



Fiscal Note 2023 Biennium

Bill #	HB0340	Title:	Revise the MEDIA Act film tax credits
Primary Sponsor:	Galt, Wylie	Status:	As Introduced

- Significant Local Gov Impact
 Needs to be included in HB 2
 Technical Concerns
 Included in the Executive Budget
 Significant Long-Term Impacts
 Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2022 Difference</u>	<u>FY 2023 Difference</u>	<u>FY 2024 Difference</u>	<u>FY 2025 Difference</u>
Expenditures:				
General Fund	\$89,861	\$88,202	\$89,366	\$90,549
State Special Revenue	\$0	\$0	\$0	\$0
Revenue:				
General Fund	(\$14,460,000)	(\$29,770,000)	(\$39,588,000)	(\$49,468,000)
State Special Revenue	\$4,500	\$13,000	\$17,500	\$23,000
Net Impact-General Fund Balance:	<u>(\$14,549,861)</u>	<u>(\$29,858,202)</u>	<u>(\$39,677,366)</u>	<u>(\$49,558,549)</u>

Description of fiscal impact: HB 340 expands the wages and expenditures eligible for the Montana Economic Development Industry Advancement (MEDIA) Act, film tax incentive. Productions that are non-scripted or released on internet media platforms would be eligible for the tradeable tax credit. Compensation eligible for the credit is changed from 20% of up to \$7.5 million in wages to 25% of up to \$10 million in wages, per person, per production (or season). The bill would allow all postproduction expenditures (instead of only Montana wages) to qualify for the credit. The bill also eliminates the current \$10 million annual tax credit limit.

FISCAL ANALYSIS

Assumptions:

Department of Revenue (DOR)

1. HB 340 revises the Montana Economic Development Industry Advancement (MEDIA) act to allow more expenditures to qualify for the credit and removes the \$10 million annual cap on credits issued.
2. This bill changes the postproduction activities that qualify for the 25% postproduction credit from only wages to all post-production expenditures incurred in Montana.
3. The allowable credit for compensation paid to actors, directors, producers, and writers is increased from 20% of the first \$7.5 million to 25% of the first \$10 million, per individual, per production or season.

4. Other changes include increasing the pre-state certification investment period for which the credit may be claimed from six months to one year. The types of productions eligible for the credit are also expanded to include instructional videos, internet commercials, and non-scripted television programs.
5. The changes listed in assumptions 2 through 4 are expected to increase qualified expenditures and the level of credits claimed.
6. Under current law, for the first credit period TY 2020 (and part of CY 2019) it is estimated that there was approximately \$90 million in qualified spending, and about \$18 million in requested credits. Based on already planned productions, it is expected that qualified spending and credits requested for TY 2021 will increase by at least 20%.
7. Under current law, only \$10 million of the requested credits each year can be paid out and the remaining ones are carried-forward for up to five years until they are able to be paid out under the cap. It is assumed that with the cap in place, qualified spending and requested credits would increase 10% each year starting in TY 2022.
8. The removal of the \$10 million cap is expected increase qualifying Montana expenditures much faster. Based on the observed growth of similar film tax credit programs in other states, it is assumed that qualifying Montana spending would increase by 40% in both TY 2022 and TY 2023 and then increase 20% each year thereafter.
9. The other changes in the bill that allow credits for formerly excluded postproduction expenditures, and the increase in credit eligible wages are assumed to increase the total credit amount from 20% to 25% of qualifying spending.
10. It appears from the first credit period in 2020 that most of the credits will be transferred from the production companies to other Montana taxpayers, so it is assumed that the 2% transfer fee will be collected on 80% of the claimed credits. Similarly, it is assumed that most of the productions claiming the credit do not have Montana taxable income, so there would not be significant additional tax liability due to 15-31-1007 (8), MCA, which does not allow production expenditures used for the credit calculation to also be claimed as a deduction.
11. The following table shows the calculation of the forecast credits for tax years 2020 to 2025 based on the assumptions above.

Current Law (\$ millions)				Proposed Law (\$ millions)				
Tax Year	Estimated Spending	Credits Requested	Credits Received	Estimated Spending	Credits Claimed	Change in Credits Claimed	Additional 2% Transfer fee	Net Change
2020	\$90.000	\$18.000	\$10.000	\$90.000				
2021	\$108.000	\$21.600	\$10.000	\$126.000	\$31.500	\$21.500	\$0.340	\$21.160
2022	\$118.800	\$23.800	\$10.000	\$176.400	\$44.100	\$34.100	\$0.550	\$33.550
2023	\$130.700	\$26.100	\$10.000	\$211.700	\$52.900	\$42.900	\$0.690	\$42.210
2024	\$143.700	\$28.700	\$10.000	\$254.000	\$63.500	\$53.500	\$0.860	\$52.640
2025	\$158.100	\$31.600	\$10.000	\$304.800	\$76.200	\$66.200	\$1.060	\$65.140

12. It is assumed that Montana income tax revenue would decrease by the change in credits minus the additional revenue from the credit transfer fee. Based on the timing of individual and corporate income tax returns, it is assumed that 70% of the credits claimed for TY 2021 would decrease revenues in FY 2022 and the remaining 30% would decrease revenues in FY 2023. The same pattern applies to future years. The fiscal year impacts are presented in the Department of Commerce section of this fiscal note Assumption #27.
13. The estimates in this fiscal note assume a consistent moderate growth in credits claimed, but the actual credit amounts may be much more volatile because they can be driven by a small number of very large productions. Similarly, uncapped film tax credit programs in other states have had the amount of credits claimed more than double in one year only to have them decrease the following year.

DOR Administrative Expense

14. The removal of the \$10 million cap and the eligibility of additional postproduction expenditures are expected to significantly increase the amount of credits claimed and the department would need a 1.00 FTE tax

examiner position to handle the increased workload. The estimated costs to the department are \$89,861 in FY 2022, \$88,202 in FY 2023, \$89,366 in FY 2024, and \$90,549 in FY 2025.

Department of Commerce (DOC)

15. Under current law in order to become a state-certified production, eligible for MEDIA Act tax credits, companies submit applications and a \$500 filing fee to department before the start of principal photography. On the application the production company states the expected investment category (\$350,000 or more, or \$50,000 or more). Postproduction companies submit applications and a \$500 filing fee to the department as well. A postproduction company that plans to claim credits in multiple years must supply an application every year but is only required to pay the application fee with the initial application.
16. HB 340 will require that the department remove the estimate of the amount of credit the postproduction company will seek to claim.
17. Prior to the MEDIA Act there were 6 independent features. In FY 2020 after the implementation of the MEDIA Act, there were 13 independent features that were certified productions. This is a 46% increase.
18. The bill expands the eligibility for MEDIA Act credits to instructional videos, commercials distributed only on the internet, non-scripted television programs as well as feature films, series, or movies for streaming.
19. Based upon data collected by the Montana Film Office in 2019 there were 29 projects that met this expanded definition. Based on percentage increase in independent features, the expanded definition of eligible productions would include an additional 63 projects. This fiscal note integrates the Department of Revenue estimates based on the experience with other states and assumes a steady increase in the cumulative number of new productions claiming credits and paying the \$500 filing fee for state-certification. The \$500 application fee is statutorily appropriated to the department.

	FY 2022	FY 2023	FY 2024	FY 2025
Implied Change in Claimants	9	26	35	46
Dept of Commerce Film Fees	\$9,000	\$26,000	\$35,000	\$46,000

20. Within 30 days of the receipt of a state-certified production application, the department notifies applicants on qualification. If certified, a certification number is provided to the applicant. Prior to claiming the media production tax credit or the tax credit for postproduction expenditures, detailed costs must be audited by a Montana certified public accountant which are submitted to the Department of Revenue for review and approval, along with a filing fee that is statutorily appropriated to the Department of Revenue.
21. It is assumed that the Department of Commerce will share the approved certified applications with the Department of Revenue.
22. 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. This is an expansion from the prior six months requirement.
23. Calendar year expenditures are reported on the company’s income tax filing in the following fiscal year.
24. It is assumed that all certified productions will claim the full amount of the credits in the first tax year they are eligible.
25. The \$10 million cap on the amount of tax credit that can be claimed each year is removed by this bill.
26. The department assumes there will be a significant increase in the number of productions in the initial years of the expanded and unlimited credit, with more modest growth thereafter in line with the Department of Revenue assumptions.
27. The fiscal year combined effects of these assumptions are summarized by the following table:

Fiscal Year Timing of Expenditures and Revenue HB 340 as Introduced (\$ million)				
	FY 2022	FY 2023	FY 2024	FY 2025
FY Production Expenditures Current Law	\$102.600	\$115.560	\$127.130	\$139.800
Current Credit @20%	\$20.520	\$23.112	\$25.426	\$27.960
Current Law Claimable Credits	\$10.000	\$10.000	\$10.000	\$10.000
FY Production Expenditures HB 340	\$115.200	\$161.280	\$201.110	\$241.310
HB 340 Credits @25%	\$28.800	\$40.320	\$50.278	\$60.328
Change in Credits Claimed HB 340	\$18.800	\$30.320	\$40.278	\$50.328

Fiscal Impact:	FY 2022	FY 2023	FY 2024	FY 2025
	<u>Difference</u>	<u>Difference</u>	<u>Difference</u>	<u>Difference</u>
Department of Revenue (DOR) & Department of Commerce (DOC)				
FTE (DOR)	1.00	1.00	1.00	1.00
<u>Expenditures:</u>				
Personal Services (DOR)	\$79,194	\$80,193	\$81,206	\$82,235
Operating Expenses (DOR)	\$10,667	\$8,009	\$8,160	\$8,314
TOTAL Expenditures	\$89,861	\$88,202	\$89,366	\$90,549
<u>Funding of Expenditures:</u>				
General Fund (01)	\$89,861	\$88,202	\$89,366	\$90,549
State Special Revenue (02)	\$0	\$0	\$0	\$0
TOTAL Funding of Exp.	\$89,861	\$88,202	\$89,366	\$90,549
<u>Revenues:</u>				
General Fund -- Tax Credits (DOR)	(\$18,800,000)	(\$30,320,000)	(\$40,278,000)	(\$50,328,000)
General Fund -- 2% fee (DOR)	\$340,000	\$550,000	\$690,000	\$860,000
State Special Revenue (DOC)	\$4,500	\$13,000	\$17,500	\$23,000
TOTAL Revenues	(\$18,455,500)	(\$29,757,000)	(\$39,570,500)	(\$49,445,000)

Net Impact to Fund Balance (Revenue minus Funding of Expenditures):

General Fund (01)	(\$18,549,861)	(\$29,858,202)	(\$39,677,366)	(\$49,558,549)
State Special Revenue (02)	\$4,500	\$13,000	\$17,500	\$23,000

Long-Term Impacts:

- Based on the experience of other states with similar credits, the credits under HB 340 provisions are likely to continue to grow as the credit percentages exceed Montana's top marginal tax rate. Production entities with HB 340 qualifying expenditures, seeking credits, are unlikely to have Montana liabilities sufficient to exhaust their credits and are therefore likely to sell credits to individuals and entities that have Montana tax liabilities.

Technical Notes:

- The Department of Commerce would need to enter into an MOU with the Department of Revenue in order to complete the Economic Impact of the Tax Credit report identified as the initial certification numbers and the final expenditure numbers may differ.

NOT SIGNED BY SPONSOR

Sponsor's Initials

Date

2/15/21

Budget Director's Initials

Date

KA

2/15/21