

(S. B. 552)
(Conference)

(No. 5-2023)

(Approved January 9, 2023)

AN ACT

To amend Sections 1020.07, 2071.01, 3000.01 and 3050.01 of Act No. 60-2019, as amended, known as the “Puerto Rico Incentives Code,” in order to expand the activities that make businesses engaged in Infrastructure and Green Energy eligible to apply for Incentives; and reinstate the limit of tax credits available for Film Projects.

STATEMENT OF MOTIVES

Puerto Rico has been part of the world’s film industry since the early 20th century. The technical and creative quality of Puerto Rico’s film industry has become widely known as a result of the local content being produced and the promotion of Puerto Rico as a filming destination. In 1999, Puerto Rico became a pioneering jurisdiction in the world and the United States when it enacted Act No. 362, which created the concept of tax incentives as is known today under the Incentives Code.

In 2020, when the Covid-19 pandemic forced the entire world into a lockdown, the consumption of audiovisual content experienced a dramatic increase of 33% in the United States, and 31% worldwide, thanks to digital and streaming platforms such as Netflix, Hulu, and Amazon Prime, among others. This extraordinary use of streaming services depleted the content available at the time and the resulting demand for the production of new content calls for an investment of \$112 billion in 2021-2022.

At a time when the global demand grows at unprecedented levels, Puerto Rico limited its offerings as a jurisdiction and as an option for content production with the

approval of Act No. 40-2020, which introduces a series of tax reliefs for individuals and corporations. However, for the sake of fiscal neutrality, the statute established several payfors amounting to \$42.8 million, which were approved by the Financial Oversight Board. Among other things, these payfors imposed a \$38 million annual limit on tax credits for Film Projects under Section 3050.01 of the Puerto Rico Incentives Code (Act No. 60-2019) under the pretext that said action was equivalent to a \$12 million payfor, mistakenly taking as a basis the \$50 million limit under the preceding Film Industry Economic Incentives Act (Act No. 27-2011) which was repealed by the Incentives Code.

Unfortunately, the limitation of such credits has also limited Puerto Rico's film production capacity because it has reduced the critical mass needed to maintain the jobs and businesses engaged in the film industry, which is experiencing worldwide exponential growth and is an industry wherein Puerto Rico has a competitive advantage over other jurisdictions. This situation not only places the hundreds of workers and businesses that provide services exclusively to the film industry at risk, but it also prevents the industry from fully contributing to the economic development of Puerto Rico, considering that our economy must recover from the effects of the COVID-19 pandemic.

This limitation on the tax incentive for film projects prevents the Film Program of the Department of Economic Development and Commerce from authorizing significant projects, thus hindering the opportunity to generate approximately \$669,000,000 in direct economic activity for Fiscal Year 2021-2022. Consequently, the Film Program has only been able to grant decrees to 4 film projects, whereas, in Fiscal Year 2016-2017, for instance, a total of 46 decrees were granted to local and international film projects.

Based on the foregoing, it can be concluded that the growth shown by this industry over the past 22 years as a result of this incentive must be retained. Thus,

this Act seeks to amend and increase the maximum annual tax credit amount from \$38,000,000 to \$100,000,000 in order to generate the aforementioned economic impact in Puerto Rico.

Furthermore, in view of the ongoing challenges that Puerto Rico is facing to provide its residents with a continuous and reliable supply of electricity, amendments are hereby proposed to expand the number of activities eligible for the Incentives Granted to businesses engaged in Infrastructure and Green Energy. We must continue to promote energy diversification in Puerto Rico and the development of renewable energy sources. At the same time, we benefit from the policy set forth by President Joseph Biden in the recently approved Bipartisan Infrastructure Law, which contains provisions that promote energy storage systems aimed at lowering energy costs and increasing the use of energy storage resources.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 1020.07 of the Puerto Rico Incentives Code is hereby amended to read as follows:

“Section 1020.07.- Definitions Applicable to Infrastructure and Green Energy or High-Efficiency Activities.

(a) For the purposes of Chapter 7 of Subtitle B of this Code pertaining to Infrastructure and Green or High-Efficiency Energy...

(1) ...

...

(27) ...

(28) Energy Storage System. – Means an interconnected system with an aggregate capacity of at least one (1) megawatt (MW) that absorbs and stores the energy generated at any given time to be subsequently used according to the need of the source.

(29) ...

...
(34) ...”

Section 2.- A new subsection (9a) is hereby added to Section 2071.01 of the Puerto Rico Incentives Code to read as follows:

“Section 2071.01.- Businesses Engaged in Infrastructure and Green or High-Efficiency Energy.

It is hereby provided that an eligible business established or to be established, in Puerto Rico by a Person, whether organized or not under a common name, may file an Application for Incentives with the Secretary of the DEDC when the Entity is established in Puerto Rico to engage in one of the following eligible activities:

...

(9)

(9a) Any business engaged in the installation, operation, assembly, maintenance of, or sale of energy at a commercial scale through an Energy Storage System.

(10) ...”

Section 3.- Section 3050.01 of Act No. 60-2019, as amended, known as the “Puerto Rico Incentives Code,” is hereby amended to read as follows:

“Section 3050.01.- Tax Credit for Creative Industries

(a) Granting of Tax Credit...

(b) Subject to the limitations, terms, and conditions set forth in this Section, the Tax Credit shall be available to Grantees at the beginning of the activities covered by the Grant in case of Film Projects, as authorized by the Secretary of the DEDC. Once the requirements of this Section are met, the Secretary of the DEDC shall certify the amount of the Tax Credit approved.

(c) Amount of Tax Credit.-

(1) In the case of Film Projects, the Tax Credit available in this Section shall be:

(i) Up to forty percent (40%) of the amounts certified by an Auditor as disbursed in connection with Puerto Rico Production Expenditures, without including payments made to Foreign Persons; and

(ii) Up to twenty percent (20%) of the amounts certified by an Auditor as disbursed in connection with Puerto Rico Production Expenditures, consisting of payments made to Foreign Persons;

(iii) Up to fifteen percent (15%) of the amounts certified by an Auditor as disbursed in connection with Puerto Rico Production Expenditures, without including payments made to Foreign Persons, in feature films, television series or documentaries in which a Domestic Producer is in charge of the Film Project and the director, cinematographer, editor, production designer, post-production supervisor, or line producer are Domestic Persons, up to a maximum of four million dollars (\$4,000,000) of Tax Credit per Film Project under this item.

(iv) The provisions of paragraph (1) notwithstanding, the amount of tax credits shall be subject to an annual limit of one hundred million dollars (\$100,000,000) per fiscal year.

(v) The Secretary of the DEDC shall distribute the tax credits fairly and equitably among all eligible film projects through regulations or circular letter, which shall ensure not less than 10 percent of the total incentive for local productions and documentaries; in order to maintain and promote investment and the creation of jobs in all sectors of Puerto Rico's film industry as well as promote the growth of the Puerto Rican film industry and the best interests of the Island.

(2) ...

(3) ...

(d) ...

(e) ...

(f) ...

(g) ...

(h) ...

(i) ...

(j) ...”

Section 4.- Fiscal Responsibility

The Office of Management and Budget; the Department of Economic Development and Commerce, and the Puerto Rico Fiscal Agency and Financial Advisory Authority shall have a ministerial duty to identify and execute any and all possible actions to attain the purposes of this Act.

Section 5.- Severability

If any provision of this Act were held to be void or invalid by a court or forum authorized therefor, such holding shall only affect that part of the Act, but not the validity of the remainder thereof. Furthermore, if any provision of this Act were challenged or objected to by the Financial Oversight Board created under the Puerto Rico Oversight, Management and Economic Stability Act (PROMESA), 48 USC §§ 2101, et seq., because said provision is in conflict with the Fiscal Plan in effect, such provision shall be deemed not included and the remaining provisions shall remain unaltered.

Section 6.- Effectiveness

This Act shall take effect upon its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 5-2023 (S. B. 552)**
(Conference) of the 4th Regular Session of the 19th Legislative Assembly of Puerto Rico:

AN ACT amend Sections 1020.07, 2071.01, 3000.01 and 3050.01 of Act No. 60-2019, as amended, known as the “Puerto Rico Incentives Code,” in order to expand the activities that make businesses engaged in Infrastructure and Green Energy eligible to apply for Incentives; and reinstate the limit of tax credits available for Film Projects.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 15th day of December, 2023.

Mónica Freire-Florit, Esq.
Director