

Good morning. My name is Roger Huffman, I'm a Montana resident from Lolo, Montana and a member of Local #399 in Hollywood. I have lived in Montana for over fifty years, but leave my Montana home each year to work in other states because only four of the features, television shows and pilots that I have worked on have been filmed in Montana.

Montana and the film industry has the potential of a marriage made in heaven. We have majestic mountains, pristine rivers and lakes, gorgeous views and some of the nicest people you could ever meet. The film industry, if given the right incentives can do wonders to strengthen Montana's economy. If we stay competitive with other states in the way of some tax incentives I think we'll see a relationship that will really flourish.

The following proposed amendments will ensure that Montana's tax incentives are consistent with those already being offered by Canada and such states as New Mexico, Idaho, Washington, Nevada, Texas, Arizona, Utah, New York, North and South Carolina and Oregon. They will keep Montana on the competitive edge of the film industry, promote a stronger state economy and enable film workers to exercise their livelihood without leaving their home state.

Proposed amendments are underlined, recommended omissions are in brackets and a rationale follows each proposal in italics. (Go to Section 4)

**Proposed Amendments to
2005 Montana Legislature**

HOUSE BILL NO. 584

INTRODUCED BY C. HARRIS

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE BIG SKY ON THE BIG SCREEN ACT; PROMOTING THE MOTION PICTURE AND TELEVISION INDUSTRIES AND RELATED MEDIA IN MONTANA BY PROVIDING TAX INCENTIVES FOR FILMING AND FOR DEVELOPING PRINT ADVERTISING IN MONTANA; PROVIDING DEFINITIONS; ALLOWING A PRODUCTION COMPANY A TAX CREDIT FOR EMPLOYING MONTANA RESIDENTS; ALLOWING A PRODUCTION COMPANY A TAX CREDIT FOR QUALIFYING EXPENDITURES MADE IN MONTANA; REQUIRING A PRODUCTION COMPANY TO APPLY TO THE

DEPARTMENT OF COMMERCE FOR STATE CERTIFICATION OF A PRODUCTION IN ORDER TO QUALIFY FOR THE TAX CREDITS; REQUIRING AN APPLICATION AND AN APPLICATION FEE FOR A PRODUCTION COMPANY TO CLAIM TAX CREDITS FOR A STATE-CERTIFIED PRODUCTION; REQUIRING THAT THE APPLICATION FEE BE USED FOR ADMINISTERING THE TAX CREDITS; LIMITING THE TAX CREDITS THAT MAY BE CLAIMED FOR A STATE CERTIFIED PRODUCTION; PROVIDING FOR THE ADMINISTRATION OF THE TAX CREDITS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, APPLICABILITY DATES, AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 11] may be cited as the "Big Sky on the Big Screen Act".

NEW SECTION. Section 2. Purpose. (1) The purposes of [sections 1 through 11] are to enhance Montana's economy by revitalizing and expanding the motion picture and television industries and related media in Montana and to promote the growth of small businesses. The objectives of [sections 1 through 11] are to:

(a) renew interest in Montana as a premier location for the production of motion pictures, documentaries, television programs and commercials, and print advertising;

(b) encourage the creation of jobs that pay well for Montana workers and university graduates;

(c) enhance the growth of Montana businesses that provide goods and services for these types of productions; and

(d) help promote the tourism industry in Montana.

(2) The objectives in subsection (1) will best be achieved by offering tax incentives to production companies for hiring Montana residents and for purchasing Montana goods and services.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 11], unless the context requires otherwise, the following definitions apply:

(1) "Compensation" means salary, wages, or other compensation, including related benefits paid to a Montana resident.

(2) (a) "Production" means a nationally or regionally distributed feature-length film, short film, documentary, television series or segment, television pilot, print advertising, or commercial made in Montana, in whole or in part, for theatrical, television, video, internet, or other viewing.

(b) The term does not include the production of television coverage of news and athletic events or a film, video, internet production, television series, print advertising, or commercial that contains any obscene material or performance as described in 45-8-201(2).

(3) (a) "Production company" means a company engaged in the business of producing nationally or regionally distributed productions.

(b) The term does not include a company owned, affiliated, or controlled by, in whole or in part, a company or person that is in default on a loan made by this state or a loan guaranteed by this state or a company or person that has filed for bankruptcy.

(4) (a) "Qualified expenditures" means expenditures in Montana made by a production company that are directly related to a state-certified production. The term includes expenditures for lodging expenses, restaurant and food expenses, location fees, lumber and construction materials, rental of production equipment and vehicles, and supplies and materials that will be used in the production.

(b) The term does not include expenditures made for goods and services obtained out of state.

(5) "Resident" or "Montana resident", for the purpose of determining eligibility for the tax credit provided under [section 7], has the meaning provided in 15-30-101.

(6) "State-certified production" means a production certified by the department of commerce as provided in [section 4] and produced by a production company that has a national or regional distribution plan, including but not limited to a major theatrical exhibition, film festival, television network, cable television programming, print advertising, or video or internet distribution.

**** NEW SECTION. Section 4. Application for state certification – approval – revocation – eligibility for tax credits – rules.** (1) A production company may not receive the tax credits allowed under [sections 7 and 8] unless the production has been certified by the department of commerce, as provided in this section, and has applied to the department of revenue for the tax credits as provided in [section 6]. The certification by the department of commerce must occur

within 30 days after submission of the application under this section. Long form features must include an on-screen credit for the State of Montana. *Rationale: Advertising such as this promotes tourism as well as increased film production in our great state.*

(2) An application, on a form provided by the department of commerce, must be submitted by the production company to the department of commerce before the [completion] **start** of principal photography. *Rationale: This will allow Montana better business practices of tracking Production Companies' expenditures, payments and hiring practices while in the state. It will also give Montana's experienced film crew members an increased opportunity to contact and gain employment by the visiting production company.*

The application must include:

- (a) the production company's name, primary business address, Montana, business address, telephone and fax numbers, incorporation information, federal tax identification number. *Rationale: For efficient documentation consistent with other state practices.*
- (b) the address and telephone and fax numbers of the production company's Montana office;
- (c) the name of the line producer, unit production manager, or production accountant or the names of all three;
- (d) a statement that the applicant meets the definition of a production company under [section 3];
- (e) the title of the production;
- (f) the type of production;
- (g) the dates of production from pre-production and the start and completion of principle photography. *Rationale: To keep Montana state and local film workers apprised of project progress.*
- (h) a copy or synopsis of the production script;
- (i) a list of the production locations; and
- (j) a statement that the proposed production does not contain any material or performance that would be considered obscene under 45-8-201(2).

(3) The application must be signed by the manager, agent, president, vice president, or other person authorized to represent the production company.

(4) (a) The department of commerce shall notify the applicant within 30 days of receipt as to whether the production qualifies as a state-certified production.

(b) If the department of commerce approves the application, it shall provide a certification number to the applicant and notify the department of revenue of the approval and certification number.

(c) If the department of commerce denies the application, the production company has the right to a hearing under Title 2, chapter 4, part 6.

(5) If the department of commerce determines that the production company has violated the provisions of subsection (2)(d) or (2)(j), the department of commerce may revoke the state certification of the production. If the department of commerce revokes the state certification, the department of commerce shall notify the department of revenue. The production company has the right to a hearing under Title 2, chapter 4, part 6.

(6) The department of commerce shall prescribe rules, including a procedure for review of that department's denial or revocation of state certification, necessary to carry out the provisions of this section.

NEW SECTION. Section 5. Submission of costs. Within 60 days of completion of principal photography, the production company shall submit a statement of all expenditures and compensation paid to Montana residents to the department of commerce.

NEW SECTION. Section 6. Application for tax credit – fee. (1) To receive the tax credits under [sections 7 and 8] for a state-certified production, a production company shall apply to the department on a form prescribed by the department. The form must be accompanied by an application fee. The application must be made and the fee paid at the time the production company files its tax return.

(2) The application fee is determined as follows:

(a) if the total compensation paid to Montana residents for the production is less than or equal to [\$30,000] **\$100,000**, the application fee is \$500; *Rationale: The film industry is a large industry involving large salaries. This figure is consistent*

with tax incentives of other states and promotes hiring Montana residents for the duration of a film, rather than just using them for a short time to earn a lower application fee and laying them off.

(b) if the total compensation paid to Montana residents for the production is more than ~~[\$30,000]~~ \$100,000, **RATIONALE: STANDARD AMOUNT FOR OTHER STATE FILM OFFICES** the application fee is \$75 for each resident employed by the production company; or

(c) if the production company is applying only for the qualified expenditure tax credit, the application fee is \$500.

(d) **MONTANA PROVIDES ALL QUALIFYING STATE CERTIFIED PRODUCTIONS WITH FEE-FREE OR LOW-FEE STATE LOCATIONS OF STATE-OWNED BUILDINGS AND LANDS.**

HOW THE PROCESS WORKS:

1. **ONCE A STATE SITE HAS BEEN LOCATED FOR SCOUTING, CALL THE FILM OFFICE FOR CONTACT INFORMATION AND AVAILABILITY.**
2. **THE MONTANA STATE FILM OFFICE WILL ACT AS A LIASON WITH OTHER STATE AGENCIES. PLEASE NOTE THAT THE OCCUPIED BUILDINGS AND LANDS REQUIRE SUFFICIENT NOTICE AND USE IS SUBJECT TO THEIR DISCRETION.**
3. **ALL COSTS INCURRED BY THE STATE OF MONTANA RELATED TO FILM USE WILL BECOME THE RESPONSIBILITY OF THE PRODUCTION COMPANY.**

RATIONALE: THIS IS A STANDARD INCENTIVE IN OTHER STATES AND RECOMMENDED BY PROFESSIONAL FILM CREW MEMBERS.

(3) The fee must be deposited in the state special revenue account. The fee is statutorily appropriated, as provided in 17-7-502, to the department of revenue to administer the provisions of [sections 6 through 11].

NEW SECTION. **Section 7. Employment production tax credit -- severability.** (1) Subject to [section 9], a production company that has submitted an application for a tax credit and paid the fee as required under [section 6] is allowed a tax credit against the taxes imposed by chapter 30 or 31 for the employment of residents of this state in connection with a state-certified production in the state. Except as provided in subsection (4)(b), the credit is equal to credit carryovers and the credit for the tax year.

(2) The aggregate of the credit allowed under this section for a production occurring in the tax year is equal to the sum of 15% of the first [\$50,000] \$100,000 or less of actual compensation paid to each Montana resident employed in connection with the state-certified production during the tax year. Rationale: See Section 6-(2)-(a)

(3) The taxpayer is required to provide to the department **a final cast and crew list**, and on a form prescribed by the department the amount of compensation paid to each Montana resident. The form returned by the taxpayer must include the certification number provided for in [section 4]. *Rationale: A finalized cast and crew list holds production companies accountable.*

(4) If the credit exceeds the taxpayer's tax liability, the taxpayer shall make a one-time election to claim the credit for each state-certified production allowed under this section as follows:

(a) the credit may be refunded; or

(b) the credit may be carried forward against the taxes imposed by chapter 30 or 31 for the 4 succeeding tax years. However, the credit may not be carried forward to the extent that the credit in the tax year that the credit is received exceeds the limitation under [section 9].

(5) A corporation, an individual, a small business corporation, a partnership, a limited liability partnership, or a limited liability company qualifies for the credit under this section. If the credit is claimed by a small business corporation, a partnership, a limited liability partnership, or a limited liability company, the credit must be attributed to the individual shareholders, partners, members, or managers in the same proportion used to report income or loss for state tax purposes.

(6) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the amount of the compensation upon which the amount of the credit was computed as a deduction under 15-30-121 or 15-31-114.

(7) If any application of this section is held invalid, this section applies to other situations or persons in a manner that is not included in the invalid application.

NEW SECTION. Section 8. Tax credit for qualified expenditures. (1) Subject to [section 9], a production company that has submitted an application and paid the fee as required under [section 6] is allowed a tax credit against the taxes imposed by chapter 30 or 31 for qualified expenditures in this state made in connection with a state-certified production in the state. The credit allowed under this section is equal to 10% of the total qualified expenditures incurred in connection with the state-certified production during the tax year.

(2) The taxpayer is required to provide to the department, on a form prescribed by the department, the amount of qualified expenditures. The form returned by the taxpayer must include the certification number provided for in [section 4]. The taxpayer shall also provide other information required by the department to verify the accuracy of the qualified expenditures.

(3) The credit allowed under this section must be refunded if a taxpayer has tax liability less than the amount of the credit.

(4) A corporation, an individual, a small business corporation, a partnership, a limited liability partnership, or a limited liability company qualifies for the credit under this section. If the credit is claimed by a small business corporation, a partnership, a limited liability partnership, or a limited liability company, the credit must be attributed to the individual shareholders, partners, members, or managers in the same proportion used to report income or loss for state tax purposes.

(5) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the amount of the qualified expenditure upon which the amount of the credit was computed as a deduction under 15-30-121 or 15-31-114.

[**NEW SECTION. Section 9. Limitation on amount of credits.** The total amount of the credits allowed under [sections 7 and 8] may not exceed \$1 million for each state-certified production] *Remove this section. Rationale: Limits discourage spending. Present day movie budgets often approach or exceed 100 million dollars. This limitation would offer very little incentive to a large-budget film, which is the very type of film Montana should be encouraging.*

There was a time in Montana history when a silver dollar spent in Montana rolled around many Montanan hands before it left the state. The above proposed amendments will bring that history back to the present. It will bring new meaning to our nickname, "The Treasure State" by stimulating our economy and creating a greater sense of security to Montanans who work in the film industry. It will open the eyes of filmmakers, moviegoers and tourists to what Montana has to offer and why Montanans are so proud of their home state.

Thank you for your time and consideration of these amendments to HB 584.