

HOUSE BILL No. 4644

April 30, 2013, Introduced by Reps. Johnson, Kelly, Somerville, Genetski, Yonker,
Howrylak and McMillin and referred to the Committee on Commerce.

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~~**THROUGH SEPTEMBER 30, 2013, THE** Michigan
2 film office shall create and operate the film and digital media
3 production assistance program. ~~The~~**THROUGH SEPTEMBER 30, 2013, THE**
4 film and digital media production assistance program may provide
5 funds to eligible production companies for direct production
6 expenditures, Michigan personnel expenditures, crew personnel
7 expenditures, or qualified personnel expenditures for state
8 certified qualified productions. **BEGINNING OCTOBER 1, 2013, THE**
9 **MICHIGAN FILM OFFICE AND THE FUND SHALL NOT OPERATE THE FILM AND**
10 **DIGITAL MEDIA PRODUCTION ASSISTANCE PROGRAM OR PROVIDE FUNDING FOR**
11 **DIRECT PRODUCTION EXPENDITURES, MICHIGAN PERSONNEL EXPENDITURES,**

1 **CREW PERSONNEL EXPENDITURES, OR QUALIFIED PERSONNEL EXPENDITURES**
2 **UNDER THIS SECTION.**

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

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

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

11 (b) To be eligible to apply for funding, the eligible
12 production company shall have direct production expenditures,
13 Michigan personnel expenditures, or a combination of direct
14 production expenditures and Michigan personnel expenditures, of
15 \$100,000.00 or more.

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

21 (d) For state certified qualified production expenditures
22 after September 30, 2011, an agreement under this section shall,
23 **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,** provide for funding
24 equal to the sum of the following:

25 (i) 27% of direct production expenditures.

26 (ii) Michigan personnel expenditures as follows:

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

1 (B) 27% after December 31, 2014.

2 (iii) Crew personnel expenditures as follows:

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

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

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

6 (D) 10% after December 31, 2014.

7 (iv) Qualified personnel expenditures as follows:

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

9 (B) 12% after December 31, 2014.

10 (v) In addition to the expenditures described in subparagraphs
11 (i), (ii), (iii), and (iv), 3% of direct production expenditures and
12 Michigan personnel expenditures at a qualified facility or
13 postproduction facility for a qualified production produced at the
14 facility.

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

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

23 (g) A television show may submit an application for no more
24 than 2 successive seasons, notwithstanding the fact that the
25 successive seasons have not been ordered. The successive season's
26 direct production expenditure, Michigan personnel expenditure,
27 nonresident above the line personnel expenditure, and nonresident

1 below the line crew expenditure amounts shall be based on the
2 current season's estimated expenditures. Upon the completion of
3 production of each season, a television show may submit an
4 application for no more than 1 additional season.

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

9 (i) That not less than 5% of the funding awarded under this
10 section is awarded for postproduction expenditures for qualified
11 productions.

12 (4) An eligible production company intending to produce a
13 qualified production in this state may submit an application for
14 funding under this section to the Michigan film office. The request
15 shall be submitted in a form prescribed by the office and shall be
16 accompanied by an application fee equal to 0.2% of the funding
17 requested but not less than \$200.00 and not more than \$5,000.00 and
18 all of the information and records requested by the office. An
19 application fee received by the office under this subsection shall
20 be deposited in the Michigan film promotion fund. The office shall
21 not process the application until it is complete. The office shall
22 process each application within 21 days after the application is
23 complete as determined by the office. As part of the application,
24 the company shall estimate direct production expenditures, Michigan
25 personnel expenditures, crew personnel expenditures, and qualified
26 personnel expenditures for an identified qualified production. If
27 the office determines to award funding under this section to an

1 eligible production company, the office with the concurrence of the
2 fund president shall enter into an agreement under this section.
3 The agreement shall include, but is not limited to, all of the
4 following:

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

11 (b) A statement identifying the company and the qualified
12 production that the company intends to produce in whole or in part
13 in this state.

14 (c) A unique number assigned to the qualified production by
15 the office.

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

18 (e) If the qualified production is a long-form narrative film
19 production, a requirement that the qualified production include
20 within its presentation worldwide for the life of the qualified
21 production an acknowledgment as provided by the office that
22 promotes the pure Michigan tourism campaign or any successor
23 campaign. If the qualified production is a television show, a
24 requirement that the qualified production include within each
25 broadcast of 30 minutes or longer an acknowledgment as provided by
26 the office that promotes the pure Michigan tourism campaign or any
27 successor campaign. If the qualified production is a music video, a

1 requirement that the music video include an acknowledgment as
2 provided by the office that promotes the pure Michigan tourism
3 campaign or any successor campaign. If the qualified production is
4 an interactive game, a requirement that the qualified production
5 include with each unit distributed and online promotions an
6 acknowledgment as provided by the office that promotes the pure
7 Michigan tourism campaign or any successor campaign. If the
8 qualified production is a long-form narrative film production, the
9 office also may require that, if the qualified production is
10 distributed by digital video disc or other digital media for the
11 secondary market, the qualified production include a video between
12 30 and 60 seconds long in a form approved by the office that
13 promotes the pure Michigan tourism campaign or any successor
14 campaign.

15 (f) A requirement that the company provide the office with the
16 information and independent certification the office deems
17 necessary to verify direct production expenditures, Michigan
18 personnel expenditures, crew personnel expenditures, qualified
19 personnel expenditures, and eligibility for funding under this
20 section, which may include a report of direct production
21 expenditures, Michigan personnel expenditures, crew personnel
22 expenditures, and qualified personnel expenditures for the
23 qualified production audited and certified by an independent
24 certified public accountant.

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

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 (6) If the Michigan film office determines that an eligible
20 production company has complied with the terms of an agreement
21 entered into under this section, the office shall award funding as
22 provided in this section. A person that willfully submits
23 information under this section that the person knows to be
24 fraudulent or false shall, in addition to any other penalties
25 provided by law, be liable for a civil penalty equal to the amount
26 of funding provided to the person under this section. A penalty
27 collected under this section shall be deposited in the Michigan

1 film promotion fund.

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

18 (8) Not later than March 1, 2012, the office shall produce a
19 performance dashboard for the assistance authorized by this
20 section. The performance dashboard shall be made available by the
21 office on the fund's website and shall be updated at least
22 annually. The performance dashboard shall include the following
23 measures:

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

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

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

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

5 (e) The name of each eligible production company and the
6 amount of each incentive dispersed for each state certified
7 qualified production.

8 (9) The Michigan film office shall not award funding after
9 September 30, ~~2017~~**2013**.

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

19 (11) The fund board may authorize the use of money
20 appropriated for the program authorized by this section for
21 administration of the program. However, the fund board shall not
22 use more than 4% of the annual appropriation for administering the
23 program authorized under this section.

24 (12) Beginning on September 30, 2011 and at the end of each
25 fiscal year thereafter, the commissioner shall certify the total
26 amount of unclaimed certificates of completion, agreements where
27 work has not commenced as required in subsection (4), and

1 agreements for qualified productions the commissioner reasonably
2 believes will not be completed. Funding allocated for qualified
3 productions described in the preceding sentence may be reallocated.

4 (13) As used in this section:

5 (a) "Above the line personnel" means a producer, director,
6 writer, actor, other than extras, or other similar personnel whose
7 compensation is negotiated prior to the start of the production.

8 (b) "Below the line crew" means persons employed by an
9 eligible production company for state certified qualified
10 production expenditures made after production begins and before
11 production is completed, including, but not limited to, a best boy,
12 boom operator, camera loader, camera operator, assistant camera
13 operator, compositor, dialogue editor, film editor, assistant film
14 editor, focus puller, Foley operator, Foley editor, gaffer, grip,
15 key grip, lighting crew, lighting board operator, lighting
16 technician, music editor, sound editor, sound effects editor, sound
17 mixer, steadicam operator, first assistant camera operator, second
18 assistant camera operator, digital imaging technician, camera
19 operator working with a director of photography, electric best boy,
20 grip best boy, dolly grip, rigging grip, assistant key for makeup,
21 assistant key for hair, assistant script supervisor, set
22 construction foreperson, lead set dresser, assistant key for
23 wardrobe, scenic foreperson, assistant propmaster, assistant audio
24 mixer, assistant boom person, assistant key for special effects,
25 and other similar personnel. Below the line crew does not include a
26 producer, director, writer, actor, or other similar personnel.

27 (c) "Crew personnel expenditure" means an expenditure made in

1 this state directly attributable to the production or development
2 of a qualified production that is a transaction subject to taxation
3 in this state and is a payment or compensation for nonresident
4 below the line crew, talent, management, or labor, not to exceed
5 \$2,000,000.00 for any 1 employee or contractual or salaried
6 employee of a qualified production, including both of the
7 following:

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

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

20 (d) "Direct production expenditure" means a development,
21 preproduction, production, or postproduction expenditure made in
22 this state directly attributable to the production or development
23 of a qualified production that is a transaction subject to taxation
24 in this state. Direct production expenditure does not include out-
25 of-state production costs that are made in this state even if the
26 costs are passed through a third-party company in this state or
27 payments made by an eligible production company to its parent

1 company, affiliate, subsidiary, or joint venture partner except
2 where the payments are for transactions entered into pursuant to
3 arm's-length negotiations and which reflect a commercially
4 reasonable price for the goods and services purchased. A direct
5 production expenditure must have true economic substance within the
6 state. Direct production expenditure does not include a prize
7 payable to participants in a game show; an expenditure for
8 entertainment, amusement, or recreation; or an expenditure of more
9 than \$2,500.00 for the purchase of artwork or jewelry used in a
10 production. Direct production expenditure does not include a
11 Michigan personnel expenditure, a qualified personnel expenditure,
12 or a crew personnel expenditure. Direct production expenditure
13 includes payments to vendors doing business in this state to
14 purchase or use tangible personal property in producing the
15 qualified production or to purchase services relating to the
16 production or development of the qualified production, including
17 all of the following:

18 (i) Production work, production equipment, production software,
19 development work, postproduction work, postproduction equipment,
20 postproduction software, set design, set construction, set
21 operations, props, lighting, wardrobe, makeup, makeup accessories,
22 photography, sound synchronization, special effects, visual
23 effects, audio effects, digital effects, film processing, music,
24 sound mixing, editing, interactive game development and
25 programming, and related services and materials.

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

1 (iii) Catering, food, lodging, and related services and
2 materials.

3 (iv) Use of vehicles, which may include chartered aircraft
4 based in this state used for transportation in this state directly
5 attributable to production of a qualified production, but may not
6 include the chartering of aircraft for transportation outside of
7 this state.

8 (v) Commercial airfare if purchased through a travel agency or
9 travel company based in this state for travel to this state or
10 within this state directly attributable to production or
11 development of a qualified production.

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

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

25 (viii) Other expenditures for production of a qualified
26 production in accordance with generally accepted entertainment
27 industry practices.

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

13 (f) "Made in this state" means, for purposes of subdivision
14 (c) only, all of the following:

15 (i) Tangible personal property and services acquired by the
16 eligible production company from a source within this state. If an
17 item of tangible personal property is not available from a source
18 within this state and a vendor with the requisite physical presence
19 in this state that regularly sells or leases property of that kind
20 obtains the property from an out-of-state vendor and sells or
21 leases it to an eligible production company, that expenditure is
22 considered made in this state and is a direct production
23 expenditure and not an out-of-state production cost.

24 (ii) Services wholly performed within this state.

25 (g) "Michigan personnel expenditure" means an expenditure made
26 in this state directly attributable to the production or
27 development of a qualified production that is a transaction subject

1 to taxation in this state and is a payment or compensation payable
2 to below the line crew for below the line crew members who are
3 residents of this state and above the line personnel for above the
4 line personnel who are residents of this state, not to exceed
5 \$2,000,000.00 for any 1 employee or contractual or salaried
6 employee who performs service in this state for the production of a
7 qualified production, including both of the following:

8 (i) Payment of wages, benefits, or fees.

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

19 (h) "Obscene matter or an obscene performance" means matter
20 described in 1984 PA 343, MCL 752.361 to 752.374.

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

1 marketing, or related expenses.

2 (j) "Postproduction facility" means a permanent facility
3 within this state equipped for the postproduction of motion
4 pictures, television shows, or digital media production that meets
5 all of the following requirements:

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

7 (ii) Includes at least 8 work stations.

8 (iii) Has been a qualified film and digital media infrastructure
9 project from which an investment expenditure certificate was issued
10 under section 457 of the Michigan business tax act, 2007 PA 36, MCL
11 208.1457, or has been the location of a state certified qualified
12 production for which a postproduction certificate of completion was
13 issued under section 455 of the Michigan business tax act, 2007 PA
14 36, MCL 208.1455, or both.

15 (k) "Producer" means an individual without regard to his or
16 her actual title or screen credit involved in or responsible for
17 any of the following:

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

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

22 (iii) Hiring above the line personnel.

23 (iv) Supervising the overall production of the qualified
24 production.

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

26 (l) "Qualified facility" means a permanent facility within this
27 state equipped for the production of motion pictures, television

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

3 (i) Includes more than 1 soundstage.

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

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

9 (iv) Has been a qualified film and digital media infrastructure
10 project for which an investment expenditure certificate was issued
11 under section 457 of the Michigan business tax act, 2007 PA 36, MCL
12 208.1457, or has been the location of a state certified qualified
13 production for which a postproduction certificate of completion was
14 issued under section 455 of the Michigan business tax act, 2007 PA
15 36, MCL 208.1455, or both.

16 (m) "Qualified personnel expenditure" means an expenditure
17 made in this state directly attributable to the production or
18 development of a qualified production that is a transaction subject
19 to taxation in this state and is a payment or compensation for
20 nonresident above the line personnel, talent, management, or labor,
21 not to exceed \$2,000,000.00 for any 1 employee or contractual or
22 salaried employee of a qualified production, including both of the
23 following:

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

26 (ii) Payment to a personal services corporation or professional
27 employer organization for the services of a performing artist or

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

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

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

1 (ii) A production that includes obscene matter or an obscene
2 performance.

3 (iii) A production that primarily consists of televised news or
4 current events.

5 (iv) A production that primarily consists of a live sporting
6 event.

7 (v) A production that primarily consists of political
8 advertising.

9 (vi) A radio program.

10 (vii) A weather show.

11 (viii) A financial market report.

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

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

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

16 (xii) A commercial.