

# ***FOCUSED REVIEW***

**Delaware Motion Picture and Television Development Commission**



Joint Legislative Oversight  
& Sunset Committee

## **Executive Summary**

The Delaware Motion Picture and Television Development Commission is not operational and held its last meeting on June 28, 2017. After its last meeting, the Delaware Motion Picture and Television Development Commission's support staff moved from the Department of Finance to the Department of State under the Division of Small Business. Delaware Motion Picture and Television Development Commission members did not express interest to the Division of Small Business to hold meetings and at least one member expressed need for a budget to carry out its duties.

The legislature created the Commission to help contribute to the state's economy and contribute to the social well-being of the state and its people. State need exists for a film commission to provide information and resources about production locations within the state and explain the benefits and advantages of producing in Delaware. There are examples of state film commissions providing this service without the lure of film production rebates or tax incentives. The Commission's statute grants powers which have not been used but would set the entity up for success. Meeting minutes and similar documentation to show progress have not been found, indicating the Commission has not performed its statutory duties. With proper structure, guidance, and support, the Commission could hold productive public meetings to perform its statutory duties and advocate for its needs.

## **Objective, Scope, and Methodology**

The Joint Legislative Oversight and Sunset Committee ("JLOSC" or "Committee") voted on March 25, 2021, for their staff to perform a focused, limited review of the Delaware Motion Picture and Television Development Commission to determine its operational status. JLOSC staff expanded the scope of this research slightly to include preliminary research relevant to the history and functionality of the Delaware Motion Picture and Television Development Commission. This includes information on current Delaware film production news, film production rebates and tax incentives, and websites of film offices found in states that do not currently offer rebates or tax incentives.

Unlike full oversight and sunset reviews, this review does not follow the standard review process which includes a self-report and formal presentation from the entity under review. In a focused, limited review, JLOSC staff explore the specific research request from the Committee and provide a report of findings and recommendations on the topic. To complete this report, JLOSC staff conducted interviews, reviewed past minutes and agendas, audit reports, news articles, and available public documents.

## **Staff Recommendations**

JLOSC should consider recommending the Division of Small Business work in conjunction with the Governor's Office and other appoint authorities to reconstitute the Delaware Motion Picture and Television Development Commission, focusing on functions such as:

- Reexamining membership and appointing new Commission members.
- Creating an annual reporting requirement.

- Creating a minimum meeting requirement.
- Ensure duties and powers are in line with similar film commissions.

Budget considerations should be explored to help the Commission carry out its statutory duties such as launching a website and producing promotional materials.

Additionally, JLOSC can recommend staff request updates from the Division of Small Business as well as conduct detailed research and report findings on film production rebates and tax incentives and alternatives. The State of Arizona offers a discount program in partnership with the private sector that does not involve tax credits.

### **Background Information**

JLOSC staff researched the operational status of the Delaware Motion Picture and Television Development Commission. The following is a summary of the findings.

**Name of Entity:** Delaware Motion Picture and Television Development Commission (“Commission”)

**Date of creation:** Senate Joint Resolution 5, 148<sup>th</sup> General Assembly, signed July 2015.

**Section of Delaware Code:** [29 Del. C. § 8750A.](#)

**Recent Statute Changes of Interest:** 2 statute changes occurred after the Commission’s creation in July 2015.

- Senate Bill 266, 148<sup>th</sup> General Assembly, signed August 2016.
  - Established the Commission in code, making it a permanent body.
  - Removed quarterly meeting requirement.
  - Removed annual reporting requirement.
- House Bill 226, 149<sup>th</sup> General Assembly, signed June 2017.
  - Transferred the Commission and duties related to its administration to the Department of State, Division of Small Business.

**Published Regulations or By-Laws:** None.

**Primary Functions:** There is no evidence the Commission performed its primary functions listed in its statute. According to statute, the Commission prepares and implements programs to promote a motion picture and television industry within the State, with the following programs specifically assigned to implement:

- Production and dissemination of promotional and informational materials on desirable production locations within the State, explaining the benefits and advantages of producing within the state, and supplying a list of services available at the state and local level and within the industry.
- Facilitation of cooperation between government agencies and private-sector groups regarding applications, locations, production, and ancillary facilitates.
- Cooperation with all sections of management and labor engaged in film and TV industry.
- Appearing on its own behalf before boards, commissions, departments, or other agencies of municipal, county or state government, or the federal government.

The Commission cannot act without an affirmative vote by a majority of its current members. Its statute lists the following powers:

- Adopt rules and regulations to conduct its own affairs.
- Hold hearings or do other acts to carry out the Commission’s mission.
- Request and obtain data from any state entity necessary to perform its duties.
- Accept any federal funds, gifts, donations, for purposes of the Commission.
- Coordinate the activities of similar entities within the State.
- Create advisory councils necessary for performance of Commission’s responsibilities.
- Assist with obtaining permits from any State entity for applicants interested in TV or film production in the State.

Except for creating 5 temporary committees in 2016, there is no other evidence of the Commission utilizing its statutory powers to conduct business and fulfill its duties. Based on a brief review of other film commissions, this Commission’s duties and authority seem to be similar. JLOSC staff could perform more research in this area if JLOSC desires additional information.

**Website:** None.<sup>1</sup>

**Related Website and Nonprofit:** Film Delaware is a nonprofit organization that “promotes the video game, motion picture, and television production industries in Delaware”.<sup>2</sup> According to its website, the organization “is an advocate for these industries and works with the Delaware Motion Picture and Television Development Commission to provide resources and information for individuals and organizations engaged in all aspects of film and motion picture production, video game production, and new media services.” Notably, the Commission is the only entity listed on as a partner on Film Delaware’s site. Due to the website’s limited information, it is unclear how this nonprofit interacted and partnered with the Commission as no specific activities or recent news is listed. Through interviews, JLOSC staff was informed that Film Delaware is currently conducting business and works with a personal attorney. The Commission mentioned Film Delaware in 2 out of 3 sets of available meeting minutes:

- March 24, 2016, meeting minutes:
  - Short-Term Goals<sup>3</sup>:
    - 6 months - 1 year: Established program of the Commission including budget, legislation, etc.
    - In collaboration with the Department of Finance, develop and establish the DE Incentive Plan by the end of June 2016 via legislation.
    - Develop a budget for Film Delaware to advance the purpose of the Commission.
    - Develop Marketing/Awareness strategy.
    - Coordinate and use the “List” in the industry, for example, Directors Guild of America.

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<sup>1</sup> Meeting minutes from May 18, 2016, show the Commission engaged in website discussion and an agenda from its last meeting held on June 28, 2017, list “development of website content” as an agenda item, minutes are not available for this meeting.

<sup>2</sup> Website available at: <https://filmdelaware.com>

<sup>3</sup> There are no minutes or reports available to show if the Commission met any of these goals.

- Set the proper foundation for success by building alliances with key stakeholders.
- February 23, 2017, meeting minutes:
  - During the public comment portion of the meeting, Mr. Jacobson summarized the immediate needs of the Commission to develop its mission, develop a budget, devise a fundraising plan, including the use of state or private funding, look at the Film Delaware website and consider whether to merge that into a site for the Commission, and develop the Commission’s message.<sup>4</sup>

**Annual Report:** None.<sup>5</sup>

**Meetings:** Enabling legislation required the Commission to meet at least quarterly. Legislation signed the following year, in August of 2016, removed this requirement. After its creation in July 2015, the Commission held its first meeting under the Department of Finance on January 14, 2016, and its last on June 28, 2017. In total, it scheduled 11 meetings, cancelled 1, and held 10 meetings. The Commission used the state’s Public Meeting Calendar for meeting announcements; however meeting minutes are only available for 3 meetings.

**All Meetings Held Under Department of Finance and Status of Meeting Minutes:**

January 14, 2016 – no minutes	April 28, 2016 – no minutes
February 17, 2016 – no minutes	December 19, 2016 – no minutes
March 10, 2016 – no minutes	February 23, 2017 – minutes available
March 24, 2016 – minutes available, no quorum	May 18, 2017 – minutes available
April 14, 2016 – cancelled	June 28, 2017 – no minutes
April 21, 2016 – no minutes	

**July 1, 2017, moved to Department of State under Division of Small Business:**

No meetings held since this move.

Meeting minutes from March 24, 2016, list 5 committees. It is unclear when these committees formed or held meetings. Meeting announcements, agendas, or minutes are not on the Public Meeting Calendar. The minutes list the following committee updates:

- Union - Delaware Contract – Commissioner Healy reported that there have been talks with the Teamsters and other unions to develop a Delaware contract.
- Operating By-Laws – Commissioner David Sheppard is working on these, along with the issues raised by Ms. Watson around public notices, executive sessions, etc. Ms. Watson volunteered to work on this committee.
- Entertainment Opportunities – Commissioner Healy reported that he has not had an opportunity to connect with Commissioner Alex Pires.

<sup>4</sup> There is no documentation available to show the Commission completed any of these tasks. The Film Delaware website is not supplying Commission information to the public.

<sup>5</sup> Original legislation (Senate Joint Resolution 5) included an annual report requirement which was removed by Senate Bill 266 a year later.

- Budget – Commissioner Healy and Katharine Gilbert are working with Secretary Cook on the budget. Mr. Healy responded to questions about the structure of the budget for the commission and Film Delaware from Commissioner Lisa Black.
- General Assembly – Commissioners Brian McGlinchey, William Freeborn, Katharine Gilbert and others will be working on legislation for a permanent commission. The bill sponsor is Senator McDowell. No funding is being requested to support the Commission.<sup>6</sup>

**Board members:** Statutorily, there are 9 members, Delaware residents consisting of the following:

- Director of the Division of Small Business or the Director’s designee.
- Secretary of the Department of Natural Resources and Environmental Control.
- 3 members appointed by the Governor.
- 2 members appointed by the President Pro Tempore.
- 2 members appointed by the Speaker of the House.

The Governor’s office currently has 3 members in its files appointed to the Commission: TJ Healey, Donna Stone, and David Sheppard.<sup>7</sup> The President pro tempore’s office last appointed Brian McGlinchey and Rhett Ruggerio on November 3, 2016. Senator Blevins appointed both to serve at her pleasure and subsequent President pro tempore have made no appointments.

**Chair, Commission Officers:** The Commission last held an election of officers at its February 23, 2017 meeting, electing TJ Healy as chair, David Sheppard as vice chair, and Kathy McGuinness as secretary. The Commission never created by-laws, and its statute only outlines membership electing a chair.<sup>8</sup>

**Administrative Support for Entity:** The Commission is currently under the Division of Small Business, who supplies administrative support. JLOSC staff spoke to the Division’s Communications Director and found that the Commission has not met due to a lack of interest from Commission members. The Division of Small Business remains supportive in supplying administrative support for the Commission.

**Recent News on Entity:** After the Commission’s creation in the summer of 2015, frequency of news articles fell by 2017. A search for recent news on the Commission yielded the following guest column article:

- Delaware Business Times guest column dated July 27, 2020, written by Mattie Moore.<sup>9</sup>
  - Discusses need for Delaware to “tap into the potential of the feature film, television, and new media industry.” Mentions the Commission not having a website listing the state’s location assets online, “a simple but important task.”

After finding a lack of recent news articles on the Commission, JLOSC staff briefly investigated current news on film production topics in Delaware to provide JLOSC with a small snapshot of current industry news in the state:

<sup>6</sup> This legislation became Senate Bill 266, signed August 2016.

<sup>7</sup> Governor’s office stated the Commission does not seem active.

<sup>8</sup> No by-laws found; limited meeting minutes show a brief conversation regarding by-laws but do not show votes adopting by-laws.

<sup>9</sup> Delaware Business Times article available at: <https://delawarebusinesstimes.com/news/industry/media-and-marketing/roll-the-cameras-boost-economic-recovery>

- A Delaware Online article date December 22, 2021, written by Krystal Griffin, included information about a science fiction movie filmed in Delaware which won over 20 awards at film festivals.<sup>10</sup>
- A Delaware Prosperity Partnership article dated August 3, 2021, interviews Scott Humphrey about the construction of a large soundstage facility called the Pine Box opening in Wilmington, late fall 2021.<sup>11</sup> The facility will supply space for film productions, performing arts events, and concert rehearsals.
- A WJBR article dated July 7, 2021, written by digital production intern Nicole Mills, included information about 5 movies with scenes filmed in Delaware<sup>12</sup>:
  - Clean and Sober (1988).
  - Dead Poets Society (1989).
  - Beloved (1998).
  - The Village (2004).
  - Failure to Launch (2006).
- A Delaware Today article dated April 1, 2020, written by Meg Ryan, provided readers with a list of 11 movies to binge during quarantine that were centered around Delaware events or locations or filmed in Delaware.<sup>13</sup>

**Audit Report:** The Delaware Auditor of Accounts released a memo, dated June 30, 2015, regarding the state’s reporting authority for audit purposes on the Commission.<sup>14</sup> The Commission is not legally separate from the state and Delaware holds its corporate powers. The memo cites the Commission’s founding legislation and the sections cited are still current in statute.

**Budget:** The Commission was established without a budget. The Commission later worked with the legislature in drafting a bill to make the Commission permanent. The Commission’s March 24, 2016, meeting minutes stated that “no funding is being requested to support the commission.” However, in 2021, JLOSC staff spoke to the last Commission chair who suggested funding was fundamental to conducting business.

**Additional Research Notes:** The necessity for film production rebates and tax incentives was a topic of interest in the research process. About 15 states, including Delaware, do not currently offer some rebate or tax incentive for film production.

While outside the scope of this focused review, JLOSC staff conducted limited research into this topic. While preliminary research suggested success with tax and rebate incentives, it also advised

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<sup>10</sup> Article available at: <https://www.delawareonline.com/story/news/2021/12/22/delaware-made-movie-has-racked-up-lots-buzz-more-come/8944170002>

<sup>11</sup> Article available at: [https://www.choosedelaware.com/success-stories/wilmington-businesses-put-world-events-on-delaware-stage/#:~:text=Pine%20Box%20Soundstage%20to%20Open,think%20Broadway\)%20performing%20arts%20events](https://www.choosedelaware.com/success-stories/wilmington-businesses-put-world-events-on-delaware-stage/#:~:text=Pine%20Box%20Soundstage%20to%20Open,think%20Broadway)%20performing%20arts%20events)

<sup>12</sup> Nicole Mills was an English student at the University of Delaware. Article available at:

<https://wjbr.com/2021/07/07/five-movies-you-probably-did-not-know-were-filmed-in-delaware>

<sup>13</sup> Article available at: <https://delawaretoday.com/things-to-do/arts-culture/delaware-movies-to-binge-in-quarantine>

<sup>14</sup> Audit report available at: [https://auditor.delaware.gov/wp-content/uploads/sites/40/2017/01/Entity-Determination-Memo-DelTech-06\\_30\\_15.pdf](https://auditor.delaware.gov/wp-content/uploads/sites/40/2017/01/Entity-Determination-Memo-DelTech-06_30_15.pdf)

caution. The brief overview below suggests some downsides to the incentives to highlight the need for more research if desired.

- The State of Georgia’s Department of Audits and Accounts released a January 2020 report on the tax credit’s impact and concluded an overstated economic impact of the credit.<sup>15</sup>
- Iowa’s film production tax credit program began in 2007 and ended the program in 2009 after an audit found \$26 million in improperly issued credits.<sup>16</sup>
- Michigan began film production incentives in 2008 and cancelled them in 2015. A September 2010 State Fiscal Agency report concluded that the tax credits would never pay for themselves.<sup>17</sup>
  - In 2021, lawmakers began exploring other options to renew offering incentives.
- Connecticut’s Department of Economic and Community Development 2019 annual report included the economic impact of the state’s film production tax credit and concluded the estimated net state tax revenue losses were just under \$95 million for fiscal years 2010-2019.<sup>18</sup>
- In a March 2021 report, the Massachusetts Tax Expenditure Review Commission concluded the state’s film credit comes with a price tag ranging from \$56-\$80 million per fiscal year and the Commission voted to disagree that the benefits were justified by its costs.<sup>19</sup>
  - July 2021, Massachusetts legislature made the film tax credit program permanent with changes such as an increase to the eligibility threshold.

Preliminary research found film office websites in states that do not currently offer rebates or tax incentives. These websites offer information and resources to the public and highlight the potential for a state film office to run a successful program without a production rebate or tax incentive.

- **Arizona** [www.azcommerce.com/film-media](http://www.azcommerce.com/film-media): Website offers a wealth of information from locations to cast and crew calls. Arizona offers a private/public sector discount and rebate program that does not involve tax credits. The program works by simply registering a film project and receiving a “Reel Savings” identification number. Participating vendors supply discounts and incentives to registered projects using the identification number. The program does not have a cap and there is no local hire requirement, processing period, review process, or audit process.

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<sup>15</sup> Audit report available at: <https://www.audits.ga.gov/rsaAudits/report/index>

<sup>16</sup> Audit report available at: <https://www.auditor.iowa.gov/reports/file/53205/embed>

<sup>17</sup> State Fiscal Agency Report available at:

<https://www.senate.michigan.gov/SFA/Publications/Issues/FilmIncentives/FilmIncentives.pdf>

<sup>18</sup> Annual report available at: <https://portal.ct.gov/-/media/DECD/Research-Publications/Annual-Report/Annual-Report-2019.pdf>

<sup>19</sup> Commission Report available at: <https://www.mass.gov/doc/terc-march-2021-final-report/download>

- **Indiana** [www.filmindiana.com](http://www.filmindiana.com): Website supplies information on locations, production, filming in the state, jobs, and education. Highlights under “incentives” section that no tax incentives exist and offers other reasons why the state is an affordable place to film.
- **Iowa** <https://iowaculture.gov/media>: Website includes information on production tools, education, film festivals, Covid-19 updates, and locations. Iowa currently does not offer tax incentives for film production but has a grant program for in-state film and digital media projects. The website lists links for funding options from state and national organizations.
- **Michigan** <https://www.michiganbusiness.org/industries/mfdmo>: Ended film production tax credits and cash-rebate incentives in 2015. Website has information on its film office, as well as resources for film and digital media.
- **New Hampshire** <https://www.visitnh.gov/film>: Website is simple but maintains a list of industry professionals and service providers and information on permits, locations, youth employment, visiting information, and links for city and town clerks and other useful contacts.

Delaware’s Commission could set up a similar website through the Division of Small Business and offer similar basic information. The New Hampshire example shows that this website does not require a large cost to supply basic information to the public.

**Research Conclusion:** JLOSC staff concludes that the Commission is not operational and has not performed its primary functions as outlined by statute. Need exists in the state for a functional Commission to supply basic information and resources about production locations within the State and explain the benefits and advantages of producing in Delaware. The legislature created the Commission to help contribute to the state’s economy and the social well-being of its citizenry. With proper structure, guidance, and support, the Commission could hold productive public meetings to perform its statutory duties and advocate for its needs.



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