

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 230(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 2/29/08

Referred: Rules

Sponsor(s): SENATORS ELLIS, Stevens, Davis

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing the film office in the Department of Commerce, Community, and**
2 **Economic Development; creating a transferable tax credit applicable to certain film**
3 **production expenditures incurred in the state; and providing for an effective date."**

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

5 *** Section 1.** AS 43.98 is amended by adding a new section to read:

6 **Sec. 43.98.030. Film production tax credit.** (a) In cooperation with the film
7 office in the Department of Commerce, Community, and Economic Development, the
8 department shall provide a transferable film production tax credit to a producer, as
9 defined in AS 44.33.239, for qualified production expenditures under AS 44.33.231 -
10 44.33.239.

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

13 (c) A taxpayer acquiring a transferable credit may use the credit or a portion of
14 the credit to offset taxes imposed under AS 43.20 (Alaska Net Income Tax Act). Any

1 portion of the credit not used may be used at a later period or transferred under (b) of
2 this section.

3 (d) The department shall adopt regulations necessary for the administration of
4 this section.

5 (e) A credit provided under (a) of this section, whether sold, assigned,
6 exchanged, conveyed, or otherwise transferred, in whole or in part, must be used
7 within three years after being provided by the department.

8 * **Sec. 2.** AS 44.33 is amended by adding new sections to read:

9 **Article 2A. Film Office.**

10 **Sec. 44.33.231. Duties.** (a) There is created a film office in the Department of
11 Commerce, Community, and Economic Development. The film office shall

12 (1) cooperate with organizations in the private sector for the expansion
13 and development of film production industries in the state;

14 (2) promote Alaska as an appropriate location for film production;

15 (3) provide production assistance through connecting film directors,
16 makers, and producers with Alaska location scouts and contractors, including
17 contractors providing assistance with permit applications;

18 (4) certify Alaska film production internship training programs and
19 promote the employment of program interns by eligible productions; and

20 (5) in cooperation with the Department of Revenue, administer the
21 Alaska film production incentive program.

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

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

26 (2) the number of applications approved by the film office; and

27 (3) the number of, and amount of, tax credits disbursed under
28 AS 44.33.232.

29 (c) The commissioner shall appoint a director to oversee the film office and
30 carry out its duties under AS 44.43.231 - 44.43.239.

31 (d) When appointing a director under (c) of this section, the commissioner

1 shall consider individuals suggested by the Alaska Film Group. The Alaska Film
2 Group may provide a list of not more than five names.

3 **Sec. 44.33.232. Alaska film production incentive program.** Subject to
4 appropriations for the purpose, the film office shall administer in cooperation with the
5 Department of Revenue the Alaska film production incentive program to provide a tax
6 credit under AS 43.98.030 for certain film production expenditures incurred in the
7 state.

8 **Sec. 44.33.233. Eligibility.** (a) A film production is eligible for a tax credit
9 under AS 43.98.030, if the

10 (1) producer has \$100,000 or more in qualified expenditures in a
11 consecutive 24-month period under AS 44.33.236;

12 (2) production is approved by the film office.

13 (b) The following productions are not eligible, regardless of the production
14 costs:

15 (1) news, weather, or current events programming;

16 (2) a production produced primarily for industrial, corporate, or
17 institutional purposes, and for internal use;

18 (3) an infomercial or any production that solicits funds;

19 (4) a political advertisement; or

20 (5) a production that is determined by the film office to contain
21 sexually explicit conduct as defined in 18 U.S.C. 2256.

22 **Sec. 44.33.234. Qualification for film production tax credit.** (a) A film
23 producer may apply for the film production tax credit under AS 43.98.030 by
24 submitting an application to the film office on a form provided by the film office. The
25 application must include

26 (1) a script or synopsis of the production;

27 (2) the names of the producer, director, and proposed cast;

28 (3) estimated start, completion, and filming dates; and

29 (4) other information the film office may require to determine the
30 producer's eligibility for a credit and the estimated amount of the credit.

31 (b) If the film office approves an application submitted under (a) of this

1 section, the film office shall issue a preliminary certificate to the producer. The
2 certificate must include a determination by the film office of the estimated film
3 production tax credit for which the production qualifies.

4 **Sec. 44.33.235. Award of film production tax credit.** (a) The film office shall
5 determine the amount of the tax credit under AS 43.98.030 available to a producer
6 who has obtained a preliminary certificate under AS 43.33.234(b), based on the
7 qualified expenditures of the production under AS 44.33.236.

8 (b) The base amount of a tax credit awarded under this section is equal to 30
9 percent of the qualified expenditures of the production.

10 (c) In determining the amount of the tax credit, the percentage provided by (b)
11 of this section shall be increased by the film office based on the following criteria:

12 (1) an additional 10 percent of qualified expenditures that are wages
13 paid to Alaska residents;

14 (2) an additional two percent of qualified expenditures made in a rural
15 area; and

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

18 (d) After completion of the production, the producer shall provide the film
19 office with a production cost report detailing the qualified expenditures of the
20 production, with verification by an independent certified public accountant that the
21 costs claimed in the report are qualified expenditures under AS 44.33.236.

22 (e) The film office, in cooperation with the Department of Revenue, shall
23 award a tax credit under AS 43.98.030 based on the information provided under (d) of
24 this section.

25 (f) The film office may not seek recourse against a producer or a taxpayer who
26 has acquired a tax credit under AS 43.98.030(b) for any portion of the credit that may
27 be subsequently disqualified.

28 **Sec. 44.33.236. Determination of qualified expenditures.** (a) Expenditures
29 made by a production company in connection with a film production approved by the
30 film office that shall be considered qualified expenditures include preproduction,
31 production, and postproduction expenditures directly incurred in this state that are

1 directly used in the production, including

- 2 (1) costs of set construction and operation;
- 3 (2) costs of wardrobes, make-up, accessories, and related services;
- 4 (3) costs associated with photography and sound synchronization;
- 5 (4) costs of lighting and related services and materials;
- 6 (5) costs of editing and related services;
- 7 (6) rental of facilities and equipment;
- 8 (7) leasing of vehicles;
- 9 (8) costs of food and lodging;
- 10 (9) costs of digital or tape editing, film processing, transfer of film to
- 11 tape or digital format, sound mixing, and special and visual effects;
- 12 (10) the total aggregate payroll for services performed in Alaska,
- 13 including all salaries, wages, compensation, and related benefits provided to
- 14 producers, directors, writers, actors, and other personnel;
- 15 (11) the costs of the use of an Alaska payroll company;
- 16 (12) costs of music, if performed, composed, or recorded by an Alaska
- 17 musician, or released or published by an Alaska-domiciled company;
- 18 (13) airfare, if purchased through an Alaska-based travel agency or
- 19 travel company;
- 20 (14) insurance costs or bonding, if purchased through an Alaska-based
- 21 insurance agency;
- 22 (15) costs relating to the design, construction, improvement, or repair
- 23 of a film, video, television, or digital production or postproduction facility or related
- 24 property, infrastructure, or equipment, except commercial exhibition facilities, as
- 25 determined by the film office;
- 26 (16) costs of state or municipal taxes levied in Alaska on the lease or
- 27 rental of passenger or recreational vehicles or the rental of rooms or other lodging; or
- 28 (17) other similar production expenditures as determined by the film
- 29 office.

30 (b) Production costs that may not be considered qualified expenditures include

- 31 (1) the cost of a report or examination prepared for eligibility for the

1 film production tax credit;

2 (2) postproduction expenditures for marketing and distribution;

3 (3) expenditures not directly attributable to the production;

4 (4) amounts that are later reimbursed, resulting in a reduction in
5 production costs;

6 (5) amounts that are paid to a person or entity as a result of
7 participation in profits from the exploitation of the production;

8 (6) costs related to the transfer or use of a film production tax credit
9 under AS 43.98.030;

10 (7) compensation and wages paid to a highly compensated individual.

11 (c) In this section, "highly compensated individual" means a person who
12 receives compensation in excess of \$2,000,000 a year in connection with a single
13 qualified film production.

14 **Sec. 44.33.238. Regulations.** The film office may adopt procedures and
15 regulations to carry out its functions under AS 44.33.231 - 44.33.239.

16 **Sec. 44.33.239. Definitions.** In AS 44.33.231 - 44.33.239,

17 (1) "commissioner" means the commissioner of commerce,
18 community, and economic development;

19 (2) "department" means the Department of Commerce, Community,
20 and Economic Development;

21 (3) "film" includes television, commercials, and videos;

22 (4) "film office" means the film office created under AS 44.33.231;

23 (5) "producer" means a person who arranges financing for or
24 supervises the production of a film, video, commercial, or television production or
25 pilot;

26 (6) "rural area" means a community with a population of 1,500 or less
27 or a community with a population of 5,500 or less that is not connected by road or rail
28 to Anchorage or Fairbanks.

29 * **Sec. 3.** AS 43.98.030; AS 44.33.231(a)(5), 44.33.231(b), 44.33.232, 44.33.233, 44.33.234,
30 44.33.235, 44.33.236, and 44.33.239(6) are repealed.

31 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 TRANSITION. (a) Notwithstanding secs. 3 and 5 of this Act, the film office shall
3 award a tax credit to a film production that has submitted a production cost report under
4 AS 44.33.235(d), enacted by sec. 2 of this Act, before July 1, 2013.

5 (b) A film production tax credit may be used to offset taxes imposed under AS 43.20
6 (Alaska Net Income Tax Act) or sold, assigned, exchanged, conveyed, or otherwise
7 transferred, in whole or in part, within three years after being provided by the Department of
8 Revenue under AS 43.98.030, enacted by sec. 1 of this Act, notwithstanding the repeal of
9 AS 43.98.030 in sec. 3 of this Act.

10 * **Sec. 5.** Section 3 of this Act takes effect July 1, 2013.