

HOUSE CS FOR CS FOR SENATE BILL NO. 23(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 4/14/11

Referred: Finance

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

REPRESENTATIVES Petersen, Herron, Tuck

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
15 legislature that the audit and report are available;

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

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

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

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

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

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

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

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

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

26 **(11) conduct audits of the Alaska film production incentive**
27 **program (AS 44.33.231 - 44.33.239) and make the audits available to the**
28 **legislature on the first day of the regular session of the legislature in 2013, 2017,**
29 **and 2021.**

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

31 (a) In cooperation with the film office in the Department of Commerce,

1 Community, and Economic Development, the department shall provide a transferable
 2 film production tax credit **certificate** to a producer, as defined in AS 44.33.239, for
 3 qualified production expenditures under AS 44.33.231 - 44.33.239.

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

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

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

8 (c) A taxpayer acquiring a transferable **tax** credit **certificate** may use the
 9 credit or a portion of the credit to offset taxes imposed under **AS 21.09.210,**
 10 **AS 21.66.110, AS 43.20, AS 43.55, AS 43.56, and AS 43.65. Except as provided in**
 11 **(e) of this section, any** [AS 43.20 (ALASKA NET INCOME TAX ACT). ANY]
 12 portion of the credit not used may be used at a later period or transferred under (b) of
 13 this section.

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

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

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

20 (f) The **total amount** [NUMBER] of tax credits provided [IN THE
 21 AGGREGATE] under this section may not exceed **\$200,000,000** [\$100,000,000].

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

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

25 (h) A person acquiring two or more film production tax credit certificates
 26 provided under (a) of this section may combine the unused amounts of the credits for
 27 sale, assignment, exchange, conveyance, or other transfer. At the request of a person
 28 holding a film production tax credit, the department shall replace a certificate that
 29 represents the full amount of tax credit available with multiple certificates that each
 30 represent a portion of the total tax credit available for the purpose of sale, assignment,
 31 exchange, conveyance, or other transfer under this subsection, or, on request, shall

1 provide one tax credit certificate that represents the combined value of multiple tax
 2 credit certificates. A tax credit certificate provided by the department under this
 3 subsection must state the expiration date and the amount of each credit that is included
 4 in the certificate. Combining or splitting unused amounts of credits under this
 5 subsection does not change or extend the time period in which each credit that is
 6 included in the combination or split must be used.

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

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

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

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

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

15 **(4) the total amount of expenditures that were paid by productions**
 16 **qualifying for the film production tax credit that were not qualified expenditures;**

17 **(5) the total amount of qualified expenditures that were paid by**
 18 **productions qualifying for the film production tax credit to Alaska businesses;**
 19 **and**

20 **(6) the total amount of qualified expenditures that were paid by**
 21 **productions qualifying for the film production tax credit to Alaska residents as**
 22 **wages.**

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

24 (d) The film office shall design a logo that represents the film office and must
 25 be included in a film qualifying for a film production tax credit under AS 44.33.231 -
 26 44.33.239.

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

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

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

31 (2) film office determines that the production is not contrary to the best

1 interests of the state; and

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

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

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

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

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

9 (2) **both the immediate and long-term prospects for** [THE EFFECT
10 OF THE PRODUCTION ON] the employment of Alaska residents; [AND]

11 (3) **both the immediate and long-term prospects for** [THE EFFECT
12 OF THE PRODUCTION ON] the economy of the state; **and**

13 **(4) the public perception of state policy on the utilization and**
14 **development of the natural resources of the state.**

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

16 (c) Information submitted in an application under (a) of this section is
17 confidential and is not subject to inspection or copying under AS 40.25.110 -
18 40.25.125.

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

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

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

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

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

31 (c) In determining the amount of the tax credit, the **applicable** percentage

1 provided by (b) of this section shall be increased by the film office based on the
2 following criteria:

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

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

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

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

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

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

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

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

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

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

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

27 (a) Expenditures made by a production company **licensed to do business in**
28 **the state** in connection with a film production approved by the film office that shall be
29 considered qualified expenditures must be directly related to the production and be
30 incurred in the state. Only expenditures that are ordinary, reasonable, and not in excess
31 of fair market value and that are for real or tangible property, fees, services, or state or

1 municipal taxes shall be considered. Expenditures may include

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, **transfer of digital media to film or tape**, sound mixing, and
12 special and visual effects;

13 (10) **subject to the limitation in (c) of this section**, the total aggregate
14 **expenditures** [PAYROLL] for services performed in Alaska, including all salaries,
15 wages, compensation, and related benefits provided to producers, directors, writers,
16 actors, and other personnel that are directly attributable to services performed in
17 Alaska;

18 (11) the costs of the use of an Alaska business for processing qualified
19 payroll and related expenditures;

20 (12) costs of music, if performed, composed, or recorded by an Alaska
21 musician, or released or published by an Alaska business;

22 (13) costs of intrastate travel, if provided by an Alaska business;

23 (14) costs relating to the design, construction, improvement, or repair
24 of a film, video, television, or digital production or postproduction facility or related
25 property, infrastructure, or equipment, except commercial exhibition facilities, as
26 determined by the film office;

27 (15) costs of state or municipal taxes levied in Alaska on the lease or
28 rental of passenger or recreational vehicles or the rental of rooms or other lodging; or

29 (16) other similar production expenditures as determined by the film
30 office in cooperation with the Department of Revenue.

31 * **Sec. 19.** AS 44.33.236 is amended by adding new subsections to read:

1 (c) The qualified expenditures described in (a)(10) of this section may not
2 exceed

3 (1) 15 percent of the total production budget after June 30, 2013, and
4 before July 1, 2016;

5 (2) 12 percent of the total production budget after June 30, 2016, and
6 before July 1, 2018; and

7 (3) 10 percent of the total production budget after June 30, 2018.

8 (d) For the purposes of (c) of this section, "total production budget" means the
9 sum of the total qualified expenditures and the total expenditures that are not qualified
10 expenditures that are incurred by the producer in connection with a film production
11 approved by the film office.

12 * **Sec. 20.** AS 44.33.237(b) is amended to read:

13 (b) Legal proceedings may not be brought under (a) of this section more than
14 six years [ONE YEAR] after the date the tax credit was awarded under AS 44.33.235.

15 * **Sec. 21.** AS 44.33.239(7) is amended to read:

16 (7) "rural area" means a community in the state with a population of
17 1,500 or less or a community with a population of 10,000 [5,500] or less that is not
18 connected by road or rail to Anchorage or Fairbanks.

19 * **Sec. 22.** The uncodified law of the state of Alaska enacted in sec. 5(a), ch. 63, SLA 2008,
20 is amended to read:

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

28 * **Sec. 23.** The uncodified law of the state of Alaska enacted in sec. 6, ch. 63, SLA 2008, is
29 amended to read:

30 Sec. 6. NOTIFICATION. When the amount [NUMBER] of tax credits
31 provided under AS 43.98.030(f), enacted by sec. 1, ch. 63, SLA 2008 [OF THIS

1 ACT], in the aggregate and the estimated amount of tax credits that could be claimed
2 based on notices of qualification issued by the film office under AS 44.33.234(b),
3 together equal \$200,000,000 [\$100,000,000], the commissioner shall notify the
4 presiding officers of each house of the legislature and the revisor of statutes in writing.

5 * **Sec. 24.** Section 7, ch. 63, SLA 2008, is amended to read:

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

8 (1) July 1, 2023 [2013]; or

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

12 * **Sec. 25.** Section 8, ch. 63, SLA 2008, is amended to read:

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

14 (1) July 1, 2029 [2014]; or

15 (2) six years [ONE YEAR] after the date of the commissioner of
16 revenue's notification to the legislature and to the revisor of statutes under sec. 6, ch.
17 63, SLA 2008 [OF THIS ACT].