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Senate Bill 1103 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Randy Richardville
Committee: Economic Development

Date Completed: 10-28-14

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 that prohibits funding under the Program after September 30, 2017.**
- **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 would be subject to the Michigan income tax, and require the tax to be withheld from residual payments.**
- **Require that Michigan residents be hired to work on qualified productions at certain phased-in ratios of residents to nonresidents, unless there were 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 entered into an agreement to award funding.**
- **Require the Film Office, in determining whether to award funding, to consider whether a production company would hold a premiere in Michigan for the qualified production and make film trailers and clips available for the Pure Michigan tourism campaign.**
- **Require certain business entities for the services of above-the-line personnel to be organized under Michigan law and maintain an active status in Michigan.**

- **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.**
- **Delete a requirement that at least 5% of the funding awarded be awarded for postproduction expenditures for qualified productions.**

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, 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. Under the bill, "qualified personnel expenditure" would include payment or compensation for all 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.

Funding Caps

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 1, 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. Under the bill, an agreement would have to 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.

The bill would prohibit funding under the Program for above-the-line personnel from exceeding 30% of total funding for each qualified production.

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

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. At least 5% of the funding awarded under the Program must be awarded for postproduction expenditures for qualified productions. The bill would delete those provisions.

Taxable Residual Income

The bill would require 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 and that taxes would be withheld from those residual payments and paid to the State in the amount provided under the Income Tax Act. Residual payments would include deferred, residual, or contingent compensation, royalties, or profit participation relating the qualified production.

Hiring Michigan Workers

Under the bill, to be eligible for funding under the Program, Michigan residents would have to 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
10-1-18 through 9-30-20	1.5:1
10-1-20 through 9-30-22	2:1
Beginning 10-1-22	3:1

A producer could 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 could waive those hiring requirements if it determined that there were an insufficient number of qualified Michigan residents for the qualified production.

TV Show Funding

Under the Act, a television show may 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 must be based on the current season's estimated expenditures. When production of each season is complete, a TV show may submit an application for one additional season.

The bill would allow a TV show to submit an application for one or more successive seasons. When production of each season was complete, the show could apply for successive additional seasons. The bill also specifies that if a TV show received funding and completed the production of that show's season, it would receive a preference for funding the immediately succeeding season.

Other Funding Considerations

The bill specifies that, if an eligible production company were producing a qualified production at a qualified facility, a copy of the agreement between the eligible production company and the qualified facility would have to be provided to the Film Office before the Office entered 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 would have to consider whether the eligible production company would do both of 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.

Organization under Michigan Law

The bill would require 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 under the Program to be organized under Michigan law and to maintain active status in Michigan for as long as residual payments from the qualified production continued to be paid.

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

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 Michigan personnel expenditure, a qualified personnel expenditure, or a crew personnel expenditure. Under the bill, the term would not include a qualified 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. Under the bill, stunt performers would be specifically 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 would include 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.

The bill would define "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.

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 1, 2014, subsidies under the Program would be required to reimburse 25% of direct production expenses and qualified personnel expenses and 10% of expenditures at a qualified facility or postproduction facility. Under current law, 27% of direct production expenses are reimbursed and 3% of expenditures at qualified facilities or postproduction facilities, 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 eliminating the \$2.0 million limit for any single employee and applying the definition to all personnel regardless of residency. 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. The bill would 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 would impose 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 would impose 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 would gradually increase from one, until September 30, 2017, to three after October 1, 2022. Waivers would be permitted if an insufficient number of Michigan residents were available.

In addition, the bill would require 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 would be required to be organized under the laws of the State unless payments were less than \$250,000 for the "above the line" services of an actor.

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 potentially requiring affected businesses to be organized under State law. While the bill would eliminate a sunset prohibiting awards after September 30, 2017, the change would have a limited fiscal impact because the bill would not, and cannot, compel appropriations to the program in future fiscal years.

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Analysis\sb1103sb

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.