
SENATE BILL NO. 165—SENATORS FORD, SMITH, DENIS,
HUTCHISON, ROBERSON; ATKINSON, JONES, KIHUEN,
MANENDO, PARKS, SEGERBLOM, SPEARMAN AND
WOODHOUSE

FEBRUARY 18, 2013

JOINT SPONSORS: ASSEMBLYMEN AIZLEY, FRIERSON,
HORNE, FIORE; KIRKPATRICK AND SPIEGEL

Referred to Committee on Revenue and
Economic Development

SUMMARY—Provides for transferable tax credits to attract film
and other productions to Nevada. (BDR 32-781)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to taxation; authorizing the Office of Economic
Development to approve, and the Nevada Tax
Commission to issue, a transferable tax credit for a
producer that produces a qualified film or other
production in this State under certain circumstances;
providing for the calculation of the transferable tax credit;
requiring a producer that receives a transferable tax credit
to consent to an audit by the Department of Taxation and
to the disclosure of the audit report to the Office and to
the public with certain limited exceptions; requiring the
Office to provide notice of certain hearings; requiring a
producer to return any portion of a transferable tax credit
to which he or she is not entitled; requiring the Office to
establish the Advisory Committee on Film and Television
Industry Transferable Tax Credits; and providing other
matters properly relating thereto.



* S B 1 6 5 *

Legislative Counsel's Digest:

1 **Section 8** of this bill requires the Office of Economic Development to approve
2 a transferable tax credit for a producer that produces a film, television or other
3 media production in this State if, in addition to certain other requirements: (1) the
4 production is in the economic interest of this State; (2) at least 60 percent of the
5 production is filmed, shot, taped, recorded or otherwise produced in this State; and
6 (3) the production costs of the qualified production exceed \$100,000. Upon
7 approval of a transferable tax credit and a determination of the amount of the tax
8 credit by the Office, **section 8** requires the Nevada Tax Commission to issue to the
9 producer the transferable tax credit. **Section 9** of this bill sets forth the types of
10 qualified expenditures and production costs that may serve as a basis for the
11 transferable tax credit, and **sections 10-12** of this bill provide for the calculation of
12 the transferable tax credit. **Section 13** of this bill requires that, as a condition of
13 approval, a producer must consent to: (1) an audit by the Department of Taxation to
14 determine whether the producer is in compliance with the requirements to receive a
15 transferable tax credit; and (2) the disclosure of the audit report to the Office and to
16 the public with certain limited exceptions. **Section 14** of this bill requires the Office
17 to meet certain notice requirements before holding a hearing to approve or
18 disapprove a transferable tax credit. **Section 16** of this bill requires a producer to
19 repay any portion of a transferable tax credit to which the producer is not entitled if
20 the producer becomes ineligible for the tax credit after receiving the tax credit.

21 **Section 17** of this bill requires the Office to establish the Advisory Committee
22 on Film and Television Industry Transferable Tax Credits to advise the Office on
23 the implementation of the provisions of this bill and the adoption of any regulations
24 pursuant thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 360 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 17, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 17, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 3 to 7, inclusive, of this act have the meanings ascribed*
7 *to them in those sections.*

8 **Sec. 3.** *“Local government” means any county, city, district,*
9 *agency or other political subdivision of this State that receives any*
10 *portion of the proceeds of a tax.*

11 **Sec. 4.** *“Nevada business” means a proprietorship,*
12 *corporation, partnership, company, association, trust,*
13 *unincorporated organization or other enterprise that is licensed to*
14 *transact business in this State.*

15 **Sec. 5.** *“Nevada resident” means a bona fide resident as that*
16 *term is defined in NRS 361.015.*

17 **Sec. 6.** *“Producer” means a natural person or business that*
18 *finances, arranges to finance or supervises the production of a*
19 *qualified production.*

20 **Sec. 7. 1.** *“Qualified production” means:*



- 1 (a) *A theatrical, direct-to-video or other media motion picture.*
2 (b) *A made-for-television motion picture.*
3 (c) *Visual effects or digital animation sequences.*
4 (d) *A television pilot program.*
5 (e) *Interstitial television programming.*
6 (f) *A television, Internet or other media series, including,*
7 *without limitation, a comedy, drama, miniseries, soap opera, talk*
8 *show or telenovela.*
9 (g) *A national or regional commercial or series of*
10 *commercials.*
11 (h) *An infomercial.*
12 (i) *An interstitial advertisement.*
13 (j) *A music video.*
14 (k) *A documentary film or series.*
15 (l) *Other visual media productions, including, without*
16 *limitation, video games and mobile applications.*
17 2. *The term does not include:*
18 (a) *A news, weather or current events program.*
19 (b) *A production that is primarily produced for industrial,*
20 *corporate or institutional use.*
21 (c) *A telethon or any production that solicits money, other*
22 *than a production which is produced for national distribution.*
23 (d) *A political advertisement.*
24 (e) *A sporting event.*
25 (f) *A gala or awards show.*
26 (g) *Any other type of production that is excluded by*
27 *regulations adopted by the Office of Economic Development*
28 *pursuant to section 8 of this act.*
29 **Sec. 8. 1. A producer of a qualified production that is**
30 **produced in this State in whole or in part may apply to the Office**
31 **of Economic Development for a transferable tax credit for any**
32 **qualified expenditures or production costs identified in section 9**
33 **of this act.**
34 2. *The Office shall approve an application for a transferable*
35 *tax credit if the Office finds that the producer of the qualified*
36 *production qualifies for the transferable tax credit pursuant to*
37 *subsection 3 and shall calculate the amount of the transferable tax*
38 *credit pursuant to sections 10, 11 and 12 of this act.*
39 3. *To be eligible for a transferable tax credit pursuant to this*
40 *section, a producer must:*
41 (a) *Submit an application that meets the requirements of*
42 *subsection 4;*
43 (b) *Provide proof satisfactory to the Office that the qualified*
44 *production is in the economic interest of the State;*



1 (c) Meet the consent requirements of subsection 1 of section 13
2 of this act;

3 (d) Provide proof satisfactory to the Office that 50 percent or
4 more of the funding for the qualified production has been placed
5 in an escrow account or trust account for the benefit of the
6 qualified production;

7 (e) Film, shoot, tape record or otherwise produce at least 60
8 percent of the qualified production in this State;

9 (f) At the completion of the qualified production, provide the
10 Office with an itemized report of qualified expenditures and
11 production costs which:

12 (1) Shows that the qualified production incurred qualified
13 expenditures and production costs in this State of \$100,000 or
14 more; and

15 (2) Is certified by an independent certified public
16 accountant who is approved by the Office; and

17 (g) Meet any other requirements prescribed by regulation
18 pursuant to this section.

19 4. An application submitted pursuant to subsection 3 must
20 contain:

21 (a) A script, storyboard or synopsis of the qualified production;

22 (b) The names of the producer, director and proposed cast;

23 (c) An estimated timeline to complete the qualified production;

24 (d) A detailed budget for the entire production, including
25 projected expenses incurred outside of Nevada;

26 (e) Details regarding the financing of the project, including,
27 without limitation, any information relating to a binding financing
28 commitment, loan application, commitment letter or investment
29 letter;

30 (f) An insurance certificate, binder or quote for general
31 liability insurance of \$1,000,000 or more;

32 (g) The business address of the producer, which must be an
33 address in this State;

34 (h) Proof that production meets any applicable requirements
35 relating to workers' compensation insurance;

36 (i) Proof that the producer has secured all licenses required to
37 do business in each location in this State at which the qualified
38 production will be produced; and

39 (j) Any other information required by regulations adopted by
40 the Office pursuant to subsection 8.

41 5. If the Office approves an application for a transferable tax
42 credit pursuant to this section, the Office shall immediately
43 forward a certificate of eligibility which identifies the amount of
44 the tax credit available pursuant to section 10 of this act to:

45 (a) The applicant;



- 1 (b) *The Department;*
- 2 (c) *The Nevada Tax Commission; and*
- 3 (d) *If the credit is for a tax imposed by a local government, to*
- 4 *the appropriate governing body.*

5 6. *Upon receipt of a certificate of eligibility pursuant to*
6 *subsection 5, the Nevada Tax Commission shall issue to the*
7 *eligible producer a transferable tax credit in the amount approved*
8 *by the Office.*

9 7. *An applicant for a transferable tax credit pursuant to this*
10 *section shall, upon the request of the Executive Director of the*
11 *Office, furnish the Executive Director with copies of all records*
12 *necessary to verify that the applicant meets the requirements of*
13 *subsection 3.*

14 8. *The Office:*

15 (a) *Shall adopt regulations prescribing:*

16 (1) *Any additional requirements to receive a transferable*
17 *tax credit;*

18 (2) *Any additional qualified expenditures or production*
19 *costs that may serve as the basis for a transferable tax credit*
20 *pursuant to section 9 of this act;*

21 (3) *Any additional information that must be included with*
22 *an application pursuant to subsection 4;*

23 (4) *The application review process;*

24 (5) *Any type of qualified production which, due to obscene*
25 *or sexually explicit material, is not eligible for a transferable tax*
26 *credit; and*

27 (6) *The requirements for notice pursuant to section 14 of*
28 *this act; and*

29 (b) *May adopt any other regulations that are necessary to*
30 *carry out the provisions of sections 2 to 17, inclusive, of this act.*

31 9. *The Nevada Tax Commission:*

32 (a) *Shall adopt regulations prescribing the manner in which a*
33 *transferable tax credit:*

34 (1) *Is issued by the Commission;*

35 (2) *May be used, applied or transferred, in whole or in part,*
36 *by a producer or third party recipient; and*

37 (3) *Expires; and*

38 (b) *May adopt any other regulations that are necessary to*
39 *carry out the provisions of sections 2 to 17, inclusive, of this act.*

40 **Sec. 9. 1. Qualified expenditures and production costs that**
41 *may serve as a basis for a transferable tax credit issued pursuant*
42 *to section 8 of this act must be incurred in Nevada on or after the*
43 *date on which an applicant submits an application for the*
44 *transferable tax credit, must be customary and reasonable and*
45 *must relate to:*



- 1 (a) *Set construction and operation;*
- 2 (b) *Wardrobe and makeup;*
- 3 (c) *Photography, sound and lighting;*
- 4 (d) *Filming, film processing and film editing;*
- 5 (e) *The rental or leasing of facilities, equipment and vehicles;*
- 6 (f) *Food and lodging;*
- 7 (g) *Editing, sound mixing, special effects, visual effects and*
- 8 *other postproduction services;*
- 9 (h) *The payroll for Nevada residents or other personnel who*
- 10 *provided services in this State;*
- 11 (i) *Payment for goods or services provided by a Nevada*
- 12 *business;*
- 13 (j) *The design, construction, improvement or repair of*
- 14 *property, infrastructure, equipment or a production or*
- 15 *postproduction facility;*
- 16 (k) *State and local government taxes;*
- 17 (l) *Fees paid to a producer who is a Nevada resident; and*
- 18 (m) *Any other transaction, service or activity authorized in*
- 19 *regulations adopted by the Office of Economic Development*
- 20 *pursuant to section 8 of this act.*

21 2. *Expenditures and costs:*

- 22 (a) *Related to:*
- 23 (1) *The acquisition, transfer or use of a transferable tax*
- 24 *credit;*
- 25 (2) *Marketing and distribution;*
- 26 (3) *Financing, depreciation and amortization;*
- 27 (4) *The payment of any profits as a result of the qualified*
- 28 *production; and*
- 29 (5) *The payment for any goods or services that are not*
- 30 *directly attributable to the qualified production;*
- 31 (b) *For which reimbursement is received, or for which*
- 32 *reimbursement is reasonably expected to be received;*
- 33 (c) *Which provide a pass-through benefit to a person who is*
- 34 *not a Nevada resident; and*
- 35 (d) *Which have been previously claimed as a basis for a*
- 36 *transferable tax credit,*
- 37 *↪ are not eligible to serve as a basis for a transferable tax credit*
- 38 *issued pursuant to section 8 of this act.*

39 **Sec. 10. 1.** *Except as otherwise provided in subsection 3*

40 *and sections 11 and 12 of this act, the base amount of a*

41 *transferable tax credit issued to an eligible producer pursuant to*

42 *section 8 of this act must equal 23 percent of the cumulative*

43 *qualified expenditures and production costs.*

44 2. *Except as otherwise provided in subsection 3 and section*

45 *12 of this act, in addition to the base amount calculated pursuant*



1 *to subsection 1, a transferable tax credit issued to an eligible*
2 *producer pursuant to section 8 of this act must include a credit in*
3 *an amount equal to:*

4 *(a) An additional 2 percent of the cumulative qualified*
5 *expenditures and production costs if more than 50 percent of the*
6 *below-the-line crew members of the qualified production are*
7 *Nevada residents; and*

8 *(b) An additional 2 percent of the cumulative qualified*
9 *expenditures and production costs if more than 50 percent of the*
10 *filming days of the qualified production occurred in a county in*
11 *this State in which, in each of the 2 years immediately preceding*
12 *the date of application, qualified productions incurred less than*
13 *\$10,000,000 of direct expenditures.*

14 **3. The Office may:**

15 *(a) Reduce the cumulative amount of a transferable tax credit*
16 *that is calculated pursuant to this section by an amount equal to*
17 *any damages incurred by the State or any political subdivision of*
18 *the State as a result of a qualified production that is produced in*
19 *this State; or*

20 *(b) Withhold the transferable tax credit, in whole or in part,*
21 *until any pending legal action in this State against a producer or*
22 *involving a qualified production is resolved.*

23 **Sec. 11. In calculating the base amount of a transferable tax**
24 **credit pursuant to subsection 1 of section 10 of this act:**

25 **1. Qualified expenditures attributable to the payment of**
26 **persons who are not Nevada residents but are designated as above-**
27 **the-line personnel pursuant to the regulations adopted by the**
28 **Office of Economic Development pursuant to section 8 of this act**
29 **must be included in the calculation at a rate of 20 percent.**

30 **2. Qualified expenditures attributable to the payment of**
31 **persons who are not Nevada residents but are designated as below-**
32 **the-line personnel pursuant to the regulations adopted by the**
33 **Office of Economic Development pursuant to section 8 of this act:**

34 *(a) For the period beginning January 1, 2014, and ending*
35 *December 31, 2015, must be included in the calculation at a rate*
36 *of 20 percent.*

37 *(b) For the period beginning January 1, 2016, and ending*
38 *December 31, 2016, must be included in the calculation at a rate*
39 *of 15 percent.*

40 *(c) For the period beginning January 1, 2017, and ending*
41 *December 31, 2017, must be included in the calculation at a rate*
42 *of 10 percent.*

43 *(d) For the period beginning January 1, 2018, and ending*
44 *December 31, 2018, must be included in the calculation at a rate*
45 *of 5 percent.*



1 (e) On or after January 1, 2019, must not be included in the
2 calculation.

3 **Sec. 12.** 1. Except as otherwise provided in this subsection,
4 the Office of Economic Development shall not approve any
5 application for a transferable tax credit if approval of the
6 application would cause the total amount of transferable tax
7 credits approved pursuant to section 8 of this act for the current
8 fiscal year to exceed \$50,000,000. If the Office does not approve
9 \$50,000,000 of transferable tax credits during any fiscal year, the
10 remaining amount of transferable tax credits may be carried
11 forward for approval in future fiscal years.

12 2. The amount of a transferable tax credit issued to any
13 producer for any qualified production pursuant to section 8 of this
14 act must not exceed \$5,000,000.

15 3. For the purposes of calculating qualified expenditures and
16 production costs:

17 (a) The compensation payable to all producers who are
18 Nevada residents must not exceed 10 percent of the total budget of
19 the qualified production.

20 (b) The compensation payable to all producers who are not
21 Nevada residents must not exceed 5 percent of the total budget of
22 the qualified production.

23 (c) The compensation payable to any employee of the qualified
24 production must not exceed \$1,000,000.

25 **Sec. 13.** 1. As a condition of approval, a producer that
26 applies for a transferable tax credit pursuant to section 8 of this
27 act must consent to:

28 (a) An audit by the Department to determine whether the
29 producer is in compliance with the requirements for the
30 transferable tax credit; and

31 (b) The disclosure of the audit report in the manner set forth
32 in this section.

33 2. If the Department conducts an audit of a producer to
34 determine whether the producer is in compliance with the
35 requirements for a transferable tax credit, the Department shall,
36 upon request, provide the audit report to the Office of Economic
37 Development.

38 3. Until a producer has exhausted all appeals to the
39 Department and the Nevada Tax Commission relating to an audit,
40 the information contained in the audit report provided to the
41 Office:

42 (a) Is confidential and proprietary information of the
43 producer;

44 (b) Is not a public record; and



1 (c) *Must not be disclosed to any person who is not an employee*
2 *of the Office unless the producer consents to the disclosure.*

3 4. *After a producer has exhausted all appeals to the*
4 *Department and the Nevada Tax Commission relating to an audit:*

5 (a) *The audit report provided to the Office is a public record;*
6 *and*

7 (b) *Upon request by any person, the Executive Director of the*
8 *Office shall disclose the audit report to the person who made the*
9 *request, except for any information in the audit report that is not*
10 *disclosed pursuant to subsection 5.*

11 5. *Before the Executive Director discloses an audit report to*
12 *the public, a producer may submit a request to the Executive*
13 *Director to protect from disclosure any information in the audit*
14 *report which, under generally accepted business practices, would*
15 *be considered a trade secret or other confidential or proprietary*
16 *information of the producer. After consulting with the producer,*
17 *the Executive Director shall determine whether to disclose the*
18 *information. The decision of the Executive Director is final and is*
19 *not subject to judicial review.*

20 6. *If the Executive Director does not disclose information in*
21 *an audit report pursuant to subsection 5, the information:*

22 (a) *Must be redacted by the Executive Director before the audit*
23 *report is disclosed to the public; and*

24 (b) *Must not be disclosed to any person who is not an employee*
25 *of the Office unless the producer consents to the disclosure.*

26 **Sec. 14. 1.** *An application for a transferable tax credit*
27 *submitted pursuant to section 8 of this act must be submitted not*
28 *earlier than 90 days before the date of commencement of principal*
29 *photography of the qualified production.*

30 2. *If the Office of Economic Development receives an*
31 *application for a transferable tax credit pursuant to section 8 of*
32 *this act, the Office shall, not later than 30 days before a hearing*
33 *on the application, provide notice of the hearing to:*

34 (a) *The applicant;*

35 (b) *The Department; and*

36 (c) *The governing body of any local government that could be*
37 *affected by the decision of the Office.*

38 3. *The notice required by this section must set forth the date,*
39 *time and location of the hearing on the application. The date of*
40 *the hearing must be not later than 45 days after the Office receives*
41 *the completed application.*

42 4. *The Office shall issue a decision on the application not*
43 *later than 30 days after the conclusion of the hearing on the*
44 *application.*



1 5. *The producer of a qualified production shall submit all*
2 *accountings and other required information to the Office and the*
3 *Department not later than 30 days after completion of the*
4 *qualified production. Production of the qualified production must*
5 *be completed within 1 year after the date of commencement of*
6 *principal photography. If the Office or the Department determines*
7 *that information submitted pursuant to this subsection is*
8 *incomplete, the producer shall, not later than 30 days after*
9 *receiving notice that the information is incomplete, provide to the*
10 *Office or the Department, as applicable, all additional information*
11 *required by the Office or the Department.*

12 6. *The Office shall give priority to the approval and*
13 *processing of an application submitted by the producer of a*
14 *qualified production that promotes tourism in the State of Nevada.*

15 **Sec. 15.** *An application for a transferable tax credit approved*
16 *pursuant to section 8 of this act may be amended for a period of 1*
17 *year after the date of issuance of the transferable tax credit.*

18 **Sec. 16.** *A producer that becomes ineligible for a*
19 *transferable tax credit after receiving the transferable tax credit*
20 *pursuant to section 8 of this act shall repay to the Department or*
21 *the appropriate local government any portion of the tax credit to*
22 *which the producer is not entitled.*

23 **Sec. 17. 1.** *The Office of Economic Development shall*
24 *establish the Advisory Committee on Film and Television Industry*
25 *Transferable Tax Credits, consisting of the following nine*
26 *members appointed by the Office:*

27 (a) *Three members who are representatives of local*
28 *governments;*

29 (b) *Three members who represent Nevada businesses involved*
30 *in the film and television industry; and*

31 (c) *Three members who are representatives of labor unions*
32 *whose members perform work related to the film and television*
33 *industry.*

34 2. *Each member of the Advisory Committee serves a term of 2*
35 *years and may be reappointed. A vacancy in the membership of*
36 *any member must be filled in the same manner as the original*
37 *appointment.*

38 3. *The Chair of the Advisory Committee must be selected*
39 *annually by the members from among the members appointed to*
40 *the Advisory Committee pursuant to paragraph (a) of subsection 1.*

41 4. *The Advisory Committee shall meet at least once annually*
42 *and at the call of the Chair.*

43 5. *The Advisory Committee shall advise the Office in carrying*
44 *out the provisions of sections 2 to 17, inclusive, of this act and the*
45 *adoption and carrying out of any regulations pursuant thereto.*



1 **6. The members of the Advisory Committee serve without**
2 **compensation.**

3 **7. The Office shall provide administrative support to the**
4 **Advisory Committee.**

5 **Sec. 18.** The Office of Economic Development and the
6 Nevada Tax Commission shall each, in consultation with the other,
7 adopt such regulations as are necessary to implement the provisions
8 of sections 2 to 17, inclusive, of this act on or before December 31,
9 2013.

10 **Sec. 19.** This act becomes effective upon passage and approval
11 for the purposes of adopting regulations and making initial
12 appointments to the Advisory Committee on Film and Television
13 Industry Transferable Tax Credits established pursuant to section 17
14 of this act, and on January 1, 2014, for all other purposes.



