

**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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4 SYNOPSIS:

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

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

16

17

18 A BILL

19 TO BE ENTITLED

20 AN ACT

21

22 Relating to the Entertainment Industry Incentive Act  
23 of 2009; to amend Sections 41-7A-40, 41-7A-41, 41-7A-42,  
24 41-7A-43, 41-7A-45, and 41-7A-48, Code of Alabama 1975, to  
25 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)~~ (5) 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)~~ (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 mediafilm and music industries.

140 c. The term does not include postproduction



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



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**



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



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



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~~



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~~  
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



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,



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.