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HOUSE BILL NO. 2163

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on January 30, 2019)

(Patron Prior to Substitute—Delegate Davis)

A BILL to amend and reenact §§ 2.2-1508, 2.2-2318, 2.2-2320, 30-309, 30-310, and 58.1-439.12:03 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 13.4, consisting of sections numbered 58.1-439.29 through 58.1-439.33, relating to new media and technology innovation income tax credit.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1508, 2.2-2318, 2.2-2320, 30-309, 30-310, 58.1-439.12:03 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 58.1 an article numbered 13.4, consisting of sections numbered 58.1-439.29 through 58.1-439.33, as follows:

§ 2.2-1508. Submission of executive budget to General Assembly.

A. On or before December 20 in the year immediately prior to the beginning of each regular session of the General Assembly held in an even-numbered year, the Governor shall submit to the presiding officer of each house of the General Assembly printed copies of a budget document, which shall be known as "The Executive Budget," based on his own conclusions and judgment, containing the following:

1. For each agency, the amount and number of positions appropriated for the current appropriation year and the amount and number of positions recommended for each year of the ensuing biennial period beginning with the first day of July thereafter, accompanied by an explanation of the recommended amount and number of positions. Such information shall also include the total estimated amount appropriated for personnel costs for each agency.

2. A statement of historical and projected trends that influence the general economic conditions in the Commonwealth and a statement of the economic assumptions upon which revenue projections are based.

3. A statement of the Governor's proposed goals, objectives, and policies in the areas of:

- a. Administration of justice;
- b. Education, including intellectual and cultural development;
- c. Individual and family services;
- d. Resources and economic development, including specific references to economic development and management of natural resources;
- e. Transportation; and
- f. General government, including therein or as separate categories areas of multiple impact, such as telecommunications, energy, and urban development.

4. A statement organized by function, primary agency, and proposed appropriation item that sets forth:

- a. Identification of common programs and services;
- b. Service attainments or lack of attainments and service terminations or reductions for the biennium;
- c. Major goals, objectives, and specific outcomes related to expenditures for programs;
- d. Program measures and performance standards to be used in monitoring and evaluating services; and the development of appropriate evaluation cycles, within available resources;
- e. The amount of each primary agency's budget that is direct aid to localities.

5. A statement of proposed capital appropriations organized by the primary agency that sets forth the program need for the project and the proposed source of funding.

6. A listing of all activity, program-related, agency or departmental evaluations performed in the previous two years with guidance indicating the manner in which the public can gain access to the full text of such studies.

7. A schedule and description of all data processing or other projects in which the Commonwealth has entered into or plans to enter into a contract, agreement or other financing agreement or such other arrangement that requires that the Commonwealth either pay for the contract by foregoing revenue collections, or allows or assigns to another party the collection on behalf of or for the Commonwealth any fees, charges, or other assessment or revenues to pay for the project. Such schedule shall include by agency and project (i) a summary of the terms, (ii) the anticipated duration, and (iii) cost or charges to any user, whether a state agency or institutions or other party not directly a party to the project arrangements. The description shall also include any terms or conditions that bind the Commonwealth or restrict the Commonwealth operations and the methods of procurement employed to reach such terms.

60 8. *A statement of proposed appropriations to be used to buy back new media and technology*
61 *innovation tax credits pursuant to the provisions of § 58.1-439.33.*

62 B. On or before December 20 of the year immediately prior to the beginning of the regular session
63 of the General Assembly held in odd-numbered years, the Governor shall submit to the presiding officer
64 of each house of the General Assembly printed copies of a budget document, which shall be known as
65 "Executive Amendments to the Appropriation Act," describing all gubernatorial amendments proposed to
66 the general appropriation act enacted in the immediately preceding even-numbered session.

67 C. The Department of Planning and Budget shall prepare "The Executive Budget" and the "Executive
68 Amendments to the Appropriation Act" in a manner and with language that can be easily understood by
69 the citizens of the Commonwealth and that provides, to the extent practical, a cross-reference to the
70 Governor's recommended budget bill or amendments to the Appropriation Act. Such documents shall
71 also be placed on the Internet to provide easy access by the public.

72 **§ 2.2-2318. Powers of Authority.**

73 The Authority, acting through the Executive Director, shall be granted all powers necessary or
74 appropriate to carry out and to effectuate its purposes, including the following to:

75 1. Have perpetual succession as a public body corporate and as a political subdivision of the
76 Commonwealth;

77 2. Adopt, amend and repeal bylaws, rules and regulations, not inconsistent with this article for the
78 administration and regulation of its affairs, to carry into effect the powers and purposes of the Authority
79 and the conduct of its business;

80 3. Sue and be sued in its own name;

81 4. Have an official seal and alter it at will although the failure to affix this seal shall not affect the
82 validity of any instrument executed on behalf of the Authority;

83 5. Maintain an office at any place within or without the Commonwealth that it designates;

84 6. Make and execute contracts and all other instruments and agreements necessary or convenient for
85 the performance of its duties and the exercise of its powers and functions under this article;

86 7. Acquire real or personal property, or any interest therein, by purchase, exchange, gift, assignment,
87 transfer, foreclosure, lease or otherwise, including rights or easements, and hold, manage, operate or
88 improve such property;

89 8. Sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part
90 of its properties and assets;

91 9. Employ officers, employees, agents, advisers and consultants, including without limitation,
92 financial advisers and other technical advisers and public accountants and, the provisions of any other
93 law to the contrary notwithstanding, to determine their duties and compensation without the approval of
94 any other agency or instrumentality;

95 10. Procure insurance, in amounts and from insurers of its choice, or provide self-insurance, against
96 any loss, cost, or expense in connection with its property, assets or activities, including insurance or
97 self-insurance against liability for its acts or the acts of its directors, employees or agents and for the
98 indemnification of the members of its Board and its employees and agents;

99 11. Receive and accept from any source aid, grants and contributions of money, property, labor or
100 other things of value to be held, used and applied to carry out the purposes of this article subject to the
101 conditions upon which the aid, grants or contributions are made;

102 12. Enter into agreements with any department, agency or instrumentality of the United States, the
103 Commonwealth, the District of Columbia or any state for purposes consistent with its mission;

104 13. Establish and revise, amend and repeal, and charge and collect, fees and charges in connection
105 with any activities or services of the Authority;

106 14. Make grants to local governments with any funds of the Authority available for this purpose;

107 15. Develop policies and procedures generally applicable to the procurement of goods, services, and
108 construction based on competitive principles;

109 16. Issue periodicals and carry and charge for advertising therein;

110 17. Raise money in the corporate, nonprofit, and nonstate communities to finance the Authority's
111 activities;

112 18. Support and encourage each locality to foster its own tourism development programs;

113 19. Enter into agreements with public or private entities that provide participating funding to
114 establish and operate tourism centers, funded jointly by the entity and the Authority, as shall be
115 determined by the Executive Director, and as approved by the Authority;

116 20. Encourage, stimulate, and support tourism in the Commonwealth by promoting, marketing, and
117 advertising the Commonwealth's many tourist attractions and locations;

118 21. Encourage, stimulate, and support the film industry, *the new media industry, and technology*
119 *innovation in the Commonwealth, including authorizing the purchase of tax credits from companies*
120 *pursuant to the provisions of § 58.1-439.33;*

121 22. Do all things necessary or proper to administer and manage the Cooperative Tourism Advertising

Fund and the Governor's Motion Picture Opportunity Fund;

23. Update a travel guide for the disabled in the first year of every biennium beginning in fiscal year 2003;

24. Develop a comprehensive plan to promote destinations of historical and other significance located throughout the Commonwealth in anticipation of the 400th anniversary of the Jamestown settlement; and

25. Do any act necessary or convenient to the exercise of the powers granted or reasonably implied by this article and not otherwise inconsistent with state law.

§ 2.2-2320. Governor's Motion Picture Opportunity Fund.

There is created a Governor's Motion Picture Opportunity Fund (the Fund) to be used, in the sole discretion of the Governor, to support the film and video industries in Virginia by providing the means for attracting production companies and producers who make their projects in the Commonwealth using Virginia employees, and goods and services. The Fund shall consist of any moneys appropriated to it in the general appropriation act or revenue from any other source. The Fund shall be established on the books of the Comptroller and any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund.

The Fund shall be used by the Governor to assist production companies or producers that meet the eligibility requirements set forth in the guidelines. The Authority shall assist the Governor in the development of guidelines for the use of the Fund. The guidelines may require that as a condition of receiving any grant or loan incentive that is based on employment goals, a recipient company must provide copies of employer quarterly payroll reports provided to the Virginia Employment Commission to verify the employment status of any position included in the employment goal. The guidelines ~~should~~ *shall* include provisions for geographic diversity and a cap on the amount of money available for a certain project. The types of projects eligible for consideration will be feature films, children's programs, documentaries, television series or other television programs designed to fit a thirty-minute or longer format slot. Projects not eligible are industrial, corporate, or commercial projects, education programs not intended for rebroadcast, adult films, music videos, and news shows or reports.

The Governor may use the Fund to purchase tax credits from companies pursuant to § 58.1-439.33.

§ 30-309. MEI Project Approval Commission; membership; terms; compensation and expenses; definition.

A. The MEI Project Approval Commission (the Commission) is established as an advisory commission in the legislative branch of state government. The purpose of the Commission shall be to review financing for individual incentive packages, including but not limited to packages offering tax incentives, for economic development projects (including but not limited to MEI projects) for which (i) one or more of the incentives in the incentive package is not authorized under current law or an amendment by the General Assembly is being sought to one or more currently existing incentives included as part of the incentive package or (ii) the aggregate amount of incentives to be provided by the Commonwealth in the incentive package including grants, tax incentives such as credits and exemptions, general or nongeneral funds, proceeds from bonds, rights to lease property at below fair market value, or any other incentives from the Commonwealth is in excess of \$10 million in value. *The Commission shall review applications for new media and technology innovation tax credits as provided in Article 13.4 (§ 58.1-439.29 et seq.) of Chapter 3 of Title 58.1.*

B. The Commission shall consist of 10 members as follows: five members of the House Committee on Appropriations or the House Committee on Finance appointed by the chair of the House Committee on Appropriations and three members of the Senate Committee on Finance appointed by the chair of the Senate Committee on Finance. In addition, the Secretaries of Finance and Commerce and Trade shall serve as ex officio, nonvoting members of the Commission.

C. Members shall serve terms coincident with their terms of office. Vacancies for unexpired terms shall be filled in the same manner as the original appointments. Members may be reappointed for successive terms.

D. The members of the Commission shall elect a chairman and vice-chairman annually. A majority of the voting members of the Commission shall constitute a quorum. The meetings of the Commission shall be held at the call of the chairman or whenever the majority of the members so request.

E. Legislative members of the Commission shall receive such compensation as provided in § 30-19.12, and nonlegislative members shall receive such compensation as provided in § 2.2-2813.

F. As used in this chapter, "MEI project" means the same as that term is defined in § 2.2-2260.

§ 30-310. Review of incentive packages.

A. 1. The Commission shall review individual incentive packages, including but not limited to packages offering tax incentives, for economic development projects (including but not limited to MEI projects) for which (i) one or more of the incentives in the incentive package is not authorized under current law or an amendment by the General Assembly is being sought to one or more currently

existing incentives included as part of the incentive package or (ii) the aggregate amount of incentives to be provided by the Commonwealth in the incentive package including grants, tax incentives such as credits and exemptions, general or nongeneral funds, proceeds from bonds, rights to lease property at below fair market value, or any other incentives from the Commonwealth is in excess of \$10 million in value. The Commission shall also review economic development projects in which a business relocates or expands its operations in one or more Virginia localities and simultaneously closes its operations or substantially reduces the number of its employees in another Virginia locality. *The Commission shall review applications for new media and technology innovation tax credits as provided in Article 13.4 (§ 58.1-439.29 et seq.) of Chapter 3 of Title 58.1.* The Commission shall recommend approval or denial of such packages and projects to the General Assembly. Factors that shall be considered by the Commission in its review shall include, but not be limited to (i) return on investment, (ii) the time frame for repayment of incentives to the Commonwealth, (iii) average wages of the jobs created by the prospective MEI project or other economic development project, (iv) the amount of capital investment that is required, and (v) the need for enhanced employment opportunities in the prospective location of the prospective MEI project or other economic development project.

2. a. Any time a proposed individual incentive package is to be considered by the Commission, materials outlining (i) the value of the proposed incentives, (ii) assumed return on investment, (iii) the time frame for repayment of incentives to the Commonwealth, (iv) average wages of the jobs created by the prospective MEI project or other economic development project, (v) the amount of capital investment that is required, and (vi) the need for enhanced employment opportunities in the prospective location of the prospective MEI project or other economic development project, shall be provided to the Commission members not less than 48 hours prior to the scheduled Commission meeting.

b. The timing of any request for an endorsement of a proposed individual incentive package ~~should~~ *shall* be scheduled so that the MEI Commission could, at its discretion, have up to seven days subsequent to the presentation of the incentive package prior to endorsing or rejecting such proposal.

B. An affirmative vote by three of the five members of the Commission from the House of Delegates and two of the three members of the Commission from the Senate shall be required to endorse any incentive package, including but not limited to packages offering tax incentives, for economic development projects (including but not limited to MEI projects) for which (i) one or more of the incentives in the incentive package is not authorized under current law or an amendment by the General Assembly is being sought to one or more currently existing incentives included as part of the incentive package or (ii) the aggregate amount of incentives to be provided by the Commonwealth in the incentive package, including grants, tax incentives such as credits and exemptions, general or nongeneral funds, proceeds from bonds, rights to lease property at below fair market value, or any other incentives from the Commonwealth is in excess of \$10 million in value. Such vote shall also be required to endorse any economic development project in which a business relocates or expands its operations in one or more Virginia localities and simultaneously closes its operations or substantially reduces the number of its employees in another Virginia locality.

§ 58.1-439.12:03. Motion picture production tax credit.

A. For taxable years beginning on and after January 1, 2011, but prior to January 1, 2022, any motion picture production company with qualifying expenses of at least \$250,000 with respect to a motion picture production filmed in Virginia shall be allowed a refundable credit against the taxes imposed by § 58.1-320 or 58.1-400 in an amount equal to 15 percent of the production company's qualifying expenses or 20 percent of such expenses if the production is filmed in an economically distressed area of the Commonwealth. The Virginia Economic Development Partnership Authority shall designate which areas of the Commonwealth are deemed to be economically distressed areas. The credit shall be computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. The refundable tax credits allowed under this section are for one tax year only. Where a motion picture production continues for more than one year, a separate application for each tax year the production continues must be made. The grant of a refundable tax credit for a motion picture film production does not create a presumption that the production will receive a refundable tax credit for subsequent tax years. Effective on January 1, 2013, for purposes of eligibility for refundable tax credits, a motion picture film production shall include digital interactive media production.

"Qualifying expenses" means the sum of the following amounts spent in the Commonwealth by a production company in connection with the production of a motion picture filmed in the Commonwealth:

1. Goods and services leased or purchased. For goods with a purchase price of \$25,000 or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

2. Compensation and wages, except in the case of each individual who directly or indirectly receives compensation in excess of \$1 million for personal services with respect to a single production. In such a

case, only the first \$1 million of salary shall be considered a qualifying expense. An individual is deemed to receive compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

B. 1. In addition to the refundable credit authorized under subsection A, such production company shall be allowed an additional refundable credit equal to 10 percent of the total aggregate payroll for Virginia residents employed in connection with the production of a film in the Commonwealth when total production costs in the Commonwealth are at least \$250,000 but not more than \$1 million. This additional credit shall be equal to 20 percent of the total aggregate payroll for Virginia residents employed in connection with such production when total production costs in the Commonwealth exceed \$1 million.

2. In addition to the credits authorized under subsection A and subdivision B 1, such production company shall be allowed an additional refundable credit equal to 10 percent of the total aggregate payroll for Virginia residents employed for the first time as actors or members of a production crew in connection with the production of a film in the Commonwealth.

C. 1. For purposes of this section, in the case of an episodic television series, an entire season of episodes shall be deemed to be one production.

2. No credit shall be allowed under this section for any production that (i) is political advertising, (ii) is a television production of a news program or live sporting event, (iii) contains obscene material, or (iv) is a reality television production.

3. *No credit shall be allowed under this section for any expenses for which the taxpayer claims or claimed a tax credit pursuant to § 58.1-439.32.*

D. 1. The issuance of refundable tax credits under this section shall be in accordance with procedures, qualifying criteria, and deadlines established by the Department and the Virginia Film Office. The qualifying criteria established by the Virginia Film Office shall take into account whether the production involves physical production within the Commonwealth of Virginia, the number of residents of Virginia that will be employed in the production and the level of compensation they will be paid, the extent to which the production will contribute to the support and expansion of existing production companies in Virginia, the extent to which the production will impact existing local businesses and the local economy, the extent to which the production will involve existing and new companies located in Virginia, and other relevant considerations. The taxpayer shall apply for a credit by submitting such forms as prescribed by the Virginia Film Office, prior to the start of production in Virginia.

2. Any taxpayer seeking credits under this section must enter into a memorandum of understanding with the Virginia Film Office that at a minimum provides the requirements that the taxpayer must meet in order to receive the credits, including but not limited to the estimated amount of money to be spent in Virginia, the timeline for completing production in Virginia, and the maximum amount of credits allocated to the taxpayer.

3. Once the taxpayer has satisfied all of the requirements in the memorandum of understanding to the satisfaction of the Virginia Film Office and completed production in Virginia, the taxpayer may claim the applicable amount of credits up to the amount that has been allocated by the Virginia Film Office on a return filed for the taxable year in which the Virginia production activities are completed. The return must state the name of the production, provide a description of the production, and include a detailed accounting of the qualifying expenses with respect to which a credit is claimed.

E. A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Tax Commissioner. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The Tax Commissioner shall consult with the Virginia Film Office in order to determine the amount of qualifying expenses.

F. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company may be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

G. The total amount of credits allocated to all taxpayers under this section shall not exceed \$2.5 million in the 2010-2012 biennium, \$5 million in the 2012-2014 biennium, and \$6.5 million in fiscal year 2015 and each fiscal year thereafter.

H. The Department of Taxation, in consultation with the Virginia Film Office, must publish by November 1 of each year for the 12-month period ending the preceding December 31 the following information:

1. Location of sites used in a production for which a credit was claimed;
2. Qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation paid by the production company;
3. Number of people employed in the Commonwealth with respect to credits claimed; and

4. Total cost to the Commonwealth's general fund of the credits claimed.

Notwithstanding any provision of § 58.1-3 or any other law, such information shall be published by the Department, even if such information is not classified, so as to prevent the identification of particular taxpayers, reports, or returns and items.

I. The Tax Commissioner shall develop guidelines implementing the provisions of this section, including but not limited to the definition of "qualifying expenses" and setting forth the recordkeeping requirements applicable to production companies claiming this credit. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

Article 13.4.

New Media and Technology Innovation Tax Credit.

§ 58.1-439.29. Definitions.

As used in this article, unless the context requires a different meaning:

"Commercial advertisement" means an advertisement recorded on film, videotape, or a digital medium for multi-market distribution that extends outside the Commonwealth by way of broadcast television networks, cable, satellite, the Internet, DVD, home video, or motion picture theaters.

"Commission" means the MEI Project Approval Commission, established pursuant to Chapter 47 (§ 30-309 et seq.) of Title 30.

"Digital interactive media production" means any interactive entertainment intended for commercial exploitation, including video game projects, console games, computer games, handheld console games, mobile electronic device games, massively multi-player online video games and virtual worlds that meet the requirement of multi-market distribution via the Internet or any other channel of exhibition, and games that use augmented reality, virtual reality, or mixed reality.

"Eligible project" means the production of an episodic television series, commercial advertisement, or digital interactive media production. "Eligible project" does not include any production that (i) is political advertising, (ii) is a television production of a news program or live sporting event, (iii) contains obscene material, (iv) is a reality television production, or (v) receives or received grants or loans pursuant to § 2.2-2320 or tax credits pursuant to § 58.1-439.12:03.

"Episodic television series" means a television program consisting of multiple episodes of a single season. In the case of an episodic television series, an entire season of episodes shall be deemed to be one production.

"Qualifying expenses" means the sum of the following amounts spent in the Commonwealth by a production company in connection with the production of an eligible project produced in the Commonwealth:

1. Goods and services leased or purchased. For goods with a purchase price of \$25,000 or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed; and

2. Compensation and wages, except in the case of each individual who directly or indirectly receives compensation in excess of \$1 million for personal services with respect to a single production. In such a case, only the first \$1 million of salary shall be considered a qualifying expense. An individual is deemed to receive compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

"Qualifying expenses" does not include any expenses that were exempt from retail sales and use tax pursuant to the provisions of Chapter 6 (§ 58.1-600 et seq.) of Title 58.1; however, if a taxpayer accrued such expenses at least one year prior to entering into a memorandum of understanding with the Virginia Film Office pursuant to the provisions of subdivision C 3 of § 58.1-439.32 and such expenses were exempt from retail sales and use tax, such expenses may be counted as qualifying expenses.

§ 58.1-439.30. Review of tax credit applications.

A. 1. The Commission shall review applications for tax credits under this article to determine whether such applications meet the eligibility criteria specified in guidelines promulgated by the Virginia Film Office. The Commission shall recommend approval or denial of an application according to whether the application meets such criteria. Additional factors that shall be considered by the Commission in its review shall include (i) return on investment, (ii) the time frame for repayment of incentives to the Commonwealth, (iii) average wages of the jobs created by the prospective project, (iv) the amount of capital investment that is required, and (v) the need for enhanced employment opportunities in the prospective location of the prospective project.

2. a. Any time a proposed individual incentive package is to be considered by the Commission, materials outlining (i) the value of the proposed tax credits, (ii) assumed return on investment, (iii) the time frame for repayment of incentives to the Commonwealth, (iv) average wages of the jobs created by the prospective project, (v) the amount of capital investment that is required, and (vi) the need for enhanced employment opportunities in the prospective location of the prospective project shall be provided to the Commission members not less than 48 hours prior to the scheduled Commission meeting.

b. The timing of any request for an endorsement of an application shall be scheduled so that the Commission has, at its discretion, up to seven days subsequent to the presentation of the incentive package for the review of such proposal.

B. An affirmative vote by three of the five members of the Commission from the House of Delegates and two of the three members of the Commission from the Senate shall be required to endorse any application.

§ 58.1-439.31. Commission report to the General Assembly.

The Commission shall report annually by the first day of each General Assembly Regular Session on all endorsed applications. Such report shall include the following information: (i) the impact of the tax credit on new media and technology innovation in Virginia, (ii) known competitor states in new media and technology innovation, (iii) employment creation and capital investment expectations, (iv) anticipated average annual wage of the new jobs, (v) local and state returns on investment as prepared by the Virginia Economic Development Partnership Authority, and (vi) expected time frame for repayment of the incentives to the Commonwealth in the form of direct and indirect general tax revenues.

§ 58.1-439.32. Tax credit.

A. For taxable years beginning on and after January 1, 2019, any company that incurs qualifying expenses with respect to an eligible project produced in Virginia shall be allowed a nonrefundable credit against the taxes imposed by § 58.1-320 or 58.1-400 in an amount equal to 15 percent of the company's qualifying expenses or 20 percent of such expenses if the eligible project is produced in an economically distressed area of the Commonwealth, as designated by the Virginia Economic Development Partnership Authority pursuant to § 58.1-439.12:03. A company may submit a single application for a project covering multiple tax years.

B. 1. In addition to the credit authorized under subsection A, such company shall be allowed an additional credit equal to 10 percent of the total aggregate payroll for Virginia residents employed in connection with the production of an eligible project in the Commonwealth when total production costs in the Commonwealth are at least \$250,000 but not more than \$1 million. This additional credit shall be equal to 20 percent of the total aggregate payroll for Virginia residents employed in connection with such eligible project when total production costs in the Commonwealth exceed \$1 million.

2. In addition to the credits authorized under subsection A and subdivision B 1, such production company shall be allowed an additional credit equal to 10 percent of the total aggregate payroll for Virginia residents employed for the first time as actors or members of a production crew in connection with the production of an eligible project in the Commonwealth.

C. 1. The issuance of tax credits under this section shall be in accordance with procedures, qualifying criteria, and deadlines established by the Department and the Virginia Film Office. The qualifying criteria established by the Virginia Film Office shall take into account whether the eligible project involves physical production within the Commonwealth of Virginia, the number of residents of Virginia that will be employed in the eligible project and the level of compensation they will be paid, the extent to which the eligible project will impact existing local businesses and the local economy, the extent to which the eligible project will involve existing and new companies located in Virginia, and other relevant considerations. The taxpayer shall apply for a credit by submitting an application, as prescribed by the Virginia Film Office, prior to the start of production in Virginia.

2. Notwithstanding the provisions of § 58.1-3, the Department and the Virginia Film Office shall share applications for tax credits and related information with the Commission. The Commission shall review such information and recommend to the Virginia Film Office whether such application should be approved. The Virginia Film Office shall consider such recommendation.

3. Any taxpayer seeking credits under this section must enter into a memorandum of understanding with the Virginia Film Office that at a minimum provides the requirements that the taxpayer must meet in order to receive the credits, including the estimated amount of money to be spent in Virginia, the timeline for completing the eligible project, and the maximum amount of credits allocated to the taxpayer.

4. Once the taxpayer has satisfied all of the requirements in the memorandum of understanding to the satisfaction of the Virginia Film Office and completed the eligible project, the taxpayer may claim the applicable amount of credits up to the amount that has been allocated by the Virginia Film Office on the tax return filed for the taxable year. The taxpayer's return shall contain information disclosing the name of the eligible project, provide a description of the eligible project, and include a detailed accounting of the qualifying expenses with respect to which a credit is claimed.

D. 1. A taxpayer allowed a credit under this section shall maintain and make available for inspection any information or records required by the Tax Commissioner. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The Tax Commissioner shall consult with the Virginia Film Office in order to determine the amount of qualifying expenses and amount of tax

429 credit authorized.

430 2. For any year for which a taxpayer claims a credit under this section, such taxpayer shall have an
431 audit for such year performed by an independent certified public accountant of such taxpayer's
432 qualifying expenses and any other information required by the Department. A summary report of the
433 audit shall be made available to the public and the Department upon request by the Department.

434 E. If the amount of the credit exceeds the taxpayer's tax liability for the taxable year, the excess may
435 be carried over for credit against the income taxes of the taxpayer in the next 10 taxable years, or until
436 the total credit amount has been taken, whichever occurs first.

437 F. The Department, in consultation with the Virginia Film Office, shall publish by November 1 of
438 each year for the 12-month period ending the preceding December 31 the following information:

439 1. Location of sites used in an eligible project for which a credit was claimed;

440 2. Qualifying expenses for which a credit was claimed, classified by whether the expenses were for
441 goods, services, or compensation paid by the company;

442 3. Number of people employed in the Commonwealth with respect to credits claimed; and

443 4. Total cost to the Commonwealth's general fund of the credits claimed.

444 Notwithstanding any provision of § 58.1-3 or any other law, such information shall be published by
445 the Department, even if such information is not classified, so as to prevent the identification of
446 particular taxpayers, reports, or returns and items.

447 G. Any tax credits that arise under this article and are received by a pass-through tax entity such as
448 a trust, estate, partnership, limited liability company or partnership, limited partnership, Subchapter S
449 corporation, or any other fiduciary shall be used either by such entity or by the member, manager,
450 partner, shareholder, or beneficiary, as the case may be, in proportion to their interest in such entity in
451 the event that income, deductions, and tax liability pass through such entity to such member, manager,
452 partner, shareholder, or beneficiary or as set forth in the agreement of said entity. Such tax credits shall
453 not be claimed by both the entity and the member, manager, partner, shareholder, or beneficiary for the
454 same expenses.

455 **§ 58.1-439.33. Transfer and buyback of tax credit.**

456 A. 1. Any taxpayer holding a credit under this article may transfer unused but otherwise allowable
457 credit for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount
458 of credit under this article shall file a notification of such transfer to the Department in accordance
459 with procedures and forms prescribed by the Tax Commissioner.

460 2. A fee of two percent of the value of the qualifying expenses associated with the transferred credit
461 shall be imposed upon any transfer arising from the sale by any taxpayer of credits under this article
462 and upon the distribution of a portion of credits under this article to a member, manager, partner,
463 shareholder, or beneficiary pursuant to subsection G of § 58.1-439.32. Revenues generated by such fees
464 first shall be used by the Department for its costs in implementing this article, but in no event shall
465 such costs exceed 50 percent of the total revenue generated by the fee on an annual basis. The
466 remainder of such revenues shall accrue to the Governor's Motion Picture Opportunity Fund established
467 pursuant to § 2.2-2320.

468 B. To the extent included in and not otherwise subtracted from federal adjusted gross income
469 pursuant to § 58.1-322.02 or federal taxable income pursuant to § 58.1-402, there shall be subtracted
470 any amount of gain or income recognized by a taxpayer on the application of a tax credit under this
471 article against a Virginia income tax liability.

472 C. The transfer of the credit and its application against a tax liability shall not create gain or loss
473 for the transferor or the transferee of such credit.

474 D. A pass-through tax entity, such as a partnership, limited liability company, or Subchapter S
475 corporation, may appoint a tax matters representative, who shall be a general partner,
476 member/manager, or shareholder, and register that representative with the Tax Commissioner. The Tax
477 Commissioner shall be entitled to deal with the tax matters representative as representative of the
478 taxpayers to whom credits have been allocated or transferred by the entity under this article with
479 respect to those credits. In the event that a pass-through tax entity allocates or transfers tax credits
480 arising under this article to its partners, members, or shareholders and the allocated or transferred
481 credits shall be disallowed, in whole or in part, such that an assessment of additional tax against a
482 taxpayer shall be made, the Tax Commissioner shall first make written demand for payment of any
483 additional tax, together with interest and penalties, from the tax matters representative. In the event that
484 such payment demand is not satisfied, the Tax Commissioner shall proceed to collection against the
485 taxpayers in accordance with the provisions of Chapter 18 (§ 58.1-1800 et seq.).

486 E. The Governor may buy back tax credits issued pursuant to this article, provided that the price
487 paid is at least 80 percent of the dollar value of the tax credits. The Governor may use any funds from
488 any source that the General Assembly may appropriate for such purpose.

489 2. That the Virginia Film Office and the Tax Commissioner shall develop guidelines implementing
490 the provisions of this act. Such guidelines shall be exempt from the provisions of the

491 Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).