

As Reported by the House Ways and Means Committee

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Sub. H. B. No. 6

Representatives Patten, Schneider

**Cosponsors: Representatives DeGeeter, Garrison, Harris, Heard, Letson,
Luckie, Murray, Newcomb, Szollosi, Yuko, Winburn, Chandler, Foley,
Koziura, Slesnick, Yates**

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A B I L L

To amend sections 5733.98 and 5747.98 and to enact 1
sections 122.85, 5733.58, and 5747.66 of the 2
Revised Code to authorize refundable, 3
nontransferable credits against the corporation 4
franchise tax or income tax for production of 5
motion pictures in Ohio and to declare an 6
emergency. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 5733.98 and 5747.98 be amended and 8
sections 122.85, 5733.58, and 5747.66 of the Revised Code be 9
enacted to read as follows: 10

Sec. 122.85. (A) As used in this section and in sections 11
5733.58 and 5747.66 of the Revised Code: 12

(1) "Tax credit-eligible production" means a motion picture 13
production certified by the director of development under division 14
(B) of this section as qualifying the motion picture company for a 15
tax credit under section 5733.58 or 5747.66 of the Revised Code. 16

(2) "Certificate owner" means a motion picture company to 17
which a tax credit certificate is issued. 18

(3) "Motion picture company" means an individual, 19
corporation, partnership, limited liability company, or other form 20
of business association producing a motion picture. 21

(4) "Eligible production expenditures" means expenditures 22
made after the effective date of the enactment of this section by 23
H.B. 6 of the 128th general assembly for goods or services 24
purchased and consumed in this state by a motion picture company 25
directly for the production of a tax credit-eligible production. 26

"Eligible production expenditures" includes, but is not 27
limited to, expenditures for resident and nonresident cast and 28
crew wages, accommodations, costs of set construction and 29
operations, editing and related services, photography, sound 30
synchronization, lighting, wardrobe, makeup and accessories, film 31
processing, transfer, sound mixing, special and visual effects, 32
music, location fees, and the purchase or rental of facilities and 33
equipment. With respect to payroll for nonresident cast and crew, 34
"eligible production expenditures" means one hundred per cent of 35
the payroll expenditure for tax credit-eligible productions 36
certified before July 1, 2010, and seventy-five per cent of the 37
payroll expenditure for tax credit-eligible productions certified 38
on or after July 1, 2010. 39

(5) "Motion picture" means entertainment content created in 40
whole or in part within this state for distribution or exhibition 41
to the general public, including, but not limited to, 42
feature-length films; documentaries; long-form, specials, 43
miniseries, series, and interstitial television programming; 44
interactive web sites; sound recordings; videos; music videos; 45
interactive television; interactive games; videogames; 46
commercials; any format of digital media; and any trailer, pilot, 47
video teaser, or demo created primarily to stimulate the sale, 48

marketing, promotion, or exploitation of future investment in 49
either a product or a motion picture by any means and media in any 50
digital media format, film, or videotape, provided the motion 51
picture qualifies as a motion picture. "Motion picture" does not 52
include any television program created primarily as news, weather, 53
or financial market reports, a production featuring current events 54
or sporting events, an awards show or other gala event, a 55
production whose sole purpose is fundraising, a long-form 56
production that primarily markets a product or service or in-house 57
corporate advertising or other similar productions, a production 58
for purposes of political advocacy, or any production for which 59
records are required to be maintained under 18 U.S.C. 2257 with 60
respect to sexually explicit content. 61

(B) For the purpose of encouraging and developing a strong 62
film industry in this state, the director of development may 63
certify a motion picture produced by a motion picture company as a 64
tax credit-eligible production. In the case of a television 65
series, the director may certify the production of each episode of 66
the series as a separate tax credit-eligible production. A motion 67
picture company shall apply for certification of a motion picture 68
as a tax credit-eligible production on a form and in the manner 69
prescribed by the director. Each application shall include the 70
following information: 71

(1) The name and telephone number of the motion picture 72
production company; 73

(2) The name and telephone number of the company's contact 74
person; 75

(3) A list of the first preproduction date through the last 76
production date in Ohio; 77

(4) The Ohio production office address and telephone number; 78

(5) The total production budget of the motion picture; 79

<u>(6) The total budgeted eligible production expenditures and</u>	80
<u>the percentage that amount is of the total production budget of</u>	81
<u>the motion picture;</u>	82
<u>(7) The total percentage of the motion picture being shot in</u>	83
<u>Ohio;</u>	84
<u>(8) The level of employment of cast and crew who reside in</u>	85
<u>Ohio;</u>	86
<u>(9) A synopsis of the script;</u>	87
<u>(10) The shooting script;</u>	88
<u>(11) A creative elements list that includes the names of the</u>	89
<u>principal cast and crew and the producer and director;</u>	90
<u>(12) The motion picture's distribution plan, including</u>	91
<u>domestic and international distribution, and sales estimates for</u>	92
<u>the picture;</u>	93
<u>(13) Documentation of financial ability to undertake and</u>	94
<u>complete the motion picture;</u>	95
<u>(14) Estimated value of the tax credit based upon total</u>	96
<u>budgeted eligible production expenditures;</u>	97
<u>(15) Any other information considered necessary by the</u>	98
<u>director.</u>	99
<u>Within ninety days after certification of a motion picture as</u>	100
<u>a tax credit-eligible production, and any time thereafter upon the</u>	101
<u>director's request, the motion picture company shall present to</u>	102
<u>the director of development sufficient evidence of reviewable</u>	103
<u>progress. If the motion picture company fails to present</u>	104
<u>sufficient evidence, the director of development may rescind the</u>	105
<u>certification. Upon rescission, the director shall notify the</u>	106
<u>applicant that the certification has been rescinded. Nothing in</u>	107
<u>this section prohibits an applicant whose tax credit-eligible</u>	108
<u>production certification has been rescinded from submitting a</u>	109

subsequent application for certification. 110

(C)(1) A motion picture company whose motion picture has been 111
certified as a tax credit-eligible production may apply to the 112
director of development on or after July 1, 2009, for a refundable 113
credit against the tax imposed by section 5733.06 or 5747.02 of 114
the Revised Code. The director in consultation with the tax 115
commissioner shall prescribe the form and manner of the 116
application and the information or documentation required to be 117
submitted with the application. 118

The credit is determined as follows: 119

(a) If the total budgeted eligible production expenditures 120
stated in the application submitted under division (B) of this 121
section or the actual eligible production expenditures as finally 122
determined under division (D) of this section, whichever is least, 123
is less than or equal to three hundred thousand dollars, no credit 124
is allowed; 125

(b) If the total budgeted eligible production expenditures 126
stated in the application submitted under division (B) of this 127
section or the actual eligible production expenditures as finally 128
determined under division (D) of this section, whichever is least, 129
is greater than three hundred thousand dollars, the credit equals 130
twenty-five per cent of the least of those eligible production 131
expenditure amounts, subject to the limitation in division (C)(4) 132
of this section. 133

(2) Except as provided in division (C)(4) of this section, if 134
the director of development approves a motion picture company's 135
application for a credit, the director shall issue a tax credit 136
certificate to the company. The director in consultation with the 137
tax commissioner shall prescribe the form and manner of issuing 138
certificates. The director shall assign a unique identifying 139
number to each tax credit certificate and shall record the 140

certificate in a register devised and maintained by the director 141
for that purpose. The certificate shall state the amount of the 142
eligible production expenditures on which the credit is based and 143
the amount of the credit. Upon the issuance of a certificate, the 144
director shall certify to the tax commissioner the name of the 145
applicant, the amount of eligible production expenditures shown on 146
the certificate, and any other information required by the rules 147
adopted to administer this section. 148

(3) The amount of eligible production expenditures for which 149
a tax credit may be claimed is subject to inspection and 150
examination by the tax commissioner or employees of the 151
commissioner under section 5703.19 of the Revised Code and any 152
other applicable law. Once the eligible production expenditures 153
are finally determined under section 5703.19 of the Revised Code 154
and division (D) of this section, the credit amount is not subject 155
to adjustment unless the director determines an error was 156
committed in the computation of the credit amount. 157

(4) No tax credit certificate may be issued before the 158
completion of the tax credit-eligible production. Not more than 159
twenty million dollars of tax credit may be allowed per fiscal 160
biennium, and not more than ten million dollars may be allowed in 161
the first year of the biennium. Not more than five million dollars 162
of tax credit may be allowed per tax credit-eligible production. 163

(D) A motion picture company whose motion picture has been 164
certified as a tax credit-eligible production shall engage, at the 165
company's expense, an independent certified public accountant to 166
examine the company's production expenditures to identify the 167
expenditures that qualify as eligible production expenditures. The 168
certified public accountant shall issue a report to the company 169
and to the director of development certifying the company's 170
eligible production expenditures and any other information 171
required by the director. Upon receiving and examining the report, 172

the director may disallow any expenditure the director determines 173
is not an eligible production expenditure. If the director 174
disallows an expenditure, the director shall issue a written 175
notice to the motion picture production company stating that the 176
expenditure is disallowed and the reason for the disallowance. 177
Upon examination of the report and disallowance of any 178
expenditures, the director shall determine finally the lesser of 179
the total budgeted eligible production expenditures stated in the 180
application submitted under division (B) of this section or the 181
actual eligible production expenditures for the purpose of 182
computing the amount of the credit. 183

(E) No credit shall be allowed under section 5733.58 or 184
5747.66 of the Revised Code unless the director has reviewed the 185
report and made the determination prescribed by division (D) of 186
this section. 187

(F) This state reserves the right to refuse the use of this 188
state's name in the credits of any tax credit-eligible motion 189
picture production. 190

(G)(1) The director of development in consultation with the 191
tax commissioner shall adopt rules for the administration of this 192
section, including rules setting forth and governing the criteria 193
for determining whether a motion picture production is a tax 194
credit-eligible production; activities that constitute the 195
production of a motion picture; reporting sufficient evidence of 196
reviewable progress; expenditures that qualify as eligible 197
production expenditures; a competitive process for approving 198
credits; and consideration of geographic distribution of credits. 199
The rules shall be adopted under Chapter 119. of the Revised Code. 200

(2) The director may require a reasonable application fee to 201
cover administrative costs of the tax credit program. The fees 202
collected shall be credited to the motion picture tax credit 203
program operating fund, which is hereby created in the state 204

treasury. The motion picture tax credit program operating fund 205
shall consist of all grants, gifts, fees, and contributions made 206
to the director of development for marketing and promotion of the 207
motion picture industry within this state. The director of 208
development shall use money in the fund to pay expenses related to 209
the administration of the Ohio film office and the credit 210
authorized by this section and sections 5733.58 and 5747.66 of the 211
Revised Code. 212

Sec. 5733.58. (A) Any term used in this section has the same 213
meaning as in section 122.85 of the Revised Code. 214

(B) There is allowed a credit against the tax imposed by 215
section 5733.06 of the Revised Code for any corporation that is 216
the certificate owner of a tax credit certificate issued under 217
section 122.85 of the Revised Code. The credit shall be claimed 218
for the taxable year in which the certificate is issued by the 219
director of development. The credit amount equals the amount 220
stated in the certificate. The credit shall be claimed in the 221
order required under section 5733.98 of the Revised Code. If the 222
credit amount exceeds the tax otherwise due under section 5733.06 223
of the Revised Code after deducting all other credits in that 224
order, the excess shall be refunded. 225

(C) If, pursuant to division (G) of section 5733.01 of the 226
Revised Code, the corporation is not required to pay tax under 227
this chapter, the corporation may file an annual report under 228
section 5733.02 of the Revised Code and claim the credit 229
authorized by this section. Nothing in this section allows a 230
corporation to claim more than one credit per tax credit-eligible 231
production. 232

Sec. 5733.98. (A) To provide a uniform procedure for 233
calculating the amount of tax imposed by section 5733.06 of the 234

Revised Code that is due under this chapter, a taxpayer shall	235
claim any credits to which it is entitled in the following order,	236
except as otherwise provided in section 5733.058 of the Revised	237
Code:	238
(1) For tax year 2005, the credit for taxes paid by a	239
qualifying pass-through entity allowed under section 5733.0611 of	240
the Revised Code;	241
(2) The credit allowed for financial institutions under	242
section 5733.45 of the Revised Code;	243
(3) The credit for qualifying affiliated groups under section	244
5733.068 of the Revised Code;	245
(4) The subsidiary corporation credit under section 5733.067	246
of the Revised Code;	247
(5) The savings and loan assessment credit under section	248
5733.063 of the Revised Code;	249
(6) The credit for recycling and litter prevention donations	250
under section 5733.064 of the Revised Code;	251
(7) The credit for employers that enter into agreements with	252
child day-care centers under section 5733.36 of the Revised Code;	253
(8) The credit for employers that reimburse employee child	254
care expenses under section 5733.38 of the Revised Code;	255
(9) The credit for maintaining railroad active grade crossing	256
warning devices under section 5733.43 of the Revised Code;	257
(10) The credit for purchases of lights and reflectors under	258
section 5733.44 of the Revised Code;	259
(11) The job retention credit under division (B) of section	260
5733.0610 of the Revised Code;	261
(12) The credit for tax years 2008 and 2009 for selling	262
alternative fuel under section 5733.48 of the Revised Code;	263

(13) The second credit for purchases of new manufacturing machinery and equipment under section 5733.33 of the Revised Code;	264 265
(14) The job training credit under section 5733.42 of the Revised Code;	266 267
(15) The credit for qualified research expenses under section 5733.351 of the Revised Code;	268 269
(16) The enterprise zone credit under section 5709.66 of the Revised Code;	270 271
(17) The credit for the eligible costs associated with a voluntary action under section 5733.34 of the Revised Code;	272 273
(18) The credit for employers that establish on-site child day-care centers under section 5733.37 of the Revised Code;	274 275
(19) The ethanol plant investment credit under section 5733.46 of the Revised Code;	276 277
(20) The credit for purchases of qualifying grape production property under section 5733.32 of the Revised Code;	278 279
(21) The export sales credit under section 5733.069 of the Revised Code;	280 281
(22) The credit for research and development and technology transfer investors under section 5733.35 of the Revised Code;	282 283
(23) The enterprise zone credits under section 5709.65 of the Revised Code;	284 285
(24) The credit for using Ohio coal under section 5733.39 of the Revised Code;	286 287
(25) The credit for small telephone companies under section 5733.57 of the Revised Code;	288 289
(26) The credit for eligible nonrecurring 9-1-1 charges under section 5733.55 of the Revised Code;	290 291
(27) For tax year 2005, the credit for providing programs to	292

aid the communicatively impaired under division (A) of section	293
5733.56 of the Revised Code;	294
(28) The research and development credit under section	295
5733.352 of the Revised Code;	296
(29) For tax years 2006 and subsequent tax years, the credit	297
for taxes paid by a qualifying pass-through entity allowed under	298
section 5733.0611 of the Revised Code;	299
(30) The refundable credit for rehabilitating a historic	300
building under section 5733.47 of the Revised Code;	301
(31) The refundable jobs creation credit under division (A)	302
of section 5733.0610 of the Revised Code;	303
(32) The refundable credit for tax withheld under division	304
(B)(2) of section 5747.062 of the Revised Code;	305
(33) The refundable credit under section 5733.49 of the	306
Revised Code for losses on loans made to the Ohio venture capital	307
program under sections 150.01 to 150.10 of the Revised Code;	308
(34) For tax years 2006, 2007, and 2008, the refundable	309
credit allowable under division (B) of section 5733.56 of the	310
Revised Code;	311
<u>(35) The refundable motion picture production credit under</u>	312
<u>section 5733.58 of the Revised Code.</u>	313
(B) For any credit except the <u>refundable</u> credits enumerated	314
in divisions (A)(30) to (34) of this section, the amount of the	315
credit for a tax year shall not exceed the tax due after allowing	316
for any other credit that precedes it in the order required under	317
this section. Any excess amount of a particular credit may be	318
carried forward if authorized under the section creating that	319
credit.	320
<u>Sec. 5747.66. (A) Any term used in this section has the same</u>	321

meaning as in section 122.85 of the Revised Code. 322

(B) There is allowed a credit against the tax imposed by 323
section 5747.02 of the Revised Code for any individual who, on the 324
last day of the individual's taxable year, is the certificate 325
owner of a tax credit certificate issued under section 122.85 of 326
the Revised Code. The credit shall be claimed for the taxable year 327
that includes the date the certificate was issued by the director 328
of development. The credit amount equals the amount stated in the 329
certificate. The credit shall be claimed in the order required 330
under section 5747.98 of the Revised Code. If the credit amount 331
exceeds the tax otherwise due under section 5747.02 of the Revised 332
Code after deducting all other credits in that order, the excess 333
shall be refunded. 334

Nothing in this section limits or disallows pass-through 335
treatment of the credit. 336

Sec. 5747.98. (A) To provide a uniform procedure for 337
calculating the amount of tax due under section 5747.02 of the 338
Revised Code, a taxpayer shall claim any credits to which the 339
taxpayer is entitled in the following order: 340

(1) The retirement income credit under division (B) of 341
section 5747.055 of the Revised Code; 342

(2) The senior citizen credit under division (C) of section 343
5747.05 of the Revised Code; 344

(3) The lump sum distribution credit under division (D) of 345
section 5747.05 of the Revised Code; 346

(4) The dependent care credit under section 5747.054 of the 347
Revised Code; 348

(5) The lump sum retirement income credit under division (C) 349
of section 5747.055 of the Revised Code; 350

(6) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;	351 352
(7) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;	353 354
(8) The low-income credit under section 5747.056 of the Revised Code;	355 356
(9) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	357 358
(10) The campaign contribution credit under section 5747.29 of the Revised Code;	359 360
(11) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	361 362
(12) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	363 364
(13) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	365 366
(14) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	367 368
(15) The credit for employers that enter into agreements with child day-care centers under section 5747.34 of the Revised Code;	369 370
(16) The credit for employers that reimburse employee child care expenses under section 5747.36 of the Revised Code;	371 372
(17) The credit for adoption of a minor child under section 5747.37 of the Revised Code;	373 374
(18) The credit for purchases of lights and reflectors under section 5747.38 of the Revised Code;	375 376
(19) The job retention credit under division (B) of section 5747.058 of the Revised Code;	377 378
(20) The credit for selling alternative fuel under section	379

5747.77 of the Revised Code;	380
(21) The second credit for purchases of new manufacturing machinery and equipment and the credit for using Ohio coal under section 5747.31 of the Revised Code;	381 382 383
(22) The job training credit under section 5747.39 of the Revised Code;	384 385
(23) The enterprise zone credit under section 5709.66 of the Revised Code;	386 387
(24) The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;	388 389
(25) The credit for employers that establish on-site child day-care centers under section 5747.35 of the Revised Code;	390 391
(26) The ethanol plant investment credit under section 5747.75 of the Revised Code;	392 393
(27) The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	394 395
(28) The export sales credit under section 5747.057 of the Revised Code;	396 397
(29) The credit for research and development and technology transfer investors under section 5747.33 of the Revised Code;	398 399
(30) The enterprise zone credits under section 5709.65 of the Revised Code;	400 401
(31) The research and development credit under section 5747.331 of the Revised Code;	402 403
(32) The credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	404 405
(33) The refundable credit for rehabilitating a historic building under section 5747.76 of the Revised Code;	406 407
(34) The refundable jobs creation credit under division (A)	408

of section 5747.058 of the Revised Code;	409
(35) The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;	410 411
(36) The refundable credits for taxes paid by a qualifying pass-through entity granted under division (J) of section 5747.08 of the Revised Code;	412 413 414
(37) The refundable credit for tax withheld under division (B)(1) of section 5747.062 of the Revised Code;	415 416
(38) The refundable credit under section 5747.80 of the Revised Code for losses on loans made to the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code;	417 418 419
<u>(39) The refundable motion picture production credit under section 5747.66 of the Revised Code.</u>	420 421
(B) For any credit, except the <u>refundable</u> credits enumerated in divisions (A)(33) to (38) of this section and the credit granted under division (I) of section 5747.08 of the Revised Code, the amount of the credit for a taxable year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit. Nothing in this chapter shall be construed to allow a taxpayer to claim, directly or indirectly, a credit more than once for a taxable year.	422 423 424 425 426 427 428 429 430 431 432
Section 2. That existing sections 5733.98 and 5747.98 of the Revised Code are hereby repealed.	433 434
Section 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that the dramatic decline in Ohio's economy and recent, substantial job	435 436 437 438

loss in Ohio have created an urgent need for the act's economic 439
development measure. Therefore, this act shall go into immediate 440
effect. 441