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Senate Bill 1103 (as enacted)
Sponsor: Senator Randy Richardville
Senate Committee: Economic Development
House Committee: Commerce

PUBLIC ACT 396 of 2014

Date Completed: 1-28-15

CONTENT

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

- Delete a provision that would have prohibited funding under the Program after September 30, 2017, and instead prohibit the Michigan Film Office from awarding funding seven years after the bill's effective date.
- Revise the funding caps for State-certified qualified production expenditures after December 1, 2014.
- Limit funding for above-the-line personnel to 30% of total funding under the Program for each qualified production.
- Require that at least 10% of the funding awarded under the Program be for motion pictures, documentaries, or television series with a budget of less than \$15.0 million.
- 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.
- Expand the definition of "qualified personnel expenditure" to include payments for all personnel, and delete a \$2.0 million per-employee limit.
- Specify that residual payments to above-the-line personnel or certain business entities for a qualified production are subject to the Michigan income tax, and provide for the tax to be withheld from residual payments under certain circumstances.
- Require that Michigan residents be hired to work on qualified productions at certain phased-in ratios of residents to nonresidents, unless there are not enough qualified Michigan residents for the positions.
- Allow a television show to apply for funding for one or more successive seasons, rather than not more than two successive seasons, and give a funding preference for the next season to a show that received funding and completed production.
- Require an eligible production company producing a qualified production at a qualified facility to give the Film Office a copy of the agreement between the company and the facility before the Office enters into an agreement to award funding.
- Require the Film Office, in determining whether to award funding, to consider whether a production company will hold a premiere in Michigan for the qualified production and make film trailers and clips available for the Pure Michigan tourism campaign.

- **Delete provisions that previously limited payments and compensation to 10% of certain expenditures, for all producers of a qualified production who were living in Michigan, and to 5% of those expenditures for all producers who were not Michigan residents.**
- **Delete a requirement that at least 5% of the funding awarded be awarded for postproduction expenditures for qualified productions.**

The bill took effect on December 26, 2014.

Production Assistance Program

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 and qualified personnel expenditures for State-certified qualified productions. Previously, the Act also allowed funding for Michigan personnel expenditures and crew personnel expenditures.

The bill deleted Michigan personnel expenditures and crew personnel expenditures from the items authorized for funding. Both terms meant an expenditure made in this State directly attributable to the production or development of a qualified production that was a transaction subject to taxation in this State and was 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" referred to a payment or compensation for nonresident below-the-line crew, talent, management, or labor. "Michigan personnel expenditure" referred to a payment or compensation to below-the-line crew and above-the-line personnel who were residents of Michigan.

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

The bill also revised the definition of "qualified personnel expenditure", which was the same as the definition of "crew personnel expenditure" but applied to nonresident above-the-line personnel, talent, management, or labor. Under the bill, "qualified personnel expenditure" includes payment or compensation for all personnel, talent, management, or labor. The bill deleted the limit of \$2.0 million for any one employee or contractual or salaried employee of a qualified production.

Funding Caps

Under the bill, an agreement for State-certified qualified production expenditures after December 1, 2014, must provide for funding equal to 25% of direct production expenditures and qualified personnel expenditures. In addition, an agreement must provide for the funding of 3% of direct production expenditures and qualified personnel expenditures at a qualified facility, or 10% of direct production expenditures and qualified personnel expenditures at a postproduction facility for a qualified production produced at the facility.

For State-certified qualified production expenditures on or before December 1, 2014, the bill requires funding to be awarded as provided in the agreement if that agreement had been entered into on or before that date.

Previously, for State-certified qualified production expenditures after September 30, 2011, an agreement to provide film and digital media production assistance under the Act had to provide for funding a specified percentage of the expenditures, and the funding had to 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	32%
	1/1/15-9/30/17	27%
Crew personnel expenditures	10/1/11-12/31/12	25%
	1/1/13-12/31/13	20%
	1/1/14-12/31/14	15%
	1/1/15-9/30/17	10%
Qualified personnel expenditures	10/1/11-12/31/14	27%
	1/1/15-9/30/17	12%

In addition to the expenditures shown in Table 1, an agreement previously was required to 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 prohibits funding under the Program for above-the-line personnel from exceeding 30% of total funding for each qualified production.

The bill requires at least 10% of the funding awarded under the Program to be awarded for qualified productions that are motion pictures, documentaries, or television series with a budget of less than \$15.0 million.

Previously, payments and compensation for all producers of a qualified production residing in Michigan could not exceed 10% of the direct production expenditures and Michigan personnel expenditures for the qualified production. Payments and compensation for all nonresident producers of a qualified production could not exceed 5% of the direct production expenditures and Michigan personnel expenditures for the qualified production. At least 5% of the funding awarded under the Program had to be awarded for postproduction expenditures for qualified productions. The bill deleted those provisions.

Taxable Residual Income

The bill requires an agreement for funding under the Program to include a requirement that residual payments to above-the-line personnel, personal service corporations (PSCs), loan out companies, professional employer organizations (PEOs), limited liability companies (LLCs), corporations, or other entities for a qualified production be subject to taxation under the Income Tax Act.

With respect to residual payments not otherwise subject to withholding under Section 703 of the Income Tax Act, the eligible production company, affiliate entity, or its successor company must elect to do either of the following:

- For a period of at least 12 years following theatrical release of the qualified production, withhold taxes from those residual payments and pay to the State the amount provided under Section 51 of the Income Tax Act.
- Require above-the-line personnel paid directly or through PSCs, loan out companies, PEOs, LLCs, corporations, or other entities for the services of above-the-line personnel receiving payments for direct production expenditures or qualified personnel expenditures to register to do business under Michigan law.

Residual payments include deferred, residual, or contingent compensation royalties, or profit participation relating to the qualified production. To the extent that the production company elects not to withhold, it must notify the above-the-line personnel of their registration obligations in writing at the time of engaging their services.

A PSC, loan out company, PEO, LLC, corporation, or other entity is exempt from the requirement to be registered to do business under Michigan law if it receives less than \$250,000 for the above-the-line services of an actor during the period that the qualified production is produced in Michigan and any related residual payments are based solely on a collective bargaining agreement.

The bill defines "loan out company" as a personal service corporation or other entity contracted with and retained by the production company to provide individual personnel, including artists, crew, actors, directors, and producers, for the performance of services used directly in a production, but not including entities retained by the production company to provide tangible property or outside contractor service, including catering, construction, trailers, equipment, and transportation.

(Section 703 of the Income Tax Act establishes the income tax withholding requirements of employers, people who disburse pension or annuity payments, and other entities. Section 51 of that Act establishes the tax rate on individuals' taxable income.)

Hiring Michigan Workers

Under the bill, to be eligible for funding under the Program, Michigan residents must be hired to work on qualified productions as shown in Table 2.

Table 2	
Period	Ratio of Resident to Nonresident
Through 9-30-17.....	1:1
10-1-17 through 9-30-20.....	1.5:1
10-1-20 through 9-30-22.....	2:1
Beginning 10-1-22	3:1

A producer may apply to the Michigan Economic Development Corporation (MEDC) for a waiver of the Michigan resident hiring requirements based on the unavailability of qualified Michigan residents. The MEDC may waive those hiring requirements if it determines that there is an insufficient number of qualified Michigan residents for the qualified production.

TV Show Funding

The bill allows a television show to submit an application for one or more successive seasons. When production of each season is complete, the show may apply for successive additional seasons. The bill also specifies that if a TV show receives funding and completes the production of that show's season, it will receive a preference for funding the immediately succeeding season.

Previously, a television show could submit an application for not more than two successive seasons. The successive season's direct production expenditure, Michigan personnel expenditure, nonresident above-the-line personnel expenditure, and nonresident below-the-line crew expenditure amounts had to be based on the current season's estimated expenditures. When production of each season was complete, a TV show could submit an application for one additional season.

Other Funding Considerations

The bill specifies that, if an eligible production company is producing a qualified production at a qualified facility, a copy of the agreement between the eligible production company and the qualified facility must be provided to the Film Office before the Office enters into an agreement to award funding under the Program.

The Act specifies factors that the Film Office must consider in determining whether to award funding under the Program. Under the bill, the Office also must consider whether the eligible production company will do the following:

- Hold a premiere in Michigan for the qualified production.
- Make film trailers and clips available to the Film Office for the Pure Michigan tourism campaign or any successor campaign to promote the qualified production and the tourism campaign.

Defined Terms

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 qualified personnel expenditure. (Previously, a Michigan personnel expenditure and a crew personnel expenditure also were excluded from the term.)

"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. Under the bill, stunt performers are excluded from the definition.

"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 includes cooks, drivers, and stunt performers.

"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, or both.

MCL 125.2029h

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will have no impact on State or local revenue or expenditure, but will change the expenses that may be reimbursed by funds already appropriated for the Film and Digital Media Production Assistance Program. After December 1, 2014, subsidies under the Program must reimburse 25% of direct production expenses and qualified personnel expenses and 10% of expenditures at a qualified facility or postproduction facility. Under previous law, 27% of direct production expenses were reimbursed and 3% of expenditures at qualified facilities or postproduction facilities, and after December 31, 2014, only 12% of qualified personnel expenses were to be reimbursed.

The bill alters the definition of "qualified personnel expenditure" by eliminating the \$2.0 million limit for any single employee and applying the definition to all personnel regardless of residency. Similarly, the bill eliminates any restrictions limiting the reimbursement for payments and compensation paid to producers. The bill also will 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. The bill will effectively reduce the 27% reimbursement for Michigan personnel expenditures by striking the provisions affecting those expenditures and including them in the expenditures subject to the 25% reimbursement.

The bill imposes new limits on the expenditures, limiting expenditures for "above the line" personnel to not more than 30% of total funding provided to a production by the program. The bill also imposes additional eligibility requirements, related to the number of Michigan residents hired to work on qualified productions, in order for a production company to receive subsidies under the Program. The ratio of Michigan residents to nonresidents hired by a production company will gradually increase from one, until September 30, 2017, to three after October 1, 2022. Waivers will be permitted if an insufficient number of Michigan residents are available.

In addition, the bill requires that residual payments be subject to taxation under the Income Tax Act and that any applicable withholding be taken from such payments and remitted to the State. Businesses receiving such payments will be required to be organized under the laws of the State unless payments are less than \$250,000 for the "above the line" services of an actor.

None of the bill's changes will affect the amount of revenue appropriated to the Program, but they may affect the amount of reimbursement individual productions receive and/or the distribution of subsidized expenses across expenditure categories. Generally, the bill will allow higher rates of reimbursement for producers and other highly compensated individuals, while potentially requiring affected businesses to be organized under State law. While the bill eliminates a sunset prohibiting awards after September 30, 2017, and instead prohibits any awards after a date that is seven years after the bill's effective date, the change will have an unknown fiscal impact before the sunset because the statute cannot compel appropriations to the program in future fiscal years.

Fiscal Analyst: David Zin