



# Senate

General Assembly

**File No. 162**

February Session, 2010

Substitute Senate Bill No. 176

*Senate, March 29, 2010*

The Committee on Commerce reported through SEN. LEBEAU of the 3rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## ***AN ACT CONCERNING THE FILM TAX CREDIT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 12-217jj of the 2010 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective July 1, 2010, and applicable to income years commencing on or after*  
4 *January 1, 2010*):

5 (a) As used in this section:

6 (1) "Commissioner" means the Commissioner of Revenue Services.

7 (2) "Department" means the Department of Economic and  
8 Community Development.

9 (3) (A) "Qualified production" means entertainment content created  
10 in whole or in part within the state, including motion pictures;  
11 documentaries; long-form, specials, mini-series, series, sound  
12 recordings, videos and music videos and interstitials television

13 programming; interactive television; interactive games; videogames;  
14 commercials; any format of digital media, including, prior to January  
15 1, 2013, an interactive web site, created for distribution or exhibition to  
16 the general public; and any trailer, pilot, video teaser or demo created  
17 primarily to stimulate the sale, marketing, promotion or exploitation of  
18 future investment in either a product or a qualified production via any  
19 means and media in any digital media format, film or videotape,  
20 provided such program meets all the underlying criteria of a qualified  
21 production.

22 (B) "Qualified production" shall not include any ongoing television  
23 program created primarily as news, weather or financial market  
24 reports, a production featuring current events, sporting events, an  
25 awards show or other gala event, a production whose sole purpose is  
26 fundraising, a long-form production that primarily markets a product  
27 or service, a production used for corporate training or in-house  
28 corporate advertising or other similar productions, for income years  
29 commencing on or after January 1, 2013, entertainment content created  
30 in whole or in part within the state for an interactive web site, or any  
31 production for which records are required to be maintained under 18  
32 USC 2257 with respect to sexually explicit content.

33 (4) "Eligible production company" means a corporation, partnership,  
34 limited liability company, or other business entity engaged in the  
35 business of producing qualified productions on a one-time or ongoing  
36 basis, and qualified by the Secretary of the State to engage in business  
37 in the state.

38 (5) "Production expenses or costs" means all expenditures clearly  
39 and demonstrably incurred in the state in the [development,]  
40 preproduction, production or postproduction costs of a qualified  
41 production, including:

42 (A) Expenditures incurred in the state in the form of either  
43 compensation or purchases including production work, production  
44 equipment not eligible for the infrastructure tax credit provided in  
45 section 12-217kk, as amended by this act, production software,

46 postproduction work, postproduction equipment, postproduction  
47 software, set design, set construction, props, lighting, wardrobe,  
48 makeup, makeup accessories, special effects, visual effects, audio  
49 effects, film processing, music, sound mixing, editing, location fees,  
50 soundstages and any and all other costs or services directly incurred in  
51 connection with a state-certified qualified production;

52 (B) Expenditures for distribution, including preproduction,  
53 production or postproduction costs relating to the creation of trailers,  
54 marketing videos, commercials, point-of-purchase videos and any and  
55 all content created on film or digital media, including the duplication  
56 of films, videos, CDs, DVDs and any and all digital files now in  
57 existence and those yet to be created for mass consumer consumption;  
58 the purchase, by a company in the state, of any and all equipment  
59 relating to the duplication or mass market distribution of any content  
60 created or produced in the state by any digital media format which is  
61 now in use and those formats yet to be created for mass consumer  
62 consumption; and

63 (C) "Production expenses or costs" does not include the following:  
64 (i) On and after January 1, 2008, compensation in excess of fifteen  
65 million dollars paid to any individual or entity representing an  
66 individual, for services provided in the production of a qualified  
67 production and on or after January 1, 2010, compensation subject to  
68 Connecticut personal income tax in excess of twenty million dollars  
69 paid in the aggregate to any individuals or entities representing  
70 individuals, for star talent provided in the production of a qualified  
71 production where "compensation" means base salary or wages, and  
72 does not include bonus pay, stock options, restricted stock units or  
73 similar arrangements; (ii) media buys, promotional events or gifts or  
74 public relations associated with the promotion or marketing of any  
75 qualified production; (iii) deferred, leveraged or profit participation  
76 costs relating to any and all personnel associated with any and all  
77 aspects of the production, including, but not limited to, producer fees,  
78 director fees, talent fees and writer fees; (iv) costs relating to the  
79 transfer of the production tax credits; (v) any amounts paid to persons

80 or businesses as a result of their participation in profits from the  
81 exploitation of the qualified production; and (vi) any expenses or costs  
82 relating to an independent certification, as required by subsection (c)  
83 of this section, or as the department may otherwise require, pertaining  
84 to the amount of production expenses or costs set forth by an eligible  
85 production company in its application for a production tax credit.

86 (6) "Sound recording" means a recording of music, poetry or  
87 spoken-word performance, but does not include the audio portions of  
88 dialogue or words spoken and recorded as part of a motion picture,  
89 video, theatrical production, television news coverage or athletic event.

90 (7) "State-certified qualified production" means a qualified  
91 production produced by an eligible production company that (A) is in  
92 compliance with regulations adopted pursuant to subsection (g) of this  
93 section, (B) is authorized to conduct business in this state, and (C) has  
94 been approved by the department as qualifying for a production tax  
95 credit under this section.

96 (8) "Interactive web site" means a web site, the production costs of  
97 which (A) exceed five hundred thousand dollars per income year, and  
98 (B) is primarily (i) interactive games or end user applications, or (ii)  
99 animation, simulation, sound, graphics, story lines or video created or  
100 repurposed for distribution over the Internet. An interactive web site  
101 does not include a web site primarily used for institutional, private,  
102 industrial, retail or wholesale marketing or promotional purposes, or  
103 which contains obscene content.

104 (9) "Post-certification remedy" means the recapture, disallowance,  
105 recovery, reduction, repayment, forfeiture, decertification or any other  
106 remedy that would have the effect of reducing or otherwise limiting  
107 the use of a tax credit provided by this section.

108 (b) [(1)] The Department of Economic and Community  
109 Development shall administer a system of tax credit vouchers within  
110 the resources, requirements and purposes of this section for eligible  
111 production companies producing a state-certified qualified production

112 in the state.

113 [(A)] (1) For income years commencing on or after January 1, 2006,  
114 but prior to January 1, 2010, any eligible production company  
115 incurring production expenses or costs in excess of fifty thousand  
116 dollars shall be eligible for a credit against the tax imposed under  
117 chapter 207 or this chapter equal to thirty per cent of such production  
118 expenses or costs.

119 [(B)] (2) For income years commencing on or after January 1, 2010,  
120 [(i)] (A) any eligible production company incurring production  
121 expenses or costs of not less than one hundred thousand dollars, but  
122 not more than five hundred thousand dollars, shall be eligible for a  
123 credit against the tax imposed under chapter 207 or this chapter equal  
124 to ten per cent of such production expenses or costs, [(ii)] (B) any such  
125 company incurring such expenses or costs of more than five hundred  
126 thousand dollars, but not more than one million dollars, shall be  
127 eligible for a credit against the tax imposed under chapter 207 or this  
128 chapter equal to fifteen per cent of such production expenses or costs,  
129 and [(iii)] (C) any such company incurring such expenses or costs of  
130 more than one million dollars shall be eligible for a credit against the  
131 tax imposed under chapter 207 or this chapter equal to thirty per cent  
132 of such production expenses or costs.

133 [(C)] (c) No eligible production company incurring an amount of  
134 production expenses or costs that qualifies for such credit shall be  
135 eligible for such credit unless, for income years commencing on or  
136 after January 1, 2010, such company conducts (A) not less than [fifty]  
137 twenty-five per cent of principal photography days within the state or  
138 expends not less than fifty per cent of postproduction costs within the  
139 state, and (B) for income years commencing on or after January 1, 2011,  
140 not less than twenty-five per cent of its total production in studios  
141 located in the state.

142 [(D)] (i) (d) (1) For income years commencing on or after January 1,  
143 2009, but prior to January 1, 2010, fifty per cent of production expenses  
144 or costs shall be counted toward such credit when incurred outside the

145 state and used within the state, and one hundred per cent of such  
146 expenses or costs shall be counted toward such credit when incurred  
147 within the state and used within the state.

148 [(ii)] (2) For income years commencing on or after January 1, 2010,  
149 no expenses or costs incurred outside the state and used within the  
150 state shall be eligible for a credit, and one hundred per cent of such  
151 expenses or costs shall be counted toward such credit when incurred  
152 within the state and used within the state.

153 [(2)] (e) On and after July 1, 2006, and for income years commencing  
154 on or after January 1, 2006, any credit allowed pursuant to this  
155 subsection may be sold, assigned or otherwise transferred, in whole or  
156 in part, to one or more taxpayers, provided no credit, after issuance,  
157 may be sold, assigned or otherwise transferred, in whole or in part,  
158 more than three times.

159 [(3)] (f) On and after July 1, 2006, and for income years commencing  
160 on or after January 1, 2006, all or part of any such credit allowed under  
161 this subsection shall be claimed against the tax imposed under chapter  
162 207 or this chapter for the income year in which the production  
163 expenses or costs were incurred, or in the three immediately  
164 succeeding income years. Any production tax credit allowed under  
165 this subsection shall be nonrefundable.

166 [(c)] (g) (1) An eligible production company shall apply to the  
167 department for a tax credit voucher on an annual basis, but not later  
168 than ninety days after the first production expenses or costs are  
169 incurred in the production of a qualified production, and shall provide  
170 with such application such information as the department may require  
171 to determine such company's eligibility to claim a credit under this  
172 section. No production expenses or costs may be listed more than once  
173 for purposes of the tax credit voucher pursuant to this section, or  
174 pursuant to section 12-217kk, as amended by this act, or 12-217ll, and if  
175 a production expense or cost has been included in a claim for a credit,  
176 such production expense or cost may not be included in any  
177 subsequent claim for a credit.

178 (2) Not later than ninety days after the end of the annual period, or  
179 after the last production expenses or costs are incurred in the  
180 production of a qualified production, an eligible production company  
181 shall apply to the department for a production tax credit voucher, and  
182 shall provide with such application such information and independent  
183 certification as the department may require pertaining to the amount  
184 of such company's production expenses or costs. Such independent  
185 certification shall be provided by an audit professional chosen from a  
186 list compiled by the department. If the department determines that  
187 such company is eligible to be issued a production tax credit voucher,  
188 the department shall enter on the voucher the amount of production  
189 expenses or costs that has been established to the satisfaction of the  
190 department and the amount of such company's credit under this  
191 section. The department shall provide a copy of such voucher to the  
192 commissioner, upon request.

193 (3) The department shall charge a reasonable administrative fee  
194 sufficient to cover the department's costs to analyze applications  
195 submitted under this section.

196 [(d)] (h) If an eligible production company sells, assigns or  
197 otherwise transfers a credit under this section to another taxpayer, the  
198 transferor and transferee shall jointly submit written notification of  
199 such transfer to the department not later than thirty days after such  
200 transfer. If such transferee sells, assigns or otherwise transfers a credit  
201 under this section to a subsequent transferee, such transferee and such  
202 subsequent transferee shall jointly submit written notification of such  
203 transfer to the department not later than thirty days after such transfer.  
204 The notification after each transfer shall include the credit voucher  
205 number, the date of transfer, the amount of such credit transferred, the  
206 tax credit balance before and after the transfer, the tax identification  
207 numbers for both the transferor and the transferee, and any other  
208 information required by the department. Failure to comply with this  
209 subsection will result in a disallowance of the tax credit until there is  
210 full compliance on the part of the transferor and the transferee, and for  
211 a second or third transfer, on the part of all subsequent transferors and

212 transferees. The department shall provide a copy of the notification of  
213 assignment to the commissioner upon request.

214 [(e)] (i) Any eligible production company that submits information  
215 to the department that it knows to be fraudulent or false shall, in  
216 addition to any other penalties provided by law, be liable for a penalty  
217 equal to the amount of such company's credit entered on the  
218 production tax credit certificate issued under this section.

219 [(f)] (j) No tax credits transferred pursuant to this section shall be  
220 subject to a post-certification remedy, and the department and the  
221 commissioner shall have no right, except in the case of possible  
222 material misrepresentation or fraud, to conduct any further or  
223 additional review, examination or audit of the expenditures or costs  
224 for which such tax credits were issued. The sole and exclusive remedy  
225 of the department and the commissioner shall be to seek collection of  
226 the amount of such tax credits from the entity that committed the  
227 fraud or misrepresentation.

228 [(g)] (k) The department, in consultation with the commissioner,  
229 shall adopt regulations, in accordance with the provisions of chapter  
230 54, as may be necessary for the administration of this section.

231 Sec. 2. Subsection (b) of section 12-217kk of the 2010 supplement to  
232 the general statutes is repealed and the following is substituted in lieu  
233 thereof (*Effective July 1, 2010, and applicable to income years commencing*  
234 *on or after January 1, 2010*):

235 (b) (1) (A) For income years commencing prior to January 1, 2010,  
236 there shall be allowed a state-certified project credit against the tax  
237 imposed under chapter 207 or this chapter to any taxpayer that invests  
238 in a state-certified project. Such credit may be in the following  
239 amounts: (i) For state-certified projects costing greater than fifteen  
240 thousand dollars and less than one hundred fifty thousand dollars,  
241 each taxpayer may be allowed a tax credit of ten per cent of the  
242 investment made by such taxpayer; (ii) for state-certified projects  
243 costing one hundred fifty thousand dollars or more, but less than one

244 million dollars, each taxpayer may be allowed a tax credit of fifteen per  
245 cent of the investment made by such taxpayer; and (iii) for state-  
246 certified projects costing one million dollars or more, each taxpayer  
247 may be allowed a tax credit of twenty per cent of the investment made  
248 by such taxpayer.

249 (B) For income years commencing on or after January 1, 2010, there  
250 shall be allowed a state-certified project credit against the tax imposed  
251 under chapter 207 or this chapter to any taxpayer that invests three  
252 million dollars or more in a state-certified project in an amount equal  
253 to twenty per cent of the investment made by such taxpayer.

254 (2) Eligible expenditures pursuant to this section shall include the  
255 following: All expenditures for a capital project to provide buildings,  
256 facilities or installations, whether [leased or purchased] a capital lease  
257 or purchase, together with necessary equipment for a film, video,  
258 television, digital production facility or digital animation production  
259 facility; project development, including design, professional consulting  
260 fees and transaction costs; development, preproduction, production,  
261 post-production and distribution equipment and system access; and  
262 fixtures and other equipment.

263 (3) Any credit allowed pursuant to this section may be sold,  
264 assigned or otherwise transferred, in whole or in part, to one or more  
265 taxpayers, and such taxpayers may sell, assign or otherwise transfer, in  
266 whole or in part, such credit. Any taxpayer holding such credit may  
267 claim such credit only for the income year in which expenditures were  
268 made by the taxpayer for the infrastructure project.

269 (4) Any credit allowed pursuant to this section shall be claimed  
270 against the tax imposed under chapter 207 or this chapter. If the  
271 amount of the credit allowable under this section exceeds the sum of  
272 any taxes due from a taxpayer, any such excess amount of the credit  
273 allowable under this section may be taken in any of the three  
274 immediately succeeding income years.

275 (5) Any tax credit earned under this section shall be nonrefundable.

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This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2010, and applicable to income years commencing on or after January 1, 2010</i>	12-217jj
Sec. 2	<i>July 1, 2010, and applicable to income years commencing on or after January 1, 2010</i>	12-217kk(b)

**CE**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 11 \$</b>	<b>FY 12 \$</b>
Department of Revenue Services	GF - Revenue Gain	5.5 million	11 million
Department of Economic & Community Development	GF - Savings	See Below	See Below

Note: GF=General Fund

**Municipal Impact:** None

### **Explanation**

The bill will result in a General Fund revenue gain of approximately \$5.5 million in FY 11 and \$11.0 million per year thereafter from the corporation business tax and the insurance premiums tax. The anticipated revenue gain is primarily due to modifications in the bill that exclude productions that do not have at least 25% of their post production costs incurred in the state.

The bill will result in fewer tax credits being administered by the Department of Economic and Community Development and that savings for one position (AR-25) will result, as that position is laid off. The net FY 11 savings of \$ 58,375 and \$82,550 in FY 12 reflects savings from salary, federal unemployment compensation act (FICA) payments, and health care; and costs for paid leave accruals and unemployment compensation.

### **The Out Years**

The bill will result in an additional General Fund revenue gain of approximately \$5 million in FY 13 and \$10 million per year beginning in FY 14 from the corporation business tax and the insurance premiums tax. The revenue gain is a result of the bill narrowing the

types of productions that qualify for the credit to not include interactive web sites.

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

*Sources: Department of Economic and Community Development*

**OLR Bill Analysis****sSB 176*****AN ACT CONCERNING THE FILM TAX CREDIT.*****SUMMARY:**

This bill generally tightens the criteria companies must meet to claim the tax credits for producing films or developing film-related infrastructure in Connecticut. By law, a company producing film or digital media qualifies for credits based on the amount of time and money it spends producing a film in Connecticut. The credits apply against the corporation business or insurance premium taxes, but film companies can transfer them to other taxpayers liable for these taxes.

By law, a company must spend at least \$100,000 producing film in the state. Under current law, it must also conduct at least 50% of its principal photography days here or spend at least 50% of the film's post-production costs in the state. The bill reduces the principal photography days in Connecticut to 25%. But it additionally requires the company to produce at least 25% of the film in Connecticut studios, beginning January 1, 2011.

The bill narrows the types of production that qualify for the credit. Starting January 1, 2013, a company producing interactive web site content no longer qualifies for the credit. Such a company currently qualifies for the credit if it spends at least \$500,000 per year developing the site and the site meets specified criteria.

The bill tightens the criteria for determining eligible production and infrastructure costs. It also makes a conforming technical change.

**EFFECTIVE DATE:** July 1, 2010 and applicable to income years beginning on or after January 1, 2010.

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**PRODUCTION EXPENSES**

The bill excludes expenses and costs incurred in Connecticut to develop an idea for film. Consequently, it limits the eligible the eligible expenses and costs to those incurred in planning (preproduction), filming (production), and editing (postproduction) a film.

By law, eligible costs do not include compensation over \$20 million paid to people or entities for representing star talent. The bill specifies that this exclusion applies to base salaries or wages. It also excludes bonus pay, stock options, restricted stock units, or similar arrangements.

**INFRASTRUCTURE CREDITS**

Besides authorizing film production credits, the law authorizes corporation business and insurance premium credits for developing the buildings, facilities, and installations needed to produce films here. A developer qualifies for the credit regardless of whether he or she intends to construct and sell the infrastructure or lease it under any type of lease agreement. With respect to leased facilities, the bill limits the credits to those leased under a capital lease. Capital leases generally have longer terms, higher lease payments, and provisions for transferring the property to the lessee when the lease term ends.

**BACKGROUND*****Credit Amounts***

Film and digital media production credits range from 10% to 30% depending on the total production expenses over \$100,000 that a company incurs in Connecticut. The credit equals 10% for expenses between \$100,000 and \$500,000, 15% for expenses over \$500,000 but less than \$1 million, and 30% for expenses over the latter amount. As discussed above, a company meeting these expense parameters must also conduct, under current law, at least 50% of its photography days in Connecticut.

The film infrastructure tax credit equals 20% of the cost of

developing buildings, facilities, and installations film and digital media production companies need to operate in Connecticut. A company qualifies for the credit if it spends at least \$3 million developing this infrastructure.

### ***Interactive Web Sites***

Under current law, producing interactive websites qualifies for the credit depending how the site is used. The production qualifies if the site is for interactive games or “end user applications.” It also qualifies if the site involves animation, simulation, sound, graphics, story lines, or video created or repurposed for Internet distribution. The site does not qualify if it is mainly used for marketing or promoting institutions, private organizations, retailing, or wholesaling. It also does not qualify if it contains obscene material.

### **COMMITTEE ACTION**

Commerce Committee

Joint Favorable Substitute

Yea 18 Nay 1 (03/18/2010)