

**As Referred by the House Rules and Reference Committee**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**H. B. No. 162**

**Representative Patton**

**Cosponsor: Representative Smith, K.**

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**A BILL**

To amend section 122.85 of the Revised Code to 1  
increase the overall cap on the motion picture 2  
tax credit from \$40 million per fiscal year to 3  
\$100 million per fiscal biennium. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 122.85 of the Revised Code be 5  
amended to read as follows: 6

**Sec. 122.85.** (A) As used in this section and in sections 7  
5726.55, 5733.59, 5747.66, and 5751.54 of the Revised Code: 8

(1) "Tax credit-eligible production" means a motion 9  
picture production certified by the director of development 10  
services under division (B) of this section as qualifying the 11  
motion picture company for a tax credit under section 5726.55, 12  
5733.59, 5747.66, or 5751.54 of the Revised Code. 13

(2) "Certificate owner" means a motion picture company to 14  
which a tax credit certificate is issued or a person to which 15  
the company has transferred under division (H) of this section 16  
the authority to claim all or a part of the tax credit 17  
authorized by that certificate. 18

(3) "Motion picture company" means an individual, 19  
corporation, partnership, limited liability company, or other 20  
form of business association producing a motion picture. 21

(4) "Eligible production expenditures" means expenditures 22  
made after June 30, 2009, for goods or services purchased and 23  
consumed in this state by a motion picture company directly for 24  
the production of a tax credit-eligible production. 25

"Eligible production expenditures" includes, but is not 26  
limited to, expenditures for cast and crew wages, 27  
accommodations, costs of set construction and operations, 28  
editing and related services, photography, sound 29  
synchronization, lighting, wardrobe, makeup and accessories, 30  
film processing, transfer, sound mixing, special and visual 31  
effects, music, location fees, and the purchase or rental of 32  
facilities and equipment. 33

(5) "Motion picture" means entertainment content created 34  
in whole or in part within this state for distribution or 35  
exhibition to the general public, including, but not limited to, 36  
feature-length films; documentaries; long-form, specials, 37  
miniseries, series, and interstitial television programming; 38  
interactive web sites; sound recordings; videos; music videos; 39  
interactive television; interactive games; video games; 40  
commercials; any format of digital media; and any trailer, 41  
pilot, video teaser, or demo created primarily to stimulate the 42  
sale, marketing, promotion, or exploitation of future investment 43  
in either a product or a motion picture by any means and media 44  
in any digital media format, film, or videotape, provided the 45  
motion picture qualifies as a motion picture. "Motion picture" 46  
does not include any television program created primarily as 47  
news, weather, or financial market reports, a production 48

featuring current events or sporting events, an awards show or 49  
other gala event, a production whose sole purpose is 50  
fundraising, a long-form production that primarily markets a 51  
product or service or in-house corporate advertising or other 52  
similar productions, a production for purposes of political 53  
advocacy, or any production for which records are required to be 54  
maintained under 18 U.S.C. 2257 with respect to sexually 55  
explicit content. 56

(B) For the purpose of encouraging and developing a strong 57  
film industry in this state, the director of development 58  
services may certify a motion picture produced by a motion 59  
picture company as a tax credit-eligible production. In the case 60  
of a television series, the director may certify the production 61  
of each episode of the series as a separate tax credit-eligible 62  
production. A motion picture company shall apply for 63  
certification of a motion picture as a tax credit-eligible 64  
production on a form and in the manner prescribed by the 65  
director. Each application shall include the following 66  
information: 67

(1) The name and telephone number of the motion picture 68  
production company; 69

(2) The name and telephone number of the company's contact 70  
person; 71

(3) A list of the first preproduction date through the 72  
last production date in Ohio; 73

(4) The Ohio production office address and telephone 74  
number; 75

(5) The total production budget of the motion picture; 76

(6) The total budgeted eligible production expenditures 77

and the percentage that amount is of the total production budget	78
of the motion picture;	79
(7) The total percentage of the motion picture being shot	80
in Ohio;	81
(8) The level of employment of cast and crew who reside in	82
Ohio;	83
(9) A synopsis of the script;	84
(10) The shooting script;	85
(11) A creative elements list that includes the names of	86
the principal cast and crew and the producer and director;	87
(12) Documentation of financial ability to undertake and	88
complete the motion picture, including documentation that shows	89
that the company has secured funding equal to at least fifty per	90
cent of the total production budget of the motion picture;	91
(13) Estimated value of the tax credit based upon total	92
budgeted eligible production expenditures;	93
(14) Any other information considered necessary by the	94
director.	95
Within ninety days after certification of a motion picture	96
as a tax credit-eligible production, and any time thereafter	97
upon the request of the director of development services, the	98
motion picture company shall present to the director sufficient	99
evidence of reviewable progress. If the motion picture company	100
fails to present sufficient evidence, the director may rescind	101
the certification. Upon rescission, the director shall notify	102
the applicant that the certification has been rescinded. Nothing	103
in this section prohibits an applicant whose tax credit-eligible	104
production certification has been rescinded from submitting a	105

subsequent application for certification.	106
(C) (1) A motion picture company whose motion picture has	107
been certified as a tax credit-eligible production may apply to	108
the director of development services on or after July 1, 2009,	109
for a refundable credit against the tax imposed by section	110
5726.02, 5733.06, 5747.02, or 5751.02 of the Revised Code. The	111
director in consultation with the tax commissioner shall	112
prescribe the form and manner of the application and the	113
information or documentation required to be submitted with the	114
application.	115
The credit is determined as follows:	116
(a) If the total budgeted eligible production expenditures	117
stated in the application submitted under division (B) of this	118
section or the actual eligible production expenditures as	119
finally determined under division (D) of this section, whichever	120
is least, is less than or equal to three hundred thousand	121
dollars, no credit is allowed;	122
(b) If the total budgeted eligible production expenditures	123
stated in the application submitted under division (B) of this	124
section or the actual eligible production expenditures as	125
finally determined under division (D) of this section, whichever	126
is least, is greater than three hundred thousand dollars, the	127
credit equals thirty per cent of the least of such budgeted or	128
actual eligible expenditure amounts.	129
(2) Except as provided in division (C) (4) of this section,	130
if the director of development services approves a motion	131
picture company's application for a credit, the director shall	132
issue a tax credit certificate to the company. The director in	133
consultation with the tax commissioner shall prescribe the form	134

and manner of issuing certificates. The director shall assign a 135  
unique identifying number to each tax credit certificate and 136  
shall record the certificate in a register devised and 137  
maintained by the director for that purpose. The certificate 138  
shall state the amount of the eligible production expenditures 139  
on which the credit is based and the amount of the credit. Upon 140  
the issuance of a certificate, the director shall certify to the 141  
tax commissioner the name of the applicant, the amount of 142  
eligible production expenditures shown on the certificate, and 143  
any other information required by the rules adopted to 144  
administer this section. 145

(3) The amount of eligible production expenditures for 146  
which a tax credit may be claimed is subject to inspection and 147  
examination by the tax commissioner or employees of the 148  
commissioner under section 5703.19 of the Revised Code and any 149  
other applicable law. Once the eligible production expenditures 150  
are finally determined under section 5703.19 of the Revised Code 151  
and division (D) of this section, the credit amount is not 152  
subject to adjustment unless the director determines an error 153  
was committed in the computation of the credit amount. 154

(4) No tax credit certificate may be issued before the 155  
completion of the tax credit-eligible production. Not more than 156  
~~forty one hundred million~~ dollars of tax ~~credit credits~~ may be 157  
allowed per fiscal ~~year biennium~~ beginning on or after July 1, 158  
~~2016 2019, provided that, for any fiscal year in which the~~ 159  
~~amount and not more than fifty million dollars~~ of tax credits 160  
~~may be~~ allowed under this section is less than that maximum 161  
~~annual amount, the amount not allowed for that fiscal year shall~~ 162  
~~be added to the maximum annual amount that may be allowed for~~ 163  
~~the following fiscal~~ in the first year of any such biennium. 164

(5) In approving applications for tax credits under this section, the director shall give priority to tax-credit eligible productions that are television series or miniseries.

(D) A motion picture company whose motion picture has been certified as a tax credit-eligible production shall engage, at the company's expense, an independent certified public accountant to examine the company's production expenditures to identify the expenditures that qualify as eligible production expenditures. The certified public accountant shall issue a report to the company and to the director of development services certifying the company's eligible production expenditures and any other information required by the director. Upon receiving and examining the report, the director may disallow any expenditure the director determines is not an eligible production expenditure. If the director disallows an expenditure, the director shall issue a written notice to the motion picture production company stating that the expenditure is disallowed and the reason for the disallowance. Upon examination of the report and disallowance of any expenditures, the director shall determine finally the lesser of the total budgeted eligible production expenditures stated in the application submitted under division (B) of this section or the actual eligible production expenditures for the purpose of computing the amount of the credit.

(E) No credit shall be allowed under section 5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code unless the director has reviewed the report and made the determination prescribed by division (D) of this section.

(F) This state reserves the right to refuse the use of this state's name in the credits of any tax credit-eligible

motion picture production. 195

(G) (1) The director of development services in 196  
consultation with the tax commissioner shall adopt rules for the 197  
administration of this section, including rules setting forth 198  
and governing the criteria for determining whether a motion 199  
picture production is a tax credit-eligible production; 200  
activities that constitute the production of a motion picture; 201  
reporting sufficient evidence of reviewable progress; 202  
expenditures that qualify as eligible production expenditures; a 203  
competitive process for approving credits; consideration of 204  
geographic distribution of credits; and implementation of the 205  
program described in division (I) of this section. The rules 206  
shall be adopted under Chapter 119. of the Revised Code. 207

(2) To cover the administrative costs of the program, the 208  
director shall require each applicant to pay an application fee 209  
equal to the lesser of ten thousand dollars or one per cent of 210  
the estimated value of the tax credit as stated in the 211  
application. The fees collected shall be credited to the tax 212  
incentives operating fund created in section 122.174 of the 213  
Revised Code. All grants, gifts, fees, and contributions made to 214  
the director for marketing and promotion of the motion picture 215  
industry within this state shall also be credited to the fund. 216

(H) (1) After the director of development services makes 217  
the determination required under division (D) of this section, a 218  
motion picture company to which a tax credit certificate is 219  
issued may transfer the authority to claim all or a portion of 220  
the amount of the tax credit the motion picture company is 221  
authorized to claim pursuant to that certificate under section 222  
5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code to one 223  
or more other persons. Within thirty days after a transfer under 224

this division, the motion picture company shall submit the 225  
following information to the director, on a form prescribed by 226  
the director: 227

(a) Information necessary for the director to identify the 228  
certificate that is the basis for the transfer; 229

(b) The portion or amount of the tax credit transferred to 230  
each transferee; 231

(c) The portion or amount of the tax credit that the 232  
motion picture company retains the authority to claim; 233

(d) The tax identification number of each transferee; 234

(e) The date of the transfer; 235

(f) Any other information required by the director; 236

(g) Any information required by the tax commissioner. 237

The director shall deliver a copy of any submission 238  
received under division (H) (1) of this section to the tax 239  
commissioner. 240

(2) A transferee may not claim a credit under section 241  
5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code unless 242  
and until the transferring motion picture company complies with 243  
division (H) (1) of this section. A transferee may claim the 244  
transferred amount of any credit or portion of a credit for the 245  
same taxable year or tax period for which the transferring 246  
motion picture company was authorized to claim the credit or 247  
portion of a credit pursuant to the certificate. A motion 248  
picture company shall make no transfer under division (H) (1) of 249  
this section after the last day of the tax period or taxable 250  
year for which the motion picture company is required to claim 251  
the credit pursuant to the certificate. 252

A motion picture company may make not more than one 253  
transfer under division (H) (1) of this section for each tax 254  
credit certificate, but pursuant to that transaction, may 255  
allocate the authority to claim a portion of the credit to more 256  
than one transferee. A motion picture company may not authorize 257  
more than one transferee to claim the same portion of a credit. 258

(I) The director of development services shall establish a 259  
program for the training of Ohio residents who are or wish to be 260  
employed in the film or multimedia industry. Under the program, 261  
the director shall: 262

(1) Certify individuals as film and multimedia trainees. 263  
In order to receive such a certification, an individual must be 264  
an Ohio resident, have participated in relevant on-the-job 265  
training or have completed a relevant training course approved 266  
by the director, and have met any other requirements established 267  
by the director. 268

(2) Accept applications from motion picture companies that 269  
intend to hire and provide on-the-job training to one or more 270  
certified film and multimedia trainees who will be employed in 271  
the company's tax credit-eligible production. 272

(3) Upon completion of a tax-credit eligible production, 273  
and upon the receipt of any salary information and other 274  
documentation required by the director, authorize a 275  
reimbursement payment to each motion picture company whose 276  
application was approved under division (I) (2) of this section. 277  
The payment shall equal fifty per cent of the salaries paid to 278  
film and multimedia trainees employed in the production. 279

**Section 2.** That existing section 122.85 of the Revised 280  
Code is hereby repealed. 281