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THIRD REPRINT

S.B. 165

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 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; authorizing the governing body of a city or county to grant abatements of certain permitting and licensing fees imposed or charged by the city or county; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 **Section 8** of this bill authorizes a producer that produces a film, television or
- 2 other media production in this State to apply, on or before December 31, 2017, to
- 3 the Office of Economic Development for a certificate of transferable tax credits.
- 4 **Section 8** requires the Office to approve transferable tax credits for such a producer
- 5 if, in addition to certain other requirements: (1) the production is in the economic
- 6 interest of this State; (2) at least 60 percent of the total qualified expenditures and



* S B 1 6 5 R 3 *

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. Additionally, **section 8** requires that, at the completion of the qualified production, the producer provide the Office with an audit of the qualified production that is certified by an independent certified public accountant in this State who is approved by the Office. **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 12** prohibits the Office from approving any applications for transferable tax credits received on or after January 1, 2018. **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.

Section 15.5 of this bill authorizes the governing body of a city or county to grant to the producer of a qualified production an abatement of all or any percentage of the amount of certain permitting fees and licensing fees imposed by the city or county if the governing body provides by ordinance for a pilot project for the abatement of such fees.

Section 19 of this bill provides that this bill expires on June 30, 2023.

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*



1 *effects editor, sound mixer, steadicam operator, first assistant*
2 *camera operator, second assistant camera operator, digital*
3 *imaging technician, camera operator working with a director of*
4 *photography, electric best boy, grip best boy, dolly grip, rigging*
5 *grip, assistant key for makeup, assistant key for hair, assistant*
6 *script supervisor, set construction foreperson, lead set dresser,*
7 *assistant key for wardrobe, scenic foreperson, assistant*
8 *propmaster, assistant audio mixer, assistant boom person,*
9 *assistant key for special effects and other similar personnel. The*
10 *term does not include above-the-line personnel.*

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

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

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

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

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

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

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

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

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

27 *(d) A television pilot program.*

28 *(e) Interstitial television programming.*

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

32 *(g) A national or regional commercial or series of*
33 *commercials.*

34 *(h) An infomercial.*

35 *(i) An interstitial advertisement.*

36 *(j) A music video.*

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

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

40 *2. The term does not include:*

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

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

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



* S B 1 6 5 R 3 *

- (d) *A political advertisement.*
- (e) *A sporting event.*
- (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, on or before December 31, 2017, 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) The gaming license fees imposed by the provisions of NRS 463.370;*
- (c) Any tax imposed pursuant to chapter 680B of NRS; or*
- (d) Any combination of the fees and taxes described in paragraphs (a), (b) and (c).*

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) 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;*
- (d) 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;*
- (e) 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



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

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

4 (g) Meet any other requirements prescribed by regulation
5 pursuant to this section.

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

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

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

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

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

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

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

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

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

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

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

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

33 (a) The applicant;

34 (b) The Department; and

35 (c) The State Gaming Control Board.

36 6. Within 14 business days after receipt of an audit provided
37 by the producer pursuant to paragraph (e) of subsection 3 and any
38 other accountings or other information required by the Office, the
39 Office shall determine whether to certify the audit and make a
40 final determination of whether a certificate of transferable tax
41 credits will be issued. If the Office certifies the audit and
42 determines that all other requirements for the transferable tax
43 credits have been met, the Office shall notify the producer that the
44 transferable tax credits will be issued. Within 30 days after the
45 receipt of the notice, the producer shall make an irrevocable



* S B 1 6 5 R 3 *

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

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

18 8. *The Office:*

19 (a) *Shall adopt regulations prescribing:*

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

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

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

27 (4) *The application review process;*

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

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

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

35 9. *The Nevada Tax Commission and the Nevada Gaming*
36 *Commission:*

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

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

41 **Sec. 9. 1. *Qualified expenditures and production costs that***
42 ***may serve as a basis for transferable tax credits issued pursuant to***
43 ***section 8 of this act must be purchases of tangible personal***
44 ***property or services from a Nevada business on or after the date***



* S B 1 6 5 R 3 *

1 on which an applicant submits an application for the transferable
2 tax credits, must be customary and reasonable and must relate to:

- 3 (a) Set construction and operation;
- 4 (b) Wardrobe and makeup;
- 5 (c) Photography, sound and lighting;
- 6 (d) Filming, film processing and film editing;
- 7 (e) The rental or leasing of facilities, equipment and vehicles;
- 8 (f) Food and lodging;
- 9 (g) Editing, sound mixing, special effects, visual effects and
10 other postproduction services;
- 11 (h) The payroll for Nevada residents or other personnel who
12 provided services in this State;
- 13 (i) Payment for goods or services provided by a Nevada
14 business;
- 15 (j) The design, construction, improvement or repair of
16 property, infrastructure, equipment or a production or
17 postproduction facility;
- 18 (k) State and local government taxes to the extent not included
19 as part of another cost reported pursuant to this section;
- 20 (l) Fees paid to a producer who is a Nevada resident; and
- 21 (m) Any other transaction, service or activity authorized in
22 regulations adopted by the Office of Economic Development
23 pursuant to section 8 of this act.

24 2. Expenditures and costs:

25 (a) Related to:

- 26 (1) The acquisition, transfer or use of transferable tax
27 credits;
- 28 (2) Marketing and distribution;
- 29 (3) Financing, depreciation and amortization;
- 30 (4) The payment of any profits as a result of the qualified
31 production;
- 32 (5) The payment for the cost of the audit required by
33 section 8 of this act; and
- 34 (6) The payment for any goods or services that are not
35 directly attributable to the qualified production;
- 36 (b) For which reimbursement is received, or for which
37 reimbursement is reasonably expected to be received;
- 38 (c) Which provide a pass-through benefit to a person who is
39 not a Nevada resident; or
- 40 (d) Which have been previously claimed as a basis for
41 transferable tax credits,
42 ➔ are not eligible to serve as a basis for transferable tax credits
43 issued pursuant to section 8 of this act.

44 **Sec. 10. 1.** Except as otherwise provided in subsection 3
45 and sections 11 and 12 of this act, the base amount of transferable



* S B 1 6 5 R 3 *

1 *tax credits issued to an eligible producer pursuant to section 8 of*
2 *this act must equal 15 percent of the cumulative qualified*
3 *expenditures and production costs.*

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

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

13 (b) *An additional 2 percent of the cumulative qualified*
14 *expenditures and production costs if more than 50 percent of the*
15 *filming days of the qualified production occurred in a county in*
16 *this State in which, in each of the 2 years immediately preceding*
17 *the date of application, qualified productions incurred less than*
18 *\$10,000,000 of direct expenditures.*

19 3. *The Office may:*

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

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

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

30 (a) *Wages and salaries, including fringe benefits, paid to*
31 *above-the-line personnel who are not Nevada residents must be*
32 *included in the calculation at a rate of 12 percent.*

33 (b) *Wages and salaries, including fringe benefits, paid to*
34 *below-the-line personnel who are not Nevada residents:*

35 (1) *For the period beginning January 1, 2014, and ending*
36 *December 31, 2015, must be included in the calculation at a rate*
37 *of 12 percent.*

38 (2) *For the period beginning January 1, 2016, and ending*
39 *December 31, 2016, must be included in the calculation at a rate*
40 *of 10 percent.*

41 (3) *For the period beginning January 1, 2017, and ending*
42 *December 31, 2017, must be included in the calculation at a rate*
43 *of 8 percent.*

44 2. *As used in this section, "fringe benefits" means employee*
45 *expenses paid by an employer for the use of a person's services,*



* S B 1 6 5 R 3 *

1 *including, without limitation, payments made to a governmental*
2 *entity, union dues, health insurance premiums, payments to a*
3 *pension plan and payments for workers' compensation insurance.*

4 **Sec. 12.** 1. *Except as otherwise provided in this subsection,*
5 *the Office of Economic Development shall not approve any*
6 *application for transferable tax credits:*

7 (a) *If approval of the application would cause the total amount*
8 *of transferable tax credits approved pursuant to section 8 of this*
9 *act for the current fiscal year to exceed \$20,000,000. If the Office*
10 *does not approve \$20,000,000 of transferable tax credits during*
11 *any fiscal year, the remaining amount of transferable tax credits*
12 *must be carried forward and made available for approval during*
13 *the immediately following 2 fiscal years.*

14 (b) *Received on or after January 1, 2018.*

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

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

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

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

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

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

30 (c) *The compensation payable to any employee, independent*
31 *contractor or any other person paid a wage or salary as*
32 *compensation for providing labor services on the production of the*
33 *qualified production must not exceed \$750,000.*

34 **Sec. 13.** (Deleted by amendment.)

35 **Sec. 14.** 1. *An application for a certificate of eligibility for*
36 *transferable tax credits submitted pursuant to section 8 of this act*
37 *must be submitted not earlier than 90 days before the date of*
38 *commencement of principal photography of the qualified*
39 *production, if any. The Office of Economic Development shall*
40 *prescribe by regulation the procedure for determining the date of*
41 *commencement of qualified productions that do not include*
42 *photography for the purposes of this section.*

43 2. *If the Office of Economic Development receives an*
44 *application for transferable tax credits pursuant to section 8 of*



* S B 1 6 5 R 3 *

1 *this act, the Office shall, not later than 30 days before a hearing*
2 *on the application, provide notice of the hearing to:*

- 3 *(a) The applicant;*
4 *(b) The Department; and*
5 *(c) The State Gaming Control Board.*

6 *3. The notice required by this section must set forth the date,*
7 *time and location of the hearing on the application. The date of*
8 *the hearing must be not later than 60 days after the Office receives*
9 *the completed application.*

10 *4. The Office shall issue a decision on the application not*
11 *later than 30 days after the conclusion of the hearing on the*
12 *application.*

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

24 *6. The Office shall give priority to the approval and*
25 *processing of an application submitted by the producer of a*
26 *qualified production that promotes tourism in the State of Nevada.*

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

28 **Sec. 15.5.** *1. For the purpose of encouraging local*
29 *economic development, the governing body of a city or county*
30 *may, on or before December 31, 2017, grant to a producer of a*
31 *qualified production for which a certificate of eligibility for*
32 *transferable tax credits has been approved pursuant to section 8 of*
33 *this act an abatement of all or any percentage of the amount of*
34 *any permitting fee or licensing fee which the local government is*
35 *authorized to impose or charge pursuant to chapter 244 or 268 of*
36 *NRS.*

37 *2. Before granting any abatement pursuant to this section,*
38 *the governing body of the city or county must provide by*
39 *ordinance for a pilot project for granting abatements to producers*
40 *of qualified productions for which a certificate of eligibility for*
41 *transferable tax credits has been approved pursuant to section 8 of*
42 *this act.*

43 *3. A governing body of a city or county that grants an*
44 *abatement pursuant to this section shall, on or before October 1 of*
45 *each year in which such an abatement is granted, prepare and*



* S B 1 6 5 R 3 *

1 *submit to the Governor and to the Director of the Legislative*
2 *Counsel Bureau for transmittal to the Legislature an annual*
3 *report which includes, for the immediately preceding fiscal year:*

4 *(a) The number of qualified productions produced within the*
5 *jurisdiction of the governing body for which a certificate of*
6 *eligibility for transferable tax credits was approved;*

7 *(b) The number and dollar value of the abatements granted by*
8 *the governing body pursuant to this section;*

9 *(c) The number of persons within the jurisdiction of the*
10 *governing body that were employed by each qualified production*
11 *and the amount of wages paid to those persons; and*

12 *(d) The period during which each qualified production was*
13 *produced within the jurisdiction of the governing body.*

14 **Sec. 16.** 1. *A producer that is found to have submitted any*
15 *false statement, representation or certification in any document*
16 *submitted for the purpose of obtaining transferable tax credits or*
17 *who otherwise becomes ineligible for transferable tax credits after*
18 *receiving the transferable tax credits pursuant to section 8 of this*
19 *act shall repay to the Department or the State Gaming Control*
20 *Board, as applicable, any portion of the transferable tax credits to*
21 *which the producer is not entitled.*

22 2. *Transferable tax credits purchased in good faith are not*
23 *subject to forfeiture unless the transferee submitted fraudulent*
24 *information in connection with the purchase.*

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

30 1. *The number of applications submitted for transferable tax*
31 *credits;*

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

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

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

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

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

40 7. *The total amount of the qualified expenses and production*
41 *costs incurred by each qualified production and the portion of*
42 *those expenses and costs that were incurred in Nevada;*

43 8. *The number of persons in Nevada employed by each*
44 *qualified production and the amount of wages paid to those*
45 *persons; and*



* S B 1 6 5 R 3 *

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

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

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

13 2. This act expires by limitation on June 30, 2023.

