Attachment A

Senate Bill 18-103

Resulting from the Office of Film, Television, and Media Performance Audit (May 2017)
Concerning the Issuance of Performance-Based Incentives
for Film Production Activities in the State

WHAT WOULD THIS BILL DO?

This Bill would modify requirements and processes related to film incentives offered by the Office of Film, Television, and Media (Film Office) within the Governor's Office of Economic Development and International Trade (OEDIT).

IN-STATE PRODUCTION COMPANIES. Modify requirements for companies to be eligible for the lower, in-state, spending threshold to include the following:

- The company must have engaged in production activities in the state for other production projects in the past 12 months as of the date it applies for an incentive, or

- If the company creates a business entity for the sole purpose of conducting production activities in the state, the manager of the business entity must be a resident of the state for at least 12 months as of the date it applies for an incentive. The bill defines "manager" as a person with authority to make financial or legal commitments for the business entity.

The bill draft would also require all companies applying as in-state production companies to submit documentation to the Film Office, with their applications, to demonstrate that they are in-state companies.

PAYMENT OF INCENTIVES. Modify provisions to help ensure incentives are only paid to qualifying production companies by:

- Requiring the report of the CPA firm hired by the production company to include documentation that details the expenses and the workforce of the production and certify in writing that the requirements to qualify for an incentive were met.
- Requiring the Film Office to review the CPA's report to ensure statutory requirements have been met.

- Requiring the Film Office to maintain a list of CPAs that are authorized to be used by production companies and that such list be posted on OEDIT's website.
- Prohibiting the Film Office from issuing an incentive until it has entered into a contract with the production company, in accordance with the procurement code.
- Requiring the Film Office to seek recovery of any incentive amounts improperly paid to a production company for any reason, including ineligibility or overpayment.

TRAINING. Add a provision requiring the Commission to annually undergo an orientation by OEDIT staff on the requirements for a production company to earn an incentive.

This bill would amend Sections 24-48.5-114, 24-48.5-116, and 24-46-102, C.R.S.

WHAT DID THE AUDIT FIND?

DEFINING AN IN-STATE PRODUCTION COMPANY. The Film Office paid incentives for two productions that did not appear to meet the in-state qualifications. One company did not appear to be a production company as defined in statute and another did not appear to maintain operations in Colorado. The statutory definition of an in-state company does not establish requirements that a company maintain ongoing operations in Colorado for any period in order to qualify for the lower in-state spending thresholds. **Recommendation 5 suggested that OEDIT clarify how the requirements for in-state production companies are applied, including implementing policies to define an in-state company and to require in-state applicants to provide evidence that they meet the definition.**

CONTROLS OVER INCENTIVES. The Film Office paid a combined total of about $1.9 million in incentives in Fiscal Years 2013 through 2016 for the nine productions we reviewed, even though none of them met all applicable qualification and documentation requirements. Specifically:

- The Film Office paid incentives for the nine productions: 1) without obtaining a required CPA report, 2) when the production company had not met the requirement that at least 50 percent of the workforce be Colorado residents, 3) when the reported local expenditures were inaccurate, or 4) without obtaining documentation of the reported local expenditures and workforce figures. **Recommendation 1 suggested that OEDIT strengthen controls over the CPA review process by establishing requirements for the type of work CPA firms are expected to complete, enforcing its requirement that production companies provide documentation of their expenses and Colorado workforce, and implementing a review to ensure the CPA reports are accurate.**

- The Film Office paid incentives for the nine productions without having properly executed contracts. Specifically, four projects never executed contracts and five had contracts that were executed after the projects were underway. **Recommendation 3 suggested that OEDIT improve its controls over expenditures and its compliance with contracting requirements.**

The Film Office paid about $10.6 million in incentives to a total of 31 productions over this period.

The audit did not raise the question of whether the Film Office should seek to recover incentives paid for productions that did not meet the qualifications or of how the EDC carried out its approval role with respect to the film incentive program. However, at the request of the LAC, provisions were included in this bill to require the Film Office to seek recovery of any incentive amounts improperly paid to a production company and to require the Commission to annually undergo an orientation on the requirements for a production company to earn an incentive.