A BILL FOR AN ACT

CONCERNING FILM PRODUCTION ACTIVITIES IN COLORADO, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

The bill modifies provisions governing the Colorado office of film, television, and media (office). Section 2 of the bill:

- Moves the office to the office of economic development;
- Adds "television show" to the definition of "film";
- Clarifies that sound recording is included in allowable
payments for qualified local expenditures;

! Reduces the payments allowed for each employee or contractor from $3 million to $1 million;
! Creates a loan guarantee program for production activities;
! Requires in-state production activities to be made up of at least 50% Colorado residents in order to claim a performance-based incentive for film production in Colorado (incentive), instead of the previous 25% requirement;
! Increases the amount of the incentive to 20% of the total amount of the production company's qualified local expenditures;
! Except for television commercials, increases the amount of qualified local expenditures for a production company that does not originate the film production activities in Colorado to $1 million;
! Requires the Colorado economic development commission to approve all conditional approvals of the incentives;
! Requires a production company that has received conditional approval for an incentive to retain a certified public accountant licensed to practice in this state to conduct an audit of financial documents that detail the expenses incurred in the course of the film production activities in Colorado, and requires such certified public accountant to certify to the office that the requirements were met; and
! Creates the Colorado office of film, television, and media operational account cash fund.

Sections 3 to 5 make conforming amendments related to moving the office and creating the cash fund.

Section 7 of the bill makes a $3 million appropriation from the general fund to the Colorado office of film, television, and media operational account cash fund.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Content creation for film, television, games, and advertising is an important and growing international business and one of America's leading exports;
(b) Colorado was once a leader in the film and television business and has since seen its market share and number of people employed in the industry radically decline;

(c) The decline is traceable to the implementation of incentives in sister states which have left Colorado in a noncompetitive position;

(d) Colorado's once formidable infrastructure for content creation is rapidly eroding and in danger of collapse;

(e) Content creation will have a positive impact on Colorado's economy, provide jobs for our citizens who graduate from our schools' film programs, and provide a skilled labor training ground for many other workers; and

(f) Film and television production is a major stimulus to Colorado's tourism industry.

(2) The general assembly further finds and declares that it is the desire of the legislature to implement an incentive program that will be competitive with sister states' programs, and House Bill 12-____ is intended to remedy this situation.

SECTION 2. In Colorado Revised Statutes, add with amended and relocated provisions 24-48.5-114, 24-48.5-115, and 24-48.5-116 as follows:

24-48.5-114. [Formerly 24-48.5-309] Film, television, and media - definitions. As used in this section and sections 24-48.5-310 and 24-48.5-311, 24-48.5-115 and 24-48.5-116, unless the context otherwise requires:

(1) "Film" means any visual or audiovisual work, including, without limitation, a video game, TELEVISION SHOW, or a television commercial, that contains a series of related images, regardless of the
medium by which the work is fixed and from which it can be viewed or reproduced, and that is primarily intended to be either:

(a) Commercially exploited by being shown in theaters or on television licensed for the home OR INTERNATIONAL market, or otherwise;

or

(b) For internal industrial, corporate, or institutional use.

(2) "Office" means the Colorado office of film, television, and media created pursuant to section 24-48.5-310 24-48.5-115.

(3) "ORIGINATES" MEANS THE PRODUCTION COMPANY HAS BEEN A RESIDENT OF THE STATE OR REGISTERED WITH THE SECRETARY OF STATE FOR AT LEAST TWELVE CONSECUTIVE MONTHS; EXCEPT THAT, IF THE PRODUCTION COMPANY CREATES A BUSINESS ENTITY FOR THE SOLE PURPOSE OF CONDUCTING PRODUCTION ACTIVITIES IN THE STATE, THEN SUCH BUSINESS ENTITY NEED NOT BE REGISTERED WITH THE SECRETARY OF STATE FOR TWELVE CONSECUTIVE MONTHS, BUT THE OWNER OF THE BUSINESS ENTITY MUST BE A RESIDENT OF THE STATE FOR AT LEAST TWELVE CONSECUTIVE MONTHS.

(4) "Production activities" means the shooting of a film, support activities related to such shooting, and any preshooting or postshooting activities that commence on or after July 1, 2009, and that are necessary to produce a finished film, including but not limited to editing and the creation of sets, props, costumes, and special effects.

(5) "Production company" means a person, including a corporation or other business entity, that engages in production activities for the purpose of producing all or any portion of a film in Colorado.

(6) "Qualified local expenditure" means a payment made by a production company operating in Colorado to a PERSON OR business in
Colorado in connection with the production of a film that the production company is producing PRODUCTION ACTIVITIES in Colorado. "Qualified local expenditure" shall include, but need not be limited to:

(a) Payments made in connection with developing or purchasing the story and scenario to be used for a film;

(b) Payments made for the costs of set construction and operations, wardrobe, accessories, and related services;

(c) Payments made for the costs of photography, sound recording and synchronization, lighting, and related services;

(d) Payments made for the costs of editing, post-production, music, and related services;

(e) Payments made for the costs of renting facilities and equipment, including location fees, leasing vehicles, and providing food and lodging to people working on the film production;

(f) Payments for airfare purchased through a Colorado-based travel agency or company;

(g) Payments for insurance and bonding purchased through a Colorado-based insurance agent;

(h) Payments for other direct costs incurred by the film production company that are deemed appropriate by the office; and

(i) Payments of up to three ONE million dollars per employee or contractor, made by a production company to pay the WAGES OR SALARIES of actors, management, and crew, EMPLOYEES OR CONTRACTORS who participate in the film production activities. In order for any WAGE OR salary to be considered a qualified local expenditure, all Colorado income taxes shall be withheld and paid either by the production company or the individual. Any payments in excess of three ONE million dollars per
employee or contractor shall be excluded.

(6) (Deleted by amendment, L. 2010, (HB 10-1180), ch. 232, p. 1016, § 1, effective May 18, 2010.)

24-48.5-115. [Formerly 24-48.5-310] Film, television, and media. (1) There is hereby created within the division COLORADO OFFICE OF ECONOMIC DEVELOPMENT the Colorado office of film, television, and media, the head of which shall be the director of the Colorado office of film, television, and media. The director of the office shall be assisted by a staff to fulfill the office's mission to promote Colorado as a location for making feature films, television shows, television commercials, still photography, music videos, and emerging mass media projects. Beginning on July 1, 2010 JULY 1, 2012, the director of the office shall report to the director of the division OFFICE OF ECONOMIC DEVELOPMENT.

(2) The office shall:

(a) Market Colorado as a destination for making feature films, television shows, television commercials, still photography, music videos, and new media projects;

(b) Assist production companies that are interested in conducting production activities in Colorado in scouting appropriate locations in the state for the production company's film;

(c) Assist state and local government agencies and organizations in the creation of permitting criteria for production companies that plan to conduct production activities on state or local government property;

(d) Assist production companies in determining the appropriate state or local government agencies to contact to apply for a permit to conduct production activities on state or local government property;

(e) Serve as a general liaison for production companies and assist
in coordination efforts among production companies, any state or local
government agency, and local businesses and individuals before, during,
and after the production company conducts production activities in
Colorado;

(f) Serve as a resource for local governments and communities
around Colorado when a production company approaches the local
government or community regarding the possibility of conducting
production activities on the property of the local
government or within the community;

(g) Administer the performance-based incentive for film
production in Colorado as specified in section 24-48.5-311; 24-48.5-116;

(h) ADMINISTER THE LOAN GUARANTEE PROGRAM AS SPECIFIED IN
SUBSECTION (3) OF THIS SECTION;

(i) Conduct educational seminars to promote the film industry
and people working in the film industry in Colorado; and

(j) Perform any other duties in furtherance of the office's
mission as deemed necessary by the director of the office AND the director
of the office of economic development AND the director of the division.

(3) (a) THE OFFICE, WITH PRIOR APPROVAL FROM THE COLORADO
ECONOMIC DEVELOPMENT COMMISSION CREATED IN SECTION 24-46-102,
MAY ENTER INTO A CONTRACT OR OTHER AGREEMENT, OR BOTH A
CONTRACT AND OTHER AGREEMENT, WITH A PRODUCTION COMPANY TO
GUARANTEE LOANS OBTAINED FOR PURPOSES OF FINANCING THE
PRODUCTION ACTIVITIES, NOT TO EXCEED TWENTY PERCENT OF THE
ENTIRE BUDGET FOR THE PRODUCTION ACTIVITIES.

(b) THE OFFICE SHALL EMPLOY THE FOLLOWING CRITERIA IN
determining whether to award a loan guarantee:
(I) The experience, professional qualifications, and business background of the production company shall be such as to give the production activities a reasonable chance of success;

(II) The production company shall be bonded by a major bonding company;

(III) The production company shall have contracted with a major sales company with experience and standing in the film industry, and such sales company shall provide sales estimates that support full repayment of the loan to be guaranteed; and

(IV) The film and the production activities shall result in a positive reflection on the state.

(c) The office may reject any application for a loan guarantee pursuant to this subsection (3).

(d) The office may provide loan guarantees for production activities; except that such loan guarantees shall be limited to twenty percent of the entire budget for the production activities. Loan guarantees may only be provided to feasible production activities for an amount that is the least amount necessary to cause the production activities to occur, as determined by the office, with prior approval from the Colorado economic development commission. The office may structure the loan guarantees in a way that facilitates the production activities and also provides for a compensatory return on investment or loan guarantee facility fee to the office based on the risk of the production activities.

(e) The office may charge a loan guarantee facility fee calculated on the outstanding principal, which fee shall be
COLLECTED FROM THE ELIGIBLE BORROWER BY THE ELIGIBLE LENDER AND PAID TO THE OFFICE. MONEYS COLLECTED SHALL BE DEPOSITED IN THE COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA OPERATIONAL ACCOUNT CASH FUND CREATED IN SECTION 24-48.5-116 (5).

(f) MONEYS PAID TO SATISFY A DEFAULTED LOAN MADE PURSUANT TO THIS SUBSECTION (3) SHALL ONLY BE PAID OUT OF THE COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA OPERATIONAL ACCOUNT CASH FUND CREATED IN SECTION 24-48.5-116 (5).

(g) NO GUARANTEE AGREEMENT MADE BY THE OFFICE PURSUANT TO THIS SUBSECTION (3) SHALL CONSTITUTE OR BECOME AN INDEBTEDNESS, A DEBT, OR A LIABILITY OF THE STATE, NOR SHALL SUCH LOAN GUARANTEE THE GIVING, PLEDGING, OR LOANING OF THE FULL FAITH AND CREDIT OF THE STATE.

24-48.5-116. [Formerly 24-48.5-311] Film, television, and media - performance-based incentive for film production in Colorado - Colorado office of film, television, and media operational account cash fund - creation. (1) Subject to the provisions of this section, on or after July 1, 2009 July 1, 2012, any production company employing a workforce for any in-state production activities made up of at least twenty-five FIFTY percent Colorado residents shall be allowed to claim a performance-based incentive in an amount as follows:

(a) For a production company that originates the film production ACTIVITIES in Colorado, an amount equal to ten TWENTY percent of the total amount of the production company's qualified local expenditures if the total of such expenditures equals or exceeds one hundred thousand dollars; and

(b) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
PARAGRAPH (b), for a production company that does not originate the film production activities in Colorado, an amount equal to ten twenty percent of the total amount of the production company's qualified local expenditures if the total of such expenditures equals or exceeds two hundred fifty thousand one million dollars.

(II) FOR A PRODUCTION COMPANY THAT PRODUCES A TELEVISION COMMERCIAL AND THAT DOES NOT ORIGINATE PRODUCTION ACTIVITIES IN COLORADO, ANY PRODUCTION COMPANY EMPLOYING A WORKFORCE FOR ANY IN-STATE PRODUCTION ACTIVITIES MADE UP OF AT LEAST FIFTY PERCENT COLORADO RESIDENTS SHALL BE ALLOWED TO CLAIM A PERFORMANCE-BASED INCENTIVE IN AN AMOUNT EQUAL TO TWENTY PERCENT OF THE TOTAL AMOUNT OF THE PRODUCTION COMPANY'S QUALIFIED LOCAL EXPENDITURES IF THE TOTAL OF SUCH EXPENDITURES EQUALS OR EXCEEDS TWO HUNDRED FIFTY THOUSAND DOLLARS.

(2) (a) In order for a production company to claim a performance-based incentive for film production activities in Colorado pursuant to this section, the production company shall apply to the office, in a manner to be determined by the office, prior to beginning production activities in the state. The application shall include a statement of intent by the production company to produce a film in Colorado for which the production company will be eligible to receive the incentive. The production company shall submit, in conjunction with the application, any documentation necessary to demonstrate that the production company's projected qualified local expenditures will satisfy the expenditures specified in paragraph (a) or (b) of subsection (1) of this section, as applicable.

(b) The office shall review each application submitted by a
production company before the production company begins work on a film in Colorado. Based on the information provided in the production company's application, the office shall make an initial determination of whether the production company will be eligible to receive a performance-based incentive and estimate the amount of the incentive that will be due to the production company. The council, OFFICE, with
approval of the COLORADO ECONOMIC DEVELOPMENT COMMISSION created in section 24-46-102, shall grant conditional written approval to every A production company that, based on the information provided by the production company AND BASED ON AN ANALYSIS OF SUCH information by the office and the COLORADO ECONOMIC DEVELOPMENT COMMISSION, will satisfy the requirements of this section and be eligible to claim an incentive.

(c) Upon completion of production activities in Colorado, a production company that received conditional approval for a performance-based incentive from the office shall submit RETAIN A CERTIFIED PUBLIC ACCOUNTANT LICENSED TO PRACTICE IN THIS STATE TO CONDUCT AN AUDIT OF financial documents to the office that detail the expenses incurred in the course of the film production activities in Colorado. along with a signed affidavit stating that the financial documents are an accurate accounting of the production company's qualified local expenditures. If the CERTIFIED PUBLIC ACCOUNTANT CERTIFIES IN WRITING TO THE OFFICE THAT THE amount of the production company's actual qualified local expenditures equals or exceeds the minimum total amount of the production company's qualified local expenditures as specified in subsection (1) of this section, the office shall
issue an incentive to the production company.

(d) The office shall develop procedures for the administration of this section, including application guidelines for production companies applying to receive a performance-based incentive and for the office to issue payment of the incentives pursuant to this section.

(3) The office shall include data regarding the number of production companies that claimed the performance-based incentive pursuant to this section and the total amount of all incentives claimed during the most recent fiscal year for which such information is available in an annual report to the general assembly.

(4) and (5) Repealed.

(6) The total amount of performance-based incentives that the office issues pursuant to this section in any fiscal year shall not exceed the amount appropriated to the division OFFICE to be used for the purposes of this section in the applicable fiscal year and any moneys not expended or encumbered from previous fiscal years that were appropriated to the division OFFICE to be used for the purposes of this section. If the office receives applications for incentives that exceed the amount appropriated by the general assembly for the fiscal year and the amount not expended or encumbered from previous fiscal years, the office shall issue incentives to production companies in the order in which the commission received applications until the total amount has been expended.

(5) (a) There is hereby created in the state treasury the Colorado Office of Film, Television, and Media Operational Account Cash Fund, referred to in this section as the "fund". The fund shall consist of:

(I) Moneys transferred to the fund in accordance with
SECTION 12-47.1-701 (2), C.R.S.;

(II) MONEYS APPROPRIATED TO THE FUND BY THE GENERAL ASSEMBLY; AND

(III) ANY GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES THAT THE OFFICE IS HEREBY AUTHORIZED TO SEEK AND ACCEPT.

(b) THE MONEYS IN THE FUND SHALL BE ANNUALLY APPROPRIATED TO THE OFFICE FOR THE OPERATION OF THE OFFICE, FOR THE PERFORMANCE-BASED INCENTIVE FOR FILM PRODUCTION IN COLORADO AS SPECIFIED IN SUBSECTION (1) OF THIS SECTION, AND FOR THE LOAN GUARANTEE PROGRAM AS SPECIFIED IN SECTION 24-48.5-115 (3).

(c) ALL MONEYS NOT EXPENDED OR ENCUMBERED, AND ALL INTEREST EARNED ON THE INVESTMENT OR DEPOSIT OF MONEYS IN THE FUND, REMAIN IN THE FUND AND DO NOT REVERT TO THE GENERAL FUND OR ANY OTHER FUND AT THE END OF ANY FISCAL YEAR. ANY MONEYS NOT EXPENDED OR ENCUMBERED FROM ANY APPROPRIATION AT THE END OF ANY FISCAL YEAR REMAIN AVAILABLE FOR EXPENDITURE IN THE NEXT FISCAL YEAR WITHOUT FURTHER APPROPRIATION.

SECTION 3. In Colorado Revised Statutes, 12-47.1-701, amend (2) (a) (II) (G) as follows:

12-47.1-701. Limited gaming fund - created. (2) (a) Except as provided in paragraph (b) of this subsection (2), at the end of the 2010-11 state fiscal year and at the end of each state fiscal year thereafter, the state treasurer shall distribute the state share as follows:

(II) Any amount of the state share that is greater than nineteen million two hundred thousand dollars but less than or equal to forty-eight million five hundred thousand dollars shall be transferred as follows:

(G) One percent to the creative industries COLORADO OFFICE OF
FILM, TELEVISION, AND MEDIA OPERATIONAL ACCOUNT cash fund, created in section 24-48.5-116, C.R.S., for the operation of the Colorado office of film, television, and media, and for the performance-based incentive for film production in Colorado as specified in section 24-48.5-116, C.R.S., AND FOR THE COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA LOAN GUARANTEE PROGRAM AS SPECIFIED IN SECTION 24-48.5-115, C.R.S.

SECTION 4. In Colorado Revised Statutes, 24-46-104, add (1) (o) as follows:

24-46-104. Powers and duties of commission. (1) The commission has the following powers and duties:

(o) TO OVERSEE THE COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA LOAN GUARANTEE PROGRAM PURSUANT TO SECTION 24-48.5-115 AND THE PERFORMANCE-BASED INCENTIVE FOR FILM PRODUCTION IN COLORADO PURSUANT TO SECTION 24-48.5-116.

SECTION 5. In Colorado Revised Statutes, 24-48.5-301, amend (1) and (2) (a) (II); repeal (2) (b) (II); and add (2) (a) (II.5) as follows:

24-48.5-301. Creative industries division - creative industries cash fund - creation - repeal. (1) There is hereby created within the Colorado office of economic development the creative industries division, which shall be referred to in this part 3 as the "division". The director of the division shall be the person who is appointed director of the council on creative industries by the director of the Colorado office of economic development. The division shall be comprised of the office of film, television, and media; the council on creative industries and the art in public places program, and the director of the division shall oversee such office; council and program.
(2) (a) There is hereby created in the state treasury the creative industries cash fund, referred to in this section as the "fund". The fund shall consist of:

(II) Moneys transferred to the fund in accordance with section 12-47.1-701(2) 12-47.1-701 (2) (a) (II) (F), C.R.S.;

(II.5) (A) For fiscal years prior to the 2012-13 fiscal year, moneys transferred to the fund in accordance with section 12-47.1-701 (2) (a) (II) (G), C.R.S.

(B) Any moneys remaining in the fund from the source specified in sub-subparagraph (A) of this subparagraph (II.5) on June 30, 2012, shall be transferred to the Colorado office of film, television, and media operational account cash fund, created in section 24-48.5-116.

(C) This subparagraph (II.5) is repealed, effective July 1, 2013.

(b) The moneys in the fund shall be annually appropriated to the division for the operation of the division, and for the following:

(II) For the operation of the Colorado office of film, television, and media and for the performance-based incentive for film production in Colorado as specified in section 24-48.5-311 (1); and

SECTION 6. Repeal of provisions being relocated in this act.
In Colorado Revised Statutes, repeal 24-48.5-309, 24-48.5-310, and 24-48.5-311.

SECTION 7. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the Colorado office of film, television, and media created in section 24-48.5-115, Colorado Revised
Statutes, for the fiscal year beginning July 1, 2012, the sum of $3,000,000, or so much thereof as may be necessary, for allocation to the Colorado office of film, television, and media operational account cash fund.

SECTION 8. Effective date. This act takes effect July 1, 2012.

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.