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BILL  ANALYSIS

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Senate Bill 569 (as enacted)
Sponsor: Senator Randy Richardville
Senate Committee: Economic Development
House Committee: Commerce

PUBLIC ACT 291 of 2011

Date Completed: 3-18-12

CONTENT

The bill amended the Michigan Strategic Fund (MSF) Act to do all of the following:

- Require the Michigan Film Office to create and operate the Film and Digital Media Production Assistance Program to provide assistance for State-certified qualified productions through September 30, 2017.
- Provide for the Program to fund specified percentages of direct production expenditures, Michigan personnel expenditures, crew personnel expenditures, and qualified personnel expenditures.
- Require at least 5% of the funding to be awarded for postproduction expenditures.
- Establish requirements for applications for assistance, including an application fee, and agreements to provide assistance under the Program.
- Specify factors the Film Office must 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.
- Require the MSF to transmit a status report to the Legislature quarterly rather than annually.
- Require the MSF to submit the quarterly status report and an annual audit to the Senate and House Appropriations Subcommittees on General Government, and make them available on the MSF website.
- Specify legislative findings, declarations, and intent.

The bill took effect on December 21, 2011.

Film and Digital Media Production Assistance Program

The bill requires the Michigan Film Office to create and operate the Film and Digital Media Production Assistance Program, which may provide funds to eligible production companies for direct production expenditures, Michigan personnel expenditures, crew personnel expenditures, or qualified personnel expenditures for State-certified qualified productions. If the Film Office receives applications that exceed what it can award in any year, it may prioritize an application for funding in the subsequent year. The Film Office may not award funding after September 30, 2017.

The Act lists activities the Film Office may undertake. The bill includes creating and operating the Film and Digital Media Production Assistance Program to encourage film and digital media production throughout the State. The Act also lists sources from

which the State Treasurer may receive money for deposit into the Michigan Film Promotion Fund. The bill includes funds appropriated to create and operate the Program, and requires the MSF to transfer to and deposit in the Fund all money appropriated to the MSF for film incentive funding for fiscal year 2011-12.

The bill contains the definitions described below.

"Eligible production company" means an entity in the business of producing qualified productions or, for interactive games, in the business of developing interactive games, but does not include an entity that is more than 30% owned, affiliated, or controlled by an entity or individual who is in default on a loan made by the State, a loan guaranteed by the State, or a loan made or guaranteed by any other state. For an interactive game, an eligible production company does not have to possess ownership of or legal control over all of the intellectual property rights or other rights necessary to complete the qualified production in its entirety or be the same entity that distributes or publishes the interactive game.

"Direct production expenditure" means a development, preproduction, production, or postproduction expenditure made in Michigan directly attributable to the production or development of a qualified production that is a transaction subject to taxation in Michigan. It does 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 must have true economic substance within Michigan. "Direct production expenditure" does 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 does not include a Michigan personnel expenditure, a qualified personnel

expenditure or a crew personnel expenditure.

"Direct production expenditure" includes payments to vendors doing business in Michigan to purchase or use tangible personal property in producing the qualified production or to purchase services relating to the production or development 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 Michigan or within the State, directly attributable to production or development 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" 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 Michigan and is a payment or compensation to below-the-line crew for below-the-line crew members who are Michigan residents and to above-the-line personnel for above-the-line personnel who are Michigan residents, not to exceed \$2.0 million for any one employee or contractual or salaried employee who performs service in Michigan for the production of a qualified production for payment of wages, benefits, or fees; and payment to a personal services corporation (PSC) or professional employer organization (PEO) 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 are subject to taxation under the Income Tax Act and are withheld and paid to Michigan.

"Qualified 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 Michigan and is a payment or compensation for nonresident above-the-line personnel, talent, management, or labor, not to exceed \$2.0 million for any one employee or contractual or salaried employee of a qualified production. Qualified personnel expenditures include both payment of wages, benefits, or fees for talent, management, or labor; 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 expenditures" 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 Michigan and is a payment or compensation for nonresident below-the-line crew, talent, management, or labor, not to exceed \$2.0 million for any one employee or contractual or salaried employee of a qualified production. The term includes both payment of wages, benefits, or fees for talent, management, or labor; 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.

"State certified qualified production" means single media or multimedia entertainment content created in whole or in part in Michigan for distribution or exhibition to the general public in two or more states by any means and media in any digital media format, film, or video tape. The term includes any trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in a production. The bill describes a number of things the term does not include, such as a production that includes obscene matter or an obscene performance, televised news or current events, live sporting events, and political advertising, and commercials.

"Above the line personnel" means a producer, director, writer, actor other than extras, or other similar personnel whose compensation is negotiated before the start of the production.

"Below the line crew" means people employed by an eligible production company for State certified qualified production expenditures made after production begins and before production is completed.

Program Responsibilities; Funding Caps

Under the Film and Digital Media Production Assistance Program, funding may be provided only to reimburse direct production expenditures, Michigan personnel expenditures, crew personnel expenditures, or qualified personnel expenditures. To be eligible to apply for funding, an eligible production company must have direct production expenditures and/or Michigan personnel expenditures of at least \$100,000. An eligible production company may not be delinquent in a tax or other obligation owed to the State or be owned or under common control of an entity that is delinquent to the State. For State-certified qualified production expenditures after September 30, 2011, an agreement under the bill must provide for funding equal to the sum of the amounts shown in Table 1.

Table 1

Expenditures	Date	Percent
Direct production expenditures	10/1/11-9/30/17	27%
MI personnel expenditures	10/1/11-12/31/14 1/1/15-9/30/17	32% 27%
Crew personnel expenditures	10/1/11-12/31/12 1/1/13-12/31/13 1/1/14-12/31/14 1/1/15-9/30/17	25% 20% 15% 10%
Qualified personnel expenditures	10/1/11-12/31/14 1/1/15-9/30/17	27% 12%

In addition to the expenditures shown in Table 1, an agreement must provide for the funding of 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 may not exceed 10% of the direct production expenditures and Michigan personnel expenditures for the qualified production. Payments and compensation for all producers of a qualified production who are not residents of Michigan may not exceed 5% of the direct production expenditures and Michigan personnel expenditures for the qualified production.

A television show may submit an application for no more than two successive seasons, regardless of whether the successive seasons have been ordered. The successive season's direct production expenditure, Michigan personnel expenditure, nonresident above-the-line personnel expenditure, and nonresident below-the-line crew expenditure amounts must be based on the current season's estimated expenditures. When each season's production is complete, a television show may submit an application for one additional season.

As a separate and distinct part of the Program, the Film Office may create a program to support and promote qualified facilities and other infrastructure throughout Michigan directly.

At least 5% of the funding awarded under the Program must be awarded for postproduction expenditures for qualified productions.

The bill defines "qualified facility" as a permanent facility within Michigan equipped for the production of motion pictures, television shows, or digital media that includes all of the following:

- More than one soundstage.
- Not less than 3,000 square feet of contiguous, column-free space for production activities with a height of at least 12 feet.
- Any grid and sufficient built-in electric services for shooting without the need of portable electric generators.

A qualified facility also must have been a qualified film and digital media infrastructure project for which an investment expenditure certificate was issued under the Michigan Business Tax Act, or the location of a State-certified qualified production for which a postproduction certificate of completion was issued under that Act.

"Postproduction expenditure" means a direct expenditure for editing, foley recording, automatic dialogue replacement, sound editing, special or visual effects including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling, or addition of sound or visual effects. The term includes direct expenditures for advertising, marketing, or related expenses.

Application for Funding & Agreement

An eligible production company intending to produce a qualified production in Michigan may apply to the Michigan Film Office for funding under the Film and Digital Media Production Assistance Program. The request must be submitted in a form prescribed by the Film Office and be accompanied by an application fee equal to 0.2% of the funding requested, but not less than \$200 and not more than \$5,000, and all of the information and records requested by the Film Office. Application fees must be deposited in the Michigan Film Promotion Fund.

The bill includes procedural and content requirements for an application and an agreement awarding funding, including a requirement that the eligible production company begin work in Michigan on the identified production within 90 days of the date of the agreement. Upon the company's

request based on good cause, the Film Office may extend the period for up to an additional 90 days.

An agreement for funding must require qualified productions to include certain information promoting the "Pure Michigan" tourism campaign or any successor campaign.

An agreement must require the company to give the Film Office the information and independent certification it deems necessary to verify direct production expenditures, Michigan personnel expenditures, crew personnel expenditures, qualified personnel expenditures, and eligibility for funding under the Program.

A funding agreement also must require the qualified production not to depict obscene matter or an obscene performance.

Awarding Funding

In determining whether to award funding under the Program, the Film Office must consider all of the following:

- The potential that, in the absence of funding, the qualified production will be produced in a location other than Michigan.
- The extent to which the qualified production may have the effect of promoting Michigan as a tourist destination.
- The extent to which the qualified production may have the effect of promoting economic development or job creation in Michigan.
- The extent to which State funding will attract private investment for the production of qualified productions in Michigan.
- The record of the eligible production company in completing commitments to engage in a qualified production.
- The extent to which the qualified production will employ Michigan residents.

If the Film Office determines that an eligible production company has complied with the terms of an agreement, the Office must award funding.

A person who willfully submits information that he or she knows to be fraudulent or

false is liable for a civil penalty equal to the amount of funding provided to that person under the Program, in addition to any other penalties provided by law. This penalty must be deposited in the Michigan Film Promotion Fund.

Protected Information

Information, records, or other data received, prepared, used, or retained by the Film Office under the bill that are submitted by an eligible production company and considered by the applicant and acknowledged by the Film Office as confidential are not subject to the disclosure requirements of the Freedom of Information Act.

Information, records, or other data are considered confidential only to the extent that the information or records describe the commercial and financial operations or intellectual property of the company, the information or records have not been publicly disseminated at any time, and disclosure of the information or records may put the company at a competitive disadvantage. The information or records protected from disclosure do not include the portion that includes any expenses that qualify under the bill as direct production expenditures or personnel expenditures.

Dashboard & Other Information

By March 1, 2012, the Film Office must produce a performance dashboard for the assistance authorized under the bill. The performance dashboard must be made available by the Film Office on the MSF website and be updated at least annually. The performance dashboard must include the following measures:

- Direct and indirect economic impact in Michigan of the assistance authorized by the bill.
- Direct and indirect job creation attributable to that assistance.
- Direct and indirect private investment in Michigan attributable to the assistance.
- Any other measures considered relevant by the Film Office or the Michigan Film Advisory Council.
- The name of each eligible production company and the amount of each incentive dispersed for each State-certified qualified production.

At the end of each fiscal year, the Film Commissioner must certify the total amount of unclaimed certificates of completion, agreements in which work has not commenced on time as required by the bill, and agreements for qualified productions the Commissioner reasonably believes will not be completed. Funding allocated for those qualified productions may be reallocated.

Administration of the Program

The MSF board may authorize the use of money appropriated for the Program for its administration. The board may not use more than 4% of the annual appropriation for administering the Program.

MSF Status Report & Audit

Under the Act, the MSF has been required to transmit to the Legislature an annual status report of its activities. Under the bill, the MSF must transmit a status report each quarter, rather than annually.

The Act requires the Auditor General or a certified public accountant (CPA) appointed by the Auditor General annually to conduct and remit to the Legislature an audit of the MSF. In conducting the audit, the Auditor General or CPA must have access to all MSF records, whether or not confidential. Each audit must include a determination of whether the MSF is likely to be able to continue to meet its obligations, including a report on the status of outstanding loans and agreements made by the MSF.

The bill requires the MSF to transmit the status report and audit to the chairperson and minority vice-chairperson of the Senate and House Appropriations Subcommittees on General Government. The MSF also must make the status report and audit available to the public on its website.

Legislative Finding, Declaration, & Intent

In the section of the Act added by the bill, the bill states, "The legislature finds and declares that funding authorized under this section to encourage diversification of the economy, to encourage film production, to encourage investment, and to encourage the creation of jobs in this state is a public purpose and of paramount concern in the interest of the health, safety, and general

welfare of the citizens of this state. It is the intent of the legislature that the economic benefits, film production, investment, and the creation of jobs resulting from this section shall accrue substantially within this state."

MCL 125.2009 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill provides for the expenditure of the \$25.0 million in General Fund/General Purpose (GF/GP) revenue appropriated as one-time funding for a film incentive program in FY 2011-12 by Article VIII of Public Act 63 of 2011. The bill establishes the Film Production Assistance Program within the Michigan Film Office (an existing office within the Michigan Strategic Fund) as a temporary program that will sunset on September 30, 2016. It also expands the size and uses of the Michigan Film Promotion Fund by providing for the \$25.0 million GF/GP appropriation for FY 2011-12 to be deposited into the Fund and directing that awards for the Film Production Assistance Program and the administrative costs of the Program be paid from the Fund. Any balance in the Michigan Film Promotion Fund carries forward in that Fund and does not lapse to the General Fund.

The money available for administration of the Film Office is increased due to the use of up to 4% of the annual appropriation for the Film Production Assistance Program for administration of the Program. In FY 2011-12, this allows up to \$1.0 million of the \$25.0 million appropriation to be used for administration at the discretion of the Michigan Strategic Fund board. The bill also establishes an application fee of 0.2% of the funding requested, with a minimum fee of \$200 and a maximum fee of \$5,000. Fee revenue will be deposited into the Michigan Film Promotion Fund and be available for the purposes of that Fund, including administration and production awards. Revenue from these fees will depend on the number and size of applications submitted.

The Michigan Film Office also has an appropriation in the Michigan Strategic Fund budget for FY 2011-12. The budget includes an appropriation of \$203,800 GF/GP for the Michigan Film Office and \$563,100 in

spending authority for the Michigan Film Promotion Fund that will be supported by the fees provided in the bill and any balance available in the Film Promotion Fund. The closing balance for the Michigan Film Promotion Fund was \$532,239 at the end of FY 2010-11.

The Michigan Film Office has additional responsibilities under the bill, including creating and operating the Film Production Assistance Program; creating and posting on the internet a performance dashboard that will report at least annually on several required indicators of program performance, including job creation; monitoring compliance of productions with award agreements; making payments after it is determined that a production has complied with an agreement; and disclosing on its website the identity and amount of all gifts, grants, loans, or other aid to the Office from any person or entity. The Film Office also is authorized to conduct a separate program to directly support and promote qualified production facilities.

The bill also increases the frequency of the Michigan Strategic Fund activity report from annually to quarterly, which will increase costs by an unknown amount.

The bill prescribes a civil penalty for people who willfully submit fraudulent or false information. The penalty will be equal to the amount of funding provided under the Film Production Assistance Program. Any revenue from this civil penalty will be deposited in the Michigan Film Promotion Fund.

Fiscal Analyst: Elizabeth Pratt
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.