

Approved: 2-19-07

Date

MINUTES OF THE HOUSE ECONOMIC DEVELOPMENT AND TOURISM COMMITTEE

The meeting was called to order by Chairman Lana Gordon at 3:30 P.M. on February 13, 2007 in Room 519-S of the Capitol.

All members were present except:

Robert Olson- excused

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department

Hank Avila, Kansas Legislative Research Department

Jason Long, Revisor of Statutes

Ann Deitcher, Committee Assistant

Conferees appearing before the committee:

Patty Clark, Dept. Of Commerce

Joan Wagnon, Dept. Of Revenue

Mitch Brian, Cerberus Films, Ltd.

Tom Rooker, Independent Film Producer

**HB 2439 - film producers tax credit bill.**

**HB 2440 - investors tax credit bill.**

**HB 2441 - sales and use tax rebate.**

Vice-Chair, Representative Huntington spoke to the Committee of the advantages to the State that passages of **HB 2439, HB 2440 and HB 2441** would provide. (Attachment 1).

Patty Clark offered testimony in support of **HB 2439, HB 2440 and HB 2441.** (Attachment 2).

Secretary of Revenue, Joan Wagnon offered testimony regarding some of the amendments she felt might be necessary in **HB 2439, HB 2440 and HB 2441** before they would be passed out of Committee. (Attachment 3).

Questions and answers followed.

Mitch Brian addressed the Committee as a proponent of **HB 2439, HB2440 and HB2441.**

(Attachment 4).

Questions and answers followed.

Tom Rooker spoke in favor of **HB 2439, HB 2440 and HB 2441.** (No written testimony was provided).

Questions and answers followed.

The meeting was adjourned at 4:25 p.m. The next meeting is scheduled for Wed., February 14, 2007.

# Joint Committee on Economic Development

## UTILIZING THE FILM INDUSTRY AS AN ECONOMIC DEVELOPMENT TOOL

### CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends legislation that will facilitate the availability of equity investment in film production businesses in the early stages of commercial development. In addition, the legislation is designed to assist in the creation and expansion of Kansas film production businesses as a job and wealth creating enterprise by granting tax credits against the Kansas Income Tax Liability of those investing in film production businesses.

**Proposed Legislation:** The Committee recommends the introduction of four bills.

### BACKGROUND

The Joint Committee on Economic Development is statutorily authorized to set its own agenda. The Committee recognized that the film industry could be an important tool to the discussion of economic development in Kansas.

### COMMITTEE ACTIVITIES

During the October meeting the Committee viewed Clark Balderson's movie "Wamego: Making Movies Anywhere," Mike Wunsch's Outpost Pictures movie about a Spanish television series his company filmed in Dallas, and a University of Kansas student film, "The Lord of the Libraries." Mr. Balderson stated that state incentives in the form of tax credits or tax refunds would be helpful to independent film makers. In addition, free access to government buildings for filming also would be helpful.

Mr. Balderson believes that there are innovative ways for the business community and government to attract film makers by helping students and the educational community, will create an inspiring atmosphere where people will want to stay.

Mr. Wunsch made the point that the competition for film industry dollars needs to be viewed as Kansas against the world, not Kansas against itself. Howard Fricke, Secretary, Kansas Department of Commerce, spoke to the Committee about the activities of the Kansas Film Industry Taskforce. According to the Secretary, the Taskforce was asked to provide a variety of options using the state's existing resources for film in Kansas. In addition, the Taskforce was asked to develop a model that film industry professionals view as specifically designed to suit Kansas' strengths and challenges, instead of duplicating a model that has proven successful in Texas, New Mexico, and North Carolina. The Taskforce created two subcommittees; one that will make recommendations on the role of Kansas educational institutions, specifically focusing on the lead role that the University of Kansas existing film school and the second subcommittee would provide recommendations on film as a business in Kansas.

Mr. Ben Meade, a film professor and film maker, spoke on film development and film making in Kansas. It is more important to have film companies in Kansas than film projects and if film companies and film makers stay in Kansas, the money will also stay in the State. Mr. Meade said the

following would promote Kansas as a place to make independent films:

- Tax incentives for small independent film makers dealing with the deductibility of production cost on a state level and on a case-by-case basis.
- Small loans for three to five years for production costs, which would allow the film maker to produce and distribute the film prior to being required to reimburse the loan.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends legislation that will facilitate the availability of equity investment in film production businesses in the early stages of commercial development. In addition, the legislation would be designed to assist in the creation and expansion of Kansas film production businesses as a job and wealth creating enterprise, by granting tax credits against the Kansas Income Tax Liability of those investing in film production businesses.

1-28-07

# Show-Me the tax breaks for filmmakers

**Incentives from Missouri legislature may mean more movies are made in the state.**

By **ROBERT W. BUTLER**  
The Kansas City Star

Could this be the year that the Missouri General Assembly finally gets serious about incentives for the state's film industry?

Things are looking up. House Bill 360, which would upgrade Missouri's tax credit program for filmmakers, is now working its way through the legislature.

Supporters looking for ammunition might want to cast a glance west to K2 which recently lost a movie production tax credits.

Merchant Ivory productions had wanted to shoot several scenes for its upcoming "The City of Your Final Destination" at the University of Kansas. The movie's central character is a KU doctoral student who travels to South America to do research.

But the film, which will feature players like Anthony Hopkins, Laura Linney and Charlotte Gainsbourg, will instead film in Colorado, using the University of Colorado-Boulder to stand in for KU.

The reason: Colorado offers tax credits. Kansas doesn't.

Tax credits attract movie and TV production to the state. Currently a production filming in Missouri can receive up to \$1 million in tax credits

that can be applied against its state tax liability.

Last year the Missouri Department of Economic Development stunned the local film industry by recommending that the tax credit program be scrapped. Only some furious lobbying kept it from going under.

Even so, legislators failed to pass a measure that would have increased the credit from a \$1.5 million annual cap to \$10.5 million. House Bill 360

should raise the cap.

Its primary sponsor, Rep. Ed Robb, thinks the chances of passage are good.

"It's difficult to get people to regard film as a business," the Columbia Republican said. "It's the very persona of film itself that's the problem, the glamour and all that. People just don't know about film production's economic impact, the potential it has to generate a lot of very good jobs."

The current bill was vetted by the state Department of Economic Development, which only a year earlier had recommended ending the credit.

"I hope we can get the full \$10.5 million," Robb said. "But if we got three-fourths of that I'd be happy."



**Robb**

## WHAT WOULD THE BILL DO?

- Raise the annual tax credit program cap to \$10.5 million.
- Eliminate the \$1 million cap per qualifying production.
- Set new minimum in-state expenditure limits to qualify for credit.
- Set a six-year sunset clause for the program.
- Define which labor costs will count toward tax credits and exclude those earning \$1 million or more.
- Define what productions will accredited for credits.

# Hollywood Comes



A look at some of the "Extreme Makeover: Home Edition" crew that was in Rose Hill. (Photo provided by the City of Rose Hill).

Hollywood in Rose Hill, Kansas? As strange as it sounds Hollywood did leave an indelible social and economic mark upon one Kansas community. The story line begins with tragedy and ends with a town pulling together and helping a neighbor in need.

Last August the Nutsche Family lost their home and all their belongings in a propane explosion while away on vacation. After countless people contacted ABC Television to tell of the disaster and nominate the Nutsche family to be part of "Extreme Makeover: Home Edition," the unbelievable occurred and the call finally came.

In September, Lock and Key Productions, producers of "Extreme Makeover: Home Edition" contacted the City and arranged a meeting. At the initial meeting the City was informed that an episode of "Extreme Makeover: Home Edition" would be filmed in the area, provided all information prior to the official unveiling remained confidential. Part of the reality show's drama is the element of surprise when the show's superstar Ty Pennington knocks on the door of the family and announces happy tidings through a bullhorn.

The challenge: How does a community provide for a long list of requests and make the necessary preparations, all the while

keeping a secret? The Rose Hill Governing Body was informed of the situation and realizing the potential economic impact, gave unanimous support to provide assistance in all appropriate manners.

With only a month to prepare, officials from the City of Rose Hill and Butler County, and the project's general contractor began meeting regularly with "Extreme Makeover's" location managers. Usually new home construction of this scope takes approximately 8 months. For this project, however, the 3,800-sq. ft. home would be built by construction crews and volunteers working around the clock in just 6 days. In order to complete a project in such a short time every last detail had to be resolved.

When the big day finally arrived, Rose Hill was like a town exhaling with the secret it had been keeping for weeks. Kansas' own Martina McBride was part of the surreal first day of filming. She sang "Somewhere Over the Rainbow" while standing next to Ty Pennington. Visitors and volunteers poured into Rose Hill once the story broke on the news.

Everyone in town was touched by the big news. Those who didn't volunteer to help with construction, donated goods. Long before all the T.V. cameras showed up, the community had

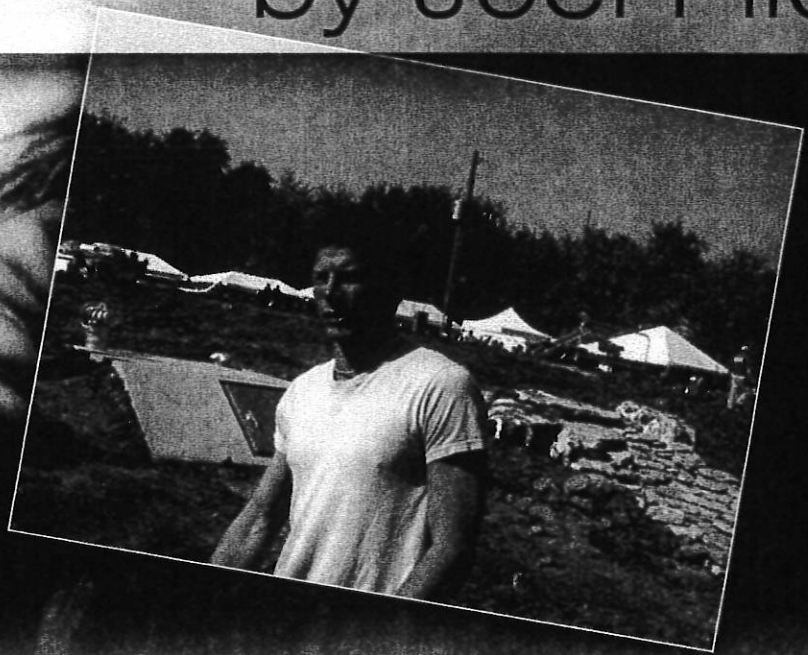
1-4

# ness to Rose Hill

by Joel Pile



**A look at the new house that was built. (Photo provided by the City of Rose Hill).**



**Ty Pennington of 'Extreme Makeover: Home Edition'. (Photo provided by the City of Rose Hill).**

volunteered to help. There was a softball tournament and benefit concert for the Nutsche family. The high school raised money for the family and local businesses volunteered to donate goods and services to the family. In fact, this was not the first time Rose Hill has come together for a family in very public need.

More than 300 people and nearly 100 companies helped build a house in 2002 for Rose Hill resident Gracia Burnham and her children. Gracia's husband, Martin, had been killed, and Gracia had been wounded, after the two were taken hostage while working as missionaries in the Philippines.

Just as seen on T.V., one week after construction began, the seven members of the Nutsche family, fresh from a Florida vacation, stood in the shadows of two giant buses. Backed up against one another, the buses idled. When ordered by the crowd to move the buses, the drivers moved the buses and the Nutsches stood face-to-face with a new beginning.

The project presented a set of unique challenges for the community. Rose Hill, a rapidly growing community of nearly 4,000, was told to be prepared for nearly 2,000 visitors per day during the week long filming. With a handful of commercial businesses in town, each business was told to prepare for the large

number of visitors, but could not be told why there would be an increase. Rose Hill was in the middle of a major road construction project which was halted to allow for the increased traffic volume during the filming. In order to keep the project on schedule, hundreds of delivery trucks hauling construction materials had to have a police escort through town and to the job site to navigate beyond the thousands of spectators. The City's involvement also included providing bleachers for spectators, a donation of water to help fill a decorative pond, coordination of building inspection with City's consulting engineer, buses to shuttle visitors from the schools to the site and around the clock on-site emergency services.

Hollywood has come and gone, but the effects will be felt for a long time. Area businesses reported sales increases as much as 48% during October and local sales tax collection increased by 27% during the fourth quarter. Rose Hill's image as a community always willing to lend a helping hand was broadcast to the nation, and another local family has been given a chance at a new start.

Joel Pile is the City Administrator for the City of Rose Hill and can be reached at (316) 776-2712 or by e-mail at [joel@cityofrosehill.com](mailto:joel@cityofrosehill.com).

# HOLLYWOOD

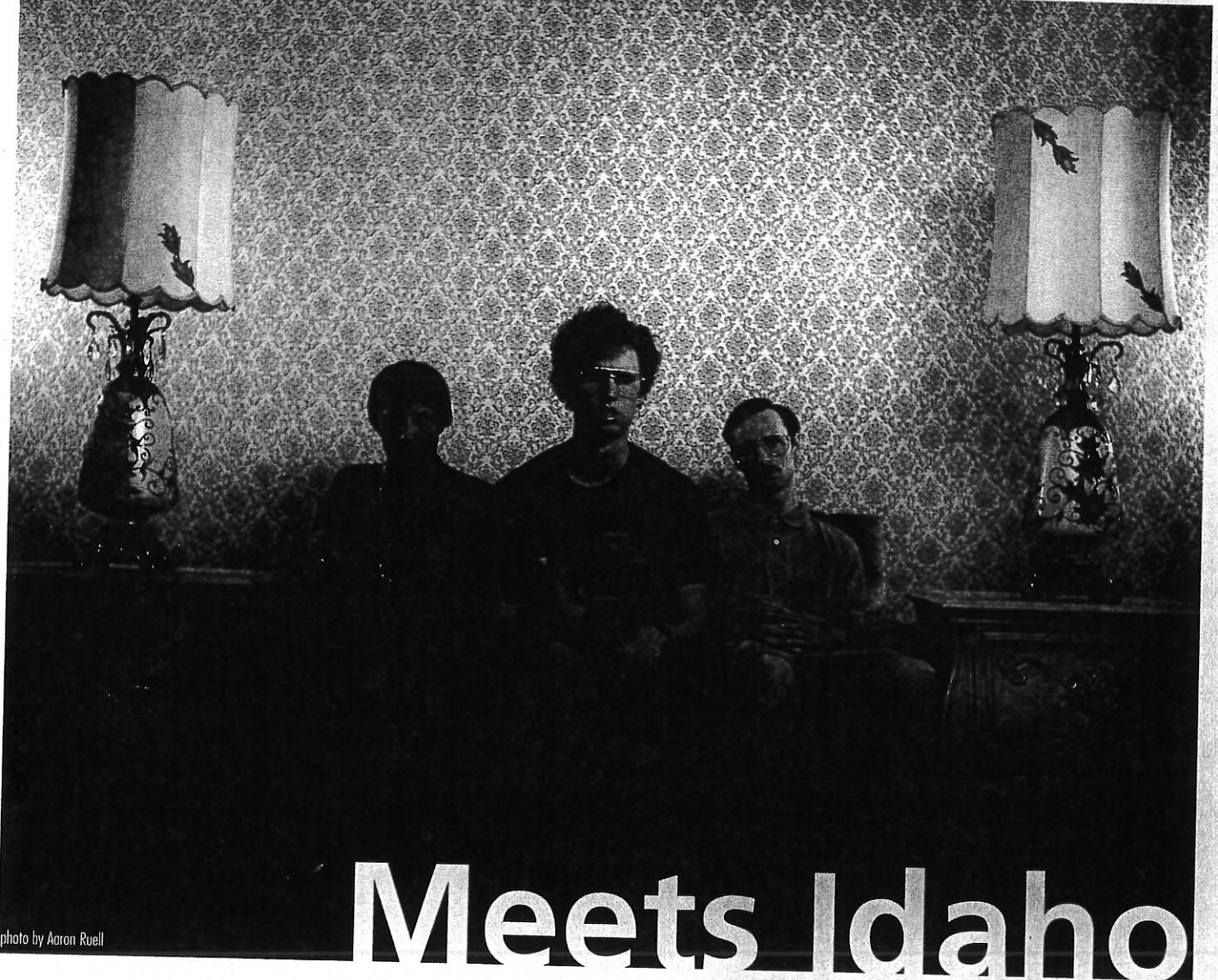


photo by Aaron Ruell

# Meets Idaho

## behind the scenes of IDAHO'S MOVIE INDUSTRY

BY DOUG COPSEY

8 ART IDAHO 2006

Okay, a show of hands—how many of you know that Idaho has its very own Film Bureau?

Now, how many of you know what a Film Bureau is? Well, in the case of the Idaho Film Bureau, it's a one-person office occupying a cramped corner of the Department of Commerce and

Labor, and it's been selling Idaho to Hollywood as a beautiful place to shoot movies for the last eighteen years. It also prints an Idaho Production Guide every year that lists all the people in the state who work in the film/video/media industry in any capacity whatsoever.

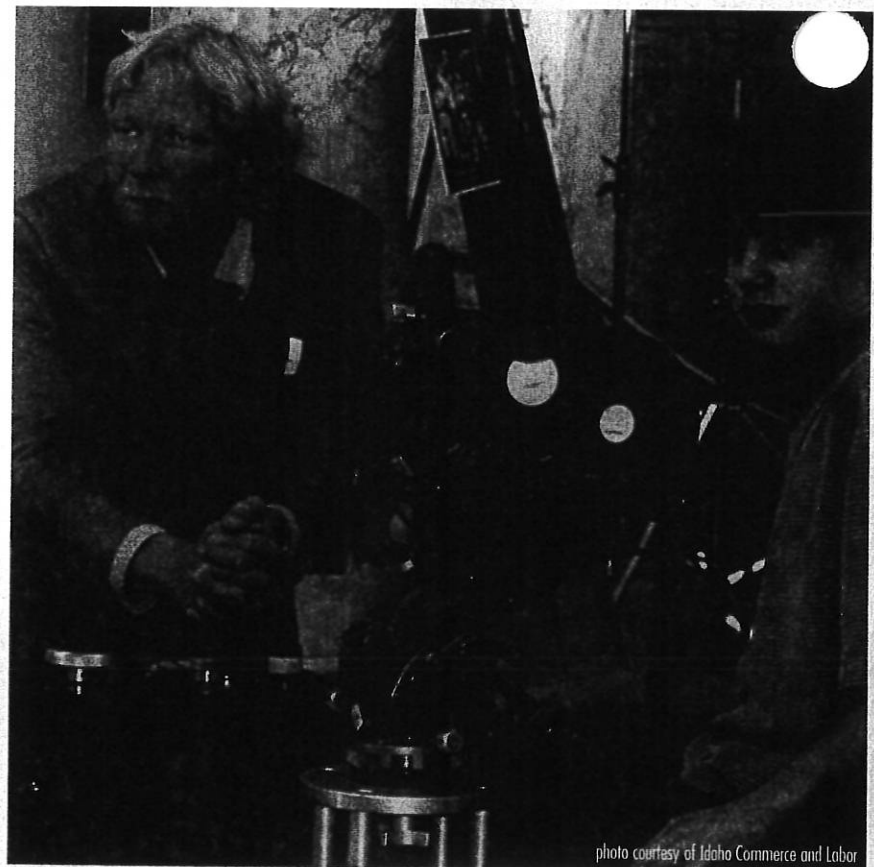
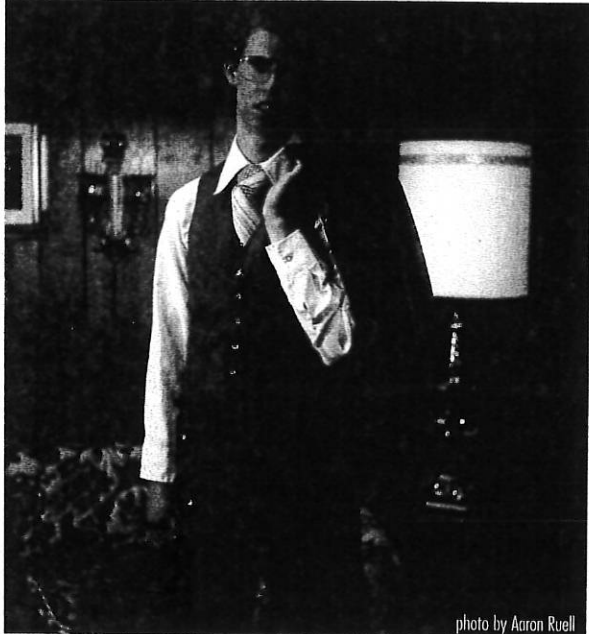
[www.idaho-media.com](http://www.idaho-media.com)

1-6

86

The first thing everyone used to ask when they called was, 'Tell me about your locations.' Now the first question is, 'What incentives do you offer?'"

-Peg Owens



Left page: Left to Right: Jon Gries, Jon Heder and Aaron Ruell in NAPOLEON DYNAMITE.

Right page: Above: Film Idaho Day in Boise. Left: Jon Heder in NAPOLEON DYNAMITE. Right: Film task co-chairs Rep. Jana Kemp and Ben Shedd flank Roger Madsen.

Since its inception, the Bureau has been run by Peg Owens, who devotes approximately half of her full-time job in the Department of Tourism to marketing the beauty of our state to feature film, television and commercial producers, as well as documentary filmmakers and anyone else who will listen. She's shepherded directors, location scouts and advertising agency executives around the state looking for just the right place to shoot, and she's fielded just about every question you can think of on specific types of locations, local crew availability, travel and accommodation arrangements and all the inherent costs therein.

But over the last few years, she says, the questions have begun to change. "The first thing everyone used to ask when they called was, 'Tell me about

your locations.' Now the first question is, 'What incentives do you offer?'"

Incentives. It's the new buzzword in the media industry. Filmmakers have to cope with a changing economy just like every other business, and over the past decade or so, cutting costs has moved way up on the priority list. It doesn't matter whether it's a \$200,000 documentary or a \$200 million feature film, producers are looking for ways to save money. The last place they want to cut corners is in the quality of what goes on the screen, so budget items like cheaper lodging and food costs, less expensive equipment rental and crew costs have become the new priority for Production Managers.

The search for budget-lowering locations has taken a great deal of film production out of meccas like

Hollywood, New York and Chicago and into states like Arizona, New Mexico and Louisiana, among others. Why? Because they, along with 33 other states, have convinced their legislatures to pass laws offering tax incentives to lure filmmakers, some of whom are spending tens of millions of dollars, to their turf. The most common incentives take the form of sales tax credits or exemptions, but there are income tax credits, labor rebates, lodging tax rebates, even investment tax credits of up to 25 percent in states like Louisiana and Oklahoma. It didn't take long for Peg to realize that Idaho needed to get on the bandwagon if it was going to have any ability to compete at all.

Enter Jana Kemp, State Representative from District 16. "A local film production friend of mine, Tom Williamson, came to me right after

1-7





photo courtesy of Idaho Commerce and Labor

Above: *Film Idaho Day* was put together in order to prepare the legislators for what was coming, and to educate them on the film industry.  
 Right: Spencer Tracy in 1939 Northwest Passage

66

...that for the critical mass of film industry people who live here, the bulk of their work happens **outside of Idaho**. That became a growing concern to me because those people are not only leaving their income tax in other states, but also **their disposable income** from all the hours and days they're living in another state to work. "

-Rep. Jana Kemp

I got elected to the House in the fall of 2004, and said that if I was interested in creating jobs for Idaho, I ought to look at the film industry."

She took a hard look, and she liked what she saw. The potential for economic impact is huge. Before Louisiana passed its incentives in 2002, the annual economic impact from filmmaking in that state was estimated at around \$34 million. Two years after the incentives went into place, they were boasting an annual impact of \$133 million. Working with Dept. of Commerce Director Roger Madsen and his staff, Rep. Kemp put together a definition of film and media production and shopped it around to

her colleagues in the state legislature during the 2005 session. She got enough interest to convince Director Madsen to appoint a task force charged with creating legislation for some Idaho tax incentives, then she and Peg Owens began to explore the possibilities.

"Before I moved to Idaho in 2003, I lived in New Mexico for eight years," says Academy Award-winning documentary director/producer Ben Shedd, "and a number of my friends had worked on getting tax incentives and programs in place for the film industry there, which is going strong there now. So I was aware what kind of impact this could have, and when I was asked to co chair the task force with

Rep. Kemp, I said yes."

By May, 2005, they had selected about a dozen government, business and film industry people from around the state for the task force and scheduled a series of meetings that took the group from Boise to Sun Valley to Coeur d'Alene over a period of five months. The public was invited to each of the meetings to share their comments on the ideas being brought forth, and to join sub-committees that helped flesh out the ideas with solid research, as well as their personal experiences in the industry.

"I know a whole base of people in and around Boise who are very accomplished filmmakers, actors,

1-8

writers, set and lighting designers," says Shedd, "but with the task force I found that there are people all over the state who are equally as accomplished and experienced."

Kemp says, "It became very clear during our meetings that for the critical mass of film industry people who live here, the bulk of their work happens outside of Idaho. That became a growing concern to me because those people are not only leaving their income tax in other states, but also their disposable income from all the hours and days they're living in another state to work. So it only makes good policy sense that we pursue building the business here so that the people who want to live here can also work here, and increase our own state tax revenues."

Using other states' incentive programs as a model, the task force came up with a pair of bills to offer up to the 2006 legislative session. In a nutshell, the first provided for a sales tax rebate to productions with Idaho expenditures over \$200,000, while the second offered an income tax credit to those same qualifying productions who hire people that pay Idaho state income taxes.

In order to prepare the legislators for what was coming, and to educate them on the film industry, the task force and Film Bureau, along with Boise area filmmaker Alex McNish and lighting designer Dan Allers, put together Film Idaho Day. On February 14<sup>th</sup>, the fourth floor of the Statehouse was filled with lights, cameras and a huge assortment of film equipment, along with area film and video artists and technicians. Idaho celebrity Dawn Wells, who played Marianne on "Gilligan's Island," runs the self-started Idaho Film & Television Institute in Driggs which offers college credit classes for students. She was on hand as a member of the task force to lend her support, and was a particular favorite of the many legislators who made the rounds of booths and displays showing the burgeoning production industry that already exists in our state.

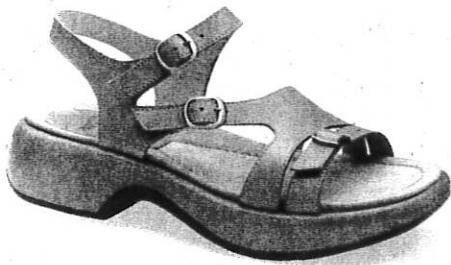
By the time the sales tax incentive, [www.idaho-media.com](http://www.idaho-media.com)



House Bill 497, rolled into the Tax and Revenue Committee, it had a healthy head of steam, and was approved unanimously. Barely a week later, it sailed through the House, and then the Senate. On March 30, Idaho became the 38<sup>th</sup> state to offer incentives to the film industry, and could now call itself a player in the multi-million dollar lottery that metes out film production to states with the most attractive package of incentives, locations, production crews and other amenities.

If all this sounds like pretty smooth sailing, consider the more than 1,000 hours of volunteer time that went into producing this bill by the task force and its sub-committees. And consider the hours of effort that went into Film Idaho Day, and all the one-on-one conversations that film and media

industry people had with legislators, not to mention the e-mails, letters and phone calls. According to Kemp, "all that was critical. If any one of those pieces were missing I don't think we'd be where we are today. And the legislative process worked, too. HB497 was one of the first bills printed out for this legislative session, but it took us all the way to the end of the session to get the final action. That's okay, though, because it resulted in a better bill than what we walked in with. The beauty of this legislation is that it's trackable, it has a sunset clause that forces the discussion to be revisited, and it has an annual reporting mechanism so that year by year the legislature can continue to be educated about how viable this industry is or is not in Idaho."



The Laney

## SMART FEET

821 W. Idaho St. Boise, ID 83702  
208.338.5959  
M-F 10-6 Sat 11-5



Beautiful from the inside out.

Being

**NUMBER ONE**  
is nothing to celebrate.

This year, more than **172,000** people will be diagnosed with lung cancer, and more than **163,000** will die from it — making it America's **NUMBER ONE** cancer killer.

But new treatments offer hope. Lung Cancer Alliance is shining a light on lung cancer and focusing more attention on this disease.

[lungcanceralliance.org](http://lungcanceralliance.org)



LUNG  
CANCER  
ALLIANCE

NO MORE EXCUSES. NO MORE LUNG CANCER.

BE PULLED IN

DOOR HARDWARE • CABINET KNOBS  
BATH ACCESSORIES



*fine*

OVER 3,500 knobs on display

114 S. 5TH STREET (DOWNTOWN BOISE) 345-8272

[www.fineinyourhome.com](http://www.fineinyourhome.com)

When the final task force report was presented to the legislature, a number of additional benefits that stemmed from their efforts were highlighted. Work force training programs discussed in task force meetings and refined by a sub-committee offer a myriad of ways, some of which already exist, to educate aspiring filmmakers here in Idaho; the prospects for regional or city film bureaus is being explored; and plans are in the works for submitting the income tax credit bill, perhaps with some refinements, to the 2007 legislature. And in another bill that passed the 2006 legislature, the Dept. of Commerce got the go-ahead to add a full-time staff person in the Film Bureau.

"Most state film bureaus have staffs anywhere from 4-6 people," says Shedd, "so this will greatly expand our bureau's ability to reach out to the film industry at large and try to bring some business to Idaho. Annual media production world wide is estimated to be a \$40 billion industry. If Idaho can get just one-tenth of one percent of that over the next few years, that's \$40 million coming into our state. That would most likely mean two or three new sound stages around the state, lots of people employed where they live, and we would probably have to double the film bureau staff again.

"It's about jobs," Kemp reiterates, "and it's about being a sub-set of our high tech industry. Micron and Hewlett-Packard produce products that are used in the film industry, so why not keep building those jobs here, too."

So stay tuned, the international turf wars for film production are just beginning to heat up here in Idaho. And if you want to know more about our local film industry, check out any of the film festivals that have cropped up around the state over the past few years. For a complete list, log on to [www.idahofilm.org](http://www.idahofilm.org) and click on Film Festivals. ■

[www.idaho-media.com](http://www.idaho-media.com)

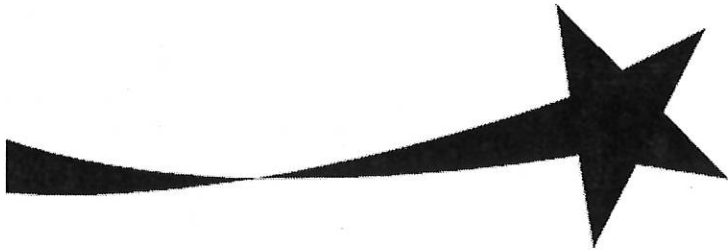
1-10



# KANSAS

DEPARTMENT OF COMMERCE

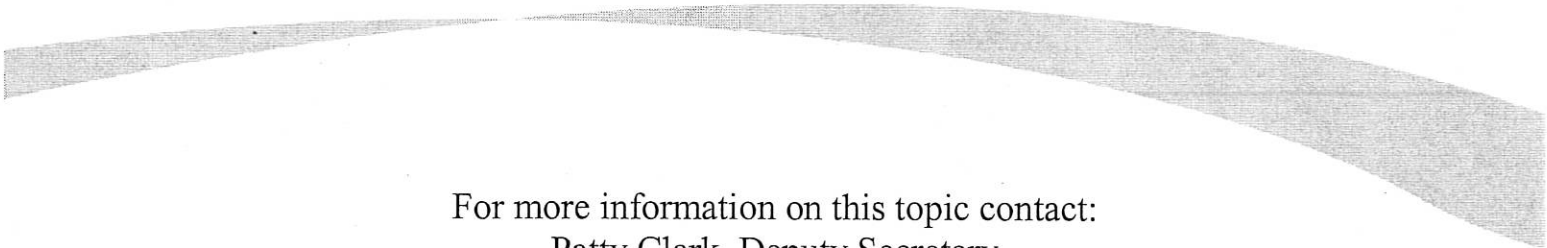
Steve Kelly, Acting Secretary



House Bills 2439, 2440 and 2441

## House Economic Development

February 13, 2007



For more information on this topic contact:

Patty Clark, Deputy Secretary

Phone: (785) 296-5253

Fax: (785) 296-3665

pclark@kansascommerce.com

[www.kansascommerce.com](http://www.kansascommerce.com)

Economic Development & Tourism

Date: 2-13-07

Attachment # 2-1

Madame Chair and members of the Committee, I am Patty Clark and I currently serve as Deputy Secretary for the Department of Commerce. I also served, along with Peter Jasso and Bill Thompson, as staff liaison to the Governor's Film Task Force and we appreciate the opportunity to provide testimony on House Bills 2439, 2440 and 2441 this afternoon.

Governor Sebelius has provided \$2,000,000 in tax credits for FY 2008 for the purposes of enhancing film production opportunities in Kansas. The bills that have been introduced include tax credits for investment in film productions filmed in Kansas as well as tax credits for film production expenditures made in Kansas. We believe \$2,000,000 is a good beginning benchmark to test the effectiveness of these tax credits and to better gauge the potential economic impact of film production on the Kansas economy.

We would like to provide the following recommendations based on the Task Force Report and the experience of the Kansas Film Commission this past decade.

We would suggest that the provisions of the production tax credit bill be combined with the provisions of the investor tax credit bill with a \$2,000,000 cap. Further we would suggest that the Film Commission Office be allowed the flexibility to award these tax credits between the two uses in any given fiscal year based upon the types of films we have the possibility of recruiting and the overall demand for the tax credits. We believe this flexibility will provide maximum use of the tax credits and greater return on investment by the state.

With this combination of tax credits, our goal would be to attract one or two films with budgets in the \$2 million to \$13 million range. These could range from a made-for-TV movie to a "Capote" size independent feature film. The following example provides estimated economic impact:

- Assume an overall film project budget is \$13 million ("Capote" was \$8 million and "Infamous" was \$13 million).
- AFCI statistics indicate that 35-50% of film project expenditures are spent on location. At 50% of a \$13 million production, \$6,500,000 would be spent in Kansas. Using the 30% production tax credit \$1,950,000 in tax credits would be awarded to this film production.

We could also use this combination of tax credits to assist indigenous film producers to film smaller projects in Kansas which typically carry an investment of \$50,000 to \$1 million, with most of those productions coming in at under \$100,000. An example of how the investor tax credit could be applied follows:

- Assume the investment required to produce a smaller film project by a native Kansan is \$1,000,000.
- Interested investors provide equity capital for half the production costs or \$500,000. Those investors would then claim \$250,000 in investor tax credits at the 50% level

Certainly in any given year we could not hope to recruit all of the above but we wanted to benchmark for you what we believe is a realistic expectation for this new incentive tool you are considering.

We would also suggest that the tax credits be refundable, rather than transferable and I believe the Department of Revenue can speak with greater clarity on that issue.

Further we would recommend that these tax credits carry both a sunset provision and that the statute call for an annual report to be provided to the Governor's office as well as key legislative committees regarding how the tax credits were used, what films were recruited and a tracking of economic impact. If these provisions are included, we can ensure accountability, review of effectiveness, determine our state's competitive position in the film industry and determine if the provisions should be extended or enhanced in later years.

We suggest the Committee include in a combined bill language similar to Missouri's language that outlines what types of film productions are not eligible for the Kansas tax credits. Having this language in statute provides clarity and direction to staff but also to potential film makers interested in coming to Kansas.

Finally, we would respectfully suggest, based on the Film Task Force report, that if you pass the production tax credit with no minimum expenditure criteria, then the tax rebate becomes redundant as everyone will choose the 30% tax credit over a rebate of 5-7% sales tax.

We look forward to the opportunity these new incentives provide and believe they are a useful tool to allow Kansas to compete for the types of film production mentioned earlier and we hope to report back on their successful utilization and a resulting positive economic impact.

Thank you and we would be happy to take any questions from the Committee.

\$2 million tax credits  
 flexibility  
 what do recruit

FIRST REGULAR SESSION

**HOUSE BILL NO. 360****94TH GENERAL ASSEMBLY**

INTRODUCED BY REPRESENTATIVES ROBB (Sponsor), SATER, GRILL AND SUTHERLAND (Co-sponsors).

Read 1st time January 11, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1088L.011

**AN ACT**

To repeal section 135.750, RSMo, and to enact in lieu thereof one new section relating to a tax credit for qualified film production projects.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 135.750, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 135.750, to read as follows:

135.750. 1. As used in this section, the following terms mean:

(1) "Highly compensated individual", any individual who receives compensation in excess of one million dollars in connection with a single qualified film production project;

(2) "Qualified film production project", any film, video, commercial, or television production, as approved by the department of economic development and the office of the Missouri film commission, that is under thirty minutes in length with an expected in-state expenditure budget in excess of fifty thousand dollars, or that is over thirty minutes in length with an expected in-state expenditure budget in excess of one hundred thousand dollars. Regardless of the production costs, "qualified film production project" shall not include any:

(a) News or current events programming;

(b) Talk show;

(c) Production produced primarily for industrial, corporate, or institutional purposes, and for internal use;

(d) Sports event or sports program;

(e) Gala presentation or awards show;

(f) Infomercial or any production that directly solicits funds;

(g) Political ad;

(h) Production that is considered obscene, as defined in section 573.010, RSMo;

(3) "Qualifying expenses", the sum of the total amount spent in this state for the following by a production company in connection with a qualified film production project:

(a) Goods and services leased or purchased by the production company. For goods with a purchase price of twenty-five thousand dollars or more, the amount included in qualifying expenses shall be the purchase price less the fair market value of the goods at the time the production is completed;

(b) Compensation and wages paid by the production company on which the production company remitted withholding payments to the department of revenue under chapter 143, RSMo. For purposes of this section, compensation and wages shall not include any amounts paid to a highly compensated individual;

(4) "Tax credit", a credit against the tax otherwise due under chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or otherwise due under chapter 148, RSMo;

(5) "Taxpayer", any individual, partnership, or corporation as described in section 143.441, 143.471, RSMo, or section 148.370, RSMo, that is subject to the tax imposed in chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or the tax imposed in chapter 148, RSMo.

2. For all taxable years beginning on or after January 1, 1999, but ending on or before December 31, 2007, a taxpayer shall be granted a tax credit [against the tax otherwise due pursuant to chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.261, RSMo, or chapter 148, RSMo,] for up to fifty percent of the amount of investment in production or production-related activities in [a qualified film production project. As used in this section, the term "taxpayer" means an individual, a partnership, or a corporation as described in section 143.441, 143.471, RSMo, or section 148.370, RSMo, and the term "qualified film production project" means] any film production project with an expected in-state expenditure budget in excess of three hundred thousand dollars. **For all taxable years beginning on or after January 1, 2008, a taxpayer shall be allowed a tax credit for up to fifty percent of the amount of qualifying expenses in a qualified film production project.** Each film production company shall be limited to one qualified film production project per year. Activities qualifying a taxpayer for the tax credit pursuant to this subsection shall be approved by the office of the Missouri film commission and the department of economic development.

[2.] 3. Taxpayers shall apply for the film production tax credit by submitting an application to the department of economic development, on a form provided by the department. As part of the application, the expected in-state expenditures of the qualified film production project shall be documented. In addition, the application shall include an economic impact statement, showing the

2.5



economic impact from the activities of the film production project. Such economic impact statement shall indicate the impact on the region of the state in which the film production or production-related activities are located and on the state as a whole.

[3.] **4. For all taxable years ending on or before December 31, 2007**, tax credits certified pursuant to subsection 1 of this section shall not exceed one million dollars per taxpayer per year, and shall not exceed a total for all tax credits certified of one million five hundred thousand dollars per year. **For all taxable years beginning on or after January 1, 2008, tax credits certified under subsection 1 of this section shall not exceed a total for all tax credits certified of ten million five hundred thousand dollars per year.** Taxpayers may carry forward unused credits for up to five tax periods, provided all such credits shall be claimed within ten tax periods following the tax period in which the film production or production-related activities for which the credits are certified by the department occurred.

[4.] **5.** Notwithstanding any provision of law to the contrary, any taxpayer may sell, assign, exchange, convey or otherwise transfer tax credits allowed in [subsection 1 of] this section. The taxpayer acquiring the tax credits may use the acquired credits to offset the tax liabilities otherwise imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to [143.261] **143.265**, RSMo, or chapter 148, RSMo. Unused acquired credits may be carried forward for up to five tax periods, provided all such credits shall be claimed within ten tax periods following the tax period in which the film production or production-related activities for which the credits are certified by the department occurred.

**6. Under section 23.253, RSMo, of the Missouri sunset act:**

**(1) The provisions of the new program authorized under this section shall automatically sunset six years after the effective date of this section unless reauthorized by an act of the general assembly; and**

**(2) If such program is reauthorized, the program authorized under this section shall automatically sunset twelve years after the effective date of the reauthorization of this section; and**

**(3) This section shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under this section is sunset.**

*2/6*

---

Testimony to the House Committee on Economic Development and Tourism

Joan Wagnon

February 13, 2007

**Department Concerns with House Bills 2439, 2440, and 2441**

Representative Gordon, Chair, and Members of the Committee:

We echo the concerns raised and agree with the recommendations made by the Department of Commerce on these bills. Some choices need to be made: the Governor has authorized a maximum of \$2 million in tax incentives for the film industry. Funding is not available for all three. If House Bills 2439 and 2440 are combined, given a cap of \$2 million per fiscal year, and sunsetted in five years, then the sales tax rebate in House Bill 2441 (with an estimated fiscal note of \$250,000) needs to be dropped. The Department recommends a five year sunset on any tax credit bill.

With each new tax credit, the Department incurs significant administrative expense: develop a new credit schedule; reprogram computer systems to accept and process the data from the new schedule; test and retest the system until errors are resolved. Generally, at least three months of programming resources are required. The estimated administrative costs to the Department needed to implement each of the tax credit proposals in House Bills 2439 and 2440 are \$258,000 per proposal of programming and testing costs in fiscal year 2008, for a total of \$516,000. If only one film industries tax credit is enacted, then the administrative costs would be reduced to \$258,000.

Below are our specific concerns with each of the bills:

House Bill 2439

The intent of the bill seems to be that the Department of Commerce will determine whether a film production company is eligible for the tax credit and the Department of Revenue will determine the direct production expenditures that will qualify for the credit. Section 2 should be clarified to make that intent clear. Subsections 2(d) and (e) do not seem consistent, as currently drafted.

Subsection 2(b) mentions the term "nontaxable transaction certificate." However, this is not a term used in either Kansas income tax or sales tax law. Perhaps this term is intended to refer to a sales tax exemption certificate. If this is the case, "sales tax exemption certificate" should be substituted for "nontaxable transaction certificate."

Subsection 3(a) provides that a "direct production expenditure" means a transaction that is subject to taxation in Kansas. We are not sure what taxation is referred to. Upon clarification of what is intended, sales tax, income tax or other, the Department is willing to work with the revisor in making this intent clear and using the appropriate Kansas terminology in this entire section.

Section 4 discusses taking certain deductions from "gross receipts" or "governmental gross receipts" if a "nontaxable transaction certificate" is provided. This section and those quoted terms conflict with Kansas income tax law, and should be revised to reflect Kansas law. The Kansas income tax is not a "gross receipts" tax, so Section 4 would have no application or relevance.

It is unclear what Section 5 means or is intended to accomplish. With an understanding of your intent of this section, the Department is willing to work with the revisor to prepare a balloon amendment.

#### House Bill 2440

This bill mimics several of the provisions in the angel investor tax credit act, when it is not clear that those provisions make sense in the context of a film industry tax incentive program. The angel investor tax credit act and the film production investor tax credit act do not have the same goals and objectives.

The definitions in subsection 1(a) provided for "film production investor" and "investor" only allow individuals of high net worth to make investments in a qualified Kansas film production business. Regarding subsection 1(e), the reference to K.S.A. 2006 Supp. 74-8134 should probably be changed to Section 7 of 2007 HB 2440, as K.S.A. 74-8134 allows the Kansas Technology Enterprise Corporation (KTEC) to determine whether a business can qualify as a "qualified Kansas business" for purposes of the angel investor tax credit.

Subsection 3(b) allows this tax credit for tax years beginning on or after January 1, 2007, but not after the year 2017. Yet the bill provides for \$2M per tax year, not to exceed \$20M. If \$2M is allowed per year beginning with tax year 2007, the cap of \$20M will be hit in 2016. The Department suggests a maximum of a five-year sunset, instead a ten-year sunset.

Subsection 3(d) provides for transfers of credits. The Department strongly opposes transferable credits, as this will expand opportunities for fraudulent or abusive credit claims. If the credits are refundable, they do not also need to be transferable. Refundable tax credits are essentially the same thing as transfer payments. The bill allows for "any investor that is not subject to taxation under the provision of the Kansas income tax act, and that makes a cash investment in a qualified security of a qualified Kansas film production business shall be deemed to acquire an interest in the nature of a transferable credit." But an investor that makes a cash investment in qualified securities of a qualified Kansas film production business

appears to acquire an interest in that company and would then subject to taxation under the Kansas income tax act, based upon that ownership interest. This is a contradiction. The credit transferability provisions throughout the bill need to be deleted.

We suggest that subsection 5(c), line 18, page 4 be revised as follows: "The secretary shall provide the information specified in subsections (a) and (b) to the department of revenue on an annual basis." This revision would enable the Department of Revenue to verify the investors and the amount of credit claimed on their individual tax returns. This also ensures the availability of electronic filing for individuals. (Taxpayers will not have to attach any documentation to this schedule, as KDOR will receive all verification from Commerce.)

#### House Bill 2441

As mentioned already, given the proposal for income tax incentives to promote the film industry and the fiscal limitations, the sales tax rebate proposal should not go forward. If it does move forward, there are several technical flaws that need to be addressed. The proposal should be amended to make the certification process with the Department of Commerce and the subsequent refund of tax a post-production process, to eliminate the potential for tax to be refunded when a project did not meet the exemption criteria. After the project is completed, the film company should request certification from the Department of Commerce and if obtained, then request a tax rebate from the Department of Revenue.

The proposal should be amended to require the submission of the refund application within 1 year after the project is completed vs. the 3 years allowed in the proposal.

The proposal indicates that sale and use taxes are to be refunded. However, only sales tax refunds are addressed. If use taxes are to be refunded, the proposal should be amended to include the necessary language for the refunding of use tax out of the use tax refund funds.

February 13, 2007

Good Afternoon. My name is Mitch Brian. I am president of Cerberus Films, Ltd. - a Kansas Corporation started in 1983. I am a professional screenwriter, member of the Writers Guild of America and live in Fairway, Kansas.

I was born in Dodge City and grew up in Hutchinson. I attended film school in Los Angeles and worked in the industry there for a dozen years before moving back to Kansas with my wife and then-newborn son. It was our desire to have a healthier environment and better standard of living than the fast and overcrowded LA Metro. Fortunately my writing career took off after relocating and over the past thirteen years I've written eighteen screenplays, two miniseries and several episodic teleplays, working for most of the major studios and networks. I'm proud to say I've been able to do that while remaining here in my home state.

I'm here today to talk about the movies; but more specifically about jobs and economic development. I'm here to talk about making Kansas more competitive in the motion picture field. As you may have heard, a film set in Lawrence to star Anthony Hopkins will not be shooting here, but instead in our neighboring state of Colorado where sales tax incentives are available. Kansas Film Commissioner Peter Jasso was quoted in a January 13 article in the Lawrence Journal World saying that the lack of production incentives was to blame for the filmmakers not coming here.

Last summer, a 5 million dollar film called "Bill" wanted to shoot in the Kansas City Metro area, but found they couldn't apply Missouri tax credits to monies spent in Kansas (in particular light and equipment rentals from Kansas based Lights On) and with no Kansas incentives in place, they took the show to St. Louis.

Missouri, by the way, has been increasing its production through its tax rebates to production companies. I know of three films that were shot there last year specifically because of the incentives – and all of them could have been shot in Kansas.

I personally experienced something similar a few years ago when I had written a picture which I was to direct and wanted to film here. We were well into preproduction when the producers decided there were better deals to be had in other states and the show was pulled out of Kansas.

As you probably know, last years Capote substituted Canada for Western Kansas and although no state in the U.S. can compete with Canada's government film subsidies, there has been, since 911, a tendency for producers to want to stay within the US.

This has caused states like New Mexico and Louisiana to implement aggressive incentives in order to lure filmmakers to their state. In 2002, Louisiana's tax credit program saw production expenditures jump from 22 million to over 300 million by 2004.

**Economic Development & Tourism**

Date: 2-13-07

Attachment # 4-1

Currently, Colorado, Missouri and Oklahoma all offer incentives. Kansas is losing out to these neighboring states – and by losing out I mean *losing out on free money*. Low-budget Hollywood productions are generally budgeted between 5 and 15 million dollars... then the budgets jump to 60 million and up. When we consider that an average of 33% of a production budget goes into the local economy we can see that this is significant money. No wonder 36 states in the union offer production incentives to filmmakers.

I find it's often easier for people to support states providing incentives for companies to build factories; it's a more concrete notion, a physical structure with permanent jobs being provided. But the movies are surprisingly similar. Equipment must be rented, sets constructed, locations hired out, meals provided, out of town workers housed, props and costumes bought and manufactured.

And as for employment, there is a local community of freelance workers, both in front of and behind the cameras, who go from show to show to make a living. And when the number of productions increase, new jobs are, in fact, created. So remember when we talk about movies, we really are talking about jobs. And the more film and commercial productions we can lure to Kansas, the more that freelance job pool will expand and strengthen the filmmaking infrastructure.

Finally, there is the sheer economic impact of money coming in from either outside the state or from local private investors. This stimulates the economy, the same way that tourist dollars pour into the Kansas Speedway in Wyandotte County or the State Fair in my home town of Hutchinson. That outside money stays in the state and studies have shown that the spending power of those dollars are tripled or quadrupled as this "economic ripple" makes its way through the economy.

So I encourage you to pass bills 2439, 2440 and 2441 so as to encourage investment in film projects here at home and make Kansas more competitive in luring productions to our state.

Thank you.