

SENATE BILL NO. 165—SENATORS FORD, SMITH, DENIS,  
HUTCHISON, ROBERSON; ATKINSON, JONES, KIHUEN,  
MANENDO, PARKS, SEGERBLOM, SPEARMAN AND  
WOODHOUSE

FEBRUARY 18, 2013

JOINT SPONSORS: ASSEMBLYMEN AIZLEY, FRIERSON,  
HORNE, FIORE; KIRKPATRICK AND SPIEGEL

Referred to Committee on Revenue and  
Economic Development

SUMMARY—Provides for transferable tax credits to attract film  
and other productions to Nevada. (BDR 32-781)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to taxation; authorizing the Office of Economic Development to approve and issue a certificate of transferable tax credits to a producer that produces a qualified film or other production in this State under certain circumstances; providing for the calculation of the transferable tax credits; requiring a producer that receives transferable tax credits to consent to an audit by the Department of Taxation or the State Gaming Control Board, or both, and to the disclosure of the audit report to the Office and to the public with certain limited exceptions; requiring the Office to provide notice of certain hearings; requiring a producer to return any portion of transferable tax credits to which he or she is not entitled; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

- 1 **Section 8** of this bill requires the Office of Economic Development to approve
- 2 transferable tax credits for a producer that produces a film, television or other



media production in this State if, in addition to certain other requirements: (1) the production is in the economic interest of this State; (2) at least 60 percent of the total qualified expenditures and production costs for the production will be incurred in this State; and (3) the production costs of the qualified production exceed \$500,000. Upon approval of transferable tax credits and a determination of the amount of tax credits by the Office, **section 8** requires the Office to issue to the producer a certificate of transferable tax credits. **Section 8** also sets forth the fees and taxes to which the transferable tax credits may be applied. **Section 9** of this bill sets forth the types of qualified expenditures and production costs that may serve as a basis for transferable tax credits, and **sections 10-12** of this bill provide for the calculation of the transferable tax credits. **Section 13** of this bill requires that, as a condition of approval, a producer must consent to: (1) an audit by the Department of Taxation or the State Gaming Control Board, or both, to determine whether the producer is in compliance with the requirements to receive the transferable tax credits; and (2) the disclosure of the audit report to the Office and to the public with certain limited exceptions. **Section 14** of this bill requires the Office to meet certain notice requirements before holding a hearing to approve or disapprove an application for transferable tax credits. **Section 16** of this bill requires a producer to repay any portion of transferable tax credits to which the producer is not entitled if the producer becomes ineligible for the tax credits after receiving the tax credits.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 360 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this act.

**Sec. 2.** *As used in sections 2 to 17, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 2.5 to 7, inclusive, of this act have the meanings ascribed to them in those sections.*

**Sec. 2.5.** *“Above-the-line personnel” means a producer, director, writer, actor, other than an extra, or other similar personnel whose compensation is negotiated before the start of the qualified production. The term does not include below-the-line personnel.*

**Sec. 3.** (Deleted by amendment.)

**Sec. 3.5.** *“Below-the-line personnel” means a person employed to work on a qualified production after production begins and before production is completed, including, without limitation, a best boy, boom operator, camera loader, camera operator, assistant camera operator, compositor, dialogue editor, film editor, assistant film editor, focus puller, Foley operator, Foley editor, gaffer, grip, key grip, lighting crew, lighting board operator, lighting technician, music editor, sound editor, sound effects editor, sound mixer, steadicam operator, first assistant camera operator, second assistant camera operator, digital imaging technician, camera operator working with a director of*



1 *photography, electric best boy, grip best boy, dolly grip, rigging*  
2 *grip, assistant key for makeup, assistant key for hair, assistant*  
3 *script supervisor, set construction foreperson, lead set dresser,*  
4 *assistant key for wardrobe, scenic foreperson, assistant*  
5 *propmaster, assistant audio mixer, assistant boom person,*  
6 *assistant key for special effects and other similar personnel. The*  
7 *term does not include above-the-line personnel.*

8 **Sec. 4.** *“Nevada business” means a proprietorship,*  
9 *corporation, partnership, company, association, trust,*  
10 *unincorporated organization or other enterprise that:*

11 *1. Has a physical location and at least one full-time*  
12 *equivalent employee in this State; and*

13 *2. Is licensed to transact business in this State.*

14 **Sec. 5.** *“Nevada resident” means a bona fide resident as that*  
15 *term is defined in NRS 361.015.*

16 **Sec. 6.** *“Producer” means a natural person or business that*  
17 *finances, arranges to finance or supervises the production of a*  
18 *qualified production.*

19 **Sec. 7. 1.** *“Qualified production” includes preproduction,*  
20 *production and postproduction and means:*

21 *(a) A theatrical, direct-to-video or other media motion picture.*

22 *(b) A made-for-television motion picture.*

23 *(c) Visual effects or digital animation sequences.*

24 *(d) A television pilot program.*

25 *(e) Interstitial television programming.*

26 *(f) A television, Internet or other media series, including,*  
27 *without limitation, a comedy, drama, miniseries, soap opera, talk*  
28 *show or telenovela.*

29 *(g) A national or regional commercial or series of*  
30 *commercials.*

31 *(h) An infomercial.*

32 *(i) An interstitial advertisement.*

33 *(j) A music video.*

34 *(k) A documentary film or series.*

35 *(l) Other visual media productions, including, without*  
36 *limitation, video games and mobile applications.*

37 **2.** *The term does not include:*

38 *(a) A news, weather or current events program.*

39 *(b) A production that is primarily produced for industrial,*  
40 *corporate or institutional use.*

41 *(c) A telethon or any production that solicits money, other*  
42 *than a production which is produced for national distribution.*

43 *(d) A political advertisement.*

44 *(e) A sporting event.*

45 *(f) A gala or awards show.*



(g) Any other type of production that is excluded by regulations adopted by the Office of Economic Development pursuant to section 8 of this act.

**Sec. 8.** 1. A producer of a qualified production that is produced in this State in whole or in part may apply to the Office of Economic Development for a certificate of eligibility for transferable tax credits for any qualified expenditures and production costs identified in section 9 of this act. The transferable tax credits may be applied to:

(a) Any tax imposed by chapters 363A and 363B of NRS;

(b) Any tax imposed by chapter 368A of NRS;

(c) The gaming license fees imposed by the provisions of NRS 463.370;

(d) Any tax imposed pursuant to chapter 680B of NRS; or

(e) Any combination of the fees and taxes described in paragraphs (a) to (d), inclusive.

2. The Office shall approve an application for a certificate of eligibility for transferable tax credits if the Office finds that the producer of the qualified production qualifies for the transferable tax credits pursuant to subsection 3 and shall calculate the estimated amount of the transferable tax credits pursuant to sections 10, 11 and 12 of this act.

3. To be eligible for transferable tax credits pursuant to this section, a producer must:

(a) Submit an application that meets the requirements of subsection 4;

(b) Provide proof satisfactory to the Office that the qualified production is in the economic interest of the State;

(c) Meet the consent requirements of subsection 1 of section 13 of this act;

(d) Provide proof satisfactory to the Office that 50 percent or more of the funding for the qualified production has been placed in an escrow account or trust account for the benefit of the qualified production;

(e) Provide proof satisfactory to the Office that at least 60 percent of the total qualified expenditures and production costs for the qualified production, including preproduction and postproduction, will be incurred in this State;

(f) At the completion of the qualified production, provide the Office with an audit of the qualified production that includes an itemized report of qualified expenditures and production costs which:

(1) Shows that the qualified production incurred qualified expenditures and production costs in this State of \$500,000 or more; and



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(2) Is certified by an independent certified public accountant in this State who is approved by the Office;

(g) Pay the cost of the audit required by paragraph (f); and

(h) Meet any other requirements prescribed by regulation pursuant to this section.

4. An application submitted pursuant to subsection 3 must contain:

(a) A script, storyboard or synopsis of the qualified production;

(b) The names of the producer, director and proposed cast;

(c) An estimated timeline to complete the qualified production;

(d) A detailed budget for the entire production, including projected expenses incurred outside of Nevada;

(e) Details regarding the financing of the project, including, without limitation, any information relating to a binding financing commitment, loan application, commitment letter or investment letter;

(f) An insurance certificate, binder or quote for general liability insurance of \$1,000,000 or more;

(g) The business address of the producer, which must be an address in this State;

(h) Proof that the qualified production meets any applicable requirements relating to workers' compensation insurance;

(i) Proof that the producer has secured all licenses required to do business in each location in this State at which the qualified production will be produced; and

(j) Any other information required by regulations adopted by the Office pursuant to subsection 8.

5. If the Office approves an application for a certificate of eligibility for transferable tax credits pursuant to this section, the Office shall immediately forward a copy of the certificate of eligibility which identifies the estimated amount of the tax credits available pursuant to section 10 of this act to:

(a) The applicant;

(b) The Department; and

(c) The State Gaming Control Board.

6. Within 14 business days after receipt of an audit provided by the producer pursuant to paragraph (f) of subsection 3, the Office shall determine whether to certify the audit and make a final determination of whether a certificate of transferable tax credits will be issued. If the Office certifies the audit and determines that all other requirements for the transferable tax credits have been met, the Office shall notify the producer that the transferable tax credits will be issued. Within 30 days after the receipt of the notice, the producer shall make an irrevocable declaration of the amount of transferable tax credits that will be



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1 applied to each fee or tax set forth in subsection 1, thereby  
2 accounting for all of the credits which will be issued. Upon receipt  
3 of the declaration, the Office shall issue to the eligible producer a  
4 certificate of transferable tax credits in the amount approved by  
5 the Office for the fees or taxes included in the declaration of the  
6 producer. The producer shall notify the Office upon transferring  
7 any of the transferable tax credits. The Office shall notify the  
8 Department and the State Gaming Control Board of all  
9 transferable tax credits issued, segregated by each fee or tax set  
10 forth in subsection 1, and the amount of any transferable tax  
11 credits transferred.

12 7. An applicant for transferable tax credits pursuant to this  
13 section shall, upon the request of the Executive Director of the  
14 Office, furnish the Executive Director with copies of all records  
15 necessary to verify that the applicant meets the requirements of  
16 subsection 3.

17 8. The Office:

18 (a) Shall adopt regulations prescribing:

19 (1) Any additional requirements to receive transferable tax  
20 credits;

21 (2) Any additional qualified expenditures or production  
22 costs that may serve as the basis for transferable tax credits  
23 pursuant to section 9 of this act;

24 (3) Any additional information that must be included with  
25 an application pursuant to subsection 4;

26 (4) The application review process;

27 (5) Any type of qualified production which, due to obscene  
28 or sexually explicit material, is not eligible for transferable tax  
29 credits; and

30 (6) The requirements for notice pursuant to section 14 of  
31 this act; and

32 (b) May adopt any other regulations that are necessary to  
33 carry out the provisions of sections 2 to 17, inclusive, of this act.

34 9. The Nevada Tax Commission and the Nevada Gaming  
35 Commission:

36 (a) Shall adopt regulations prescribing the manner in which  
37 transferable tax credits will be administered.

38 (b) May adopt any other regulations that are necessary to  
39 carry out the provisions of sections 2 to 17, inclusive, of this act.

40 **Sec. 9. 1. Qualified expenditures and production costs that**  
41 **may serve as a basis for transferable tax credits issued pursuant to**  
42 **section 8 of this act must be purchases of tangible personal**  
43 **property or services from a Nevada business on or after the date**  
44 **on which an applicant submits an application for the transferable**  
45 **tax credits, must be customary and reasonable and must relate to:**



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- (a) *Set construction and operation;*
  - (b) *Wardrobe and makeup;*
  - (c) *Photography, sound and lighting;*
  - (d) *Filming, film processing and film editing;*
  - (e) *The rental or leasing of facilities, equipment and vehicles;*
  - (f) *Food and lodging;*
  - (g) *Editing, sound mixing, special effects, visual effects and other postproduction services;*
  - (h) *The payroll for Nevada residents or other personnel who provided services in this State;*
  - (i) *Payment for goods or services provided by a Nevada business;*
  - (j) *The design, construction, improvement or repair of property, infrastructure, equipment or a production or postproduction facility;*
  - (k) *State and local government taxes to the extent not included as part of another cost reported pursuant to this section;*
  - (l) *Fees paid to a producer who is a Nevada resident; and*
  - (m) *Any other transaction, service or activity authorized in regulations adopted by the Office of Economic Development pursuant to section 8 of this act.*
2. *Expenditures and costs:*
- (a) *Related to:*
    - (1) *The acquisition, transfer or use of transferable tax credits;*
    - (2) *Marketing and distribution;*
    - (3) *Financing, depreciation and amortization;*
    - (4) *The payment of any profits as a result of the qualified production;*
    - (5) *The payment for the cost of the audit required by section 8 of this act; and*
    - (6) *The payment for any goods or services that are not directly attributable to the qualified production;*
  - (b) *For which reimbursement is received, or for which reimbursement is reasonably expected to be received;*
  - (c) *Which provide a pass-through benefit to a person who is not a Nevada resident; or*
  - (d) *Which have been previously claimed as a basis for transferable tax credits,*  
*↪ are not eligible to serve as a basis for transferable tax credits issued pursuant to section 8 of this act.*

**Sec. 10. 1.** *Except as otherwise provided in subsection 3 and sections 11 and 12 of this act, the base amount of transferable tax credits issued to an eligible producer pursuant to section 8 of*



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1 *this act must equal 20 percent of the cumulative qualified*  
2 *expenditures and production costs.*

3 2. *Except as otherwise provided in subsection 3 and section*  
4 *12 of this act, in addition to the base amount calculated pursuant*  
5 *to subsection 1, transferable tax credits issued to an eligible*  
6 *producer pursuant to section 8 of this act must include credits in*  
7 *an amount equal to:*

8 (a) *An additional 2 percent of the cumulative qualified*  
9 *expenditures and production costs if more than 50 percent of the*  
10 *below-the-line personnel of the qualified production are Nevada*  
11 *residents; and*

12 (b) *An additional 2 percent of the cumulative qualified*  
13 *expenditures and production costs if more than 50 percent of the*  
14 *filming days of the qualified production occurred in a county in*  
15 *this State in which, in each of the 2 years immediately preceding*  
16 *the date of application, qualified productions incurred less than*  
17 *\$10,000,000 of direct expenditures.*

18 3. *The Office may:*

19 (a) *Reduce the cumulative amount of transferable tax credits*  
20 *that are calculated pursuant to this section by an amount equal to*  
21 *any damages incurred by the State or any political subdivision of*  
22 *the State as a result of a qualified production that is produced in*  
23 *this State; or*

24 (b) *Withhold the transferable tax credits, in whole or in part,*  
25 *until any pending legal action in this State against a producer or*  
26 *involving a qualified production is resolved.*

27 **Sec. 11. 1. In calculating the base amount of transferable**  
28 **tax credits pursuant to subsection 1 of section 10 of this act:**

29 (a) *Wages and salaries, including fringe benefits, paid to*  
30 *above-the-line personnel must be included in the calculation at a*  
31 *rate of 17 percent.*

32 (b) *Wages and salaries, including fringe benefits, paid to*  
33 *below-the-line personnel:*

34 (1) *For the period beginning January 1, 2014, and ending*  
35 *December 31, 2015, must be included in the calculation at a rate*  
36 *of 17 percent.*

37 (2) *For the period beginning January 1, 2016, and ending*  
38 *December 31, 2016, must be included in the calculation at a rate*  
39 *of 12 percent.*

40 (3) *For the period beginning January 1, 2017, and ending*  
41 *December 31, 2017, must be included in the calculation at a rate*  
42 *of 7 percent.*

43 (4) *For the period beginning January 1, 2018, and ending*  
44 *December 31, 2018, must be included in the calculation at a rate*  
45 *of 2 percent.*





(5) On or after January 1, 2019, must not be included in the calculation.

2. As used in this section, "fringe benefits" means employee expenses paid by an employer for the use of a person's services, including, without limitation, payments made to a governmental entity, union dues, health insurance premiums, payments to a pension plan and payments for workers' compensation insurance.

**Sec. 12.** 1. Except as otherwise provided in this subsection, the Office of Economic Development shall not approve any application for transferable tax credits if approval of the application would cause the total amount of transferable tax credits approved pursuant to section 8 of this act for the current fiscal year to exceed \$35,000,000. If the Office does not approve \$35,000,000 of transferable tax credits during any fiscal year, the remaining amount of transferable tax credits must be carried forward and made available for approval during the immediately following 2 fiscal years.

2. The transferable tax credits issued to any producer for any qualified production pursuant to section 8 of this act:

(a) Must not exceed a total amount of \$6,000,000; and

(b) Expire 4 years after the date on which the transferable tax credits are issued to the producer.

3. For the purposes of calculating qualified expenditures and production costs:

(a) The compensation payable to all producers who are Nevada residents must not exceed 10 percent of the portion of the total budget of the qualified production that was expended in or attributable to any expenses incurred in this State.

(b) The compensation payable to all producers who are not Nevada residents must not exceed 5 percent of the portion of the total budget of the qualified production that was expended in or attributable to any expenses incurred in this State.

(c) The compensation payable to any employee, independent contractor or any other person paid a wage or salary as compensation for providing labor services on the production of the qualified production must not exceed \$1,000,000.

**Sec. 13.** 1. As a condition of approval, a producer that applies for transferable tax credits pursuant to section 8 of this act must consent to:

(a) An audit by the Department or the State Gaming Control Board, or both, depending upon the fees or taxes for which transferable tax credits are issued, to determine whether the producer is in compliance with the requirements for the transferable tax credits; and



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1       (b) *The disclosure of the audit report in the manner set forth*  
2 *in this section.*

3       2. *If the Department or the State Gaming Control Board*  
4 *conducts an audit of a producer to determine whether the*  
5 *producer is in compliance with the requirements for transferable*  
6 *tax credits, the Department or the Board shall, upon request,*  
7 *provide the audit report to the Office of Economic Development.*

8       3. *Until a producer has exhausted all appeals to the*  
9 *Department and the Nevada Tax Commission, or the State*  
10 *Gaming Control Board and the Nevada Gaming Commission, as*  
11 *applicable, relating to an audit, the information contained in the*  
12 *audit report provided to the Office:*

13       (a) *Is confidential and proprietary information of the*  
14 *producer;*

15       (b) *Is not a public record; and*

16       (c) *Must not be disclosed to any person who is not an employee*  
17 *of the Office unless the producer consents to the disclosure.*

18       4. *After a producer has exhausted all appeals to the*  
19 *Department and the Nevada Tax Commission, or the State*  
20 *Gaming Control Board and the Nevada Gaming Commission, as*  
21 *applicable, relating to an audit:*

22       (a) *The audit report provided to the Office is a public record;*  
23 *and*

24       (b) *Upon request by any person, the Executive Director of the*  
25 *Office shall disclose the audit report to the person who made the*  
26 *request, except for any information in the audit report that is not*  
27 *disclosed pursuant to subsection 5.*

28       5. *Before the Executive Director discloses an audit report to*  
29 *the public, a producer may submit a request to the Executive*  
30 *Director to protect from disclosure any information in the audit*  
31 *report which, under generally accepted business practices, would*  
32 *be considered a trade secret or other confidential or proprietary*  
33 *information of the producer. After consulting with the producer,*  
34 *the Executive Director shall determine whether to disclose the*  
35 *information. The decision of the Executive Director is final and is*  
36 *not subject to judicial review.*

37       6. *If the Executive Director does not disclose information in*  
38 *an audit report pursuant to subsection 5, the information:*

39       (a) *Must be redacted by the Executive Director before the audit*  
40 *report is disclosed to the public; and*

41       (b) *Must not be disclosed to any person who is not an employee*  
42 *of the Office unless the producer consents to the disclosure.*

43       **Sec. 14. 1.** *An application for a certificate of eligibility for*  
44 *transferable tax credits submitted pursuant to section 8 of this act*  
45 *must be submitted not earlier than 90 days before the date of*



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1 commencement of principal photography of the qualified  
2 production, if any. The Office of Economic Development shall  
3 prescribe by regulation the procedure for determining the date of  
4 commencement of qualified productions that do not include  
5 photography for the purposes of this section.

6 2. If the Office of Economic Development receives an  
7 application for transferable tax credits pursuant to section 8 of  
8 this act, the Office shall, not later than 30 days before a hearing  
9 on the application, provide notice of the hearing to:

10 (a) The applicant;

11 (b) The Department; and

12 (c) The State Gaming Control Board.

13 3. The notice required by this section must set forth the date,  
14 time and location of the hearing on the application. The date of  
15 the hearing must be not later than 45 days after the Office receives  
16 the completed application.

17 4. The Office shall issue a decision on the application not  
18 later than 30 days after the conclusion of the hearing on the  
19 application.

20 5. The producer of a qualified production shall submit all  
21 accountings and other required information to the Office and the  
22 Department not later than 30 days after completion of the  
23 qualified production. Production of the qualified production must  
24 be completed within 1 year after the date of commencement of  
25 principal photography. If the Office or the Department determines  
26 that information submitted pursuant to this subsection is  
27 incomplete, the producer shall, not later than 30 days after  
28 receiving notice that the information is incomplete, provide to the  
29 Office or the Department, as applicable, all additional information  
30 required by the Office or the Department.

31 6. The Office shall give priority to the approval and  
32 processing of an application submitted by the producer of a  
33 qualified production that promotes tourism in the State of Nevada.

34 **Sec. 15.** (Deleted by amendment.)

35 **Sec. 16.** 1. A producer that is found to have submitted any  
36 false statement, representation or certification in any document  
37 submitted for the purpose of obtaining transferable tax credits or  
38 who otherwise becomes ineligible for transferable tax credits after  
39 receiving the transferable tax credits pursuant to section 8 of this  
40 act shall repay to the Department or the State Gaming Control  
41 Board, as applicable, any portion of the transferable tax credits to  
42 which the producer is not entitled.

43 2. Transferable tax credits purchased in good faith are not  
44 subject to forfeiture unless the transferee submitted fraudulent  
45 information in connection with the purchase.



1     **Sec. 17.** *The Office of Economic Development shall, on or*  
2 *before October 1 of each year, prepare and submit to the Governor*  
3 *and to the Director of the Legislative Counsel Bureau for*  
4 *transmittal to the Legislature an annual report which includes, for*  
5 *the immediately preceding fiscal year:*

6     1. *The number of applications submitted for transferable tax*  
7 *credits;*

8     2. *The number of qualified productions for which*  
9 *transferable tax credits were approved;*

10    3. *The amount of transferable tax credits approved;*

11    4. *The amount of transferable tax credits used;*

12    5. *The amount of transferable tax credits transferred;*

13    6. *The amount of transferable tax credits taken against each*  
14 *allowable fee or tax, including the actual amount used and*  
15 *outstanding, in total and for each qualified production;*

16    7. *The total amount of the qualified expenses and production*  
17 *costs incurred by each qualified production and the portion of*  
18 *those expenses and costs that were incurred in Nevada;*

19    8. *The number of persons in Nevada employed by each*  
20 *qualified production and the amount of wages paid to those*  
21 *persons; and*

22    9. *The period during which each qualified production was in*  
23 *Nevada and employed persons in Nevada.*

24     **Sec. 18.** The Office of Economic Development, the Nevada  
25 Gaming Commission and the Nevada Tax Commission shall each  
26 adopt such regulations as are respectively required to implement the  
27 provisions of sections 2 to 17, inclusive, of this act on or before  
28 December 31, 2013.

29     **Sec. 19.** This act becomes effective upon passage and approval  
30 for the purposes of adopting regulations and performing any other  
31 preparatory administrative tasks that are necessary to carry out the  
32 provisions of this act, and on January 1, 2014, for all other purposes.

