



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill # HB0340

Title: Revise the MEDIA Act film tax credits

Primary Sponsor: Galt, Wylie

Status: As Amended in House Committee

- 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</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
Expenditures:				
General Fund	\$89,861	\$88,202	\$89,366	\$90,549
State Special Revenue	\$4,500	\$13,000	\$17,500	\$23,000
Revenue:				
General Fund	(\$18,460,000)	(\$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>(\$18,549,861)</u>	<u>(\$29,858,202)</u>	<u>(\$39,677,366)</u>	<u>(\$49,558,549)</u>

Description of fiscal impact: HB 340 as amended expands the wages and expenditures eligible for the Montana Economic Development Industry Advancement (MEDIA) Act, film tax incentive, increases the credits and imposes a new cap on available credits. 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 amendments change current \$10 million annual tax credit limit to \$250 million.

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. The amendments raise the \$10 million cap to a \$250 million annual cap on credits issued, restores the postproduction credit application designation of planned credits and traded credit reporting, and carry-over provisions when the cap is reached. The credits shares are enhanced if the Montana resident share of the crew members meets certain thresholds and adds a 30% credit for compensation

paid to crew members from an underserved area. The credit for all expenditures made in an underserved area is increased from 5% to 10% and the 5% credit for including a Montana screen credit is amended to only apply to compensation that is eligible for one of the other credit components. These amendments may shift some more of the spending to Montana residents and underserved areas, but they are not expected to have a significant impact on the estimates in this fiscal note.

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. Under this bill and the new \$250 million cap, it is expected to 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 have no 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.

Tax Year	Current Law (\$ millions)			Proposed Law (\$ millions)				
	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.

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 increase of the annual cap to \$250 million and the additional credit components are expected to significantly increase the amount of credits claimed, and the department would need 1.00 FTE additional tax examiner to handle the added workload. The estimated costs to the department are \$90,715 in FY 2022, \$89,068 in FY 2023, \$90,245 in FY 2024, and \$91,441 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. 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.
17. 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.
18. 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

19. 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.
20. It is assumed that the DOC will share the approved certified applications with the DOR
21. The media production tax credit may be approved only if principal photography began within 1 year of the date that the DOC certified the production. This is an expansion from the prior six months requirement.
22. Calendar year expenditures are reported on the company’s income tax filing in the following fiscal year.
23. It is assumed that certified productions will claim all credits in the first tax year they are eligible.
24. HB 340 as amended implements a \$250 million annual cap effective in TY 2021, this is an expansion of the current law \$10 million cap on the amount of tax credit that can be claimed each year. The prior version of the bill removed the cap.
25. 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.

26. The fiscal year combined effects of these assumptions are summarized by the following table:

Fiscal Year Timing of Expenditures and Revenue HB 340 as Amended (\$ 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
Department of Revenue (DOR) & Department of Commerce (DOC)	Difference	Difference	Difference	Difference
FTE (DOR)	1.00	1.00	1.00	1.00
Expenditures:				
Personal Services (DOR)	\$79,194	\$80,193	\$81,206	\$82,235
Operating Expenses (DOR)	\$10,667	\$8,009	\$8,160	\$8,314
Operating Expenses (DOC)	\$4,500	\$13,000	\$17,500	\$23,000
TOTAL Expenditures	\$94,361	\$101,202	\$106,866	\$113,549
Funding of Expenditures:				
General Fund (01)	\$89,861	\$88,202	\$89,366	\$90,549
State Special Revenue (02)	\$4,500	\$13,000	\$17,500	\$23,000
TOTAL Funding of Exp.	\$94,361	\$101,202	\$106,866	\$113,549
Revenues:				
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)	\$0	\$0	\$0	\$0

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 DOC would need to enter into an MOU with the DOR 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.
- Currently, per Section 9901 of the American Recovery Plan Act (ARPA) which adds New Section 602 to 42 U.S.C. 801, it is unknown if reductions to state taxes resulting in a reduction to net state tax revenue may jeopardize receipt, or require repayment, of State Recovery Funds contained in the ARPA.

NOT SIGNED BY SPONSOR

Sponsor’s Initials

Date

4/6/21

Budget Director’s Initials

Date

KA

4-5-21