

SB293 INTRODUCED



1 AGALQ7-1
2 By Senator Gudger
3 RFD: Finance and Taxation Education
4 First Read: 04-May-23
5
6 2023 Regular Session



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SYNOPSIS:

Under existing law, certain state rebates and sales, use, and lodging tax exemptions are provided for qualified production companies in the entertainment industry working in efforts to attract the entertainment industry to Alabama.

This bill would amend the Entertainment Industry Incentive Act of 2009 to create the Film and Music Incentive Act of 2023. This bill would expand the entertainment rebate program offered under current law to offset certain production expenditures of qualified productions.

A BILL
TO BE ENTITLED
AN ACT

Relating to the Entertainment Industry Incentive Act of 2009; to amend Sections 41-7A-40, 41-7A-41, 41-7A-42, 41-7A-43, 41-7A-45, and 41-7A-48, Code of Alabama 1975, to expand the incentive by renaming it the Film and Music Incentive Act of 2023, to allow for the inclusion of music and virtual reality as qualified production companies; to define a "historic location," and to increase the current



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29 cap of the incentive.

30 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

31 Section 1. Sections 41-7A-40, 41-7A-41, 41-7A-42,
32 41-7A-43, 41-7A-45, and 41-7A-48, Code of Alabama 1975, are
33 amended to read as follows:

34 "§41-7A-40

35 This article may be cited as the "~~Entertainment~~
36 ~~Industry Incentive Act of 2009.~~ Film and Music Incentive Act
37 of 2023."

38 "§41-7A-41

39 The following is hereby found and declared by the
40 Legislature of Alabama:

41 (1) Although Alabama is filled with attractive natural
42 resources, a growing workforce, and other resources
43 attractive to the ~~entertainment~~ film and music industry,
44 Alabama has not developed its potential in terms of
45 attracting the ~~entertainment~~ film and music industry to the
46 state by offering production incentives for qualified
47 productions not previously offered in Alabama.

48 (2) ~~Entertainment~~ Film and music industry incentives
49 offered by other states attract valuable projects to their
50 states which stimulate local economies, use local manpower
51 and suppliers, offer other employment and entrepreneurial
52 opportunities for state residents, and provide public
53 awareness of the natural resources available in their
54 states.

55 (3) Because Alabama does not currently offer a
56 sufficiently viable incentive package to the industry,



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57 Alabama cannot effectively compete with other states for
58 attracting industry projects in such a volume to cause the
59 development of adequate industry infrastructure and those
60 projects locate elsewhere.

61 (4) For Alabama to compete nationally or
62 internationally for the location and production of more
63 projects in Alabama and to foster a growing ~~entertainment~~
64 film and music industry in Alabama, an increase in industry
65 specific production incentives are immediately necessary.

66 (5) The Legislature recognizes and confirms the
67 planning and promotion of the ~~entertainment~~film and music
68 industry are of vital importance to the economic development
69 of Alabama as are the recruitment, expansion, and retention
70 of industrial development within the state, and the
71 promotion of the ~~entertainment~~film and music industry should
72 be included as an integral part of any comprehensive
73 economic development strategy plan promoted by the state and
74 state agencies.

75 (6) Since Act 2009-144 was passed in 2009, the State
76 of Georgia has attracted a number of film and music
77 productions and established successful film production
78 facilities, whereas Alabama has enjoyed less success and has
79 yet to establish a successful film production facility.

80 (7) The film and music industry has been significantly
81 disrupted since Act 2009-144 was passed in 2009, and, to be
82 competitive in attracting such projects, Alabama must devote
83 more financial resources to the effort."

84 "§41-7A-42



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85 For purposes of this article, the following terms
86 shall have the following meanings:

87 (1) COMPANY. A corporation, partnership, limited
88 liability company, or any other business entity.

89 (2) DEPARTMENT. The Alabama Department of Revenue.

90 ~~(3) ENTERTAINMENT INDUSTRY. Those persons or entities~~
91 ~~engaged in the production of entertainment content as~~
92 ~~defined under paragraph a. of subdivision (8).~~

93 ~~(4)~~ (3) EXPENDED IN ALABAMA. In the case of tangible
94 property, property which is acquired or leased from a source
95 within the State of Alabama; in the case of services,
96 services performed for a qualified production project in the
97 State of Alabama.

98 (4) FILM AND MUSIC INDUSTRY. Those persons or entities
99 engaged in the production of qualified products with
100 entertainment content as defined under paragraph a. of
101 subdivision (8).

102 (5) HISTORIC LOCATION. Parcels, portions of which are
103 located in or within 300 feet of both of the following:

104 a. The Africatown Historic District, as defined in
105 Section 11-74-2,

106 b. The Mobile County Training School, one of the
107 oldest African American public schools in the State of
108 Alabama.

109 ~~(5)~~ (6) OFFICE. The Alabama Film Office.

110 ~~(6)~~ (7) PAYROLL. All salary, wages, and other
111 compensation, including related benefits, including
112 specifically, but not limited to, compensation and benefits



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113 provided to resident and nonresident producers, directors,
114 writers, actors, and other personnel involved in qualified
115 production projects in Alabama.

116 ~~(7)~~ (8) PRODUCTION EXPENDITURES.

117 a. The term includes preproduction, production, and
118 postproduction expenditures incurred in the State of Alabama
119 that are directly used in a state-certified production,
120 including, but not limited to, the following: Set
121 construction and operation, wardrobe, makeup, set
122 accessories, and related services; costs associated with
123 photography and sound synchronization, lighting, and related
124 services and materials; editing and related services; rental
125 of facilities and equipment; leasing of vehicles; costs of
126 food and lodging; costs of catering; digital or tape
127 editing, film processing, transfer of film to tape or
128 digital format; transfer direct to DVD, cable, or satellite
129 for distribution; sound mixing, special and visual effects
130 including duplication, film processing digital, DVD, music
131 composition, and satellite distribution; total aggregate
132 payroll; music; airfare; insurance costs of bonding; or
133 other similar production expenditures as determined by rule
134 or regulation.

135 b. The term includes financial contributions or
136 educational or workforce development in partnership with
137 related educational institutions, or local industry
138 organizations, or both, contributed toward the furtherance
139 of the local ~~entertainment media~~ film and music industries.

140 c. The term does not include postproduction



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141 expenditures for marketing or any amounts that are paid to
142 persons or entities as a result of their participation in
143 profits from the exploitation of a motion picture
144 production.

145 ~~(8) QUALIFIED PRODUCTION.~~ (9) PRODUCTION HEADQUARTERS.

146 The temporary headquarters in Alabama of a qualified
147 production, as certified by a qualified production facility.

148 (10) QUALIFIED PRODUCTION.

149 a. The term means ~~entertainment~~ film and music content
150 created in whole or in part within the state, including
151 motion pictures; soundtracks for motion pictures;
152 documentaries; long-form, specials, miniseries, series,
153 sound recordings, videos and music videos, and interstitials
154 television programming; interactive television; interactive
155 games; video games; music albums; entertainment and
156 educational content that incorporates virtual reality or
157 augmented reality, or virtual reality film production;
158 commercials; infomercials; any format of digital media,
159 including an interactive website that is intended for
160 national or international distribution or exhibition to the
161 general public; and any trailer, pilot, video teaser, or
162 demo created primarily to stimulate the sale, marketing,
163 promotion, or exploitation of future investment in either a
164 product or a qualified production via any means and media in
165 any digital media format, film, or videotape, provided such
166 program meets all the underlying criteria of a qualified
167 production.

168 b. The term does not include any ongoing television



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169 program created primarily as news, weather, or financial
170 market reports, a production featuring current events,
171 sporting events, an awards show or other gala event, a
172 production whose sole purpose is fund-raising, a long-form
173 production that primarily markets a product or service, a
174 production used for corporate training or in-house corporate
175 advertising or other similar productions; nor does the term
176 include any production for which records are required to be
177 maintained under 18 U.S.C. § 2257 with respect to sexually
178 explicit content; nor does the term mean or include any form
179 of gambling, gaming, wagering, or pari-mutuel wagering
180 activity or enterprise.

181 ~~(9)~~ (11) QUALIFIED PRODUCTION COMPANY.

182 a. The term means a company engaged in the business of
183 producing a qualified production, as that term is defined.

184 b. The term does not mean or include any company
185 owned, affiliated, or controlled, in whole or in part, by
186 any company or person which is in default on a loan.

187 (12) QUALIFIED PRODUCTION FACILITY. A complex of
188 buildings and associated back-lot facilities in which films
189 or music are intended to be regularly produced that is
190 within the State of Alabama and that contains at least four
191 of the following:

192 a. A minimum of 5,000 square feet of office space
193 available for use by qualified production companies for
194 qualified productions.

195 b. Indoor, climate-controlled storage for sets and
196 materials anticipated to be used or are being used for



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197 qualified productions.

198 c. Space for carpentry or other set and scene
199 preparation activities for qualified productions.

200 d. At least three indoor, fully-insulated,
201 climate-controlled, and soundproof sound stage facilities
202 with a minimum ceiling height of 30 feet. Each sound stage
203 facility must contain sufficient electrical service so as to
204 not need generators for ordinary operation.

205 e. A minimum of 4,000 square feet of
206 climate-controlled, enclosed storage for costumes used for
207 qualified productions.

208 ~~(10)~~ (13) RESIDENT OF ALABAMA. A natural person and,
209 for the purpose of determining eligibility for the
210 incentives provided by this article, any person domiciled in
211 the State of Alabama and any other person who maintains a
212 permanent place of abode within the state and spends in the
213 aggregate more than six months of each year within the State
214 of Alabama.

215 ~~(11)~~ (14) STATE-CERTIFIED PRODUCTION. A qualified
216 production approved by the office, produced by a qualified
217 production company."

218 "§41-7A-43

219 (a) Beginning January 1, 2009, a qualified production
220 company shall be entitled to a rebate for production
221 expenditures, as defined in subdivision (7) of Section
222 41-7A-42, related to a state-certified production. The
223 rebate shall be equal to 25 percent of the state-certified
224 production's production expenditures excluding payroll paid



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225 to residents of Alabama plus 35 percent of all payroll paid
226 to residents of Alabama for the state-certified production,
227 provided the total production expenditures for a project
228 must equal or exceed at least five hundred thousand dollars
229 (\$500,000), but for each year until the fiscal year ending
230 September 30, 2023, no rebate shall be available for
231 production expenditures incurred after the first twenty
232 million dollars (\$20,000,000). ~~of production expenditures~~
233 ~~expended in Alabama on a state-certified production.~~ For the
234 fiscal year ending September 30, 2024, no rebate shall be
235 available for production expenditures incurred after the
236 first sixty-five million dollars (\$65,000,000). For the
237 fiscal year ending September 30, 2025, no rebate shall be
238 available for production expenditures incurred after the
239 first one hundred ten million dollars (\$110,000,000). For
240 the fiscal year ending September 30, 2026, and each
241 subsequent fiscal year thereafter, no rebate shall be
242 available for production expenditures incurred after the
243 first one hundred fifty million dollars (\$150,000,000).

244 (b) A single episode in a television series or
245 miniseries may be considered a single production project for
246 purposes of this section. However, in determining the total
247 production expenditures incurred by a qualified production
248 company on a qualified production, the total production
249 expenditures of a television series or miniseries, whether a
250 single season or multiple seasons thereof, to be filmed
251 within a period of 12 consecutive months, each individual
252 episode of which separately and independently meets the



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253 definition of a qualified production, may be aggregated to
254 meet the monetary requirements set forth in subsection (a)
255 as long as each individual episode within the series
256 pertains to the same subject as the other episodes in the
257 series.

258 (c) A single commercial may be considered a single
259 production project for purposes of this section. However, in
260 determining the total production expenditures incurred by a
261 qualified production company on a qualified production, the
262 total production expenditures of a series of commercials to
263 be filmed within a period of 12 consecutive months, each of
264 which separately and independently meets the definition of a
265 qualified production, may be aggregated to meet the monetary
266 requirements set forth in subsection (a) as long as each
267 individual commercial within the series pertains to the same
268 subject as the other commercials in the series and was
269 planned as part of a series of commercials to be filmed
270 within a period of 12 consecutive months at the time the
271 qualified production company applied for the incentives.

272 (d) A qualified production company shall be entitled
273 to the rebate for production expenditures as provided in
274 subsection (a) for a qualified project that is limited only
275 to the production of a soundtrack used in a motion picture
276 or documentary, provided that the production expenditures
277 for the soundtrack project must equal or exceed at least
278 fifty thousand dollars (\$50,000), but no rebate shall be
279 available for production expenditures incurred after the
280 first three hundred thousand dollars (\$300,000) of



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281 production expenditures expended in Alabama under this
282 subsection.

283 (e) A qualified production company shall be entitled
284 to the rebate for production expenditures as provided in
285 subsection (a) for a qualified project that is limited only
286 to the production of a music album or music video, provided
287 that the production expenditures for the music album equal
288 or exceed twenty thousand dollars (\$20,000) and the
289 production expenditures for the music video equal or exceed
290 fifty thousand dollars (\$50,000), but no rebate shall be
291 available for production expenditures incurred after the
292 first two hundred thousand dollars (\$200,000) of production
293 expenditures expended in Alabama under this subsection.
294 Rebates received under this subsection may not, in the
295 aggregate, exceed five percent of the funding available each
296 year under Section 41-7A-43(a) for all qualified production
297 companies.

298 (f) The rebate described in this section may be
299 applied to offset any income tax liability applicable to a
300 qualified production company for the tax year in which
301 production activity in Alabama on the state-certified
302 production concludes.

303 (g) If the rebate available under this section exceeds
304 a qualified production company's Alabama income tax
305 liability for the tax year in which production activity in
306 Alabama concludes on the state-certified production, the
307 excess of the rebate over a qualified production company's
308 Alabama income tax liability shall be rebated to the



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309 qualified production company.

310 (h) The Commissioner of the Department of Revenue and
311 the office shall ~~promulgate~~adopt rules necessary to
312 administer this section."

313 "§41-7A-45

314 A qualified production company that intends to expend
315 in the aggregate one hundred fifty thousand dollars
316 (\$150,000) or more in connection with a qualified production
317 in the State of Alabama within a consecutive 12-month
318 period, upon making application for, meeting the
319 requirements of, and receiving written certification of that
320 designation from the office, shall be exempted from the
321 payment of the state portion, but not the local portion of
322 sales, use, and lodging taxes levied pursuant to Sections
323 40-23-2, 40-23-61, and 40-26-1, respectively, on production
324 expenditures ~~expended in Alabama~~ in connection with the
325 state-certified ~~productions~~ production. For each year until
326 the fiscal year ending September 30, 2023, the ~~The~~ exemption
327 provided by this section shall not be available for
328 production expenditures incurred by a qualified production
329 company after the first twenty million dollars
330 (\$20,000,000). For the fiscal year ending September 30,
331 2024, the cap on such ~~of~~ production expenditures ~~expended~~
332 eligible for the exemption described in this section, shall
333 be sixty-five million dollars (\$65,000,000). For the fiscal
334 year ending September 30, 2025, the cap on such production
335 expenditures eligible for the exemption described in ~~in~~
336 ~~Alabama on a state-certified project.~~ this section shall be



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337 one hundred ten million dollars (\$110,000,000). For the
338 fiscal year ending September 30, 2026, and each subsequent
339 fiscal year thereafter, the cap on such production
340 expenditures eligible for the exemption described in this
341 section shall be one hundred fifty million dollars
342 (\$150,000,000)."

343 "§41-7A-48

344 (a) For the fiscal year ending September 30, 2009,
345 the aggregate cap of incentives granted under this article
346 shall not exceed five million dollars (\$5,000,000) for all
347 qualified production companies. For the fiscal year ending
348 September 30, 2010, the aggregate cap of incentives granted
349 under this article shall not exceed seven million five
350 hundred thousand dollars (\$7,500,000) for all qualified
351 production companies. For fiscal years ending September 30,
352 2011, and September 30, 2012, the aggregate cap of
353 incentives granted under this article shall not exceed ten
354 million dollars (\$10,000,000) for all qualified production
355 companies. For the fiscal year ending September 30, 2013,
356 the aggregate cap of incentives granted under this article
357 shall not exceed fifteen million dollars (\$15,000,000) ~~for~~ for
358 all qualified production companies. For the fiscal year
359 ending September 30, 2014, the aggregate cap of incentives
360 granted under this article shall not exceed fifteen million
361 dollars (\$15,000,000) and for ~~all~~ each subsequent fiscal
362 ~~years thereafter,~~ year until the fiscal year ending
363 September 30, 2023, the aggregate cap of incentives granted
364 under this article shall not exceed twenty million dollars



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365 (\$20,000,000) for all qualified production companies. For
366 the fiscal year ending September 30, 2024, the aggregate cap
367 of incentives granted under this article shall not exceed
368 sixty-five million dollars (\$65,000,000) for all qualified
369 production companies. For the fiscal year ending September
370 30, 2025, the aggregate cap of incentives granted under this
371 article shall not exceed one hundred ten million dollars
372 (\$110,000,000) for all qualified production companies. For
373 the fiscal year ending September 30, 2026, and each
374 subsequent fiscal year thereafter, the aggregate cap of
375 incentives granted under this article shall not exceed one
376 hundred fifty million dollars (\$150,000,000) for all
377 qualified production companies.

378 (b) Beginning the fiscal year ending September 30,
379 2024, one-third of the aggregate cap described in subsection
380 (a), together with the caps described in Section
381 41-7A-43(e), shall be reserved each year for qualified
382 productions created, in whole or in part, at a qualified
383 production facility located at a historic location and which
384 also has its production headquarters at such qualified
385 production facility, as certified by such qualified
386 production facility. The applicable qualified production
387 facility shall be required to make a certification of the
388 foregoing and may impose a cap on the rebate available on
389 applicable qualified productions that is less than the caps
390 provided in Section 41-7A-43. In the event that applications
391 are not received by the close of the fourth quarter of a
392 particular year for the amounts reserved in this section,



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393 such reserved but unallocated funds shall carry forward for
394 allocations in accordance with this subsection in the
395 subsequent fiscal years until fully allocated. Amounts
396 carried forward into subsequent fiscal years shall not be
397 counted towards the aggregate caps described in subsection
398 (a) for purposes of calculating the amount reserved under
399 this section for the subsequent fiscal years. The aggregate
400 caps described in subsection (a) shall be increased to allow
401 for the carry forward described in this section."

402 Section 2. If a court of competent jurisdiction
403 adjudges invalid or unconstitutional any clause, sentence,
404 paragraph, section, or part of this act, such judgment or
405 decree shall not affect, impair, invalidate, or nullify the
406 remainder of this act, but the effect of the decision shall
407 be confined to the clause, sentence, paragraph, section, or
408 part of this act adjudged to be invalid or unconstitutional.

409 Section 3. All laws or parts of laws which conflict
410 with this act are repealed.

411 Section 4. This act shall become effective
412 immediately following its passage and approval by the
413 Governor, or its otherwise becoming law.