, including console, computer, mobile,
14 and online games, internet programming, an internet video, a sound
15 recording, a video, digital animation, or an interactive website.
16 Qualified production also includes any trailer, pilot, video
17 teaser, or demo created primarily to stimulate the sale, marketing,
18 promotion, or exploitation of future investment in a production.
19 Qualified production does not include any of the following:

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

23 (ii) A production that includes obscene matter or an obscene
24 performance.

25 (iii) A production that primarily consists of televised news or
26 current events.

27 (iv) A production that primarily consists of a live sporting

1 event.

2 (v) A production that primarily consists of political
3 advertising.

4 (vi) A radio program.

5 (vii) A weather show.

6 (viii) A financial market report.

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

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

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

11 (xii) A commercial.