

A-Engrossed
House Bill 2167

Ordered by the House April 8
Including House Amendments dated April 8

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber for Oregon Film and Video Office)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Increases maximum reimbursement from Oregon Production Investment Fund for film or television production for certain films. Applies to films starting principal photography on or after January 1, 2011.]

Limits total reimbursements to local filmmakers for fiscal year. *[Increases]* **Changes amount of maximum total tax credits for certified film production development contributions to Oregon Production Investment Fund to _____.**

Specifies certain duties of Oregon Film and Video Office.

Creates procedure by which Legislative Assembly annually may appropriate amount of moneys for deposit in Oregon Production Investment Fund that matches annual amount of tax credits to be certified for contributors to fund. In years where appropriation is made, allows contributor to request refund of contribution and disallows claiming of tax credit.

Extends sunset on film production labor rebate certificates.

Extends sunset on tax credits for certified film production development contributions to Oregon Production Investment Fund.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to film production; creating new provisions; amending ORS 284.367, 284.368 and 315.514 and
3 section 77, chapter 736, Oregon Laws 2003, and section 1a, chapter 559, Oregon Laws 2005; and
4 prescribing an effective date.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 284.367 is amended to read:

7 284.367. (1) The Oregon Production Investment Fund is established in the State Treasury, separate
8 and distinct from the General Fund. Interest earned by the Oregon Production Investment Fund
9 shall be credited to the fund. **The Oregon Film and Video Office shall, in consultation with the**
10 **Oregon Business Development Department, administer moneys in the fund.**

11 (2) Moneys in the Oregon Production Investment Fund shall consist of:

12 (a) Amounts donated to the fund;

13 (b) Amounts appropriated or otherwise transferred to the fund by the Legislative Assembly;

14 (c) Other amounts deposited in the fund from any source; and

15 (d) Interest earned by the fund.

16 (3) Ninety-five percent of moneys in the fund are continuously appropriated to the Oregon
17 Business Development Department for the purposes of making:

18 (a) Reimbursements to filmmakers under ORS 284.368;

19 (b) Payments to a tax credit marketer for marketing services provided by the marketer as described in ORS 284.369; and
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NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (c) Refunds described in ORS 315.514 (6).

2 (4) Five percent of moneys in the fund are continuously appropriated to the department for the
3 purpose of making reimbursements to local filmmakers under ORS 284.368 (3). **Total reimburse-**
4 **ments to local filmmakers may not exceed \$500,000 in a fiscal year.**

5 (5) Expenditures from the fund are not subject to ORS 291.232 to 291.260.

6 **(6) The Oregon Film and Video Office, in consultation with the department, may adopt**
7 **rules regarding administration of moneys in the fund under this section.**

8 **SECTION 2.** ORS 284.368 is amended to read:

9 284.368. (1) As used in this section:

10 (a) "Actual Oregon expenses" means the costs paid in Oregon for principal photography, pro-
11 duction or postproduction in Oregon of a film, including but not limited to the purchase or rental
12 cost of equipment, food, lodging, real property and permits and payments made for salaries, wages
13 and benefits for work in Oregon.

14 (b) "Film" means a television movie or one or more episodes of a single television series, or a
15 movie produced for release to theaters, video or the Internet. "Film" does not include the production
16 of a commercial or one or more segments of a newscast or sporting event.

17 (c) "Filmmaker" means a person who owns a television or film production company.

18 (d) "Local filmmaker" means a person who owns a television or film production company that
19 has its principal place of business in this state.

20 (e) "Resident of this state" has the meaning given that term in ORS 316.027.

21 (2)(a) The Oregon Business Development Department may reimburse a filmmaker for a portion
22 of the actual Oregon expenses incurred by the filmmaker. **The Oregon Film and Video Office shall**
23 **determine eligibility for reimbursement under this subsection.**

24 (b) Maximum reimbursement for a single film shall be the total of:

25 (A) 10 percent of payments made for employee salaries, wages and benefits for work done in
26 Oregon; and

27 (B) 20 percent of all other actual Oregon expenses.

28 (c) To qualify for reimbursement under this subsection, total actual Oregon expenses for the film
29 must equal or exceed \$750,000.

30 (3)(a) The department may reimburse a local filmmaker for all or a portion of the actual Oregon
31 expenses incurred by the local filmmaker. **The office shall determine eligibility for reimburse-**
32 **ment under this subsection.**

33 (b) To qualify for reimbursement under this subsection:

34 (A) Total actual Oregon expenses paid for the film must be at least \$75,000 and less than
35 \$750,000;

36 (B) The local filmmaker must have spent 80 percent of the film's payroll on employees who are
37 residents of this state; and

38 (C) The local filmmaker must have employed or contracted with a public accountant certified
39 under ORS 673.040 for the provision of payroll services.

40 (4) Reimbursement under this section shall be made from moneys credited to or deposited in the
41 Oregon Production Investment Fund during the biennium in which the actual Oregon expenses were
42 paid or any prior biennium. A reimbursement may not be made to the extent funds are not available
43 in the fund to make the reimbursement.

44 (5)[(a)] Total actual Oregon expenses supporting a claim for reimbursement under this section
45 must be verified by the Oregon Film and Video Office. The filmmaker must submit to the office proof

1 of the actual Oregon expenses. The proof must include any documentation that may be required by
2 the office in its discretion to verify the actual Oregon expenses.

3 [(b)] (6) The office may charge the filmmaker for costs reasonably incurred **to determine el-**
4 **igibility for reimbursement under subsections (2) and (3) of this section and** to verify the ac-
5 tual Oregon expenses, including but not limited to the cost for a review or audit of the supporting
6 documentation by an accountant or auditor. The office may require the department to deduct the
7 costs incurred by the office [*in performing its review or audit*] from any reimbursement made to the
8 filmmaker under this section.

9 [(c) *The office may adopt rules that establish a procedure for the submission and verification of*
10 *actual Oregon expenses.*]

11 (7) **The office, in consultation with the department, may adopt rules to implement the**
12 **provisions of this section.**

13 **SECTION 3.** ORS 315.514 is amended to read:

14 315.514. (1) A credit against the taxes that are otherwise due under ORS chapter 316 or, if the
15 taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to a taxpayer for certified film
16 production development contributions made by the taxpayer during the tax year to the Oregon
17 Production Investment Fund established under ORS 284.367.

18 (2)(a) The amount of the tax credit shall equal the amount certified for credit by the Oregon
19 Film and Video Office, except that a contribution must equal at least 90 percent of the tax credit.

20 (b) The Oregon Film and Video Office shall adopt rules for determining the amount of tax credit
21 to be certified by the office. The rules shall be adopted in order to achieve the following goals:

22 (A) Subject to paragraph (a) of this subsection, generate contributions for which tax credits of
23 [*\$7.5*] \$_____ million are certified for each fiscal year;

24 (B) Maximize income and excise tax revenues that are retained by the State of Oregon for state
25 operations; and

26 (C) Provide the necessary financial incentives for taxpayers to make contributions, taking into
27 consideration the impact of granting a credit upon a taxpayer's federal income tax liability.

28 (3) A taxpayer seeking a tax credit under this section shall apply for tax credit certification to
29 the Oregon Film and Video Office on a form supplied by the office. The taxpayer shall include pay-
30 ment of the contribution at the time of application.

31 (4) Contributions made under this section shall be deposited in the Oregon Production Invest-
32 ment Fund.

33 (5)(a) Upon receipt of a contribution, the Oregon Film and Video Office shall, **except as pro-**
34 **vided in section 4 of this 2011 Act**, issue to the taxpayer written certification of the amount cer-
35 tified for tax credit under this section to the extent the amount certified for tax credit, when added
36 to all amounts previously certified for tax credit under this section, does not exceed [*\$7.5*]
37 \$_____ million for the fiscal year in which certification is made.

38 (b) The Oregon Film and Video Office is not liable, and a refund of a contributed amount need
39 not be made, if a taxpayer who has received tax credit certification is unable to use all or a portion
40 of the tax credit to offset the tax liability of the taxpayer.

41 (6) To the extent the Oregon Film and Video Office does not certify contributed amounts as el-
42 igible for a tax credit under this section, the taxpayer may request a refund of the amount the tax-
43 payer contributed, and the office shall refund that amount.

44 (7)(a) Except as provided in paragraph (b) of this subsection, a tax credit claimed under this
45 section may not exceed the tax liability of the taxpayer and may not be carried over to another tax

1 year.

2 (b) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
3 particular tax year may be carried forward and offset against the taxpayer's tax liability for the next
4 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried
5 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
6 succeeding tax year may be carried forward and used in the third succeeding tax year but may not
7 be carried forward for any tax year thereafter.

8 (c) A taxpayer is not eligible for a tax credit under this section if the first tax year for which
9 the credit would otherwise be allowed begins on or after January 1, [2012] **2018**.

10 (8) If a tax credit is claimed under this section by a nonresident or part-year resident taxpayer,
11 the amount shall be allowed without proration under ORS 316.117.

12 (9) A taxpayer who has received a tax credit certificate under this section may sell the certif-
13 icate to another taxpayer. The sale is effective only if a notice of tax credit certificate sale is filed
14 with the Department of Revenue. The notice shall be filed on a form prescribed by the department
15 on or before the date on which the income or corporate excise tax return of the buyer for the first
16 year for which the credit could be claimed is filed or due, whichever is earlier. The notice form shall
17 include the following information:

18 (a) The name and taxpayer identification number of the seller;

19 (b) The name and taxpayer identification number of the buyer;

20 (c) The amount of the tax credit certificate that is being sold to the buyer;

21 (d) The amount of the tax credit certificate that is being retained by the seller; and

22 (e) Any other information required by the department.

23 (10) If requested by the Department of Revenue, the Oregon Film and Video Office shall supply
24 a list of taxpayers that have obtained tax credit certification under this section, and for each listed
25 taxpayer disclose:

26 (a) The amount of contribution made by the taxpayer; and

27 (b) The amount certified for tax credit under this section.

28 (11) If the amount of contribution for which a tax credit certification is made is allowed as a
29 deduction for federal tax purposes, the amount of the contribution shall be added to federal taxable
30 income for Oregon tax purposes.

31 **SECTION 4. (1) In lieu of the issuance of certifications for tax credit under ORS 315.514**
32 **by the Oregon Film and Video Office, the Legislative Assembly may, no less than 30 days**
33 **prior to the end of each fiscal year, appropriate to the Oregon Business Development De-**
34 **partment for deposit into the Oregon Production Investment Fund an amount equal to the**
35 **total amount, less the discount rate provided under ORS 315.514 (2)(a), that would otherwise**
36 **be certified for tax credits during the current fiscal year, based on the amount of contribu-**
37 **tions and accompanying applications for credit received by the office during the fiscal year.**

38 **(2) If the Legislative Assembly makes the election allowed in subsection (1) of this sec-**
39 **tion:**

40 **(a) Any contributions to the Oregon Production Investment Fund made during the cur-**
41 **rent fiscal year and for which an application for a credit under ORS 315.514 is pending shall,**
42 **at the request of the taxpayer, be refunded by the Oregon Film and Video Office; and**

43 **(b) A credit under ORS 315.514 may not be claimed for any contribution made during the**
44 **current fiscal year.**

45 **SECTION 5.** Section 1a, chapter 559, Oregon Laws 2005, is amended to read:

1 **Sec. 1a.** The Oregon Film and Video Office may not issue a qualifying film production labor
2 rebate certificate under section 1 [*of this 2005 Act*], **chapter 559, Oregon Laws 2005**, on or after
3 January 1, [2012] **2018**.

4 **SECTION 6.** Section 77, chapter 736, Oregon Laws 2003, as amended by section 1, chapter 913,
5 Oregon Laws 2009, is amended to read:

6 **Sec. 77.** ORS 315.514 applies to tax years beginning on or after January 1, 2005, and before
7 January 1, [2012] **2018**, and to tax credit certifications issued by the Oregon Film and Video Office
8 on or after July 1, 2005.

9 **SECTION 7.** (1) **The amendments to ORS 284.367 by section 1 of this 2011 Act apply to**
10 **fiscal years beginning on or after July 1, 2011.**

11 **(2) The amendments to ORS 284.368 by section 2 of this 2011 Act apply to films starting**
12 **principal photography on or after January 1, 2011.**

13 **(3) The amendments to ORS 315.514 by section 3 of this 2011 Act apply to tax credit cer-**
14 **tifications issued by the Oregon Film and Video Office on or after the effective date of this**
15 **2011 Act.**

16 **(4) Section 4 of this 2011 Act applies to applications for certification under ORS 315.514**
17 **received on or after the effective date of this 2011 Act.**

18 **SECTION 8.** **This 2011 Act takes effect on the 91st day after the date on which the 2011**
19 **regular session of the Seventy-sixth Legislative Assembly adjourns sine die.**

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