

CS FOR SENATE BILL NO. 23(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/4/11

Referred: Rules

Sponsor(s): SENATORS ELLIS, McGuire, French, Davis, Wielechowski, Kookesh, Meyer, Menard, Egan, Stedman

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to transferable film production tax credits and film production tax**
2 **credit certificates; requiring the legislative audit division to audit the Alaska film**
3 **production incentive program; and providing for an effective date by amending the**
4 **effective dates of secs. 3 and 4, ch. 63, SLA 2008."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 24.20.271 is amended to read:

7 **Sec. 24.20.271. Powers and duties.** The legislative audit division shall

8 (1) conduct a performance post-audit of boards and commissions
9 designated in AS 44.66.010 and of those programs and activities of agencies subject to
10 termination as determined in the manner set out in AS 44.66.020 and 44.66.030, and
11 make the audit, together with a written report, available to the legislature not later than
12 the first day of the regular session of the legislature convening in each year set out
13 with reference to boards, commissions, or agency programs whose activities are
14 subject to termination as prescribed in AS 44.66; the division shall notify the

1 legislature that the audit and report are available;

2 (2) audit at least once every three years the books and accounts of all
3 custodians of public funds and all disbursing officers of the state;

4 (3) at the direction of the Legislative Budget and Audit Committee,
5 conduct performance post-audits on any agency of state government;

6 (4) cooperate with state agencies by offering advice and assistance as
7 requested in establishing or improving the accounting systems used by state agencies;

8 (5) require the assistance and cooperation of all state officials and
9 other state employees in the inspection, examination, and audit of state agency books
10 and accounts;

11 (6) have access at all times to the books, accounts, reports, or other
12 records, whether confidential or not, of every state agency;

13 (7) ascertain, as necessary for audit verification, the amount of agency
14 funds on deposit in any bank as shown on the books of the bank; no bank may be held
15 liable for making information required under this paragraph available to the legislative
16 audit division;

17 (8) complete studies and prepare reports, memoranda, or other
18 materials as directed by the Legislative Budget and Audit Committee;

19 (9) have direct access to any information related to the management of
20 the University of Alaska and have the same right of access as exists with respect to
21 every other state agency;

22 (10) conduct an audit every two years of information found in the
23 annual reports required under AS 42.05.211 and AS 42.06.220 regarding compliance
24 by the Regulatory Commission of Alaska with the requirements of AS 42.05.175(a) -
25 (e) and of the timeline extensions made by the commission under AS 42.05.175(f),
26 and of other performance measures adopted by the commission;

27 **(11) conduct audits of the Alaska film production incentive**
28 **program (AS 44.33.231 - 44.33.239) for the periods September 2, 2008, through**
29 **June 30, 2013; July 1, 2013, through June 30, 2018; and July 1, 2018, through**
30 **June 30, 2023.**

31 * Sec. 2. AS 43.98.030(a) is amended to read:

(a) In cooperation with the film office in the Department of Commerce, Community, and Economic Development, the department shall provide a transferable film production tax credit certificate to a producer, as defined in AS 44.33.239, for qualified production expenditures under AS 44.33.231 - 44.33.239.

* **Sec. 3.** AS 43.98.030(b) is amended to read:

(b) A tax credit certificate provided under (a) of this section may be sold, assigned, exchanged, conveyed, or otherwise transferred in whole or in part.

* **Sec. 4.** AS 43.98.030(c) is amended to read:

(c) A taxpayer acquiring a transferable tax credit certificate may use the credit or a portion of the credit to offset taxes imposed under AS 43.20 (Alaska Net Income Tax Act). Except as provided in (e) of this section, any [ANY] portion of the credit not used may be used at a later period or transferred under (b) of this section.

* **Sec. 5.** AS 43.98.030(e) is amended to read:

(e) A transferable film production tax credit certificate provided under (a) of this section, whether sold, assigned, exchanged, conveyed, or otherwise transferred, in whole or in part, must be used within six [THREE] years after being provided by the department.

* **Sec. 6.** AS 43.98.030(f) is amended to read:

(f) The amount [NUMBER] of tax credits provided [IN THE AGGREGATE] under this section may not exceed

(1) \$100,000,000 before July 1, 2018;

(2) \$200,000,000 in the aggregate.

* **Sec. 7.** AS 43.98.030 is amended by adding new subsections to read:

(g) The total amount of tax credits for a single production may not exceed 44 percent of the qualified production expenditures.

(h) A person acquiring two or more film production tax credit certificates provided under (a) of this section may combine the unused amounts of the credits for sale, assignment, exchange, conveyance, or other transfer. At the request of a person holding a film production tax credit, the department shall replace a certificate that represents the full amount of tax credit available with multiple certificates that each

represent a portion of the total tax credit available for the purpose of sale, assignment, exchange, conveyance, or other transfer under this subsection, or, on request, shall provide one tax credit certificate that represents the combined value of multiple tax credit certificates. A tax credit certificate provided by the department under this subsection must state the expiration date and the amount of each credit that is included in the certificate. Combining or splitting unused amounts of credits under this subsection does not change or extend the time period in which each credit that is included in the combination or split must be used.

* **Sec. 8.** AS 44.33.231(b) is amended to read:

(b) The film office shall make available to the legislature, within 30 days after the start of each regular session, a report of the activities conducted by the film office under AS 43.33.231 - 43.33.239. The report must include

(1) the number of applications received under AS 44.33.234;

(2) the number of applications approved by the film office; [AND]

(3) the number of, and amount of, tax credits disbursed under AS 44.33.232; **and**

(4) the total amount of qualified expenditures that were paid by productions qualifying for the film production tax credit to Alaska

(A) businesses; and

(B) residents as wages.

* **Sec. 9.** AS 44.33.231 is amended by adding a new subsection to read:

(d) The film office shall design a logo that represents the film office and must be included in a film qualifying for a film production tax credit under AS 44.33.231 - 44.33.239.

* **Sec. 10.** AS 44.33.233(a) is amended to read:

(a) A film production is eligible for a tax credit under AS 43.98.030, if the

(1) producer has \$100,000 or more in qualified expenditures in a consecutive **36-month** [24-MONTH] period under AS 44.33.236;

(2) film office determines that the production is not contrary to the best interests of the state; and

(3) production is approved by the film office.

1 * **Sec. 11.** AS 44.33.233(b) is amended to read:

2 (b) In determining under (a) of this section whether a production is not
3 contrary to the best interests of the state, the film office may consider

4 [(1)] the effect of the production on

5 **(1) both the immediate and long-term prospects for the film industry in**
6 **Alaska;**

7 (2) [THE EFFECT OF THE PRODUCTION ON] the employment of
8 Alaska residents; [AND]

9 (3) [THE EFFECT OF THE PRODUCTION ON] the economy of the
10 state; **and**

11 **(4) natural resource development in the state.**

12 * **Sec. 12.** AS 44.33.234 is amended by adding a new subsection to read:

13 (c) Information submitted in an application under (a) of this section is
14 confidential and is not subject to inspection or copying under AS 40.25.110 -
15 40.25.125.

16 * **Sec. 13.** AS 44.33.235(a) is amended to read:

17 (a) Subject to AS 43.98.030(f) **and (i) of this section**, the film office, in
18 cooperation with the Department of Revenue, shall determine the amount of the tax
19 credit under AS 43.98.030 available to a producer who has obtained a notice of
20 qualification under AS 43.33.234(b), based on the qualified expenditures of the
21 production under AS 44.33.236.

22 * **Sec. 14.** AS 44.33.235(b) is amended to read:

23 (b) The base amount of a tax credit awarded under this section is equal to 30
24 percent of the qualified expenditures of **a [THE] production other than a nonfiction**
25 **production produced for television and 20 percent of the qualified expenditures**
26 **for a nonfiction production produced for television.**

27 * **Sec. 15.** AS 44.33.235(c) is amended to read:

28 (c) In determining the amount of the tax credit, the **applicable** percentage
29 provided by (b) of this section shall be increased by the film office based on the
30 following criteria:

31 (1) an additional 10 percent of qualified expenditures that are wages

1 paid to Alaska residents;

2 (2) an additional six [TWO] percent of qualified expenditures made in
3 a rural area; and

4 (3) an additional two percent of qualified expenditures made in the
5 state between October 1 and March 30.

6 * **Sec. 16.** AS 44.33.235(d) is amended to read:

7 (d) After completion of the production, the producer shall provide the film
8 office with a production cost report detailing the qualified expenditures of the
9 production, with verification by an independent certified public accountant approved
10 by the film office that the costs claimed in the report are qualified expenditures under
11 AS 44.33.236 and that there is no outstanding balance for a qualified expenditure
12 that is due to a person in the state.

13 * **Sec. 17.** AS 44.33.235 is amended by adding new subsections to read:

14 (i) To qualify for the tax credit under AS 43.98.030, a producer shall include,

15 (1) in the end credits of each qualified film, the film office logo
16 designed under AS 44.33.231(d) and the words, "Filmed in Alaska with the Support of
17 the State of Alaska and the Film Office, Alaska Department of Commerce,
18 Community, and Economic Development"; or

19 (2) on each DVD or other media produced for distribution, a short
20 Alaska promotional video or advertisement approved by the film office.

21 (j) The Department of Revenue may not provide a tax credit certificate under
22 AS 43.98.030 to a producer that fails to meet the requirements in (i) of this section.

23 * **Sec. 18.** AS 44.33.236(a) is amended to read:

24 (a) Expenditures made by a production company in connection with a film
25 production approved by the film office that shall be considered qualified expenditures
26 must be directly related to the production and be incurred in the state. Only
27 expenditures that are ordinary, reasonable, and not in excess of fair market value and
28 that are for real or tangible property, fees, services, or state or municipal taxes shall be
29 considered. Expenditures may include

30 (1) costs of set construction and operation;

31 (2) costs of wardrobes, make-up, accessories, and related services;

- (3) costs associated with photography and sound synchronization;
- (4) costs of lighting and related services and materials;
- (5) costs of editing and related services;
- (6) rental of facilities and equipment;
- (7) leasing of vehicles;
- (8) costs of food and lodging;
- (9) costs of digital or tape editing, film processing, transfer of film to tape or digital format, **transfer of digital media to film or tape**, sound mixing, and special and visual effects;
- (10) the total aggregate payroll for services performed in Alaska, including all salaries, wages, compensation, and related benefits provided to producers, directors, writers, actors, and other personnel that are directly attributable to services performed in Alaska;
- (11) the costs of the use of an Alaska business for processing qualified payroll and related expenditures;
- (12) costs of music, if performed, composed, or recorded by an Alaska musician, or released or published by an Alaska business;
- (13) costs of intrastate travel, if provided by an Alaska business;
- (14) costs relating to the design, construction, improvement, or repair of a film, video, television, or digital production or postproduction facility or related property, infrastructure, or equipment, except commercial exhibition facilities, as determined by the film office;
- (15) costs of state or municipal taxes levied in Alaska on the lease or rental of passenger or recreational vehicles or the rental of rooms or other lodging; or
- (16) other similar production expenditures as determined by the film office in cooperation with the Department of Revenue.

* **Sec. 19.** AS 44.33.239(7) is amended to read:

- (7) "rural area" means a community with a population of 1,500 or less or a community with a population of **10,000** [5,500] or less that is not connected by road or rail to Anchorage or Fairbanks.

* **Sec. 20.** The uncodified law of the state of Alaska enacted in sec. 5(a), ch. 63, SLA 2008,

1 is amended to read:

2 (a) Subject to AS 43.98.030(f), enacted by sec. 1, **ch. 63, SLA 2008** [OF THIS
3 ACT], secs. 3 and 7, **ch. 63, SLA 2008**, [OF THIS ACT] do not prevent the film
4 office from determining a film production's qualified expenditures, awarding a tax
5 credit, or reviewing a tax credit under the provisions repealed by secs. 3 and 4, **ch. 63,**
6 **SLA 2008**, [OF THIS ACT] to a film production that has received a notice of
7 qualification under AS 44.33.234(b), enacted by sec. 2, **ch. 63, SLA 2008** [OF THIS
8 ACT], before **July 1, 2023** [JULY 1, 2013].

9 * **Sec. 21.** The uncodified law of the state of Alaska enacted in sec. 6, ch. 63, SLA 2008, is
10 amended to read:

11 Sec. 6. NOTIFICATION. When the **amount** [NUMBER] of tax credits
12 provided under AS 43.98.030(f), enacted by sec. 1, **ch. 63, SLA 2008** [OF THIS
13 ACT], in the aggregate and the estimated amount of tax credits that could be claimed
14 based on notices of qualification issued by the film office under AS 44.33.234(b),
15 together equal **\$200,000,000** [\$100,000,000], the commissioner shall notify the
16 presiding officers of each house of the legislature and the revisor of statutes in writing.

17 * **Sec. 22.** Section 7, ch. 63, SLA 2008, is amended to read:

18 Sec. 7. Section 3, **ch. 63, SLA 2008**, [OF THIS ACT] takes effect on the
19 earlier of the following:

20 (1) July 1, **2023** [2013]; or

21 (2) the date of the commissioner of revenue's notification to the
22 presiding officers of each house of the legislature and to the revisor of statutes under
23 sec. 6, **ch. 63, SLA 2008** [OF THIS ACT].

24 * **Sec. 23.** Section 8, ch. 63, SLA 2008, is amended to read:

25 Sec. 8. Section 4 of this Act takes effect on the earlier of the following:

26 (1) July 1, **2024** [2014]; or

27 (2) one year after the date of the commissioner of revenue's
28 notification to the legislature and to the revisor of statutes under sec. 6, **ch. 63, SLA**
29 **2008** [OF THIS ACT].