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Senate Bill 569 (as introduced 7-13-11)
Sponsor: Senator Randy Richardville
Committee: Economic Development

Date Completed: 10-26-11

CONTENT

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

- **Require the Michigan Film Office to create and operate the Film Production Assistance Program to provide assistance for State-certified qualified productions through September 30, 2016.**
- **Provide for the Program to fund specified percentages of direct production expenditures, personnel expenditures, and qualified personnel expenditures.**
- **Establish requirements for applications for assistance, including an application fee, and agreements 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.**

Film Production Assistance Program

The bill would require the Michigan Film Office to create and operate the Film Production Assistance Program, which could provide funds to eligible production companies for direct production expenditures, personnel expenditures, or qualified personnel expenditures for State-certified qualified productions. If the Film Office received applications that would exceed what it could award in any year, it could prioritize an application for funding in the subsequent year. The Film Office could not award funding after September 30, 2016.

The bill would include creating and operating the Film Production Assistance Program in the list of things the Film Office may do. The bill also would include funds appropriated to create and operate the Program in the list of sources from which the State Treasurer may receive money for deposit into the Michigan Film Promotion Fund.

"Eligible production company" would mean an entity in the business of producing qualified productions or, for interactive games, in the business of developing interactive games, but would 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 would 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" 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 qualified personnel expenditure or a personnel expenditure.

"Direct product expenditure" 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.
- Expenditures for distribution, including preproduction, production, or postproduction costs relating to the creation of trailers, marketing videos, commercials, point-of-purchase videos, and content created on film or digital media; and the purchase of equipment relating to the duplication or market distribution of any content created or produced 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.

"Personnel expenditure" would mean an 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 and is a payment or compensation for above-the-line personnel, 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. Personnel expenditures would include both payment of wages, benefits, or fees for talent, management, or labor; 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 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, development, or distribution of a qualified production that is a transaction subject to taxation in Michigan and is a payment or compensation payable to below-the-line crew for below-the-line crew members who are residents of Michigan, not to exceed \$2.0 million for any one employer or contractual or salaried employee who performs service in Michigan for the production of a qualified production. 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 personnel expenditure.

"State certified qualified production" would mean 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 would include 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 would 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.

"Above the line personnel" would mean 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" would mean 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 Production Assistance Program, funding could be provided only to reimburse direct production expenditures, personnel expenditures, or qualified personnel expenditures. To be eligible to apply for funding, an eligible production company would have to have direct production expenditures of at least \$50,000. 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 qualified personnel expenditures: 30% after September 30, 2011, and before January 1, 2015; and 25% after December 31, 2014.
- For direct production expenditures: 27%.
- For personnel expenditures: 27% after September 30, 2011, and before January 1, 2013; 22% after December 31, 2012, and before January 1, 2014; 17% after December 31, 2013, and before January 1, 2015; and 12% after December 31, 2014.
- In addition to the expenditures described above, 5% of direct production expenditures and qualified personnel expenditures at a qualified facility.
- In addition to the first three expenditures, 2% of direct production expenditures and qualified personnel expenditures at a 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 qualified personnel expenditures for the qualified production.

If the Film Office awarded funding for a television show, applications in subsequent years for the same show would have to receive a priority for funding.

As a separate and distinct part of the Program, the Film Office could create a program to support and promote qualified production facilities directly.

"Facility" would mean an entity within Michigan equipped for the production of motion pictures or television shows that includes all of the following:

- One, two, or three soundstages.
- Between 3,000 and 20,000 square feet of contiguous, column-free space for production activities, with a height of at least 12 feet under any permanent grid.
- A permanent grid and sufficient built-in electric service for shooting without the need of portable electric generators.
- A minimum sound proof with a noise criteria of at least 30.

"Qualified facility" would mean a facility within Michigan equipped for the production of motion pictures or television shows that includes all of the following:

- More than three soundstages.
- At least 20,000 square feet of contiguous, column-free space for production activities, with a height of at least 16 feet under any permanent grid.
- A permanent grid and sufficient built-in electric service for shooting without the need of portable electric generators.
- A minimum sound proof with a noise criteria of at least 30.

Application for Funding & Agreement

An eligible production company intending to produce a qualified production in Michigan could apply to the Michigan Film Office for funding under the Film Production Assistance Program. The request would have to 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 would have to 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 could extend the period for up to an additional 90 days.

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

An agreement for funding also would have to require that the qualified production not depict obscene matter or an obscene performance.

Awarding Funding

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

- The potential that, in the absence of funding, the qualified production would be produced in a location other than Michigan.
- The extent to which the qualified production could have the effect of promoting Michigan as a tourist destination.
- The extent to which the qualified production could have the effect of promoting economic development or job creation in Michigan.
- The extent to which State funding would 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.

If the Film Office determined that an eligible production company had complied with the terms of an agreement, the Office would have to award funding.

A person who willfully submitted information that he or she knew to be fraudulent or false would be 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 would have to 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 were submitted by an eligible production company and considered by the applicant and acknowledged by the Film Office as confidential would not be subject to the disclosure requirements of the Freedom of Information Act.

Information, records, or other data would be considered confidential only to the extent that the information or records described the commercial and financial operations or intellectual property of the company, the information or records had not been publicly disseminated at any time, and disclosure of the information or records could put the company at a competitive disadvantage. The information or records protected from disclosure would not include that portion that included any expenses that qualified under the bill as direct production expenditures or personnel expenditures.

Dashboard & Other Information

By March 1, 2012, the Film Office would have to produce a performance dashboard for the assistance authorized under the bill. The performance dashboard would have to be made available by the Film Office on the MSF website and be updated at least annually. The performance dashboard would have to 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.

At the end of each fiscal year, the Film Commissioner would have to certify the total amount of unclaimed certificates of completion, agreements in which work had not commenced on time as required by the bill, and agreements for qualified productions the Commissioner reasonably believed would not be completed. Funding allocated for those qualified productions could be reallocated.

Administration of the Program

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

Legislative Finding, Declaration, & Intent

In the section of the Act proposed 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 125.2029a et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would provide 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 would establish the Film Production Assistance Program within the Michigan Film Office (an existing office within the Michigan Strategic Fund) as a temporary program that would sunset on September 30, 2016. It would expand 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 proposed 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 would increase due to the proposed 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 would allow 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 would establish 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 would be deposited into the Michigan Film Promotion Fund and would be available for the purposes of that Fund, including administration and production awards. Revenue from these fees would 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 would 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 \$456,141 at the end of FY 2009-10.

The Michigan Film Office would have additional responsibilities under the bill, including creating and operating the Film Production Assistance Program; creating and posting on the internet a performance dashboard that would report at least annually on several required indicators of program performance, including job creation; monitoring compliance of productions with award agreements; and making payments after it was determined that a production had complied with an agreement. The Film Office also would be authorized to conduct a separate program to directly support and promote qualified production facilities.

Participants receiving production incentive funds would be required to include brief animations in their productions promoting the Pure Michigan tourism campaign. The value of these advertisements to the State is unknown.

The bill would prescribe a civil penalty for people who willfully submitted fraudulent or false information. The penalty would be equal to the amount of funding provided under the Film Production Assistance

Program. Any revenue from this civil penalty would 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.