GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2015 REGULAR SESSION

HOUSE BILL NO. 340

THURSDAY, FEBRUARY 12, 2015

The following bill was reported to the Senate from the House and ordered to be printed.

RECEIVED AND FILED
DATE March 30, 2015
3:34pm

ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

1 AN ACT relating to the expansion of the film tax credits.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 148.542 is amended to read as follows:

4 As used in KRS 148.542 to 148.546:

5 (1) "Above-the-line production crew" means employees involved with the production
6 of a motion picture or entertainment production whose salaries are negotiated prior
7 to commencement of production, such as actors, directors, producers, and writers;

8 (2) "Animated production" means a nationally distributed feature-length film created
9 with the rapid display of a sequence of images using 2-D or 3-D graphics of artwork
10 or model positions in order to create an illusion of movement;

11 (3) "Approved company" means an eligible company approved for incentives provided
12 under KRS 141.383 and 148.544;

13 (4) "Below-the-line production crew" means employees involved with the production
14 of a motion picture or entertainment production except above-the-line production
15 crew. "Below-the-line production crew" includes but is not limited to:

16 (a) Casting assistants;

17 (b) Costume design;

18 (c) Extras;

19 (d) Gaffers;

20 (e) Grips;

21 (f) Location managers;

22 (g) Production assistants;

23 (h) Set construction staff; and

24 (i) Set design staff;

25 (5) "Cabinet" means the Finance and Administration Cabinet;

26 (6) "Commercial" means an individual production or series of live-action or animated
27 productions, music videos, infomercials, or interstitials that are:

1 (a) Less than thirty-one (31) minutes in length;
2 (b) Made for the purpose of promoting a product, service, or idea; and
3 (c) Produced for regional or national distribution via broadcast, cable, or any
4 digital format, including but not limited to cable, satellite, Internet, or mobile
5 electronic devices;
6 (7) "Commonwealth" means the Commonwealth of Kentucky;
7 (8) "Compensation" means compensation included in adjusted gross income as defined
8 in KRS 141.010(10);
9 (9) "Documentary" means a production based upon factual information and not
10 subjective interjections;
11 (10) "Eligible company" means any person that intends to film or produce a motion
12 picture or entertainment production in the Commonwealth;
13 (11) "Employee" means the same as defined in KRS 141.010(20);
14 (12) ***"Enhanced incentive county" has the same meaning as in KRS 154.32-010;***
15 ***(13)*** "Feature-length film" means a live-action or animated production that is:
16 (a) More than thirty (30) minutes in length; and
17 (b) Produced for distribution in theaters or via digital format, including but not
18 limited to DVD, Internet, or mobile electronic devices;
19 ***(14)***[~~(13)~~] "Industrial film" means a business-to-business film that may be viewed by the
20 public, including but not limited to videos used for training or for viewing at a trade
21 show;
22 ***(15) "Kentucky-based company" has the same meaning as in KRS 164.6011;***
23 ***(16)***[~~(14)~~] (a) "Motion picture or entertainment production" means:
24 1. The following if filmed in whole or in part, or produced in whole or in
25 part, in the Commonwealth:
26 a. A feature-length film;
27 b. A television program;

1 c. An industrial film;
2 d. A documentary; or
3 e. A commercial; or
4 2. A national touring production of a Broadway show produced in
5 Kentucky;
6 (b) "Motion picture or entertainment production" does not include the filming or
7 production of obscene material or television coverage of news or athletic
8 events;
9 ***(17)***[~~(15)~~] "Obscene" means the same as defined in KRS 531.010;
10 ***(18)***[~~(16)~~] "Office" means the Kentucky Film Office in the Tourism, Arts and Heritage
11 Cabinet;
12 ***(19)***[~~(17)~~] "Person" means the same as defined in KRS 141.010(15);
13 ***(20)***[~~(18)~~] (a) "Qualifying expenditure" means expenditures made in the
14 Commonwealth for the following if directly used in or for a motion picture or
15 entertainment production:
16 1. The production script and synopsis;
17 2. Set construction and operations, wardrobe, accessories, and related
18 services;
19 3. Lease or rental of real property in Kentucky as a set location;
20 4. Photography, sound synchronization, lighting, and related services;
21 5. Editing and related services;
22 6. Rental of facilities and equipment;
23 7. Vehicle leases;
24 8. Food; and
25 9. Accommodations.
26 (b) "Qualifying expenditure" does not include Kentucky sales and use tax paid by
27 the approved company on the qualifying expenditure;

1 *(21)*[~~(19)~~] "Qualifying payroll expenditure" means compensation paid to above-the-line
2 crew and below-the line crew while working on a motion picture or entertainment
3 production in the Commonwealth if the compensation is for services performed in
4 the Commonwealth;
5 ***(22) "Resident" has the same meaning as in KRS 141.010;***
6 *(23)*[~~(20)~~] "Secretary" means the secretary of the Tourism, Arts and Heritage Cabinet;
7 *(24)*[~~(21)~~] "Tax incentive agreement" means the agreement entered into pursuant to KRS
8 148.546 between the office and the approved company; and
9 *(25)*[~~(22)~~] "Television program" means any live-action or animated production or
10 documentary, including but not limited to:
11 (a) An episodic series;
12 (b) A miniseries;
13 (c) A television movie; or
14 (d) A television pilot;
15 that is produced for distribution on television via broadcast, cable, or any digital
16 format, including but not limited to cable, satellite, Internet, or mobile electronic
17 devices.
18 ➔Section 2. KRS 148.544 is amended to read as follows:
19 (1) The purposes of KRS 141.383 and 148.542 to 148.546 are to:
20 (a) Encourage the film and entertainment industry to choose locations in the
21 Commonwealth for the filming and production of motion picture or
22 entertainment productions;
23 (b) Encourage the development of a film and entertainment industry in Kentucky;
24 (c) Encourage increased employment opportunities for the citizens of the
25 Commonwealth within the film and entertainment industry; and
26 (d) Encourage the development of a production and postproduction infrastructure
27 in the Commonwealth for film production and touring Broadway show

1 production facilities containing state-of-the-art technologies.
2 (2) The Kentucky Film Office is hereby established in the Tourism, Arts and Heritage
3 Cabinet to administer, together with the Finance and Administration Cabinet and
4 the Tourism Development Finance Authority, the tax incentive established by KRS
5 141.383 and 148.542 to 148.546.
6 (3) To qualify for the tax incentive provided in subsection (4) of this section, the
7 following requirements shall be met:
8 (a) ***For an approved company that is also a Kentucky-based company that:***
9 ***1. Films or produces a feature-length film, television program, or***
10 ***industrial film in whole or in part in the Commonwealth, the***
11 ***minimum combined total of qualifying expenditures and qualifying***
12 ***payroll expenditures shall be one hundred twenty-five thousand***
13 ***dollars ($125,000);***
14 ***2. Films or produces a commercial in whole or in part in the***
15 ***Commonwealth that is distributed regionally or nationally, the***
16 ***minimum combined total of qualifying expenditures and qualifying***
17 ***payroll expenditures shall be one hundred thousand dollars***
18 ***($100,000);***
19 ***3. Produces a national touring production of a Broadway show in whole***
20 ***or in part in the Commonwealth, the minimum combined total of***
21 ***qualifying expenditures and qualifying payroll expenditures shall be***
22 ***twenty thousand dollars ($20,000); or***
23 ***4. Films or produces a documentary in whole or in part in the***
24 ***Commonwealth, the minimum combined total of qualifying***
25 ***expenditures and qualifying payroll expenditures shall be ten***
26 ***thousand dollars ($10,000);***
27 ***(b)*** For an approved company ***that is not a Kentucky-based company*** that***:***

1 ***1.*** Films or produces a ***feature-length film, television program, or***
2 ***industrial film in whole or in part in the Commonwealth***[~~motion~~
3 ~~picture production, except for a commercial or documentary~~], the
4 minimum combined total of qualifying expenditures and qualifying
5 payroll expenditures shall be ***two hundred fifty thousand dollars***
6 ***($250,000)***[~~five hundred thousand dollars ($500,000)~~];
7 ***2.***[~~(b)~~] [~~For an approved company that~~]Films or produces a commercial
8 ***in whole or in part*** in the Commonwealth that is distributed regionally
9 or nationally, the minimum combined total of qualifying expenditures
10 and qualifying payroll expenditures shall be ***one hundred thousand***
11 ***dollars ($100,000)***[~~two hundred thousand dollars ($200,000)~~]; ***or***[~~and~~]
12 ***3.***[~~(c)~~] [~~For an approved company that~~]Films or produces a documentary
13 ***in whole or in part*** in the Commonwealth or that produces a national
14 touring production of a Broadway show, the minimum combined total of
15 qualifying expenditures and qualifying payroll expenditures shall be
16 ***twenty thousand dollars ($20,000)***[~~fifty thousand dollars ($50,000)~~].
17 (4) (a) The incentive available under KRS 141.383 and 148.542 to 148.546 is a
18 refundable credit against the Kentucky income tax imposed under KRS
19 141.020 or 141.040, and the limited liability entity tax imposed under KRS
20 141.0401, as provided in KRS 141.383.
21 ***(b) 1. For a motion picture or entertainment production filmed or produced***
22 ***in its entirety in an enhanced incentive county, the amount of the***
23 ***incentive shall be equal to thirty-five percent (35%) of the approved***
24 ***company's:***
25 ***a. Qualifying expenditures;***
26 ***b. Qualifying payroll expenditures paid to resident and nonresident***
27 ***below-the-line production crew; and***

1 ***c. Qualifying payroll expenditures paid to resident and nonresident***
2 ***above-the-line production crew not to exceed one million dollars***
3 ***($1,000,000) in payroll expenditures per employee.***
4 ***2. a. To the extent the approved company films or produces a motion***
5 ***picture or entertainment production in part in an enhanced***
6 ***incentive county and in part a Kentucky county that is not an***
7 ***enhanced incentive county, the approved company shall be***
8 ***eligible to receive the incentives provided in this paragraph for***
9 ***those expenditures incurred in the enhanced incentive county***
10 ***and all other expenditures shall be subject to the incentives***
11 ***provided in paragraph (c) of this subsection.***
12 ***b. The approved company shall track the requisite expenditures by***
13 ***county. If the approved company can demonstrate to the***
14 ***satisfaction of the cabinet that it is not practical to use a separate***
15 ***accounting method to determine the expenditures by county, the***
16 ***approved company shall determine the correct expenditures by***
17 ***county using an alternative method approved by the cabinet.***
18 ***(c) For a motion picture or entertainment production filmed or produced in***
19 ***whole or in part in any Kentucky county other than in an enhanced***
20 ***incentive county,*** the amount of the incentive shall ***be equal to***~~[not exceed]~~:
21 1. ***Thirty percent (30%)***~~[Twenty percent (20%)]~~ of the approved
22 company's***:***
23 ***a.*** Qualifying expenditures;
24 ***b.*** ~~[2. Twenty percent (20%) of the approved company's~~
25 ~~]~~Qualifying payroll expenditures paid to below-the-line production
26 crew ***that are not residents***; and
27 ***c.*** ~~[3. Twenty percent (20%) of the approved company's~~

1]Qualifying payroll expenditures paid to above-the-line production
2 crew ***that are not residents,*** not to exceed ***one million dollars***
3 ***($1,000,000)***[~~one hundred thousand dollars ($100,000)~~] in payroll
4 expenditures per employee***; and***
5 ***2. Thirty-five percent (35%) of the approved company's:***
6 ***a. Qualifying payroll expenditures paid to resident below-the-line***
7 ***production crew; and***
8 ***b. Qualifying payroll expenditures paid to resident above-the-line***
9 ***production crew not to exceed one million dollars ($1,000,000)***
10 ***in payroll expenditures per employee.***
11 ***(d)***[~~(b)~~] The Tourism Development Finance Authority may accept applications,
12 authorize the execution of tax incentive agreements, and enter into tax
13 incentive agreements beginning on June 26, 2009; however, no credit amount
14 shall be claimed by the taxpayer as a refund or paid by the Department of
15 Revenue prior to July 1, 2010.
16 ➔Section 3. KRS 148.546 is amended to read as follows:
17 (1) An eligible company shall, at least thirty (30) days prior to incurring any
18 expenditure for which recovery will be sought, file an application for tax incentives
19 with the office. The application shall include:
20 (a) The name and address of the applicant;
21 (b) ***Verification that the applicant is a Kentucky-based company;***
22 ***(c)*** The production script or a detailed synopsis of the script;
23 ***(d)***[~~(c)~~] ***The locations where the filming or production will occur;***
24 ***(e)*** The anticipated date on which filming or production shall begin;
25 ***(f)***[~~(d)~~] The anticipated date on which the production will be completed;
26 ***(g)***[~~(e)~~] The total anticipated qualifying expenditures;
27 ***(h)***[~~(f)~~] The total anticipated qualifying payroll expenditures for ***resident and***

1 ***nonresident*** above-the-line crew ***by county***;
2 ***(i)***[~~(g)~~] The total anticipated qualifying payroll expenditures for ***resident and***
3 ***nonresident*** below-the-line crew ***by county***;
4 ***(j)***[~~(h)~~] The address of a Kentucky location at which records of the production
5 will be kept;
6 ***(k)***[~~(i)~~] An affirmation that if not for the incentive offered under KRS 148.542
7 to 148.546, the eligible company would not film or produce the production in
8 the Commonwealth; and
9 ***(l)***[~~(j)~~] Any other information the office may require.
10 (2) The office shall notify the eligible company within thirty (30) days after receiving
11 the application of its status.
12 (3) (a) Upon review of the application and any additional information submitted, the
13 office shall present the application and its recommendation to the Tourism
14 Development Finance Authority established by KRS 148.850 which may, by
15 resolution, authorize the execution of a tax incentive agreement between the
16 Tourism Development Finance Authority and the approved company.
17 (b) 1. The total amount of tax credits authorized by the Tourism Development
18 Finance Authority during fiscal year 2010-2011 shall not exceed five
19 million dollars ($5,000,000).
20 2. The total amount of tax credits authorized by the Tourism Development
21 Finance Authority during the fiscal year 2011-2012 shall not exceed
22 seven million five hundred thousand dollars ($7,500,000).
23 (4) The tax incentive agreement shall include the following provisions:
24 (a) The duties and responsibilities of the parties;
25 (b) A detailed description of the motion picture or entertainment production for
26 which incentives are requested;
27 (c) The anticipated qualifying expenditures and qualifying payroll expenditures

1 for ***resident and nonresident***[~~both~~] above-the-line and below-the-line crews
2 ***by county***;
3 (d) The minimum combined total of qualifying expenditures and qualifying
4 payroll expenditures necessary for the approved company to qualify for
5 incentives;
6 (e) That the approved company shall have no more than two (2) years from the
7 date the tax incentive agreement is executed to start the motion picture or
8 entertainment production;
9 (f) That the approved company shall have no more than four (4) years from the
10 execution of the tax incentive agreement to complete the motion picture or
11 entertainment production;
12 (g) That the motion picture or entertainment production shall not include obscene
13 materials and shall not negatively impact the economy or the tourism industry
14 of the Commonwealth;
15 (h) That the execution of the agreement is not a guarantee of tax incentives and
16 that actual receipt of the incentives shall be contingent upon the approved
17 company meeting the requirements established by the tax incentive
18 agreement;
19 (i) That the approved company shall submit to the office within one hundred
20 eighty (180) days of the completion of the motion picture or entertainment
21 production a detailed cost report of the qualifying expenditures, qualifying
22 payroll expenditures, and final script;
23 (j) That the approved company shall provide the office with documentation that
24 the approved company has withheld income tax as required by KRS 141.310
25 on all qualified payroll expenditures for which an incentive under KRS
26 141.383 and 148.544 is sought;
27 (k) That, if the office determines that the approved company has failed to comply

1 with any of its obligations under the tax incentive agreement:
2 1. The office may deny the incentives available to the approved company;
3 2. Both the office and the cabinet may pursue any remedy provided under
4 the tax incentive agreement;
5 3. The office may terminate the tax incentive agreement; and
6 4. Both the office and the cabinet may pursue any other remedy at law to
7 which it may be entitled;
8 (l) That the office shall monitor the tax incentive agreement;
9 (m) That the approved company shall provide to the office and the cabinet all
10 information necessary to monitor the tax incentive agreement;
11 (n) That the office may share information with the cabinet or any other entity the
12 office determines is necessary for the purposes of monitoring and enforcing
13 the terms of the tax incentive agreement;
14 (o) That the motion picture or entertainment production shall contain an
15 acknowledgment that the motion picture ***or entertainment*** production was
16 ***produced or*** filmed[~~ or the touring show was produced~~] in the
17 Commonwealth of Kentucky;
18 (p) ***That the approved company shall include screen credits in its final***
19 ***production that:***
20 ***1. Indicate that the approved company received tax incentives from the***
21 ***Commonwealth of Kentucky; and***
22 ***2. Display the "Unbridled Spirit" logo;***
23 ***(q)*** Terms of default;
24 ***(r)***[~~(q)~~] The method and procedures by which the approved company shall
25 request and receive the incentive provided under KRS 141.383 and 148.544;
26 ***(s)***[~~(r)~~] That the approved company may be required to pay an administrative fee
27 as authorized under subsection (5) of this section; and

1 ***(t)***[~~(s)~~] Any other provisions deemed necessary or appropriate by the parties to
2 the tax incentive agreement.
3 (5) The office may require the approved company to pay an administrative fee, the
4 amount of which shall be established by administrative regulation promulgated in
5 accordance with KRS Chapter 13A. The administrative fee shall not exceed one-
6 half of one percent (0.5%) of the estimated amount of tax incentive sought or five
7 hundred dollars ($500), whichever is greater.
8 (6) Prior to commencement of activity as provided in a tax incentive agreement, the tax
9 incentive agreement shall be submitted to the Government Contract Review
10 Committee established by KRS 45A.705 for review, as provided in KRS 45A.695,
11 45A.705, and 45A.725.
12 (7) The office shall notify the cabinet upon approval of an approved company. The
13 notification shall include the name of the approved company, the name of the
14 motion picture or entertainment production, the estimated amount of qualifying
15 expenditures, the estimated date on which the approved company will complete
16 filming or production, and any other information required by the cabinet.
17 (8) Within one hundred eighty days (180) days of completion of the motion picture or
18 entertainment production, the approved company shall submit to the office a
19 detailed cost report of:
20 (a) Qualifying expenditures;
21 (b) Qualifying payroll expenditures for ***resident and nonresident*** above-the-line
22 crew ***by county***;
23 (c) Qualifying payroll expenditures for ***resident and nonresident*** below-the-line
24 crew ***by county***; and
25 (d) The final script.
26 (9) (a) The office, together with the secretary, shall review all information submitted
27 for accuracy and shall confirm that all relevant provisions of the tax incentive

1 agreement have been met.
2 (b) Upon confirmation that all requirements of the tax incentive agreement have
3 been met, the office, and the secretary shall review the final script, and if they
4 determine that the motion picture or entertainment production does not:
5 1. Contain visual or implied scenes that are obscene; or
6 2. Negatively impact the economy or the tourism industry of the
7 Commonwealth;
8 the office shall forward the detailed cost report to the cabinet for calculation
9 of the refundable credit.
10 (10) The cabinet shall verify that the approved company withheld the proper amount of
11 income tax on qualifying payroll expenditures, and the cabinet shall notify the
12 office of the total amount of refundable credit available on qualifying expenditures
13 and qualifying payroll expenditures.
14 (11) On or before October 1, 2010, and on or before each October 1 thereafter, for the
15 immediately preceding fiscal year, the office shall report to the Tourism
16 Development Finance Authority:
17 (a) The number of tax incentive agreements that have been executed;
18 (b) The estimated amount of tax incentives that have been requested under KRS
19 141.383 and 148.542 to 148.546; and
20 (c) The amount of tax incentives approved under KRS 139.538, 141.383, and
21 148.542 to 148.546.
22 (12) (a) By November 1 of each year, the authority shall file an annual report with the
23 Governor and the Legislative Research Commission. The report shall be
24 submitted in cooperation with the Cabinet for Economic Development and
25 included in the single annual report required in KRS 154.12-2035. The report
26 shall also be available on the Tourism, Arts and Heritage Cabinet's Web site.
27 (b) The report shall include information for all motion picture or entertainment

1 production projects approved.
2 (c) The report shall include the following information:
3 1. For each approved motion picture or entertainment production project:
4 a. The name of the approved company and a brief description of the
5 project;
6 b. The amount of approved costs included in the agreement; and
7 c. The total amount recovered under the tax incentive agreement;
8 2. The number of applications for projects submitted during the prior fiscal
9 year;
10 3. The number of projects finally approved during the prior fiscal year; and
11 4. The total dollar amount approved for recovery for all projects approved
12 during the prior fiscal year, and cumulatively under KRS 141.383 and
13 148.542 to 148.546 since its inception, by year of approval.
14 (d) The information required to be reported under this section shall not be
15 considered confidential taxpayer information and shall not be subject to KRS
16 Chapter 131 or any other provisions of the Kentucky Revised Statutes
17 prohibiting disclosure or reporting of information.
18 ➔Section 4. This Act applies to taxable periods beginning on or after January 1,
19 2015.

Speaker-House of Representatives

President of Senate

Attest: Chief Clerk of House of Representatives

Approved Governor

Date 3/30/15