

(S. B. 845)

(No. 69-2015)

(Approved May 19, 2015)

AN ACT

To amend Sections 2.2, 3.5, 4.1(a)(3), 7.3(b)(A), and 9.1 of Act No. 27-2011, known as the “Puerto Rico Film Industry Economic Incentives Act,” in order to broaden the definitions of proper terms and words; reduce the minimum amount to be invested in film projects; improve the incentives granted to certain film projects that include local elements; create a tax credit whenever Puerto Rico is expressly promoted; and for other purposes.

STATEMENT OF MOTIVES

Puerto Rico has become a competitive destination worldwide for the production of feature films and television series partly due to the incentives granted under Act No. 27-2011, better known as the “Puerto Rico Film Industry Economic Incentives Act.” The foregoing notwithstanding, there are two situations that cause great concern among the local components of the film industry. On the one hand, it is extremely costly for local producers to fund their own film products. On the other hand, local highly-qualified professionals are not being employed in foreign productions.

Currently, many local producers who have scheduled high-quality film projects lack the necessary capital to avail themselves of the incentives provided in Act No. 27-2011. Some local productions have been able to combine these incentives with the funding provided by the “Puerto Rico Motion Picture Arts, Sciences, and Industry Development Corporation Fund” created by Act No. 121-2001, as amended, known as the “Puerto Rico Motion Picture Arts, Sciences, and Industry Development Corporation Act.” The Motion Picture Fund may grant

financing up to eighty percent (80%) of the total cost of production, or up to a maximum of \$1.2 million. However, the allocation made to the Fund is limited to \$3.2 million annually, whereas Act No. 27-2011 sets aside \$50 million annually in tax credits for the industry, of which forty percent (40%) may be allocated to payments made to Puerto Rico residents. At present, nearly \$15 million of said \$50 million that are available annually are not being used. Maximizing the use of said funds shall translate into a \$125-million injection for Puerto Rico's economy, which shall result in triple the amount of jobs in the film industry.

Moreover, it is a well-known fact that our local film industry has plenty of high quality and experienced professionals, who are often left unemployed when foreign productions bring their own crews. We have actors, actresses, screenwriters, and film score composers, among other professionals who are currently unemployed despite being equally or more experienced than the foreigners hired. The ideal conditions must be created in order for our film industry professionals to be hired. In doing so, we shall promote their ongoing development, which shall render beneficial the hiring of said professionals for both local and foreign productions.

The aforementioned two scenarios add to the fact that we cannot afford to lose our financial appeal in order to remain a competitive destination. This bill directly redresses the injustice experienced by local film industry professionals and producers. The minimum amounts required for film projects to be eligible are rendered flexible herein in order to enable local producers to have actual access to the economic incentives granted under the Puerto Rico Film Industry Economic Incentives Act. In this manner, we shall increase the number of film projects produced by locals under Act No. 27-2011, specifically feature films, short films, documentaries, and original film score recordings. This shall definitely render local producers more likely to have their projects funded.

Furthermore, the tax credit amount available to feature films, short films, documentaries, and television series, including soap operas, for payments made to Puerto Rico residents is increased from forty percent (40%) to ninety percent (90%). This shall only be possible when producers or co-producers who are Puerto Rico residents are entitled to earn profits from the projects. The hiring of Puerto Rico residents shall provide the ideal conditions for the creation of local jobs and, in turn, shall support the works of local producers. For such reason, the definition of Puerto Rican Actors and Actresses is also added to include persons born in Puerto Rico and persons of Puerto Rican descent—whose mother or father is Puerto Rican—up to the second degree of consanguinity inclusive (grandchildren). In doing so, the return of Puerto Rican talent is thus fostered.

Upon analysis of the need to include and define various terms in order to render more encompassing this and any other laws related to the Puerto Rico Film Industry Economic Incentives Act, the section pertaining to the definitions of Act No. 27-2011, is thus amended to temper it with the terms of the Film Industry.

For all of the foregoing, this Legislative Assembly deems it appropriate to seize this opportunity to promote Puerto Rico as a tourist or business destination as well as by providing for a new special ten percent (10%) tax credit on account of Puerto Rico production expenditures, when the main plot takes place in Puerto Rico or when Puerto Rico is expressly mentioned. Providing a more attractive incentive for film projects including important local elements shall encourage investment in new film projects. Furthermore, it is hereby provided that for a grantee to avail himself of the new benefits, a producer who is a Puerto Rico resident shall be entitled to receive not less than thirty percent (30%) of the net profits generated by the film project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1. – Section 2.2 of Act No. 27-2011, as amended, is hereby amended to read as follows:

“Section 2.2.– Definitions.-

Whenever used as proper nouns, the following words and terms, as used in this Act, shall have the meaning stated hereinbelow:

(a) Puerto Rican Actors and Actresses.- Onscreen talent deemed to be: an individual who is a Puerto Rico resident, as defined in the Puerto Rico Internal Revenue Code, a nonresident individual born in Puerto Rico, or a nonresident individual whose mother or father is Puerto Rican, or who is of Puerto Rican descent up to the second degree of consanguinity inclusive (grandchildren).

(b) Legislative Assembly.- Means the House of Representatives and the Senate of the Commonwealth of Puerto Rico, acting jointly.

(c) Auditor.- An independent Certified Public Accountant authorized to practice said profession in Puerto Rico, contracted by the Grantee to carry out the functions contemplated under this Act.

(d) Code.- Act No. 1-2011, as amended, known as the ‘Puerto Rico Internal Revenue Code of 2011,’ or any subsequent similar law that substitutes it.

(e) Grantee.- A person that has received a Grant under the provisions of this Act.

(f) Conflict of Interest.- Any situation where a direct or indirect interest of a person or the relatives thereof, in accordance with the Puerto Rico Government Ethics Act of 2011, is or may be reasonably in disagreement with the interests of the Corporation or the public interest with respect to one or more projects to be evaluated.

(g) Motion Picture Corporation.- The Puerto Rico Motion Picture Arts, Sciences, and Industry Development Corporation created by Act No. 121 of August 17, 2001, as amended.

(h) Grant.- The concession of authority by the Secretary of Economic Development and Commerce, pursuant to this Act, Act No. 121-2001, and the Motion Picture Corporation Act, to allow a person engaged in film projects or infrastructure projects or a studio operator or large-scale studio operator to avail himself of the incentives set forth in this Act, provided that the requirements of this Act are met. 'Grant' shall have the same meaning as 'incentives grant,' 'tax exemption,' 'tax incentives,' or merely 'incentives,' 'exemption,' 'grant,' or 'license,' which can be used indiscriminately as may be convenient for the purpose of illustrating what is provided in the corresponding text.

(i) Studio.- A comprehensive purpose-built, high-capacity film and television production studio, developed and operated anywhere in Puerto Rico, suitable for the purposes of housing soundstages and exterior sets, including facilities for set construction and design, production offices, and production services departments catering to the production community and such other built-in necessary amenities or facilities, as determined by the Secretary of Economic Development and Commerce through regulation, circular letter or administrative determination, with a budget equal to or greater than fifty million dollars (\$50,000,000), as certified by the Auditor.

(j) Large-scale Studio.- A comprehensive purpose-built, high-capacity film and television production studio, developed and operated within a Film Development Zone, suitable for the purposes of housing soundstages and exterior sets, including facilities for set construction and design, production offices, and production services departments catering to the production community and such other built-in necessary amenities or facilities, as determined by the Secretary of

Economic Development and Commerce through regulations, circular letter, or administrative determination, with a budget equal to or greater than one hundred million dollars (\$100,000,000), as certified by the Auditor.

(k) Bond.- An irrevocable standby letter of credit issued by a financial institution duly authorized to do business in Puerto Rico, the assurance of a surety or insurance company, or a surety from a creditworthy person, in each case acceptable to the Secretary of the Treasury, to the effect that a Film Project or Infrastructure Project shall be completed within the corresponding proposed terms and parameters. In the case of Film Projects, the term 'Bond' shall include a 'Completion Bond.'

(l) Fund or Motion Picture Fund.- The Puerto Rico Motion Picture Arts, Sciences, and Industry Development Corporation Fund, created by virtue of Act No. 121-2001, as amended, known as the 'Puerto Rico Motion Picture Arts, Sciences, and Industry Development Corporation Act.'

(m) Principal Photography.- The phase of production during which a film project is actually filmed. The term shall not include the preproduction or postproduction of a film project.

(n) Production Expenditures.- The development, preproduction, production, and postproduction expenditures directly incurred in the production of a Film Project. The expenditures related to the development of a Film Project shall only be included when not less than fifty percent (50%) of the Principal Photography of the Film Project takes place in Puerto Rico. The expenditures related to the preproduction, production, and postproduction shall not be required to meet the aforementioned fifty percent (50%) Principal Photography requirement to be considered Production Expenditures.

(o) Puerto Rico Production Expenditures.- The payments made to Puerto Rico Residents, and/or Qualified Nonresidents for services physically rendered in Puerto Rico that are directly attributable to the development, preproduction, production, and postproduction of a Film Project. The expenditures attributable to the development of a Film Project shall only be included when not less than fifty percent (50%) of the Principal Photography of a Film Project takes place in Puerto Rico. The expenditures attributable to preproduction, production, and postproduction shall not be required to meet the aforementioned fifty percent (50%) Principal Photography requirement to be considered Puerto Rico production expenditures. In order to constitute Puerto Rico Production Expenditures, the payments received by Puerto Rico residents and Qualified Nonresidents shall be subject to income taxes in Puerto Rico, as provided in this Act, whether directly or through a professional services corporation, cooperative, or other legal entity. The Puerto Rico Production Expenditures include payments related to the development, preproduction, production, and postproduction of a Film Project including, but not limited to the following:

(1) Wages, fringe benefits, per diems or fees for talent, management, or labor provided to a person that is a Puerto Rico Resident or Qualified Nonresident. However, per diems of a Puerto Rico Nonresident or Qualified Nonresident may be included in the definition of Puerto Rico Production Expenditures at the discretion of the Secretary of Development;

(2) interest, charges, and fees paid to Persons included in Section 1033.17(f)(4) of the Code; and/or

(3) any of the following goods or services provided by a supplier that is a Puerto Rico Resident:

(A) The story and screenplay to be used for a Film Project;

(B) set construction and operations, wardrobe, accessories, and related services;

(C) photography, sound synchronization, lighting, and related services;

(D) editing and related services;

(E) rental of facilities and equipment;

(F) leasing of vehicles, including the chartering of aircraft or watercraft, provided that such aircraft or watercraft is registered and home ported in Puerto Rico, and such leasing is limited to travel within Puerto Rico, its airspace, and territorial waters;

(G) food and lodging;

(H) airfare, if purchased through a Puerto Rico-based travel agency or travel company for travel to and from Puerto Rico or within Puerto Rico, that is directly attributable to the film project;

(I) insurance coverage or bonding; provided, that it is purchased through an insurance producer authorized to do business in Puerto Rico; and

(J) other costs directly attributable to the Film Project in accordance with the generally accepted entertainment industry practice, as determined by the Secretary of Development through regulations, circular letter, or administrative determination.

(4) The following shall be excluded from the Puerto Rico Production Expenditures definition:

(A) Those items paid to Puerto Rico Residents with the money obtained through any subsidy, gift, or fund appropriation from the Government of the Commonwealth of Puerto Rico. Those items paid to Puerto Rico Residents with money obtained through contributions made to a Film Project on account of

sponsored advertisement, brand integration or product placement, or media buy, or that because of their nature and terms are refundable, such as loans or investments, including contributions by the Puerto Rico Motion Picture Fund created under the Motion Picture Corporation Act may be included in the definition of Puerto Rico Production Expenditures at the discretion of the Secretary of Development.

(B) The cost of goods acquired or leased by Puerto Rico Resident suppliers outside of Puerto Rico for resale to a Grantee, when these fail to comply with the rules prescribed by the Secretary of Development through regulations and/or circular letter, and when, in the judgment of the Auditor there is no economic substance in the transaction; and

(C) Those items paid to Puerto Rico Resident entities mainly for the services rendered by natural persons other than Puerto Rico residents, except for entities rendering Line[sic] Qualified Nonresident services.

(p) Governor. - The Governor of the Commonwealth of Puerto Rico.

(q) Government.- The Government of the Commonwealth of Puerto Rico including all of its municipalities, instrumentalities, political subdivisions, agencies, and public and quasi-public corporations.

(r) Screenplay.- A document that describes the motion picture production, the scenes, action, dialogues, setting, events, and shooting directions of a fiction project.

(s) Screenwriter.- A natural person who creates the original screenplay, the dialogues, or an adaptation from another source on which the film project is based.

(t) Board of Directors.- The Board of the Puerto Rico Motion Picture Arts, Sciences, and Industry Development Corporation.

(u) Act.- The Puerto Rico Film Industry Economic Incentives Act.

(v) Motion Picture Corporation Act.- Act No. 121-2001, as amended, known as the ‘Puerto Rico Motion Picture Arts, Sciences, and Industry Development Corporation Act.’

(w) Qualified Nonresident.- Producer, director, writer, onscreen talent (except for background actors, also known as extras), including stuntmen, known as Above-the-Line; any technical or creative staff behind the cameras, known as Below-the-Line; and any other similar individual who, according to the generally accepted practice in the entertainment industry, is deemed to be Above-the-Line or Below-the-Line, as determined by the Secretary of Development, other than a Puerto Rico Resident.

(x) Large-scale Studio Operator.- A person engaged in the administration and operation of a Large-scale Studio.

(y) Studio Operator.- A person engaged in the administration and operation of a Studio.

(z) Person.- Any natural person, corporation, partnership, professional service corporation, association, trust, limited liability company, cooperative, or any other entity or organization, including the Government of the Commonwealth of Puerto Rico.

(aa) Producer.- A private entrepreneur who owns the motion picture copyrights and is responsible for the production and marketing of the film project.

(bb) Infrastructure Project.- The development or substantial expansion in Puerto Rico of studios, large-scale studios, laboratories, facilities for postproduction, animation, and special effects, facilities for the international transmission of television images or other media, or other permanent facilities to carry out Film Projects (regardless of whether said projects avail themselves of the provisions of this Act) whose hard costs budget, as certified by the Auditor, exceeds one million dollars (\$1,000,000).

(cc) Film Project.- As defined in Section 4.1(b) of this Act.

(dd) Puerto Rico Resident.- An individual who meets the requirements set forth in Section 1010.01(a)(30) of the Code and/or a corporation, partnership, limited liability company, cooperative, or other juridical person organized under the laws of the Government of the Commonwealth of Puerto Rico, or engaged in a trade or business in Puerto Rico pursuant to the provisions of the Code, which must derive not less than eighty percent (80%) of its gross income from sources within Puerto Rico, using the rules prescribed in Section 1032.04 of the Code related to sources of income.

(ee) Secretary of Development.- The Secretary of the Department of Economic Development and Commerce of the Government of the Commonwealth of Puerto Rico.

(ff) Secretary of the Treasury.- The Secretary of the Department of the Treasury of the Government of the Commonwealth of Puerto Rico.

(gg) Transfer.- A lease, sale, exchange, transfer, assignment, or conveyance in any manner of real or personal property, as the case may be.

(hh) Film Development Zones.- The geographic areas described in Section 6.1 of this Act.”

Section 2.- Section 3.5 of Act No. 27-2011, as amended, is hereby amended to read as follows:

“Section 3.5.- General Responsibilities and Authority of the Secretary of Development.-

In the evaluation, analysis, consideration, award, renegotiation, and revision of any incentive or benefit granted under this Act, the Department of Economic Development and Commerce and the Secretary thereof shall be required to oversee and ensure compliance with all the provisions of this Act.

The Secretary of Development shall be required to and be responsible for preparing a Certificate of Compliance annually, once the persons or entities interested in availing themselves of the incentives established herein can validate, in the judgment of said official, that they have met the requirements set forth in this Act. Every year, the Secretary of Development shall verify the information submitted by exempt businesses in order to issue the Certificate of Compliance not later than on the tenth (10th) day of January of each year.

The Certificate of Compliance shall include, in turn, the following information regarding the person or entity benefited by the incentive: the name of the person or entity, the cadastre number of the property or properties connected to the incentivized activity; the merchant registration number; the account connected to the business as required in the Puerto Rico Internal Revenue Code; the employer identification number; and the information required by Act No. 216-2014, better known as the Fiscal Information and Permit Control Act, as applicable.

The Certificate of Compliance shall be issued by the Secretary of Development through the Interagency Validation Portal for the Granting of Incentives for the Economic Development of Puerto Rico, to the agencies, public corporations, and municipalities responsible for awarding benefits or incentives under this Act. The filing of the Certificate of Compliance by the person interested in obtaining the benefits provided herein shall be an essential requirement for the agency, public corporation, or municipality to grant the benefit or incentive provided for in this Act.

The only action to be taken by the Secretary of the Treasury, the Executive Director of the Municipal Revenues Collection Center (CRIM), or any other government official or body, or public corporation concerned, in connection with the benefits or incentives under this Act, shall be limited to the award of the benefit or incentive in question if a valid Certificate of Compliance is obtained, as provided

in this section. Thus, the Secretary of Development shall be the sole official responsible for overseeing compliance with all provisions of this Act.

The Secretary of Development may delegate to the Film Commissioner any of the powers granted to him under this Act, except for matters related to the designation of geographical areas as Film Development Zones, pursuant to the provisions of Sections 6.1 and 8.4.”

Section 3.- Section 4.1(a) (3) of Act No. 27-2011, as amended, is hereby amended to read as follows:

“Section 4.1.- Eligible Film Projects

(a) ...

(1) ...

(2) ...

(3) Puerto Rico production expenditures shall be at least fifty thousand dollars (\$50,000); provided, that in the case of a Film Project described in subsection (b)(2) and (b)(3) below, Puerto Rico production expenditures shall be at least twenty-five thousand dollars (\$25,000); and in the case of a film project, as described in Section 4(b)(9) of this Act, Puerto Rico production expenditures shall be at least twenty-five thousand dollars (\$25,000).

(b) ...”

Section 4.- Section 7.3 of Act No. 27-2011, as amended, is hereby amended to read as follows:

“Section 7.3.- Availability of Tax Credits for Grantees.

(a) ...

(b) ...

(A) ...

(B) ...

(C) Except in the case of documentaries, up to fifty percent (50%) of the Puerto Rico Production Expenditures, not including the payments made to Qualified Nonresidents in accordance with the following rules:

(i) an additional seven percent (7%) when at least one (1) of the screenwriters is a Puerto Rico Resident;

(ii) an additional seven percent (7%) when the director is a Puerto Rico Resident;

(iii) an additional four percent (4%) when the first assistant director is a Puerto Rico Resident;

(iv) an additional four percent (4%) when the cinematographer is a Puerto Rico Resident;

(v) an additional four percent (4%) when the production designer is a Puerto Rico Resident;

(vi) an additional four percent (4%) when the film score composer is a Puerto Rico Resident;

(vii) an additional four percent (4%) when the editor is a Puerto Rico Resident;

(viii) an additional six percent (6%) when a Puerto Rican Actor and/or Actress performs a leading role;

(ix) an additional four percent (4%) when at least five (5) of the following are Puerto Rico Residents: the Puerto Rican Supporting Actor and/or Actress, special effects supervisor, visual effects supervisor, postproduction supervisor, sound engineer, gaffer, key grip, stunt coordinator, script supervisor, or set designer;

(x) an additional six percent (6%) when the Unit Production Manager is a Puerto Rico Resident.

(D) In the case of documentaries, up to an additional fifty percent (50%) of the Puerto Rico Production Expenditures, not including the payments made to Qualified Nonresidents in accordance with the following rules:

(i) an additional nine percent (9%) when at least one (1) of the screenwriters is a Puerto Rico Resident;

(ii) an additional nine percent (9%) when the director is a Puerto Rico Resident;

(iii) an additional nine percent (9%) when the cinematographer is a Puerto Rico Resident;

(iv) an additional eight percent (8%) when the film score composer is a Puerto Rico Resident;

(v) an additional eight percent (8%) when the editor is a Puerto Rico Resident;

(vi) an additional seven percent (7%) when two (2) of the following are Puerto Rico Residents: the sound engineer, gaffer, or key grip; and

(E) Ten percent (10%) of the amounts certified by the Auditor as disbursed, in connection with Puerto Rico Production Expenditures, not including the payments made to Qualified Nonresidents, Grantees engaged in Film Projects, as described in Section 4.1(b)(1) and 4.1(b)(4), where the main plot takes place in Puerto Rico and Puerto Rico is expressly mentioned.

(F) General Rules.-

(i) The combination of all of the credits granted in this subsection (b) may never exceed ninety percent (90%) of the total Puerto Rico Production Expenditures, without including the payments made to Qualified Nonresidents.

(ii) For a Grantee to avail himself of the benefits provided for in paragraphs (C) and (D) of subsection (b) of this Section, the Auditor shall be required to certify, and furnish a copy of the appropriate contracts, that one or more of the producers or co-producers who are Puerto Rico Residents, natural persons, and not entities, are entitled directly or indirectly, individually or in the aggregate to receive not less than thirty percent (30%) of the net profit of the film project, to be distributed among the project's producers, upon repayment of the financing and other financial obligations.

(2) ...
...”

Section 5.- Section 9.1 of Act No. 27-2011, as amended, known as the “Puerto Rico Film Industry Economic Incentives Act,” is hereby amended to read as follows:

“Section 9.1.- Denial, Revocation, and Limitation of Benefits.-

(a) ...
...

(c) The existence or mere appearance of a conflict of interest shall be notified immediately by the person who becomes aware thereof to the Secretary of Development. If the situation is not resolved or clarified within thirty (30) days, the persons involved in said conflict of interest may not benefit from the provisions of this Act.”

Section 6.- Effects of Judicial Interpretation

If any clause, paragraph, subparagraph, article, provision, section, subsection, or part of this Act were held to be unconstitutional by a competent court, said holding shall not affect or invalidate the remaining provisions of this Act.

Section 7.- Effectiveness.

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 69-2015 (S. B. 845)** of the **5th Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT to amend Sections 2.2, 3.5, 4.1(a)(3), 7.3(b)(A), and 9.1 of Act No. 27-2011, known as the “Puerto Rico Film Industry Economic Incentives Act,” in order to broaden the definitions of proper terms and words; reduce the minimum amount to be invested in film projects; improve the incentives granted to certain film projects that include local elements; create a tax credit whenever Puerto Rico is expressly promoted; and for other purposes.

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

In San Juan, Puerto Rico, on this 1st day of November, 2017.

Orlando Pagán-Ramírez
Acting Director