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Senate Bill 1103 (as introduced 10-1-14)  
Sponsor: Senator Randy Richardville  
Committee: Economic Development

Date Completed: 10-20-14

## **CONTENT**

**The bill would amend the Michigan Strategic Fund Act to do the following with respect to the Film and Digital Media Production Assistance Program:**

- **Delete a provision prohibiting funding under the Program after September 30, 2017.**
- **Revise the funding caps for State-certified qualified production expenditures after December 31, 2014.**
- **Delete "Michigan personnel expenditures" and "crew personnel expenditures" from the costs for which the Program may provide assistance, but retain the authorization for funding direct production expenditures and qualified personnel expenditures.**
- **Delete a \$2.0 million per-employee limit in the definition of "qualified personnel expenditure" (compensation to nonresident above-the-line personnel).**
- **Delete provisions limiting payments and compensation to 10% of certain expenditures, for all producers of a qualified production living in Michigan, and to 5% of those expenditures for all producers who are not Michigan residents.**
- **Prohibit expenditures for above-the-line personnel from exceeding 25% of the total of direct expenditures and qualified personnel expenditures, and prohibit expenditures for below-the-line personnel from exceeding 50% of that total.**

**The bill also would require personal service corporations or professional employer organizations for the services of above-the-line personnel receiving payments qualifying for funding, to be organized under Michigan law.**

The Act requires the Michigan Film Office to create and operate the Film and Digital Media Production Assistance Program. The Program may provide funds to eligible production companies for direct production expenditures, Michigan personnel expenditures, crew personnel expenditures, and qualified personnel expenditures for State-certified qualified productions.

The bill would delete Michigan personnel expenditures and crew personnel expenditures from the items authorized for funding. Both terms mean an expenditure made in this State directly attributable to the production or development of a qualified production that is a transaction subject to taxation in this State and is a payment or compensation, not to exceed \$2.0 million for any one employee or contractual or salaried employee of a qualified production. "Crew personnel expenditure" refers to a payment or compensation for nonresident below-the-line crew, talent, management, or labor. "Michigan personnel expenditure" refers to a payment or compensation to below-the-line crew and above-the-line personnel who are residents of Michigan.

The bill would delete the definitions and references to those expenditures from other provisions in the Act.

The bill also would revise the definition of "qualified personnel expenditure", which is the same as the definition of "crew personnel expenditure" but applies to nonresident above-the-line personnel, talent, management, or labor. The bill would delete the limit of \$2.0 million for any one employee or contractual or salaried employee of a qualified production. The bill also would include per diem and lodging in the term.

Currently, for State-certified qualified production expenditures after September 30, 2011, an agreement to provide film and digital media production assistance under the Act must provide for funding a specified percentage of the expenditures, and the funding must equal 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%

Under the bill, an agreement after December 31, 2014, instead would have to provide for funding equal to 25% of direct production expenditures and qualified personnel expenditures.

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. The bill would retain this requirement but would refer to qualified personnel expenditures, rather than Michigan personnel expenditures.

Currently, 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. The bill would delete those provisions.

The bill would prohibit expenditures for above-the-line personnel from exceeding 25% of the total of direct expenditures and qualified personnel expenditures. Expenditures for below-the-line personnel could not exceed 50% of the total of direct expenditures and qualified personnel expenditures. Direct expenditures could not exceed 25% of the total of direct expenditures and qualified personnel expenditures.

The Act 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. "Direct production expenditure" does not include a Michigan personnel expenditure, a qualified personnel expenditure, or a crew personnel expenditure.

"State certified qualified production" or "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 term does not include a production that includes obscene matter or an obscene performance; a production that primarily consists of televised news, current events, live sporting events, or political advertising; commercials; or various other types of productions.

"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. The definition includes a number of specific types of positions. Under the bill, the term also would include stunt people.

"Qualified facility" means a permanent facility within Michigan equipped for the production of motion pictures, television shows, or digital media that includes 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; and any grid and sufficient built-in electric services for shooting without the need of portable electric generators.

"Postproduction facility" means a permanent facility within Michigan equipped for the postproduction of motion pictures, television shows, or digital media production that includes at least 3,000 square feet of contiguous space and at least eight work stations. Both a qualified facility and a postproduction 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.

## **FISCAL IMPACT**

The bill would have no impact on State or local revenue or expenditure, but would change the expenses that may be reimbursed by funds already appropriated for the Film and Digital Media Production Assistance Program. After December 31, 2014, subsidies under the Program would be required to reimburse 25% of direct production expenses and qualified personnel expenses. Under current law, 27% of direct production expenses are reimbursed and after December 31, 2014, only 12% of qualified personnel expenses will be reimbursed.

The bill would alter the definition of "qualified personnel expenditure" by including per diem and lodging expenses and eliminating the \$2.0 million limit for any single employee. Similarly, the bill would eliminate any restrictions limiting the reimbursement for payments and compensation paid to producers. The bill also would increase reimbursements for crew personnel expenditures by deleting the provisions limiting reimbursement to 10% of expenditures, grouping them under other expenditures subject to 25% reimbursement. However, the bill would eliminate the 27% reimbursement for Michigan personnel expenditures by striking the provisions affecting those expenditures. Because the definition for qualified personnel expenditure applies only to nonresidents, expenditures to any Michigan resident would not be eligible for reimbursement under the bill.

The bill would impose new limits on the expenditures, limiting expenditures for "above the line" personnel to not more than 25% of total direct expenditures and qualified personnel expenditures. Similarly, the bill would limit expenditures on "below the line" personnel to not more than 50% of total direct expenditures and qualified personnel expenditures. (The definition of "qualified personnel expenditure", however, applies only to "above the line" personnel.) Direct expenditures would be limited to 25% of the combination of direct expenditures and qualified personnel expenditures. It is not clear whether these limits would apply only to the expenditures subject to reimbursement or if they would represent eligibility criteria for productions that receive reimbursements.

None of the bill's changes would affect the amount of revenue appropriated to the Program, but they could affect the amount of reimbursement individual productions receive and/or the distribution of subsidized expenses across expenditure categories. Generally, the bill would allow higher rates of reimbursement for producers and other highly compensated individuals, while eliminating reimbursement for personnel expenditures made to State residents or lower-paid nonresidents.

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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.