

Legislative Analysis



FILM & DIGITAL MEDIA PRODUCTION INCENTIVES

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Senate Bill 569 (Substitute H-1)

Sponsor: Sen. Randy Richardville

(Enacted as Public Act 291 of 2011)

House Committee: Commerce

Senate Committee: Economic Development

Complete to 12-6-11

A SUMMARY OF SENATE BILL 569 AS REPORTED FROM HOUSE COMMITTEE

The bill would amend the Michigan Strategic Fund (MSF) Act to create the Michigan Film and Digital Media Production Assistance Program. The bill would require the Michigan Film Office (an office in the Michigan Strategic Fund) to provide assistance for state-certified qualified productions through September 30, 2017. Moreover, the bill would allow the Michigan Film Office to create a grant program that would support and promote qualified production facilities.

Senate Bill 569 would create the statutory framework for the granting and distribution of the \$25.0 million GF/GP appropriated for film incentives in the FY 2011-12 General Government budget, among other things. With the elimination of the Michigan Business Tax (MBT) and the creation of the Corporate Income Tax (CIT), numerous tax credits were eliminated, including the film tax credit. As part of the enacted FY 2011-12 budget, film incentives were retained, but with the intent that the film tax credits would be substituted with a grant program.

Although, the program typically is referred to as a "film" incentive program, it would apply to a variety of qualified productions, including motion pictures, documentaries, television series and miniseries, music videos, interactive games (such as video games or wireless games), internet programming and videos, sound recordings, digital animation, and interactive websites, among other things.

The incentive program does not apply to the making of commercials. It also does not apply to live sporting events, televised news or current events, political advertising, radio shows, weather shows, financial market reports, award shows, employee training or in-house corporate advertising productions, or any production that includes obscene matter or an obscene performance.

Briefly put, the bill would:

- Provide for a program to fund specified percentages of direct production expenditures, Michigan personnel expenditures, crew personnel expenditures, and qualified personnel expenditures.

- Establish requirements for applications for assistance, including an application fee, and requirements for agreements between the state and a production company to provide assistance under the program.
- Specify factors the Film Office would have to consider in determining whether to award funding under the program.
- Provide for the protection of confidential information from public disclosure.
- Require the Film Office to produce a performance dashboard on the MSF website.
- Allow the MSF board to use up to 4% of the program's annual appropriation to administer the program.
- Specify legislative findings, declarations, and intent.

To be eligible to apply for funding, an eligible production company would have to have direct production expenditures and/or Michigan personnel expenditures of at least \$100,000. An eligible production company could not be delinquent in a tax or other obligation owed to Michigan, or be owned or under common control of an entity that was delinquent. For state-certified qualified production expenditures after September 30, 2011, an agreement under the bill would have to provide for funding equal to the sum of following:

- For direct production expenditures: 27%.
- For Michigan personnel expenditures: 32% after September 30, 2011, and before January 1, 2015; and 27% after December 31, 2014.
- For crew personnel expenditures: 25% after September 30, 2011, and before January 1, 2013; 20% after December 31, 2012, and before January 1, 2014; 15% after December 31, 2013, and before January 1, 2015; and 10% after December 31, 2014.
- For qualified personnel expenditures: 27% after September 30, 2011, and before January 1, 2015; and 12% after December 31, 2014.
- In addition to the expenditures described above, 3% of direct production expenditures and Michigan personnel expenditures at a qualified facility or postproduction facility for a qualified production produced at the facility.

Payments and compensation for all producers of a qualified production residing in Michigan could not exceed 10% of the direct production expenditures and qualified personnel expenditures for the qualified production. Payments and compensation for all producers of a qualified production who were not residents of Michigan could not exceed 5% of the direct production expenditures and Michigan personnel expenditures for the qualified production.

Criteria for Awarding Funding

In determining whether to award funding under the program, the Michigan Film Office would consider all of the following:

- The potential that, in the absence of funding, the qualified production will be produced elsewhere.

- The extent to which the production could have the effect of promoting Michigan as a tourist destination.
- The extent to which the production could promote economic development or job creation in the state.
- The extent to which state funding will attract private investment for the qualified productions in the state.
- The record of the eligible production company in completing commitments.
- The extent to which the production will employ Michigan residents.

Definitions

The following are bill's definitions of some of the key terms used in the bill and the above summary.

"Direct production expenditure" would mean a development, preproduction, production, or postproduction expenditure made in Michigan directly attributable to the production, development, or distribution of a qualified production that is a transaction subject to taxation in Michigan. It would not include out-of-state production costs that are made in Michigan, even if the costs are passed through a third-party company in Michigan, or payments made by an eligible production company to its parent company, affiliate, subsidiary, or joint venture partner, except where those payments are for transactions entered into pursuant to arm's length negotiations and that reflect a commercially reasonable price for the goods and services purchased. A direct production expenditure would have to have true economic substance within Michigan. "Direct production expenditure" would not include a prize payable to participants in a game show; an expenditure for entertainment, amusement, or recreation; or an expenditure of more than \$2,500 for the purchase of artwork or jewelry used in a production. The term would not include a Michigan personnel expenditure, a qualified personnel expenditure or a crew personnel expenditure.

The term would include payments to vendors doing business in Michigan to purchase or use tangible personal property in producing or distributing the qualified production or to purchase services relating to the production, development, or distribution of the qualified production, including all of the following:

- Production and postproduction work, equipment, and software; development work; set design, construction, and operations; props; lighting; wardrobe; makeup and makeup accessories; photography; sound synchronization; special, visual, audio, and digital effects; film processing; music; sound mixing; editing; interactive game development and programming; and related services and materials.
- Use of facilities or equipment, use of soundstages or studios, location fees, and related services and materials.
- Catering, food, lodging, and related services and materials.
- Use of vehicles, including chartered aircraft based in Michigan, for transportation in Michigan directly attributable to production of a qualified production, but not including the chartering of aircraft for transportation outside of Michigan.

- Commercial airfare, if purchased through a travel agency or travel company based in Michigan, for travel to and from Michigan or within the state, directly attributable to production, development, or distribution of a qualified production.
- Insurance coverage or bonding if purchased from an insurance agent based in Michigan.
- Interest on a loan, if the entity from which the financing is obtained is a public, private, or institutional entity with the requisite level of physical presence in Michigan that is not related to or affiliated with the eligible production company or any above-the-line personnel or cast members, and whose principal business activity is the lending of money to individuals and businesses.
- Other expenditures for production of a qualified production in accordance with generally accepted entertainment industry practices.

"Michigan personnel expenditure" would mean an expenditure made in Michigan directly attributable to the production or development of a qualified production that is a transaction subject to tax in the state and is a payment for compensation payable to below-the-line crew members who are residents of Michigan and to above-the-line personnel who are residents of Michigan, not to exceed \$2 million for any one employee or contractual or salaried employee for the production of a qualified production. Personnel expenditures would include both the payment of wages, benefits, and fees; and the payment to a personal services corporation or a professional employer organization for the services of a performing artist or crew member if the PSC or PEO is subject to taxation in Michigan on the portion of the payment qualifying for funding and the payments received by the performing artist or crew member that are subject to taxation under the Income Tax Act and are withheld and paid to Michigan.

"Qualified personnel expenditure" would mean an expenditure made in Michigan directly attributable to the production or development of a qualified production that is a transaction subject to taxation in Michigan and is a payment or compensation payable to nonresident above-the-line personnel, talent, management, or labor not to exceed \$2 million for any one employee or contractual or salaried employee. Qualified personnel expenditures would include both payment of wages, benefits, or fees; and payment to a PSC or PEO for the services of a performing artist or crew member, subject to the same criteria as required for a Michigan personnel expenditure.

"Crew personnel expenditure" means an expenditure made in Michigan directly attributable to the production or development of a qualified production that is a transaction subject to taxation in the state and is a payment or compensation for nonresident below-the-line crew, talent, management, or labor, not to exceed \$2 million for any one employee or contractual or salaried employee of a qualified production, including both (1) the payment of wages, benefits, or fees for talent, management, or labor and (2) payment to a personal services corporation or professional employer organization for the services of a performing artist or crew member under certain specified conditions.

The term "above the line personnel" refers to producers, directors, writers, actors, and similar personnel whose compensation is negotiated in advance. "Below the line" personnel are those hired after the production begins and before it is completed and includes a wide range of occupations listed in the bill, including personnel involved in cameras, lighting, sound, sound effects, wardrobe, makeup, and editing.

FISCAL IMPACT:

As mentioned earlier, Senate Bill 569 would create the statutory framework (described above) for the granting and distribution of the \$25.0 million GF/GP appropriated for film incentives in the FY 2011-12 General Government budget, among other things. With the elimination of the Michigan Business Tax (MBT) and the creation of the Corporate Income Tax (CIT), numerous tax credits were eliminated, including the film tax credit. As part of the enacted FY 2011-12 budget, film incentives were retained, but with the intent that the film tax credits would be substituted with a grant program.

The bill would create the Michigan Film and Digital Media Production Assistance Program which would be administered by the Michigan Film Office (an office in the Michigan Strategic Fund). Moreover, the bill would allow the Michigan Film Office to create a grant program that would support and promote qualified production facilities. The programs would be funded by the Michigan Film Promotion Fund. The bill would direct that the \$25.0 million GF/GP appropriated for film incentives in the FY 2011-12 budget would be deposited in the fund. It should be noted that the \$25.0 million GF/GP was considered "one-time" appropriations in the FY 2011-12 budget and FY 2012-13 funding is uncertain at this time.

In addition, the bill would require an application fee of 0.2% of the funding requested (\$200 minimum, \$5,000 maximum). All application fees received would be deposited in the fund for expenditure for purposes authorized by the Michigan Film and Digital Media Production Assistance Program. Without the help of historical data, estimating application fee collections is not possible. Under statute, funds remaining in the Michigan Film Promotion Fund at the close of the fiscal year remain in the fund.

The Michigan Film Office would have the responsibility of creating the Michigan Film and Digital Media Production Assistance Program, collecting and reporting data, and the developing and maintaining a performance dashboard on a publicly accessible website. Despite the costs associated with the administration and reporting requirements, the Michigan Film Office would be authorized, pursuant to a determination by the MSF board, to use up to 4.0% of the appropriated amount for film incentives and grants to offset the administration and operation of the program.

The bill would create a civil penalty those applicants that submit fraudulent or false information on the film incentive application. The civil penalty would equal the amount of funding provided to the applicant. Any civil fines collected under this bill would be deposited in the Michigan Film Promotion Fund. The amount of revenue from civil fines would depend on the number of violations in any given year.

Finally, production projects receiving film incentive funding would be required to include a reference to the Pure Michigan campaign. There would likely be a positive, albeit indeterminate, fiscal impact from the increase in Pure Michigan marketing.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.