GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2021 Biennium

Bill #	HB0293	**Title:**	Provide for film tax credits
Primary Sponsor:	Galt, Wylie	**Status:**	As Amended in House Committee

☐Significant Local Gov Impact X Needs to be included in HB 2 X Technical Concerns

☐Included in the Executive Budget Significant Long-Term Impacts X Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2020 Difference	FY 2021 Difference	FY 2022 Difference	FY 2023 Difference
Expenditures:				
General Fund	$342,311	$303,917	$337,169	$313,863
State Special Revenue	$35,000	$35,000	$35,000	$35,000
Revenue:				
General Fund	($1,603,800)	($3,208,590)	($4,812,390)	($4,950,000)
State Special Revenue	$35,000	$35,000	$35,000	$35,000
Net Impact-General Fund Balance:	($1,946,111)	($3,512,507)	($5,149,559)	($5,263,863)

Description of fiscal impact: HB 293, as amended, proposes a tax credit for film production companies for 20% of production expenditures that, with various additional components, can increase to a maximum of 35% of total base investment. This bill also includes a post-production tax credit of 25% of qualified postproduction expenditures incurred in the state with an additional 5% for expenditures in an underserved area. HB 293 requires a production company to apply to the Department of Commerce for state certification to qualify for the production tax credit and to submit production expenditure verification reports. No more than $5 million dollars in credits may be requested from the Department of Commerce each year and no more than $7.5 million dollars may be claimed from the Department of Revenue each year.

FISCAL ANALYSIS

Assumptions:

Department of Commerce (DOC):

1. HB 293 as amended would create the "Montana Economic Development Industry Advancement Act", which provides a tax credit to encourage media production in the State of Montana.
2. The objectives of this bill are very similar to the "Big Sky on the Big Screen Act" tax credit that was in effect from 2006 through 2014, but the credit structure itself is very different.

3. A production company will submit a state-certified production application and $500 filing fee to the Department of Commerce before the start of principal photography. Additionally, the application will state whether the production company plans to make a base investment of $350,000 or more, or a base investment of $50,000 or more.
4. A postproduction company will submit a state-certified postproduction application and a $500 filing fee to the Department of Commerce that contains the estimate of the amount of credit the postproduction company will claim. A postproduction company that plans to claim the credit in multiple years must supply an application every year but is only required to pay the application fee once per certified application.
5. The $500 filing fee for state-certification would be paid by 30 certified productions each year generating approximately $15,000 (30*$500) for administrative costs each year.
6. The $500 application fee is statutorily appropriated to the Department of Commerce.
7. The Department of Commerce will define in rule the qualifications for approving a state-certified production application with a base investment of $50,000 or more, and an application with a base investment of $350,000 or more.
8. Within 30 days of the receipt of a state-certified production application, the department will notify the applicant on whether the applicant qualifies. If the state-certified production application or post-production application is successful, then a certification number will be provided to the applicant.
9. The department will design and furnish the programming promoting Montana destinations.
10. Prior to claiming the media production tax credit or the tax credit for postproduction expenditures, detailed costs must be audited by a certified public accountant. These costs will then be submitted to the Department of Revenue for review and approval along with a filing fee that is statutorily appropriated to the Department of Revenue. The amount of the filing fee is determined by the size of the base investment for production companies and is $1,000 for post-production companies. These fees are delineated in the Department of Revenue section of this fiscal note
11. For the purposes of this fiscal note is it assumed that the Department of Commerce will share the approved certified applications with the Department of Revenue.
12. The Department of Revenue shall notify the Department of Commerce the amount of media production tax credit that may be claimed and the federal tax identification number of the production company.
13. The media production tax credit may be approved only if principal photography began within 1 year of the date that the Department of Commerce certified the production.
14. The tax credit for media production:
    a. Is for the base investment made up to 1 year before state certification through the completion of the credit.
    b. The credit is equal to 20% of the production expenditures in the state, but the aggregate may not exceed 35% of the production company's base investment.
    c. Additional amounts for which the credit may be claimed above the 20% but below the maximum 35%
        i. 25% of compensation for crew members who are Montana residents not to exceed $150,000 credit/person.
        ii. 15% of compensation for crew members who are not Montana residents not to exceed $150,000 credit/person.
        iii. 15% of the first $5 million of compensation to each actor, director, producer or writer for whom Montana income taxes have been withheld.
        iv. 30% of compensation paid to students not to exceed $50,000 credit. This provision is not applicable if the same student compensation is claimed above.
        v. 10% of payment made to Montana colleges or universities.
        vi. 10% of all in-studio facility and equipment rental expenditures for a production that rents a studio for 20 days or more.
        vii. 5% for production expenditures made in an underserved area which is a county in which 14% or more people are in poverty. Currently 26 counties meet this definition.

15. The tax credit for postproduction expenditures
    a. The credit is equal to 25% of the postproduction expenditures incurred in the state.
    b. An additional 5% for postproduction expenditures made in an underserved area which is a county in which 14% or more people are in poverty.
    c. This credit may not exceed the postproduction company's total compensation paid to employees working in the state for the tax year in which the credit is claimed.
16. The tax credit for postproduction expenditures requires that more than 50% of the qualified postproduction activities were performed and paid for in Montana, and more than half of equipment purchases, or rentals took place in Montana.
17. The department would require 1.00 FTE for the assigned duties and handle inquiries.
18. The department will monitor all tax credits approved by the Department of Revenue including the 3 year carry forward and any credit transfers.
19. Since the bill is effective upon passage and approval it applies to CY 2019 and would have fiscal impact in FY 2020.
20. It is assumed that all certified productions will claim the full amount of the credits in the first tax year they are eligible.
21. HB 293 requires the department to contract and present a film credit economic impact report to the interim committee no less than 6 months prior to the start of the 2021 Session and every two years thereafter. The report would be contracted in FY 2020 and FY 2022.
22. The Montana Film Office procured a similar report in 2004 at a cost of $19,278. The cumulative rate of inflation from 2004 to 2019 is 33.8%. The cost for a report in FY 2020 is assumed to be $26,571 and $28,165 in FY 2022.
23. 17-1-508, MCA, requires analysis of the statutory appropriation relative to the guidance in 17-1-508(3), MCA, to be published in the fiscal note. In reviewing and establishing statutory appropriations, the legislature shall consider the following guidelines. Answer yes or no to each of the following guidelines regarding the statutory appropriation:

	YES	NO
a. The money is from a continuing, reliable, and estimable source.		X
b. The use of the appropriation or the expenditure occurrence is predictable and reliable.		X
c. The authority exists elsewhere.		X
d. An alternative appropriation method is available, practical, or effective.		X
e. It appropriates state general fund money for purposes other than paying for emergency services.	X	
f. The money is used for general purposes.		X
g. The legislature wishes to review expenditure and appropriation levels each biennium.		X
h. An expenditure cap and sunset date are excluded.		X

Department of Revenue (DOR)

24. HB 293 would create the "Montana Economic Development Industry Advancement Act", which introduces a film tax credit with the objectives of providing tax incentives to encourage media production in the state of Montana.
25. This bill would allow film production companies to claim a tax credit for 20% of production expenditures in Montana in the given tax year plus various additional amounts related to compensation paid and other expenditures. The total credit would be limited to a maximum 35% of the production company's base investment in the tax year.
26. This bill and film tax credit structure is a composite of several other state's film tax credit programs. Assumptions on film industry growth in Montana, as a result of this bill, are based off the impacts in these other states.

Film Tax Credits

27. To qualify for the Montana film tax credit, the production company must incur a base investment of at least $350,000, or $50,000 if approved by Department of Commerce (DOC) on a case-by-case basis.
28. For 2016-2018, total Montana film expenditures for qualified productions averaged approximately $6,481,000 each year.
29. This bill is effective on passage and approval and it is assumed that Montana film expenditures would not significantly change for TY 2019 and then double for TY 2020, once production companies are able to adjust their production plans. Production is assumed to increase another 50% for TY 2021, and 20% for TY 2022.
30. The total film credits that can be granted by DOC each calendar year would be capped at $5 million and the total annual film credits that can be claimed against state income tax would be capped at $7.5 million.
31. Total credits claimed each fiscal year are assumed to be 25% of total Montana expenditures. The estimated credits claimed are approximately $1,620,000 for TY 2019, $3,241,000 for TY 2020, $4,861,000 for TY 2021, $5,000,000 for TY 2022.
32. The following table shows the credit expenditures in other states in the early years of their respective film credit programs, the gross state product in that year, and the credits as a percentage of GSP. For Montana, the credit expenditure is the estimated $1.62 million calculated in assumption #14. The Montana tax credit estimates are in keeping with these other states.

State	Film Credit Expenditures ($ millions)	Gross State Product ($ millions)	Credits as Percentage of GSP
California	$95.00	$2,144,497	0.0044%
Georgia	$89.00	$407,025	0.0219%
Louisiana	$69.00	$205,800	0.0337%
Ohio	$10.00	$497,208	0.0020%
New Mexico	$5.70	$77,426	0.0074%
Montana	$1.62	$47,079	0.0034%
Utah	$0.81	$94,195	0.0009%

33. The credits claimed for a given tax year are assumed to be paid and impact general fund revenues in the following fiscal year. Thus, credits claimed for TY 2019 would impact general fund revenue in FY 2020.
34. It is assumed that general fund revenue would decrease by the amount of film credits claimed up to the established caps, because the credit is transferable and can be carried over.
35. This bill includes a transfer fee of 2% of the transferred credit amount, and the revenue from that fee would be deposited in the general fund. It is assumed that 50% of awarded film credits would be claimed by the production company and 50% would be transferred and be subject to the 2% fee.
36. The general fund revenue from the 2% fee is estimated to be $16,200 for FY 2020, $32,410 for FY 2021, $48,610 for FY 2022 and $50,000 for FY 2023.
37. The net decrease in general fund revenue associated with the claimed credits is estimated to be $1,603,800 in FY 2020, $3,208,590 in FY 2021, $4,812,390 in FY 2022, and $4,950,000 in FY 2023. Carryovers could result in fewer credits being claimed for FY 2021 and possibly FY 2022, and more being claimed for FY 2023 and future fiscal years (up to $7.5 million).

Post-production credits

38. This bill also includes a post-production tax credit of 25% of qualified postproduction expenditures incurred in the state with an additional 5 percent for expenditures in an underserved area. The amount of credits that would be claimed by post-production companies are unknown and not estimated in this fiscal note, so the credit totals could be higher, and the credit cap could be hit earlier than estimated.
39. Prior to claiming the tax credit, a production company must be approved by DOC and submit costs to Department of Revenue (DOR). With the submission of costs, the production company must pay a fee of $500 for productions with a base investment of $350,000 or less and $1,000 for productions of more than $350,000

or for post-production companies. This fee would be deposited into the state special revenue fund and statutorily appropriated for DOR to administer the provisions in this bill. It is assumed that this total would be approximately $20,000 each fiscal year (i.e. 10 large productions and 20 small productions).

40. The department expects to incur costs associated with hiring 3.00 FTE in order to administer the provisions of this bill. These costs are expected to be $246,175 in FY 2020, $238,015 in FY 2021, $241,588 in FY 2022 and $245,210 in FY 2023. A portion of these costs would be covered by the state special revenue generated by the fees described in the prior and the remainder would be funded by the general fund.
41. 17-1-508, MCA, requires an analysis of the statutory appropriation relative to the guidance in 17-1-508(3), MCA, to be published in the fiscal note. In reviewing and establishing statutory appropriations, the legislature shall consider the following guidelines regarding the statutory appropriation:

	YES	NO
a. The money is from a continuing, reliable, and estimable source.	X	
b. The use of the appropriation or the expenditure occurrence is predictable and reliable.	X	
c. The authority exists elsewhere.		X
d. An alternative appropriation method is available, practical, or effective.	X	
e. It appropriates state general fund money for purposes other than paying for emergency services.	X	
f. The money is used for general purposes.		X
g. The legislature wishes to review expenditure and appropriation levels each biennium.	X	
h. An expenditure cap and sunset date are excluded.	X	

Fiscal Impact:	**FY 2020 Difference**	**FY 2021 Difference**	**FY 2022 Difference**	**FY 2023 Difference**
Department of Revenue (DOR) and Department of Commerce (DOC)				
FTE (DOR)	3.00	3.00	3.00	3.00
FTE (DOC)	1.00	1.00	1.00	1.00
Expenditures:				
Personal Services (DOR)	$215,185	$215,185	$218,416	$221,690
Personal Services (DOC)	$78,065	$77,902	$79,071	$80,257
Operating Expenses (DOR)	$30,990	$22,830	$23,172	$23,520
Operating Expenses (DOC)	$53,071	$23,000	$51,510	$23,396
TOTAL Expenditures	$377,311	$338,917	$372,169	$348,863
Funding of Expenditures:				
General Fund (01)	$342,311	$303,917	$337,169	$313,863
State Special Revenue (02)	$35,000	$35,000	$35,000	$35,000
TOTAL Funding of Exp.	$377,311	$338,917	$372,169	$348,863
Revenues:				
General Fund (DOR) - Credit	($1,620,000)	($3,241,000)	($4,861,000)	($5,000,000)
General Fund (DOR) - 2% Fee	$16,200	$32,410	$48,610	$50,000
State Special Revenue (DOR)	$20,000	$20,000	$20,000	$20,000
State Special Revenue (DOC)	$15,000	$15,000	$15,000	$15,000
TOTAL Revenues	($1,568,800)	($3,173,590)	($4,777,390)	($4,915,000)
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($1,946,111)	($3,512,507)	($5,149,559)	($5,263,863)
State Special Revenue (02)	$0	$0	$0	$0

Technical Notes:

Department of Commerce (DOC)

1. In Section 5, DOC would approve the certified production to claim the credit, which needs to be coordinated with (3)(a) where the DOR reviews costs and provides DOC the amount of the tax credit calculated. The DOC and DOR would need to enter into an MOU to share cost data and fee submission completion, verification reports and audit reports for this approval.
2. The DOC would need to enter a separate MOU with the DOR to complete the economic impact report specified section 11 as the initial certification and the final expenditure numbers may differ.

Department of Revenue (DOR)

3. This bill is effective upon passage and approval, but it does not state whether production companies can apply the credit to a tax year that has already started or only to tax years beginning after the bill is passed. For this fiscal note, it is assumed that production companies can claim the credit for tax years beginning after December 31, 2018 (TY 2019) and the impact on revenue would begin in FY 2020.
4. This bill specifically references the Revenue and Transportation Interim Committee. SB 266 splits this committee into separate committees, coordination language may be needed in HB 293 for this possibility.

		TL	3/22/19
Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Dedication of Revenue 2021 Biennium

17-1-507, MCA.

a) Are there persons or entities that benefit from this dedicated revenue that do not pay?

No. Section 4 of the bill states that when production companies apply for state certification, they pay the filing fee. This is to offset the administrative costs associated with implementing the bill by the Department of Commerce. Section 5 of the bill states that when production companies submit their paperwork to claim the media production tax credit or the tax credit for postproduction expenditures, they must also pay the filing fee. This is to offset the administrative costs associated with implementing the bill by the Department of Revenue.

b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

Section 4 of the bill creates a state special revenue account to be established for the program proposed in this bill because expenditures and revenues related to providing state certification and verification of the media production tax credit and the postproduction tax credit would be accounted for in a dedicated fund. The funds deposited in the account may be used only for implementing the provisions proposed in the bill.

c) Is the source of revenue relevant to current use of the funds and adequate to fund the program activity that is intended? Yes / No (if no, explain)

Yes, the source of revenue is relevant to the current use of the funds. No, the source of funds is not adequate to fund the program activity as intended. For the purposes of this fiscal note, it is assumed fund 02116 (bed tax) would be used to fill the shortfall. The Department of Commerce does not have current staff that could manage the review of the costs submitted for the tax credits.

d) Does the need for this state special revenue provision still exist? _X__Yes ___No

The amount of applications subject to the filing fee are subject to fluctuations and is therefore not from a reliable source; likewise, the amount of companies filing for a media production tax credit or a postproduction tax credit may not predictable or reliable.

e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending?

No. The fund in question is audited by the Office of the Legislative Auditor with any findings being presented to the Legislative Audit Committee.

f) **Does the dedicated revenue fulfill a continuing, legislatively recognized need?**

Unknown

g) **How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency?** (Please Explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

The amount of applications subject to the filing fee are subject to fluctuations and is therefore not from a reliable source; likewise, the amount of companies filing for a media production tax credit or a postproduction tax credit is not predictable or reliable.