**South Carolina General Assembly**

119th Session, 2011-2012

**H. 5079**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Merrill and Agnew

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Introduced in the House on March 27, 2012

Currently residing in the House Committee on **Ways and Means**

Summary: Motion Picture Incentive Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/27/2012 House Introduced and read first time ([House Journal‑page 10](file:///h:\hj%20archive\2012\03-27-12.docx))

3/27/2012 House Referred to Committee on **Ways and Means** ([House Journal‑page 10](file:///h:\hj%20archive\2012\03-27-12.docx))

3/28/2012 House Member(s) request name added as sponsor: Agnew

**VERSIONS OF THIS BILL**

[3/27/2012](file:///p:\pprever\2011-12\5079_20120327.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTIONS 12‑62‑25 AND 12‑62‑95 SO AS TO PROVIDE ELIGIBILITY CRITERIA FOR DETERMINING ELIGIBILITY FOR THE INCENTIVES PROVIDED PURSUANT TO THE SOUTH CAROLINA MOTION PICTURE INCENTIVE ACT (ACT) AND TO PROVIDE FOR STATE INCOME TAX WITHHOLDING FOR PAYMENTS TO A “LOAN OUT COMPANY” WITH RESPECT TO THE INDIVIDUAL PAID THROUGH SUCH A COMPANY; TO AMEND SECTION 12‑62‑20, AS AMENDED, RELATING TO DEFINITIONS FOR PURPOSES OF THE ACT, SO AS TO REVISE EXISTING DEFINITIONS AND ADD A NEW DEFINITION; TO AMEND SECTION 12‑62‑50, AS AMENDED, RELATING TO THE PAYROLL REBATE ALLOWED BY THE ACT, SO AS TO INCREASE THE MAXIMUM REBATE ALLOWED FROM FIFTEEN PERCENT TO TWENTY PERCENT OF PAYROLL WITH AN ADDITIONAL REBATE OF UP TO FIVE PERCENT FOR THE PORTION OF PAYROLL PAID TO SOUTH CAROLINA RESIDENTS AND REVISE THE REQUIREMENTS FOR APPLYING FOR AND RECEIVING THIS REBATE; TO AMEND SECTION 12‑62‑60, AS AMENDED, RELATING TO THE SOURCE OF FUNDING FOR THE INCENTIVES AND THE VENDOR REBATE ALLOWED BY THE ACT, SO AS TO INCREASE THE MAXIMUM VENDOR REBATE FROM FIFTEEN PERCENT TO THIRTY PERCENT OF EXPENDITURES, CLARIFY THE APPLICATION OF THE VENDOR REBATE, AND PROVIDE SPECIFIC USES TO WHICH A PORTION OF THE FUNDING SOURCE OF THE ACT MAY BE USED; TO AMEND SECTION 12‑62‑70, AS AMENDED, RELATING TO THE LIMITED USE OF GOVERNMENTAL PROPERTY FOR LOCATIONS WITHOUT CHARGE, SO AS TO PROVIDE THAT THIS FREE USE APPLIES ONLY FOR A MOTION PICTURE APPROVED PURSUANT TO THE ACT; TO AMEND SECTION 12‑62‑90, AS AMENDED, RELATING TO THE REQUIRED CREDIT ROLL FOR MOTION PICTURES RECEIVING INCENTIVES PURSUANT TO THE ACT, SO AS TO REVISE THE CREDIT ROLL; AND TO REPEAL SECTION 12‑62‑55 RELATING TO THE ASSIGNMENT OF REBATE PAYMENTS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 62, Title 12 of the 1976 Code is amended by adding:

“Section 12‑62‑25. The department shall take into consideration the following criteria for minimum eligibility for motion picture incentives found in this chapter:

(1) the amount of obscene or inappropriate content or content that could portray South Carolina or residents of South Carolina in a negative way;

(2) the percentage of the motion picture to be produced in South Carolina;

(3) widespread public appeal that would encourage the public to visit the State of South Carolina;

(4) necessary production company financing to begin production on schedule;

(5) the amount and percentage of the budget that will be spent in South Carolina;

(6) the production company’s wage scales, reflecting industry standards;

(7) the number of South Carolina hires anticipated;

(8) producer or writer connections to South Carolina;

(9) the date the master is to be released for distribution;

(10) the distributor attached to the production;

(11) existence of a completion bond and insurance policy in place with industry‑recognized providers;

(12) appropriate production company and principal industry reference or references;

(13) the submitting of a reasonable production schedule;

(14) availability of the filming location;

(15) the likelihood that the production will stimulate economic activity through marketing and special events surrounding the production;

(16) the likelihood that the production will encourage trade, commerce, and markets for South Carolina goods; and

(17) the likelihood that the production will enhance the general welfare of the people of South Carolina.

Only projects approved by the department are eligible for incentives. Projects must be evaluated by the department to determine the appropriate level of film incentives applicable.

Section 12‑62‑95. (A) For purposes of this section:

(1) ‘Individual’ has the meaning provided pursuant to Section 12‑2‑20(2).

(2) ‘Loan out company’ means a personal service corporation or other entity contracted and retained by a motion picture production company or another entity to provide individual personnel including, but not limited to, artists, crew, actors, directors, and producers for the performance of services used directly in production or post‑production of a motion picture filmed in this State, but does not include entities retained by a motion picture production company to provide tangible property or outsider contractor services, such as catering, construction, trailers, equipment, and transportation.

(3) A claim for refund based on withholding made pursuant to this section must be claimed on the individual’s South Carolina income tax return.

(4) Any withholding made pursuant to this section is not subject to Section 12‑8‑550.

(B) A person who pays a loan out company for personal services provided by an individual in connection with the filming or production of a qualified motion picture in South Carolina shall withhold South Carolina individual income tax at the rate of seven percent from the gross amounts paid to the loan out company.

(C) The amount must be withheld before a motion picture production company receives a full rebate pursuant to Section 12‑62‑50.”

SECTION 2. Section 12‑62‑20 of the 1976 Code, as last amended by Act 359 of 2008, is further amended to read:

“Section 12‑62‑20. For purposes of this chapter:

(1) ‘Company’ means a corporation, partnership, limited liability company, or other business entity.

(2) ‘Department’ means the South Carolina Department of Parks, Recreation and Tourism.

(3) ‘Motion picture’ means a feature‑length film, video, episodic television series, or commercial made in whole or in part in South Carolina, and intended for national theatrical or television viewing or as a television pilot produced by a motion picture production company. The term ‘motion picture’ does not include the production of television coverage of news and athletic events or a production produced by a motion picture production company if records, as required by 18 U.S.C. 2257, are to be maintained by that motion picture production company with respect to any performer portrayed in that single media or multimedia program.

In the case of an episodic television series, an entire season of episodes is considered one production. The rebate is computed based on all of the motion picture production company’s production expenditures incurred with respect to the production of the entire season’s episodes.

(4) ‘Motion picture production company’ means a company engaged in the business of producing motion pictures intended for a national theatrical release or for television viewing. ‘Motion picture production company’ does not mean or include a company owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a loan made by the State or a loan guaranteed by the State.

(5) ‘Payroll’ means ~~salary, wages, or other compensation subject to South Carolina income tax withholdings~~ payment for services to individuals, or a loan out company, or personal service company for the services of individuals, who are directly involved in a motion picture filmed in South Carolina if the payments are subject to South Carolina income tax withholding. If an individual directly involved in the filming of a motion picture in South Carolina is represented by a personal service company, loan out company, or payroll services company, only the motion picture production company may qualify for the rebate pursuant to Section 12‑62‑50 for payments to the personal service company, loan out company, or payroll services company. For purposes of this chapter, personal service companies, loan out companies, and payroll services companies referenced in this chapter are not subject to the requirements of Chapter 68, Title 40.

‘Payroll’ does not include that portion of the payments to an individual or payments to personal service company or loan out company associated with an individual that result in the individual or company receiving more than one million dollars for a single motion picture.

(6) ‘Director’ means the director of the department ~~of Parks, Recreation and Tourism,~~ or ~~his~~ the director’s designee.

(7) ‘Rebate’ means money that is transferred from the department to a motion picture production company that is associated with either payroll of individuals subject to South Carolina income tax withholding or South Carolina supplier expenditures for a motion picture.”

SECTION 3. Section 12‑62‑50 of the 1976 Code, as last amended by act 359 of 2008, is further amended to read:

“Section 12‑62‑50. ~~(A)(1)~~ ~~The South Carolina Film Commission may rebate to a motion picture production company a portion of the South Carolina payroll of the employment of persons subject to South Carolina income tax withholdings in connection with production of a motion picture. The rebate may not exceed fifteen percent of the total aggregate South Carolina payroll for persons subject to South Carolina income tax withholdings employed in connection with the production when total production costs in South Carolina equal or exceed one million dollars during the taxable year. The rebates in total may not annually exceed ten million dollars and shall come from the state’s general fund. For purposes of this section, ‘total aggregate payroll’ does not include the salary of an employee whose salary is equal to or greater than one million dollars for each motion picture.~~

~~(2)(a)~~ ~~For purposes of this section, an employee is an individual directly involved in the filming or post‑production of a motion picture in South Carolina and who is an employee of a:~~

~~(i)~~ ~~motion picture production company that is directly involved in the filming or post‑production of a motion picture in South Carolina; or~~

~~(ii)~~ ~~personal service corporation retained by a motion picture production company to provide persons used directly in the filming or post‑production of a motion picture in South Carolina; or~~

~~(iii)~~ ~~payroll services or loan out company that is retained by a motion picture production company to provide employees who work directly in the filming or post‑production of a motion picture in South Carolina.~~

~~(b)~~ ~~For his wages to qualify for the rebate, the employee must be certified by the department as a qualifying employee and the employee must have had South Carolina income tax withholding withheld and remitted to the Department of Revenue by a company described in item (2)(a).~~

~~(3)~~ ~~The rebate applies with respect to an employee described in subitem (a)(ii) or (iii) only if, before commencement of filming in South Carolina, the personal services corporation, payroll services company, or loan out company is approved and certified by the department, and makes an irrevocable assignment of its rebate to the motion picture production company that produced the motion picture. The assignment must be made on a form provided by the Department of Revenue, which must include a waiver of confidentiality pursuant to Section 12‑54‑240. Upon assignment, the rebate may be paid only to the motion picture production company.~~

~~(B)(1)~~ ~~The rebate provided in subsection (A) is available to the motion picture production company at the end of all filming in South Carolina in connection with the motion picture. The motion picture production company producing the motion picture must apply to the department for a certificate of completion once filming in South Carolina is complete. The motion picture production company must provide the information the department considers necessary to determine if the one million dollar expenditure requirement has been met.~~

~~(2)~~ ~~A motion picture production company may claim the rebate by filing a request for rebate with the department once the certificate of completion is obtained. The request for rebate must be filed by the last day of February of the year following the year in which the certificate of completion is obtained. To claim the rebate, the motion picture production company and all companies described in subsection (A)(2)(a)(ii) or (iii) must be current with respect to all taxes due and owing the State at the time of filing the request for rebate. If the motion picture production company or a company described in subsection (A)(2)(a)(ii) or (iii) is not current with respect to all taxes due and owing the State, the motion picture production company is permanently barred from claiming the rebate.~~

~~(3)~~ ~~The motion picture production company must attach to its request for rebate a copy of the certificate of completion and a copy of all assignments of the rebate, if applicable.~~

~~(C)~~ ~~A motion picture production company claiming a rebate pursuant to this section, and all companies described in subsection (A)(2)(a)(ii) or (iii), must make payroll books and records available for inspection to the commission and the department at the times requested by the commission or the department. Each motion picture production company claiming the rebate, at the time of filing, must provide a report to both the commission and the department that includes the project’s name, the name of each employee that worked on the motion picture, the social security number for each employee, the dates employed, the dates the employee worked on the motion picture, a job description for each employee, the total gross wages for each employee, the South Carolina taxable wages subject to withholding for each employee, the amount of rebate attributable to that employee, and other information considered necessary by the commission or the department. The report also must contain the total amount of withholding attributable to all employees that worked on the motion picture in South Carolina.~~

~~(D)~~ ~~For purposes of this section, and as an exception to Section 12‑54‑240, a motion picture production company and a company described in subsection (A)(2)(a)(ii) or (iii) agree that the commission and the department may share or provide information concerning the request for rebate and the certificate of completion among the respective taxpayers and the respective agencies.~~ (A) The department may rebate to a motion picture production company a portion of the South Carolina payroll incurred in connection with production of a motion picture in South Carolina. To be eligible for the rebate, the motion picture production company shall submit an incentives application to the department before filming in South Carolina, and the department must have approved the application. The rebate may not exceed twenty percent of the total aggregate South Carolina payroll in connection with the motion picture and is not available unless total production costs of the motion picture in South Carolina equal or exceed one million dollars within twelve months from the date the incentive application is approved by the department. An additional rebate not to exceed five percent is allowed for that portion of the payroll paid to South Carolina residents. Rebate funding pursuant to this section may not exceed ten million dollars annually for all motion pictures and must come from the State’s general fund. For purposes of this section, ‘total aggregate payroll’ does not include the salary of an employee whose salary is equal to or greater than one million dollars for each motion picture. The distribution of rebates associated with payroll may not exceed the amount available to the department. Funds that have been committed from this source may be carried over to the next and all succeeding fiscal years.

(B) For purposes of this section, only the motion picture production company may qualify for the rebate for individuals whose services are provided through any of the following entities:

(1) a motion picture production company that is directly involved in the filming or post‑production of a motion picture in South Carolina;

(2) a payroll services company retained by a motion picture production company to provide individuals who work directly in the filming or post‑production of a motion picture in South Carolina; or

(3) a personal service company or loan out company retained by a motion picture production company to provide individuals used directly in the filming or post‑production of a motion picture in South Carolina.

(C)(1) the rebate provided pursuant to subsection (A) is available to the motion picture production company at the end of all filming in South Carolina in connection with the motion picture. The motion picture production company producing the motion picture shall apply to the department for a certificate of completion once filming in South Carolina is complete. The motion picture production company shall provide the information the department considers necessary to determine if the one million dollar expenditure requirement has been met.

(2) A motion picture production company may receive the rebate by filing a request with the department within ninety days of obtaining the certificate of completion or earlier if the motion picture company requests in writing to the department for an earlier payment. To receive the rebate, the motion picture production company must be current with respect to all taxes due and owing the State at the time of filing the request for rebate. If the motion picture production company is not current with respect to taxes due and owing to the State, the motion picture production company may be permanently barred from claiming the rebate.

(3) The motion picture production company shall attach to its request for rebate a copy of the certificate of completion.

(4) A motion picture production company claiming a rebate shall make payroll books and records available for inspection to the department at the times requested by the department. Each motion picture production company claiming the rebate, at the time of filing, shall provide a report to the department that includes the project’s name, the name of each individual that worked on the motion picture, the social security number for each individual, and if applicable, the EIN of any loan out company or personal service company of such an individual, the date range and the number of hours the individual worked on the motion picture, a job description for each individual, the amount paid to the loan out company or personal service company representing the individual or company, the amount of rebate attributed to all individuals or companies to whom payroll is attributed, and other information considered necessary by the department.

(D) For purposes of this section, and as an exception to Section 12‑54‑240, a motion picture production company and a company described in subsection (B)(1), (2), or (3) of this section agree that the department may share or provide information concerning the request for rebate and the certificate of completion among the respective companies, the department, and the Department of Revenue.”

SECTION 4. Section 12‑62‑60 of the 1976 Code, as last amended by Act 359 of 2008, is further amended to read:

“Section 12‑62‑60. (A)(1) An amount equal to twenty‑six percent of the general fund portion of admissions tax collected by the State of South Carolina for the previous fiscal year must be funded annually by September first to the department for the exclusive use of the ~~South Carolina Film Commission~~ department for the purposes set forth in this section. The department may rebate to a motion picture production company up to ~~fifteen~~ thirty percent of the expenditures made by the motion picture production company in the State if the motion picture production company has a minimum in‑state expenditure of one million dollars. The distribution of rebates may not exceed the amount annually funded to the department ~~for the South Carolina Film Commission~~ from the admissions tax collected by the State.

(2) This subsection does not apply to payroll paid ~~for motion picture production employees~~ to individuals subject to Section 12‑62‑50 or money paid to the companies described in ~~Section 12‑62‑50(A)(2)(a)(ii) or (iii)~~ Section 12‑62‑50(B)(1), (2), or (3). Unexpended funds from this source may be carried over to the next and succeeding fiscal years.

(B) Up to seven percent of the amount provided to the department in subsection (A) may be used exclusively for ~~marketing and special events~~ the following purposes:

(1) to allow for assistance with recruitment and infrastructure development of the film industry;

(2) to develop a film crew base;

(3) to develop ally support in the film industry;

(4) marketing and special events; and

(5) to allow for assistance with the auditing and legal service expenses associated with this chapter.

(C) The allocations to motion picture production companies contemplated by this chapter must be made by the department. The department may adopt rules and promulgate regulations for the application for and award of the rebate.

(D) One percent of the general fund portion of admissions tax collected by the State of South Carolina must be funded to the department for the exclusive use of the ~~South Carolina Film Commission~~ department for the promotion of collaborative production and educational efforts between institutions of higher learning in South Carolina and motion picture related entities. The department~~, in conjunction with the South Carolina Film Commission,~~ shall adopt rules and promulgate regulations necessary to administer this section. Unexpended funds from this source may be carried over to the next and succeeding fiscal years.

(E) The department shall report annually to the chairman of the Senate Finance Committee and the chairman of the House Ways and Means Committee on the use of all funds pursuant to this section. The report is a public record pursuant to the Freedom of Information Act, Chapter 4, ~~of~~ Title 30, and must be posted annually on the ~~commission’s web site~~ department’s website by January first.”

SECTION 5. Section 12‑62‑70(B) of the 1976 Code, as last amended by Act 359 of 2008, is further amended to read:

“(B) The State or its political subdivisions may not charge a location or facility fee for properties they own if the properties are used for seven or fewer days as a location or facility in the production of a motion picture that is approved by the department pursuant to this chapter. A property may be used for a total of only twenty‑one days without location or facility fees in a calendar year. The motion picture production company may be on site no longer than seven days within a thirty‑day period without a location or facility fee charge. State‑owned or political subdivision‑owned properties may recoup all costs they expend on behalf and at the direction of the motion picture production company. State‑owned or political subdivision‑owned properties also may recoup a location or facility fee, after the first seven days, not to exceed two thousand five hundred dollars a day. State‑owned or political subdivision‑owned properties also may recoup costs required to repair damage caused by the motion picture production company to real or personal property of the state agency or political subdivision. The motion picture production company shall reimburse all costs, at the property’s normal and customary rates, to the state agency or political subdivisions incurring the costs within twenty‑one calendar days of completion of production activities on site. The motion picture production company may use the publicly owned property only on the days agreed to and approved by the state agency or political subdivision.”

SECTION 6. Section 12‑62‑90 of the 1976 Code, as last amended by Act 359 of 2008 is further amended to read:

“Section 12‑62‑90. The end credit roll of a motion picture that utilizes a South Carolina tax credit or rebate must recognize the State of South Carolina with the following statement: ‘Filmed in South Carolina ~~pursuant to the South Carolina Motion Picture Incentive Act~~ www.FilmSC.com’, except that the State of South Carolina reserves the right to refuse the use of South Carolina’s name in the credits of a motion picture filmed or produced in the State.”

SECTION 7. Section 12‑62‑55 of the 1976 Code is repealed.

SECTION 8. This act takes effect July 1, 2012.

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