AN ACT CREATING THE "MONTANA ECONOMIC DEVELOPMENT INDUSTRY ADVANCEMENT ACT" (MEDIA) TO PROVIDE INCOME TAX INCENTIVES FOR CERTAIN EXPENDITURES RELATED TO FILM, TELEVISION, AND RELATED MEDIA PRODUCTION; PROVIDING A TAX CREDIT TO PRODUCTION COMPANIES FOR CERTAIN MEDIA PRODUCTION EXPENDITURES MADE IN MONTANA; PROVIDING THAT THE CREDIT MAY BE CARRIED FORWARD OR TRANSFERRED TO A MONTANA TAXPAYER; REQUIRING THE DEPARTMENT OF REVENUE TO ADMINISTER THE TRANSFER OF THE TAX CREDITS; PROVIDING FOR A TRANSFER FEE; PROVIDING A TAX CREDIT FOR MONTANA WAGE EXPENDITURES INCURRED IN MONTANA; REQUIRING A PRODUCTION COMPANY TO APPLY TO THE DEPARTMENT OF COMMERCE FOR STATE CERTIFICATION TO QUALIFY FOR THE MEDIA PRODUCTION TAX CREDIT; REQUIRING AN APPLICATION AND AN APPLICATION FEE FOR A PRODUCTION COMPANY OR POSTPRODUCTION COMPANY TO CLAIM A TAX CREDIT; PROVIDING LIMITS ON THE AMOUNT OF CREDITS THAT MAY BE CLAIMED EACH YEAR; PROVIDING A STATUTORY APPROPRIATION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES.

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

Section 1. Short title. [Sections 1 through 12] may be cited as the "Montana Economic Development Industry Advancement Act".

Section 2. Purpose. (1) The purpose of [sections 1 through 12] is to enhance Montana's economy by expanding film and related media production in the state, by increasing job opportunities for a broad array of workers, and by promoting the growth of small businesses. The objectives of [sections 1 through 12] are to:

(a) advertise Montana as open for business to qualifying projects;

(b) develop a broad spectrum of high-paying jobs in the state;

(c) encourage investment of funds to finance media production in the state;

(d) expand opportunities for existing Montana small businesses and for new small businesses that provide goods and services to qualified projects; and

(e) promote tourism in the state.

(2) The objectives in subsection (1) will best be achieved by offering tax incentives as provided in [sections 1 through 12].

Section 3. Definitions. As used in [sections 1 through 12], unless the context requires otherwise, the following definitions apply:

(1) "Affiliate" means a subsidiary of which more than 50% of the voting stock is owned directly by the parent corporation or another member of the Montana combined group.

(2) "Base investment" means the amount expended by a production company as production expenditures and compensation incurred in this state that are directly used in a state-certified production.

(3) (a) "Compensation" means Montana wages, salaries, commissions, payments to a loan-out company subject to the provisions of subsection (3)(c), union benefits, fringe benefits, and any other form of remuneration paid to employees for personal services performed in this state.

(b) The term does not include compensation paid that is less than the minimum wage described in 39-3-409.

(c) The term includes payments to a loan-out company by a production company if the production company withheld and remitted Montana income tax at the rate of 6.9% on all payments to the loan-out company for services performed in this state. The amount withheld is considered to have been withheld by the loan-out company on wages paid to its employees for services performed in this state. The amounts withheld must be allocated to the loan-out company's employees based on the payments made to the loan-out company's employees for services performed in Montana. For purposes of this chapter, loan-out company nonresident employees performing services in this state must be considered taxable nonresidents and the loan-out company is subject to income taxation in the tax year in which the loan-out company's employees perform services in this state, notwithstanding any other provisions of Title 15. The withholding liability is subject to penalties and interest as provided in 15-1-216.

(d) With respect to a single crew member or production staff member, excluding an actor, director, producer, or writer, the portion of any compensation that exceeds $500,000 for a single production is not included when calculating the base investment.

(e) All payments to a single employee and any legal entity in which the employee has any direct or indirect ownership interest are considered as having been paid to the employee and must be aggregated regardless of the means of payment or distribution.

(4) "Game platform" means the electronic delivery system used to launch or play an interactive game.

(5) "Game sequel" means an interactive game that builds on the theme of a previously released interactive game, is distinguished by a new title, and features objectives or characters that are recognizably different from those in the original game.

(6) (a) "Loan-out company" means a personal service company contracted with and retained by a production company to provide individual personnel who are not employees of the production company, including actors, directors, producers, writers, production designers, production managers, costume designers, directors of photography, editors, casting directors, first assistant directors, second unit directors, stunt coordinators, and similar personnel, for performance of services used directly in a qualified production activity.

(b) The term does not include persons retained by a production company to provide tangible property or outside independent contractor services, such as catering, construction, trailers, equipment, and transportation.

(7) "Multimarket commercial distribution" means paid commercial distribution that extends to markets outside the state.

(8) (a) "Postproduction company" means a company that:

(i) maintains a business location physically located in this state;

(ii) is engaged in qualified postproduction activities;

(iii) meets the requirements of [section 5(4)] in the tax year for which the postproduction company claims the tax credit provided for in [section 9]; and

(iv) has been approved by the department of commerce to claim the credit provided for in [section 9].

(b) The term does not include any form of business owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a tax obligation of the state, a loan made by the state, or a loan guaranteed by the state.

(9) "Prereleased interactive game" means a new game, the offering of an existing game on a new game platform, or a game sequel that is in the developmental stages of production and that may be available to individuals for testing purposes but is not generally made available or distributed to consumers or to the general

public.

(10) (a) "Production company" means a company primarily engaged in qualified production activities that have been approved by the department of commerce.

(b) The term does not include any form of business owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a tax obligation of the state, a loan made by the state, or a loan guaranteed by the state.

(11) (a) "Production expenditure" means a preproduction or production expenditure incurred in Montana that is directly used for a qualified production activity including:

(i) set construction and operation;

(ii) wardrobes, makeup, accessories, and related services;

(iii) costs associated with photography and sound synchronization expenditures, excluding license fees, incurred with Montana companies for sound recordings and musical compositions, lighting, or related services and materials;

(iv) editing and related services;

(v) rental of facilities and equipment;

(vi) leasing of vehicles, whether to be photographed or to transport people, equipment, or materials;

(vii) lodging costs, including hotel rooms and private housing rentals paid for by the production company;

(viii) per diem and living allowance paid to staff, cast, and crew members;

(ix) digital, film, or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, visual effects services, and animation services;

(x) airfare, if purchased through a Montana travel agency or travel company;

(xi) insurance costs and bonding, if purchased through a Montana insurance agency; and

(xii) other direct costs of producing the project in accordance with generally accepted entertainment industry practices and generally accepted accounting principles.

(b) The term does not include:

(i) compensation, which qualifies for the credit provided for in [section 7(3)(b)(i) through (3)(b)(iv)];

(ii) production expenditures for footage shot outside the state;

(iii) marketing;

(iv) story rights;

(v) distribution; or

(vi) postproduction expenditures.

(12) "Qualified Montana promotion" means a promotion of this state approved by the department of commerce and consisting of:

(a) a qualified movie production that includes a 5-second static or animated logo that promotes Montana in the end credits for the life of the project and that includes a link to the official state of Montana website on the project's website;

(b) a qualified television production that includes an embedded 5-second Montana promotion during each broadcast worldwide for the life of the project and that includes a link to the official state of Montana website on the project's website;

(c) a qualified music video that includes the Montana logo at the end of each video and within online promotions;

(d) a qualified interactive game that includes a 15-second Montana advertisement in units sold and embedded in online promotions; or

(e) a qualified television special or sports event for which the network provides complimentary placement of two 30-second spots per 30 minutes of qualifying television special or sports event programming promoting Montana destinations and provided by the department of commerce as provided for in [section 4(7)].

(13) "Qualified postproduction activity" means an activity performed in this state on a qualified production employing traditional, emerging, and new workflow techniques used in postproduction for picture, sound, and music editing, rerecording and mixing, visual effects, graphic design, original scoring, animation, musical composition, and other activities performed after initial production and including activities performed on previously produced and edited content.

(14) "Qualified postproduction wage" means wages incurred in this state directly in qualified postproduction activities for footage shot inside or outside this state.

(15) (a) "Qualified production" means a new film, video, or digital project including only feature films, series for theaters, television, or streaming, pilots, movies and scripted shows made for television or streaming, televised commercial advertisements, music videos, corporate videos, industrial films, production for website creation, television specials, sports events, video games, interactive entertainment, prereleased interactive games, and sound recording projects used in a feature film, series, pilot, or movie for television.

(b) The term includes projects shot, recorded, or originally created in short or long form, animation, and music, fixed on a delivery system, including film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced and which is intended for multimarket commercial distribution via a theater, video on demand, digital or fiber optic distribution platforms, digital video recording, a digital platform designed for distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser-supported sites, cable television stations, streaming services, or public broadcasting stations.

(c) The term does not include the coverage of news, local interest programming, instructional videos, commercials distributed only on the internet, infomercials, solicitation-based productions, nonscripted television programs, feature films consisting primarily of stock footage not originally recorded in Montana, or projects containing obscenity as defined in 45-8-201(2).

(16) (a) "Qualified production activity" means the production of a new film, video, or digital project in this state and approved by the department of commerce, including only feature films, series for theaters, television, or streaming, pilots, movies and scripted shows made for television or streaming, televised commercial advertisements, music videos, corporate videos, industrial films, production for website creation, television specials, sports events, video games, interactive entertainment, prereleased interactive games, and sound recording projects used in a feature film, series, pilot, or movie for television.

(b) The term includes the production of projects filmed or recorded in this state, in whole or in part and in short or long form, animation and music, fixed on a delivery system, including film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced and which is intended for multimarket commercial distribution via a theater, video on demand, digital or fiber optic distribution platforms, digital video recording, a digital platform designed for distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser-supported sites, cable television stations, streaming services, or public broadcasting stations.

(c) The term does not include the coverage of news, local interest programming, instructional videos, commercials distributed only on the internet, infomercials, solicitation-based productions, nonscripted television programs, or feature films consisting primarily of stock footage not originally recorded in Montana, projects containing obscenity as defined in 45-8-201(2), or projects not shot, recorded, or originally created in Montana.

(17) "Resident" has the meaning provided in 15-30-2101.

(18) "State-certified production" means a production engaged in qualified production activities and certified by the department of commerce as provided in [section 4].

(19) "Underserved area" means a county in this state in which 14% or more people of all ages are in poverty as determined by the U.S. bureau of the census estimates for the most current year available.

Section 4. Application for state certification. (1) (a) A production company may not receive the tax credit provided for in [section 7] unless the production has been certified by the department of commerce as provided in this section.

(b) A postproduction company may not receive the tax credit provided for in [section 9] unless the postproduction company has been certified by the department of commerce. The postproduction company shall submit an application that includes the information provided for in subsection (2)(a) for the postproduction company. The application must be submitted in the year in which the postproduction plans to claim the credit and must be accompanied by a $500 application fee. For the purposes of allocating the credit pursuant to [section 10], the application must contain an estimate of the amount of credit the postproduction company will claim. A postproduction company that plans to claim the credit in more than 1 tax year must apply for the credit each year but the application fee is only required in the first year of application. The department of commerce shall notify the applicant whether the postproduction company qualifies for the credit within 30 days of receipt of the application.

(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 start of principal photography. The application must be accompanied by a $500 fee and must include:

(a) the production company's name, primary business address, telephone and fax numbers, incorporation information, federal tax identification number, and the name of at least one principal company officer or manager;

(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;

(d) a statement that the applicant meets the definition of production company in [section 3];

(e) the title of the production;

(f) the type of production;

(g) the proposed dates of production from preproduction to the start and completion of principal photography;

(h) a copy or synopsis of the production script;

(i) a list of production locations;

(j) a statement that the proposed production does not contain any material or performance that would be considered obscene under 45-8-201(2);

(k) a statement that the production will include a qualified Montana promotion; and

(l) a statement that the production company plans to make a base investment of $350,000 or more or, if subsection (5) applies, that the production company plans to make a base investment of $50,000 or more.

(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 of the application as to whether the production qualifies as a state-certified production.

(b) If the department of commerce approves the application, the department of commerce shall provide a certification number to the applicant.

(5) The department of commerce may approve on a case-by-case basis an application for a commercial, music video, production for website creation, video game, interactive entertainment, or experimental or low-budget project that plans a base investment of less than $350,000 but more than $50,000.

(6) (a) If the department of commerce determines that the production company has violated the provisions of subsection (2)(j) or (2)(k), 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 before the department of commerce on the revocation of the state certification as provided in Title 2, chapter 4, part 6.

(b) The department of revenue shall recapture any tax credit claimed by a production company for which the state certification has been revoked. The recapture is subject to penalties and interest as provided in 15-1-216.

(c) If the production company transferred the tax credit, the recapture provisions of [section 8(7)] apply.

(7) The department of commerce shall design and furnish the Montana screen credit needed to qualify for the additional tax credit provided for in [section 7(3)(b)(viii)] and the programming promoting Montana

destinations provided for in [section 3(12)(e)].

(8) The application fee must be deposited in an account in the state special revenue fund. The fee is statutorily appropriated to the department of commerce, as provided in 17-7-502, to administer the provisions of [sections 4 through 12].

(9) The department of commerce shall prescribe rules necessary to carry out the provisions of this section, including a procedure for review of the department of commerce's denial or revocation of state certification, the department's policies on the types of productions that may include the Montana screen credit, and the criteria for approving projects with a base investment of less than $350,000.

Section 5. Submission of costs -- fee. (1) Prior to claiming the media production tax credit provided for in [section 7] or the tax credit for postproduction wages provided for in [section 9], a production company or postproduction company must be approved to claim the credit by the department of commerce and shall submit costs to the department of revenue as provided in this section. A taxpayer may not claim a credit provided for in [section 7] or [section 9] unless the costs have been approved as provided in this section. The submission of cost information must be accompanied by a fee as follows:

(a) for a production company with a base investment of less than $350,000, $500;

(b) for a production company with a base investment of $350,000 or more, $1,000;

(c) for a postproduction company claiming the credit provided for in [section 9], $1,000.

(2) (a) A production company wishing to claim or transfer the tax credit for media production provided for in [section 7] shall submit to the department of revenue detailed information on production expenditures and compensation paid in connection with the state-certified production. Production expenditures and compensation paid must be submitted within 60 days of the completion of principal photography or, for a state-certified production for which expenditures will be claimed for multiple tax years, by the end of the tax year for which the credit will be claimed. If the production company fails to submit the required expenditures and compensation within 60 days, the tax credits may not be claimed until the following tax year.

(b) The information submitted by the production company must include:

(i) the certification number of the state-certified production, as provided for in [section 4(4)];

(ii) a description of the qualified production activities and the production expenditures, including information that demonstrates a base investment of $350,000 or more or, if [section 4(5)] applies, a base investment of $50,000 or more; and

(iii) if compensation is included in the production expenditures, a detailed listing of employee names, social security numbers, Montana wages, state of residence, and whether the employee is an enrolled student.

(3) (a) The department of revenue shall review the costs submitted pursuant to subsection (2) and provide to the department of commerce the amount of the media production tax credit calculated pursuant to [section 7] that may be claimed or transferred and the federal tax identification number of the production company.

(b) (i) Except as provided in subsection (3)(b)(ii), the department of revenue shall approve the media production tax credit if the state-certified production's base investment is $350,000 or more.

(ii) The department of revenue shall approve the credit for a commercial, music video, production for website creation, video game, interactive entertainment, or experimental or low-budget project certified by the department of commerce pursuant to [section 4(5)] if the production's base investment is $50,000 or more.

(c) A credit may be approved as provided in this subsection (3) only if principal photography began within 1 year of the date the department of commerce certified the production pursuant to [section 4].

(4) A postproduction company wishing to claim the tax credit for qualified postproduction wages provided for in [section 9] shall submit to the department of revenue a detailed listing of employee names, social security numbers, and Montana wages.

(5) A production company or postproduction company that submits costs pursuant to this section to claim the credit provided for in [section 7] or [section 9] shall submit the production expenditure verification report provided for in [section 6] by the due date provided for in 15-30-2604 without extension.

(6) The identity and social security number or federal tax identification number of the employees for which compensation information is submitted pursuant to this section are subject to the provisions of 15-30-2618 and 15-31-511.

(7) The fee provided for in subsection (1) must be deposited in the state special revenue fund. The fee is statutorily appropriated, as provided in 17-7-502, to the department of revenue to administer the provisions of [sections 7 through 9].

Section 6. Production expenditure verification report. (1) A production company or postproduction company that claims the credit provided for in [section 7] or [section 9] shall submit a production expenditure verification report to the department of revenue as provided in this section.

(2) The production expenditure verification report must:

(a) be issued by a certified public accountant who is unrelated to the production company or postproduction company and include a certification to that effect;

(b) be performed in accordance with the accounting standards generally accepted in the United States;

(c) be addressed to the person who engaged the accountant with a copy addressed to the production company, postproduction company, or person who applies for the credit provided for in [section 7];

(d) include the accountant's name, address, and telephone number;

(e) include the date of completion of the accountant's work; and

(f) contain a statement of acknowledgment by the accountant that the state is relying on the report to issue tax credits.

(3) The contents of the report must include:

(a) verification of the accuracy of the production expenditures and compensation submitted pursuant to [section 5(2)] or the wages and compensation submitted pursuant to [section 5(4)];

(b) an opinion from the accountant stating that there are no related party transactions or that material related party transactions are properly reported and accounted for, adequately disclosed, and explained in the report; and

(c) a statement that the submission of the production expenditures and compensation presents fairly, in all material aspects, the production expenditures, postproduction wages, and compensation expended in Montana pursuant to the provisions of [sections 1 through 12].

(4) All costs associated with the report are the obligation of the production company or postproduction company.

Section 7. Tax credit for media production. (1) Subject to [section 10], a production company and its affiliates are allowed a credit against the taxes imposed by chapter 30 and this chapter for investments in a state-certified production approved by the department of commerce as provided in [sections 4 and 5]. The credit is for the base investment made up to 6 months before state certification through completion of the project. The credit must be claimed for the period July 1, 2019, through December 31, 2020, in which the production expenditures were incurred or the compensation was paid unless the credit is transferred to the next tax year because the limits provided for in [section 10] have been met. For periods after December 31, 2020, the credit must be claimed for the year in which the production expenditures were incurred or the compensation was paid unless the credit is transferred to the next tax year because the limits provided for in [section 10] have been met.

(2) To claim the credit provided for in this section:

(a) the production company or its affiliate must have applied to the department of commerce as provided in [section 5] and been approved to claim or transfer the credit; or

(b) the taxpayer must be the entity to which a credit approved pursuant to [section 5] and this section was transferred.

(3) (a) The credit is equal to 20% of the production expenditures in the state in the tax year, plus the additional amounts provided for in subsection (3)(b), but may not in the aggregate exceed 35% of the production company's base investment in the tax year.

(b) Additional amounts for which the credit may be claimed are:

(i) 25% of the compensation paid per production or season of a television series to each crew member or production staff member who is a resident, not to exceed a $150,000 credit per person;

(ii) 15% of the compensation paid per production or season of a television series to each crew member or production staff member who is not a resident but for whom Montana income taxes have been withheld, not to exceed a $150,000 credit per person;

(iii) 20% of the first $7.5 million of compensation paid per production or season of a television series to each actor, director, producer, or writer for whom Montana income taxes have been withheld;

(iv) 30% of compensation paid per production or season of a television series to a student enrolled in a Montana college or university who works on the production for college credit. The credit may not exceed $50,000 per student. If a credit provided for in this subsection (3)(b)(iv) is claimed for an enrolled student, the credits provided for in subsections (3)(b)(i) through (3)(b)(iii) may not be claimed for the same enrolled student.

(v) an additional 10% of payments made to a Montana college or university for stage rentals, equipment rentals, or location fees for filming on campus;

(vi) an additional 10% of all in-studio facility and equipment rental expenditures incurred in this state for a production that rents a studio for 20 days or more;

(vii) an additional 5% for production expenditures made in an underserved area; and

(viii) an additional 5% of the base investment in the state if the state-certified production includes a

Montana screen credit furnished by the state as provided in [section 4(7)].

(4) If one production company makes a production expenditure to hire another production company to produce a project or contribute elements of a project for pay, the hired production company is considered a service provider for the hiring company and the hiring company is entitled to claim the credit for all expenditures that are incurred in the state.

(5) Any unused credit may be carried forward for 5 years or may be transferred as provided in [section 8]. The credit allowed by this section, including a transferred credit, may not be refunded if the taxpayer has a tax liability less than the amount of the credit.

(6) A taxpayer claiming a credit shall include with the tax return the following information:

(a) the amount of tax credit claimed and transferred for the tax year;

(b) the amount of the tax credit previously claimed or transferred;

(c) the amount of the tax credit carried over from a previous tax year; and

(d) the amount of the tax credit to be carried over to a subsequent tax year.

(7) (a) A taxpayer claiming the credit provided for in this section must claim the credit as provided in subsection (7)(b).

(b) (i) An entity taxed as a corporation for Montana income tax purposes shall claim the credit on its corporate income tax return.

(ii) Individuals, estates, and trusts shall claim a credit allowed under this section on their individual income tax return.

(iii) An entity not taxed as a corporation shall claim the credit allowed under this section on member or partner returns as follows:

(A) corporate partners or members shall claim their share of the credit on their corporate income tax returns;

(B) individual partners or members shall claim their share of the credit on their individual income tax returns; and

(C) partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.

(c) In order to prevent disguised sales of the credit provided for in this section, allocations of credits through partnership and membership agreements may not be recognized unless they have a substantial economic effect as that term is defined in 26 U.S.C. 704 and applicable federal regulations.

(8) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the amount of the production expenditure or compensation on which the amount of the credit was computed as a deduction under 15-30-2131 or 15-31-114.

Section 8. Transfer of tax credit for media production -- transfer fee. (1) A tax credit for a state-certified production approved as provided in [sections 4 and 5] and calculated pursuant to [section 7] but not claimed by the production company may be transferred in whole or in part by the production company to another Montana taxpayer as provided in this section.

(2) A credit may be transferred only once each tax year. The transfer may involve one or more transferees.

(3) A transferee must acquire the credit for a minimum of 85% of its value.

(4) A transferred credit is subject to the carryforward period from the year in which the production company was eligible to claim the credit.

(5) A production company or taxpayer that transfers a tax credit shall submit to the department of revenue a written notification of the transfer of the tax credit within 30 days after the transfer. The notification must include the following information:

(a) the certification number of the state-certified production;

(b) the tax credit balance before and after the transfer;

(c) the tax identification number of the taxpayer to whom the credit was transferred;

(d) the amount of credit transferred; and

(e) any other information required by the department of revenue.

(6) The notification of the transfer of a tax credit must be accompanied by a fee equal to 2% of the value of the tax credit transferred. The transfer fee must be deposited in the general fund.

(7) A transferee has rights to claim the tax credit available to the production company or previous transferee only at the time of the transfer. If a production company or transferee did not have rights to claim the credit at the time of transfer, the department of revenue shall disallow the credit claimed by the taxpayer or recapture the credit. The transferee's recourse is against the production company or previous transferee and not against the state of Montana.

(8) The department shall administer the transfer of credits pursuant to this section.

Section 9. Tax credit for postproduction wages. (1) A postproduction company that has incurred qualified postproduction wages in the tax year is allowed a credit against the taxes imposed by chapter 30 and this chapter if the taxpayer applies to the department of commerce as provided in [section 4] and to the department of revenue as provided in [section 5] and is approved to claim the credit.

(2) The tax credit is equal to 25% of qualified postproduction wages incurred in the state.

(3) A tax credit claimed under this section may not exceed the postproduction company's total compensation paid to employees working in this state for the tax year in which the credit is claimed.

(4) The tax credit allowed by this section may not be refunded if the taxpayer has no tax liability. Any unused credit may be carried forward for 5 years.

(5) A taxpayer claiming a credit shall include with the tax return the following information:

(a) the amount of tax credit claimed for the tax year;

(b) the amount of the tax credit previously claimed;

(c) the amount of the tax credit carried over from a previous tax year; and

(d) the amount of the tax credit to be carried over to a subsequent tax year.

(6) (a) A taxpayer claiming the credit provided for in this section must claim the credit as provided in subsection (6)(b).

(b) (i) An entity taxed as a corporation for Montana income tax purposes shall claim the credit on its corporate income tax return.

(ii) Individuals, estates, and trusts shall claim a credit allowed under this section on their individual income tax return.

(iii) An entity not taxed as a corporation shall claim the credit allowed under this section on member or partner returns as follows:

(A) corporate partners or members shall claim their share of the credit on their corporate income tax returns;

(B) individual partners or members shall claim their share of the credit on their individual income tax returns; and

(C) partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.

(c) In order to prevent disguised sales of the credit provided for in this section, allocations of credits through partnership and membership agreements may not be recognized unless they have a substantial economic effect as that term is defined in 26 U.S.C. 704 and applicable federal regulations.

(7) A postproduction company may not claim a credit under this section for production expenditures for which the media production credit provided for in [section 7] is claimed.

Section 10. Limitation of tax credits. (1) (a) The department of commerce may grant to applicants pursuant to [section 4] the authority to apply for the tax credits provided for in [sections 7 and 9].

(b) The authorization by the department of commerce to apply for a credit does not guarantee the credit. A taxpayer authorized to apply for a credit pursuant to [section 4] and this section must meet the requirements of [sections 5 through 9] and subsection (2) of this section.

(c) The department of commerce shall make reasonable efforts to post on its website the amount of tax credits available and not yet allocated.

(2) (a) Total claims for the tax credits provided for in [sections 7 and 9] may not exceed $10 million per calendar year.

(b) Claims must be allowed on a first-come, first-served basis. A taxpayer whose claim for a credit is disallowed because the calendar year limit has been reached may use the credit in the next calendar year but the transfer of the credit to the next calendar year does not extend the carry forward periods provided for in [section 7(5)] or [section 9(4)].

(c) If a claim is disallowed because the calendar year limit has been reached, the department of revenue may waive penalties and interest pursuant to 15-1-216.

(d) The department of revenue shall make reasonable efforts to post on its website the amount of credits available and not yet claimed.

Section 11. Report to legislature. (1) The department of commerce shall provide a written report about the economic impact of the tax credits provided for in [sections 7 through 9] to the revenue and transportation interim committee, provided for in 5-5-227. The report must be provided no less than 6 months before the start of the 2021 regular legislative session and, pursuant to 5-11-210, every 2 years thereafter, and must be posted on the department of commerce's website.

(2) The report must include:

(a) the overall impact of the tax credits;

(b) the dollar amount of tax credits issued;

(c) the number of net new jobs created;

(d) the amount of compensation paid;

(e) the economic impact of the film industry in the state;

(f) the names of all state certified productions eligible to claim tax credits; and

(g) any other information that describes the impact of the tax credits.

(3) The department of commerce shall contract with a research organization to prepare the report required by this section. The research organization may not be affiliated with the film industry or with the department of commerce. The department may use the fees collected pursuant to [section 4] or other funding to pay for the report.

(4) The department of commerce shall make recommendations to the revenue and transportation interim committee on whether to make changes to the tax credits provided for in [sections 7 through 9], including changes to the cap provided for in [section 10]. The revenue and transportation interim committee may make recommendations to the legislature based on the information contained in the report and the department of commerce's recommendations.

Section 12. Rulemaking. (1) The department of commerce and the department of revenue shall adopt rules necessary to implement and administer [sections 1 through 12]. The rules shall include procedures for:

(a) determining production expenditures allowed under [section 7] and postproduction wages allowed under [section 9];

(b) administering the transfer of credits and the registration and reporting requirements of credit brokers pursuant to [section 8]; and

(c) reviewing taxpayer compliance with the provisions of [section 4].

(2) The department of revenue and the department of commerce shall jointly adopt rules related to the content of the definitions in [section 3].

Section 13. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-1304; 10-4-304; 15-1-121; 15-1-218; <u>[section 4]; [section 5];</u> 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-148; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-321; 61-3-415; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-150; 76-13-416; 76-17-103; 76-22-109; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments.(In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded

liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December 31, 2023; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025; pursuant to sec. 55, Ch. 151, L. 2017, the inclusion of 30-10-1004 terminates June 30, 2021; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023, and pursuant to sec. 2, Ch. 340, L. 2017, and sec. 32, Ch. 429, L. 2017, is void for fiscal years 2018 and 2019; and pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027.)"

Section 14. Codification instruction. [Sections 1 through 12] are intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [sections 1 through 12].

Section 15. Coordination instruction. If both House Bill No. 723 and [this act] are passed and approved, then [section 1(5) of House Bill No. 723] must be amended by including the underlined language as follows:

"(5) The following tax credits expire on December 31, 2029:

(a) the biodiesel or biolubricant production facility credit provided for in 15-32-702;

(b) the biodiesel blending and storage credit provided for in 15-32-703;

(c) the adoption tax credit provided for in 15-30-2364;

(d) the credit for providing temporary emergency lodging provided for in 15-30-2381 and 15-31-171;

(e) the credit for hiring a registered apprentice or veteran apprentice provided for in 15-30-2357 and 15-31-173; ~~and~~

(f) the earned income tax credit provided for in 15-30-2318; and

(g) the media production and postproduction credits provided for in [section 7 of House Bill No. 293] and [section 9 of House Bill No. 293]."

Section 16. Coordination instruction. If both House Bill No. 723 and [this act] are passed and approved, then [section 7(1) of this act] must be amended as follows:

"(1) Subject to [section 10] and through the tax year ending December 31, 2029, a production company and its affiliates are allowed a credit against the taxes imposed by chapter 30 and this chapter for investments in a state-certified production approved by the department of commerce as provided in [sections 4 and 5]. The credit is for the base investment made up to 6 months before state certification through completion of the project. The credit must be claimed for the period July 1, 2019, through December 31, 2020, in which the production expenditures were incurred or the compensation was paid unless the credit is transferred to the next tax year because the limits provided for in [section 10] have been met. For periods after December 31, 2020, the credit must be claimed for the year in which the production expenditures were incurred or the compensation was paid unless the credit is transferred to the next tax year because the limits provided for in [section 10] have been met."

Section 17. Coordination instruction. If both House Bill No. 723 and [this act] are passed and approved, then [section 9(1) of this act] must be amended as follows:

"(1) ~~A~~ Through the tax year ending December 31, 2029, a postproduction company that has incurred qualified postproduction wages in the tax year is allowed a credit against the taxes imposed by chapter 30 and this chapter if:"

Section 18. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 19. Effective date. [This act] is effective July 1, 2019.

Section 20. Applicability. (1) Except as provided in subsection (2), [this act] applies to tax years beginning after December 31, 2020.

(2) The tax credit in [section 7] applies after June 30, 2019, as provided in [section 7(1)].

- END -

I hereby certify that the within bill,

HB 0293, originated in the House.

____

Speaker of the House

Signed this __________________________________ day

of ______________________________________, 2019.

____

Chief Clerk of the House

____

President of the Senate

Signed this __________________________________ day

of ______________________________________, 2019.

HOUSE BILL NO. 293

INTRODUCED BY W. GALT, D. BARTEL, D. FERN, G. HERTZ, S. MORIGEAU, C. SCHREINER, B. SMITH, K. WHITE, D. ZOLNIKOV, S. MALEK, D. BEDEY

AN ACT CREATING THE "MONTANA ECONOMIC DEVELOPMENT INDUSTRY ADVANCEMENT ACT" (MEDIA) TO PROVIDE INCOME TAX INCENTIVES FOR CERTAIN EXPENDITURES RELATED TO FILM, TELEVISION, AND RELATED MEDIA PRODUCTION; PROVIDING A TAX CREDIT TO PRODUCTION COMPANIES FOR CERTAIN MEDIA PRODUCTION EXPENDITURES MADE IN MONTANA; PROVIDING THAT THE CREDIT MAY BE CARRIED FORWARD OR TRANSFERRED TO A MONTANA TAXPAYER; REQUIRING THE DEPARTMENT OF REVENUE TO ADMINISTER THE TRANSFER OF THE TAX CREDITS; PROVIDING FOR A TRANSFER FEE; PROVIDING A TAX CREDIT FOR MONTANA WAGE EXPENDITURES INCURRED IN MONTANA; REQUIRING A PRODUCTION COMPANY TO APPLY TO THE DEPARTMENT OF COMMERCE FOR STATE CERTIFICATION TO QUALIFY FOR THE MEDIA PRODUCTION TAX CREDIT; REQUIRING AN APPLICATION AND AN APPLICATION FEE FOR A PRODUCTION COMPANY OR POSTPRODUCTION COMPANY TO CLAIM A TAX CREDIT; PROVIDING LIMITS ON THE AMOUNT OF CREDITS THAT MAY BE CLAIMED EACH YEAR; PROVIDING A STATUTORY APPROPRIATION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES.