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H.P. 1005

House of Representatives, April 12, 2013

An Act To Promote Tourism and Foster Economic Development

(EMERGENCY)

Reference to the Committee on Taxation suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative HAMANN of South Portland.
Cosponsored by Senator VALENTINO of York and
Representatives: BEAR of the Houlton Band of Maliseet Indians, DAUGHTRY of Brunswick,
GILBERT of Jay, GOODE of Bangor, HARVELL of Farmington, JORGENSEN of Portland,
KUSIAK of Fairfield, McLEAN of Gorham.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** despite the State's diverse potential film locations, available workforce
4 and competitive pricing for certain production expenses, the State's motion picture
5 industry lags behind other states due to the lack of a competitive incentive program; and

6 **Whereas,** a robust motion picture industry provides jobs, injects large amounts of
7 money into the local economy and has a positive impact on the tourism industry; and

8 **Whereas,** without rapid enactment of the tax incentives proposed in this legislation,
9 the State may not attract filmmakers that are scouting film locations in the State; and

10 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
11 the meaning of the Constitution of Maine and require the following legislation as
12 immediately necessary for the preservation of the public peace, health and safety; now,
13 therefore,

14 **Be it enacted by the People of the State of Maine as follows:**

15 **Sec. 1. 5 MRSA §13090-L,** as amended by PL 2011, c. 285, §1, is further
16 amended to read:

17 **§13090-L. Visual media production and major visual media production certification**

18 **1. Generally.** A visual media production company that intends to undertake a visual
19 media production in this State may apply to the department to have the production, or a
20 portion of the production, certified under subsection ~~3~~ 3-B for purposes of the visual
21 media production reimbursement pursuant to Title 36, chapter 919-A and the credit under
22 Title 36, section 5219-Y. A major visual media production company that intends to
23 undertake a major visual media production in this State may apply to the department to
24 have the production, or a portion of the production, certified under subsection 3-B for the
25 purpose of the major visual media production credit under Title 36, section 5219-II.

26 **2-A. Definitions.** As used in this section, unless the context otherwise indicates, the
27 following terms have the following meanings.

28 A. "Digital media project" means visual and audio content on an electronic, digital
29 medium and created, referred to and distributed electronically. "Digital media
30 project" includes publicly accessible websites, computer multimedia, video and
31 computer games and digital video discs.

32 B. "Maine State Film Office" means the Maine State Film Office established in the
33 Office of Tourism pursuant to section 13090-I.

34 B-1. "Major visual media production" means a visual media production with an
35 overall budget, as defined in rules adopted by the department, that is greater than
36 \$1,000,000.

1 B-2. "Major visual media production company" means a person engaged in the
2 business of producing a major visual media production.

3 B-3. "Major visual media production expense" means an expense directly incurred in
4 this State for preproduction, production or postproduction of a major visual media
5 production certified under this section. "Major visual media production expense"
6 includes major visual media production wages, and payments to a temporary
7 employee-leasing company, as defined in Title 36, section 6901, subsection 3-A, and
8 other contractual payments for the services of individuals working in the State.
9 "Major visual media production expense" includes the cost of construction;
10 operations; editing and related services; music, photography and film processing,
11 including transferring film to tape or a digital format; sound recording, mixing and
12 synchronization; lighting, makeup, wardrobe and accessories; transportation; food
13 and lodging for cast and crew; insurance and bonding; and the rental of facilities and
14 equipment, including location fees. "Major visual media production expense" does
15 not include expenses incurred in marketing or advertising a major visual media
16 production or in printing or disseminating a major visual media production.

17 B-4. "Major visual media production wages" includes wages and salaries on which
18 taxes have been paid or accrued, not to exceed an aggregate of \$500,000, of
19 individuals employed in preproduction, production or postproduction of the major
20 visual media production, including, but not limited to, staff for hair, makeup,
21 wardrobe, accessories, lighting, rigging, electric, camera operations, photography,
22 composing, editing and nonstarring cast roles.

23 C. "Person" has the same meaning as in Title 36, section 111, subsection 3.

24 D. "Visual media production" means a single-medium or multimedia feature film,
25 television show or series, video, digital media project or photographic project
26 intended for a local, regional, national or international audience and fixed on film,
27 videotape, computer disk, laser disc or other delivery medium that can be viewed or
28 reproduced and that is exhibited in theaters or by individual television stations or
29 groups of stations, television networks or cable television stations or via other means
30 or licensed for home viewing or use. "Visual media production" does not include:

- 31 (1) A news, current events or public programming show or a program that
32 includes weather or market reports;
- 33 (2) A talk show;
- 34 (3) A sports event or activity;
- 35 (4) A gala presentation or awards show;
- 36 (5) A finished production that solicits funds; or
- 37 (6) A production for which records are required to be maintained by 18 United
38 States Code, Section 2257.

39 E. "Visual media production company" means a person engaged in the business of
40 producing a visual media production.

41 F. "Visual media production expense" means an expense directly incurred in this
42 State for preproduction, production or postproduction of a visual media production

1 certified under this section. "Visual media production expense" includes wages and
2 salaries of individuals employed in the production on which taxes have been paid or
3 accrued if those wages do not exceed \$50,000 per individual and payments to a
4 temporary employee-leasing company, as defined in Title 36, section 6901,
5 subsection 3-A, and other contractual payments for the services of individuals
6 working in the State if those payments do not exceed \$50,000 per individual
7 providing services in the production. "Visual media production expense" includes the
8 cost of construction; operations; editing and related services; music, photography and
9 film processing, including transferring film to tape or a digital format; sound
10 recording, mixing and synchronization; lighting, makeup, wardrobe and accessories;
11 transportation; food and lodging for cast and crew; insurance and bonding; and the
12 rental of facilities and equipment, including location fees. "Visual media production
13 expense" does not include expenses incurred in marketing or advertising a visual
14 media production or in printing or disseminating a visual media production.

15 **3. Requirements for visual media production certificate.** Applications for a
16 visual media production certificate must be made on a form prescribed and furnished by
17 the department. The applicant must:

18 A. Provide the names of the principals involved in the visual media production and
19 contact information for them;

20 B. Provide a certificate of insurance for the visual media production;

21 C. Provide financial information that demonstrates that the visual media production
22 is fully financed and that at least \$75,000 of visual media production expense will be
23 incurred for the visual media production certified in accordance with ~~this~~ subsection
24 3-B;

25 D. Provide data demonstrating that the visual media production will benefit the
26 people of the State by increasing opportunities for employment and will strengthen
27 the economy of the State;

28 E. Agree to include, in the certified visual media production, an on-screen credit for
29 the State of Maine. The exact wording and size of that credit must be determined in
30 rules adopted by the Maine State Film Office and the department. The Maine State
31 Film Office or the department may, at its discretion, exempt visual media productions
32 from this requirement. Rules adopted pursuant to this paragraph are routine technical
33 rules as defined in chapter 375, subchapter 2-A;

34 F. Provide evidence that the visual media production company is not owned by,
35 affiliated with or controlled by, in whole or in part, a person that is in default on a
36 loan made by the State or a loan guaranteed by the State;

37 G. Provide any other information required by the department; ~~and~~

38 H. Provide a projected schedule for preproduction, production and postproduction of
39 the visual media production that shows that the production will begin within 60 days
40 after certification pursuant to ~~this~~ subsection- 3-B; and

41 I. Provide any other information required to demonstrate to the satisfaction of the
42 commissioner that the visual media production company has met, or will meet, the
43 requirements of this subsection.

1 ~~To qualify for a visual media production certificate, a visual media production company~~
2 ~~must demonstrate to the satisfaction of the commissioner that the visual media production~~
3 ~~company has met, or will meet, the requirements of this subsection. If the department~~
4 ~~determines that the applicant does not qualify for a visual media production certificate, it~~
5 ~~must inform the applicant of that determination in writing within 4 weeks of receiving the~~
6 ~~application. As soon as practicable, the department shall issue a visual media production~~
7 ~~certificate for a visual media production that qualifies. The department shall include with~~
8 ~~the certificate information regarding the tax credit report under subsection 4 and~~
9 ~~procedures for claiming reimbursement under Title 36, chapter 919-A and the credit~~
10 ~~under Title 36, section 5219-Y.~~

11 **3-A. Requirements for major visual media production certificate.** Applications
12 for a major visual media production certificate must be made on a form prescribed and
13 furnished by the department. The applicant must:

14 A. Provide payment for an application fee equal to 0.2% of the tax credit for which
15 the major visual media production is requesting certification;

16 B. Provide the names of the principals involved in the major visual media production
17 and contact information for them;

18 C. Provide a certificate of insurance for the major visual media production;

19 D. Provide financial information that demonstrates that the major visual media
20 production is fully financed and has an overall budget of:

21 (1) Over \$1,000,000 but less than or equal to \$100,000,000, if applying for the
22 25% credit under Title 36, section 5219-II, subsection 1; and

23 (2) Over \$100,000,000, if applying for the 35% credit under Title 36, section
24 5219-II, subsection 1;

25 E. Provide projections of the number of positions required for the major visual media
26 production, the number of residents of the State employed and the economic impact
27 on the State;

28 F. Provide evidence that the major visual media production company is not owned
29 by, affiliated with or controlled by, in whole or in part, a person that is in default on a
30 loan made by the State or a loan guaranteed by the State;

31 G. Provide a projected schedule for preproduction, production and postproduction of
32 the major visual media production that shows that the production will begin within 60
33 days after certification pursuant to subsection 3-B;

34 H. Provide a statement that the major visual media production will employ residents
35 of the State in at least 50% of the positions that will receive major visual media
36 production wages with no fewer than 10 residents employed;

37 I. Demonstrate that the major visual media production would not occur within the
38 State absent the availability of the tax credit for which the major visual media
39 production is requesting certification;

40 J. Agree to include, in the certified major visual media production, an on-screen
41 credit for the State of Maine as described in subsection 3, paragraph E;

1 K. Agree to include a Maine tourism promotional trailer following the opening
2 previews of any theatrical screening of the major visual media production and on any
3 digital distribution that includes at least one opening preview;

4 L. Agree to include a 30-second Maine tourism commercial per hour during any
5 broadcast of the major visual media production with a minimum of one 30-second
6 commercial airing per broadcast regardless of the length of the broadcast; and

7 M. Provide any other information required to demonstrate to the satisfaction of the
8 commissioner that the major visual media production company has met, or will meet,
9 the requirements of this subsection.

10 The Maine State Film Office or the department may exempt major visual media
11 productions, under certain conditions specified in rules adopted by the department, from
12 any requirement in this section or may certify a major visual media production for a
13 reduced credit as specified in rules adopted by the department.

14 **3-B. Issuance of certificate.** The department shall issue a visual media production
15 certificate for a visual media production that qualifies under subsection 3 or a major
16 visual media production certificate for a major visual media production that qualifies
17 under subsection 3-A within 4 weeks of receipt of the application or deny the application
18 in writing. The department shall include with the certificate information regarding the tax
19 credit report under subsection 4 and procedures for claiming reimbursement under Title
20 36, chapter 919-A and the credits under Title 36, sections 5219-Y and 5219-II.

21 **4. Certified report.** No later than 4 weeks after completion of a certified visual
22 media production or major visual media production, the visual media production
23 company or major visual media production company shall report, in a format specified by
24 the Maine State Film Office or the department, its compliance with the requirements of
25 subsection 3 with respect to the certified visual media production or 3-A to the Maine
26 State Film Office.

27 **5. Department to provide information to State Tax Assessor.** The department
28 shall provide to the State Tax Assessor copies of the visual media production certificate
29 or major visual media production certificate issued pursuant to subsection 3 3-B, together
30 with any other information reasonably required by the State Tax Assessor for the
31 administration of visual media production reimbursement under Title 36, chapter 919-A
32 and the ~~credit~~ credits under Title 36, ~~section~~ sections 5219-Y and 5219-II.

33 **6. Rulemaking.** The department shall develop rules as necessary to administer this
34 section in cooperation with the State Tax Assessor. Rules adopted pursuant to this
35 section are routine technical rules as defined in chapter 375, subchapter 2-A.

36 **7. Report.** The Maine State Film Office shall submit a report by January 15th
37 annually to the joint standing committee of the Legislature having jurisdiction over
38 taxation matters regarding the certification and reporting process pursuant to this section
39 and. The report must include information on the visual media production tax credit and
40 reimbursement activities pursuant to under Title 36, section 5219-Y and Title 36, chapter
41 919-A and the major visual media production tax credit under Title 36, section 5219-II.
42 The report must include a description of any rule-making activity related to the

1 implementation of the ~~credit~~ credits and reimbursement activities, outreach efforts to
2 visual media production companies and major visual media production companies, the
3 number of applications for the visual media production credit and tax reimbursement, the
4 number of applications for the major visual media production credit, the number of
5 credits and reimbursements granted, the revenue loss associated with the ~~credit~~ credits
6 and reimbursement and the amount of visual media production expenses and major visual
7 media production expenses generated in the State as a result of the ~~credit~~ credits and
8 reimbursement.

9 **Sec. 2. 36 MRSA §5219-II** is enacted to read:

10 **§5219-II. Certified major visual media production credit**

11 **1. Credit allowed.** A major visual media production company, as defined in Title 5,
12 section 13090-L, subsection 2-A, paragraph B-2, is allowed a credit against the taxes
13 imposed by this Part in an amount equal to a percentage of major visual media production
14 expenses, as defined in Title 5, section 13090-L, subsection 2-A, paragraph B-3, of up to
15 25% if the overall budget is greater than \$1,000,000 but less than or equal to
16 \$100,000,000 and up to 35% if the overall budget is greater than \$100,000,000. The
17 major visual media production company may be certified to receive a reduced credit
18 pursuant to Title 5, section 13090-L, subsection 3-A.

19 **2. Limitation.** Taxpayers claiming a credit under section 5219-W are not eligible
20 for this credit.

21 **Emergency clause.** In view of the emergency cited in the preamble, this
22 legislation takes effect when approved.

23 **SUMMARY**

24 This bill provides a refundable income tax credit for a major visual media production
25 company equal to a percentage of expenses. The major visual media production company
26 is eligible in an amount up to 25% if the overall budget is greater than \$1,000,000 but less
27 than or equal to \$100,000,000 and up to 35% if the overall budget is greater than
28 \$100,000,000.