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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 983      Session of  
2005

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INTRODUCED BY T. STEVENSON, MANN, BAKER, BALDWIN, BASTIAN,  
CALTAGIRONE, CAPPELLI, CAUSER, CAWLEY, CREIGHTON, DeWEESE,  
FEESE, FRANKEL, GEIST, GODSHALL, HENNESSEY, HERMAN, HERSHEY,  
JAMES, W. KELLER, LEACH, LEVDANSKY, MARKOSEK, MARSICO,  
McCALL, McGEEHAN, MUSTIO, NAILOR, O'NEILL, PICKETT, PISTELLA,  
READSHAW, ROEBUCK, SAINATO, SATHER, SEMMEL, SHANER,  
R. STEVENSON, THOMAS, TURZAI, WALKO, WATSON, WILT,  
YOUNGBLOOD, ADOLPH AND FABRIZIO, MARCH 15, 2005

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AMENDMENTS TO SENATE AMENDMENTS, HOUSE OF REPRESENTATIVES,  
APRIL 3, 2006

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AN ACT

1 Amending Title 12 (Commerce and Trade) of the Pennsylvania  
2 Consolidated Statutes, further providing, in the  
3 Infrastructure and Facilities Improvement Program, for  
4 approvals; ~~and providing for film production tax credits.~~ <—  
5 ESTABLISHING A FILM PRODUCTION GRANT PROGRAM; AND REPEALING <—  
6 PROVISIONS OF THE TAX REFORM CODE OF 1971 RELATING TO FILM  
7 PRODUCTION TAX CREDITS.

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 Section 1. Section 3406(b) of Title 12 of the Pennsylvania  
11 Consolidated Statutes is amended to read:

12 § 3406. Approval.

13 \* \* \*

14 (b) Grant approval.--Upon receipt of the notification  
15 required in subsection (a), the department may approve the  
16 application and award the applicant a grant in an annual amount

1 not to exceed the amount established by the Secretary of the  
2 Budget. Prior to providing grant funds to the applicant, the  
3 department shall enter into a contract with the applicant and  
4 the project user. The contract shall include provisions which do  
5 all of the following:

6 (1) Specify the base amount of the grant per year.

7 (2) Specify the total number of years that grant funds  
8 may be provided to the applicant and the year in which the  
9 grant may commence, including an option to defer commencement  
10 of the grant to any date up to the date upon which the  
11 project is completed and operations have commenced. If the  
12 applicant is an industrial enterprise, retail enterprise, a  
13 research and development enterprise or a manufacturer, the  
14 number of years may not exceed ten years. If the applicant is  
15 a hospital, convention center or hotel establishment, the  
16 number of years may not exceed 20 years.

17 [(3) If the grant will be awarded for more than four  
18 years, establish the procedure for awarding the grant after  
19 the fourth year. To provide a grant beyond the initial four-  
20 year period, the applicant shall be required to demonstrate  
21 to the satisfaction of the department, the Secretary of the  
22 Budget and the Department of Revenue that the tax revenues  
23 specified in section 3405 are anticipated to be equal to or  
24 exceed the amount of the grant awarded in the previous year.  
25 If the department, the Secretary of the Budget and the  
26 Department of Revenue determine that the tax revenues  
27 specified in section 3405 are anticipated to equal or exceed  
28 the amount specified in paragraph (1), the applicant shall be  
29 awarded a grant for that year in the amount specified in  
30 paragraph (1). If the department, the Secretary of the Budget

1 and the Department of Revenue determine that the tax revenues  
2 specified in section 3405 will not equal or exceed the amount  
3 specified in paragraph (1), the applicant shall be awarded a  
4 grant equal to the anticipated tax revenues specified in  
5 section 3405 for that year.]

6 (3) If the grant will be awarded for more than four  
7 years, establish the procedure for the award of the grant  
8 after year four. If the department, the Secretary of the  
9 Budget and the Department of Revenue determine that the tax  
10 revenues specified in section 3405(b) during the fifth year  
11 and each succeeding year thereafter are anticipated to be  
12 equal to or exceed the amount of the grant awarded during the  
13 previous year, the department shall award the grant in the  
14 amount of the original grant as determined under this  
15 section. If the department, the Secretary of the Budget and  
16 the Department of Revenue determine that the tax revenues  
17 specified in section 3405(b) during the fifth year and each  
18 year thereafter will not equal or exceed the amount of the  
19 grant for the previous year, the department shall award a  
20 grant that is no less than the anticipated tax revenue  
21 specified in section 3405(b) and no more than the amount of  
22 the original grant awarded under this section.

23 (4) Require the applicant to use the grant to pay debt  
24 service for the project and to repay all or any portion of a  
25 grant if the applicant fails to use the grant to pay debt  
26 service.

27 (5) Specify that the annual amount of the grant in any  
28 one year may not exceed the annual amount of the debt service  
29 on the project for that year.

30 (6) If the grant in any one year exceeds the annual

1 payment on debt service in that year, require the applicant  
2 to repay the amount of the grant for that year which exceeds  
3 the payment on debt service for that year.

4 [(7) If the project user is not a governmental entity,  
5 prohibit the project user from holding title to the project  
6 during the period which the applicant is receiving a grant  
7 from the department.]

8 (8) Require the project user to pay to the applicant a  
9 sum equal to any payments received by the project user from  
10 third parties for infrastructure which is part of the project  
11 during the period which the applicant is receiving a grant  
12 from the department. Any payment received by the applicant  
13 under this paragraph must be applied to payment of the debt  
14 service for the project.

15 (9) Require the applicant to [insure] satisfactorily  
16 demonstrate that the full amount of annual debt service is  
17 paid for the project, regardless of the amount of the grant  
18 received.

19 (10) Require the project user to use the project for the  
20 period of time the applicant is receiving grants under this  
21 chapter and to repay all or any portion of a grant if the  
22 project user fails to use the project for the period of time  
23 the applicant is receiving grants.

24 [(11) Require the project user to timely pay all  
25 Commonwealth and local taxes and fees.]

26 (11) Require the project user to timely pay all  
27 Commonwealth and local taxes and fees that are then due and  
28 owing. A local government unit as defined under 53 Pa.C.S.  
29 Pt. VII Subpt. B (relating to indebtedness and borrowing) or  
30 an issuing authority may enter into an agreement or adopt an

ordinance or resolution to permit the local government unit or issuing authority to pay, waive, abate, settle, compromise or reimburse any local tax, fee or other imposition applicable to a project user imposed by any local government unit or issuing authority. The agreement, ordinance or resolution shall not affect the eligibility of an applicant or a project to receive a grant under this chapter.

(12) Require the department to approve any change of use of a project during the period in which the applicant is receiving a grant from the department. The department may not unreasonably withhold its consent to a change of use.

\* \* \*

Section 2. Title 12 is amended by adding a chapter to read:

#### ~~CHAPTER 41~~

#### ~~FILM PRODUCTION TAX CREDITS~~

~~Sec.~~

~~4101. Scope of chapter.~~

~~4102. Report.~~

~~§ 4101. Scope of chapter.~~

~~This chapter relates to film production tax credits.~~

~~§ 4102. Report.~~

~~The report to the General Assembly required under section 1709 C of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, pertaining to the film production tax credit shall be made available on the publicly accessible Internet website of the Department of Revenue.~~

#### CHAPTER 41

#### FILM PRODUCTION GRANTS

SEC.

4101. SCOPE OF CHAPTER.

1 4102. DEFINITIONS.

2 4103. ESTABLISHMENT.

3 4104. APPLICATION.

4 4105. REVIEW.

5 4106. APPROVAL.

6 4107. PENALTY.

7 4108. LIMITATIONS.

8 4109. GUIDELINES.

9 § 4101. SCOPE OF CHAPTER.

10 THIS CHAPTER RELATES TO THE FILM PRODUCTION GRANT PROGRAM.

11 § 4102. DEFINITIONS.

12 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER  
13 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE  
14 CONTEXT CLEARLY INDICATES OTHERWISE:

15 "APPLICANT." A PERSON THAT FILES A NOTICE AND APPLICATION IN  
16 ACCORDANCE WITH THIS CHAPTER.

17 "DEPARTMENT." THE DEPARTMENT OF COMMUNITY AND ECONOMIC  
18 DEVELOPMENT OF THE COMMONWEALTH.

19 "FILM." THE TERM INCLUDES A FEATURE FILM, TELEVISION FILM,  
20 TELEVISION PILOT OR EACH EPISODE OF A TELEVISION SERIES WHICH IS  
21 INTENDED AS PROGRAMMING FOR A NATIONAL AUDIENCE. THE TERM DOES  
22 NOT INCLUDE A PRODUCTION FEATURING:

23 (1) NEWS, CURRENT EVENTS, WEATHER AND MARKET REPORTS.

24 (2) PUBLIC PROGRAMMING.

25 (3) TALK SHOWS, GAME SHOWS, SPORTS EVENTS, AWARDS SHOWS  
26 OR OTHER GALA EVENTS.

27 (4) A PRODUCTION THAT SOLICITS FUNDS.

28 (5) A PRODUCTION THAT PRIMARILY MARKETS A PRODUCT OR  
29 SERVICE.

30 (6) A PRODUCTION CONTAINING OBSCENE MATERIAL OR

PERFORMANCES AS DEFINED IN 18 PA.C.S. § 5903(B) (RELATING TO  
OBSCENE AND OTHER SEXUAL MATERIALS AND PERFORMANCES).

(7) A PRODUCTION PRIMARILY FOR PRIVATE, POLITICAL,  
INDUSTRIAL, CORPORATE OR INSTITUTIONAL PURPOSES.

"PENNSYLVANIA PRODUCTION EXPENSE." A PRODUCTION EXPENSE  
INCURRED IN THIS COMMONWEALTH. FOR THE PURPOSES OF WAGES AND  
SALARIES, THE TERM INCLUDES ONLY WAGES AND SALARIES ON WHICH THE  
TAXES IMPOSED BY ARTICLE III OR IV OF THE ACT OF MARCH 4, 1971  
(P.L.6, NO.2), KNOWN AS THE TAX REFORM CODE OF 1971, HAVE BEEN  
PAID OR ACCRUED.

"PRODUCTION EXPENSE."

(1) AN EXPENSE INCURRED IN THE PRODUCTION OF A FILM. THE  
TERM INCLUDES:

(I) THE AGGREGATE AMOUNT OF WAGES AND SALARIES OF  
INDIVIDUALS EACH OF WHOM RECEIVE LESS THAN \$1,000,000 AND  
ARE EMPLOYED IN THE PRODUCTION OF THE FILM.

(II) THE COSTS OF CONSTRUCTION, OPERATIONS, EDITING,  
PHOTOGRAPHY, SOUND SYNCHRONIZATION, LIGHTING, WARDROBE  
AND ACCESSORIES.

(III) THE COST OF RENTAL FACILITIES AND EQUIPMENT.

(2) THE TERM DOES NOT INCLUDE EXPENSES INCURRED IN  
PURCHASING STORY RIGHTS, MUSIC RIGHTS, DEVELOPMENT COSTS,  
MARKETING OR ADVERTISING A FILM.

"PROGRAM." THE FILM PRODUCTION GRANT PROGRAM ESTABLISHED IN  
SECTION 4103 (RELATING TO ESTABLISHMENT).

"QUALIFIED FILM PRODUCTION EXPENSE." A PENNSYLVANIA  
PRODUCTION EXPENSE IF AT LEAST 60% OF THE TOTAL PRODUCTION  
EXPENSES ARE PENNSYLVANIA PRODUCTION EXPENSES.

"RECIPIENT." A PERSON WHO RECEIVES A GRANT UNDER THIS  
CHAPTER.

1 "START DATE." THE FIRST DAY OF PRINCIPAL PHOTOGRAPHY IN THIS  
2 COMMONWEALTH.

3 § 4103. ESTABLISHMENT.

4 THERE IS ESTABLISHED WITHIN THE DEPARTMENT A PROGRAM TO BE  
5 KNOWN AS THE FILM PRODUCTION GRANT PROGRAM. THE PROGRAM SHALL BE  
6 ADMINISTERED BY THE DEPARTMENT TO PROVIDE GRANTS TO PERSONS FOR  
7 CERTAIN FILMS PRODUCED WITHIN THIS COMMONWEALTH.

8 § 4104. APPLICATION.

9 (A) NOTICE.--PRIOR TO COMMENCING PRODUCTION OF A FILM, A  
10 PERSON MAY SUBMIT A NOTICE TO THE DEPARTMENT INFORMING IT OF THE  
11 PERSON'S INTENTION TO REQUEST A GRANT FOR A PENNSYLVANIA FILM  
12 PRODUCTION. THE NOTICE SHALL BE ON THE FORM REQUIRED BY THE  
13 DEPARTMENT AND SHALL INCLUDE OR DEMONSTRATE ALL OF THE  
14 FOLLOWING:

15 (1) AN ITEMIZED LIST OF PRODUCTION EXPENSES TO BE  
16 INCURRED.

17 (2) AN ITEMIZED LIST OF PENNSYLVANIA PRODUCTION EXPENSES  
18 TO BE INCURRED.

19 (3) THE START DATE.

20 (4) THE PROJECTED COMPLETION DATE.

21 (5) A STATEMENT OF THE AMOUNT OF GRANT SOUGHT.

22 (6) ANY OTHER INFORMATION REQUIRED BY THE DEPARTMENT.

23 (B) APPLICATION.--WITHIN 60 DAYS OF THE COMPLETION OF  
24 PRODUCTION OF A FILM, THE APPLICANT SHALL FILE AN APPLICATION  
25 FOR A FILM PRODUCTION GRANT WITH THE DEPARTMENT. THE APPLICATION  
26 SHALL BE ON THE FORM REQUIRED BY THE DEPARTMENT AND SHALL  
27 INCLUDE OR DEMONSTRATE ALL OF THE FOLLOWING:

28 (1) AN ITEMIZED LIST OF PRODUCTION EXPENSES ACTUALLY  
29 INCURRED.

30 (2) AN ITEMIZED LIST OF PENNSYLVANIA PRODUCTION EXPENSES



1 ACTUALLY INCURRED. EXPENSES SUBMITTED UNDER THIS PARAGRAPH  
2 MAY NOT IN THE AGGREGATE EXCEED THE AMOUNT OF PROJECTED  
3 EXPENSES SUBMITTED TO THE DEPARTMENT UNDER SUBSECTION (A)(2).

4 (3) THE DATE OF THE COMPLETION OF PRODUCTION OF THE  
5 FILM.

6 (4) ANY OTHER INFORMATION REQUIRED BY THE DEPARTMENT.

7 § 4105. REVIEW.

8 THE DEPARTMENT SHALL REVIEW THE APPLICATION TO DETERMINE IF  
9 THE APPLICANT HAS MET ALL OF THE CRITERIA SET FORTH IN SECTION  
10 4104 (RELATING TO APPLICATION).

11 § 4106. APPROVAL.

12 THE FOLLOWING SHALL APPLY:

13 (1) UPON BEING SATISFIED THAT ALL REQUIREMENTS HAVE BEEN  
14 MET AND SUBJECT TO SECTION 4108 (RELATING TO LIMITATIONS),  
15 THE DEPARTMENT MAY APPROVE THE APPLICATION AND AWARD A FILM  
16 PRODUCTION GRANT.

17 (2) PRIOR TO PROVIDING GRANT FUNDS TO THE APPLICANT, THE  
18 DEPARTMENT SHALL ENTER INTO A CONTRACT WITH THE APPLICANT.  
19 THE CONTRACT SHALL INCLUDE PROVISIONS REQUIRING THE APPLICANT  
20 TO USE THE GRANT TO PAY COSTS ASSOCIATED WITH THE PRODUCTION  
21 OF THE FILM.

22 (3) THE DEPARTMENT MAY IMPOSE ANY OTHER TERMS AND  
23 CONDITIONS ON THE GRANTS AUTHORIZED BY THIS CHAPTER AS THE  
24 DEPARTMENT DETERMINES ARE IN THE BEST INTERESTS OF THE  
25 COMMONWEALTH.

26 § 4107. PENALTY.

27 (A) IMPOSITION.--EXCEPT AS PROVIDED IN SUBSECTION (B), THE  
28 DEPARTMENT SHALL IMPOSE A PENALTY UPON A RECIPIENT FOR VIOLATION  
29 OF THE CONTRACT REQUIRED BY SECTION 4106 (RELATING TO APPROVAL).

30 (B) EXCEPTION.--THE DEPARTMENT MAY WAIVE THE PENALTY

1 REQUIRED BY SUBSECTION (A) IF THE DEPARTMENT DETERMINES THAT THE  
2 FAILURE WAS DUE TO CIRCUMSTANCES OUTSIDE THE CONTROL OF THE  
3 RECIPIENT.

4 (C) AMOUNT.--THE AMOUNT OF THE PENALTY SHALL BE EQUAL TO THE  
5 FULL AMOUNT OF THE GRANT RECEIVED PLUS AN ADDITIONAL AMOUNT OF  
6 UP TO 10% OF THE AMOUNT OF THE GRANT RECEIVED. THE PENALTY SHALL  
7 BE PAYABLE IN ONE LUMP SUM OR IN INSTALLMENTS, WITH OR WITHOUT  
8 INTEREST, AS THE DEPARTMENT DEEMS APPROPRIATE.

9 § 4108. LIMITATIONS.

10 THE FOLLOWING LIMITATIONS SHALL APPLY:

11 (1) A RECIPIENT MAY NOT RECEIVE A GRANT UNDER THIS  
12 CHAPTER FOR MORE THAN ONE YEAR FOR THE SAME FILM.

13 (2) A GRANT AWARDED UNDER THIS CHAPTER TO AN APPLICANT  
14 FOR A FILM MAY NOT EXCEED 20% OF THE QUALIFIED FILM  
15 PRODUCTION EXPENSES INCURRED FOR THE FILM.

16 (3) IN NO CASE SHALL THE AGGREGATE AMOUNT OF GRANTS  
17 AWARDED IN ANY FISCAL YEAR UNDER THIS CHAPTER EXCEED  
18 \$10,000,000.

19 (4) A GRANT AWARDED UNDER THIS CHAPTER SHALL IN NO WAY  
20 CONSTITUTE AN ENTITLEMENT DERIVED FROM THE COMMONWEALTH OR A  
21 CLAIM ON ANY OTHER FUNDS OF THE COMMONWEALTH.

22 § 4109. GUIDELINES.

23 THE DEPARTMENT SHALL DEVELOP NECESSARY WRITTEN GUIDELINES FOR  
24 THE PROGRAM.

25 SECTION 3. REPEALS ARE AS FOLLOWS:

26 (1) THE GENERAL ASSEMBLY DECLARES THAT THE REPEAL UNDER  
27 PARAGRAPH (2) IS NECESSARY TO EFFECTUATE THE ADDITION OF 12  
28 PA.C.S. CH. 41.

29 (2) ARTICLE XVII-C OF THE ACT OF MARCH 4, 1971 (P.L.6,  
30 NO.2), KNOWN AS THE TAX REFORM CODE OF 1971, IS REPEALED.

1       Section ~~3~~ 4.   The amendment of 12 Pa.C.S. § 3406 shall apply   <—  
2   retroactively to July 1, 2004.  
3       Section ~~4~~ 5.   This act shall take effect immediately.       <—