SB 1154

Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 1154 (Senator Peters, *et al.*)
Budget and Taxation Ways and Means

Income Tax – Film Production Activity Tax Credit – Alterations

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This bill alters the film production activity tax credit by (1) eliminating the program's reserve fund; (2) specifying that the Secretary of Commerce may award specified maximum amounts of tax credits in each fiscal year; and (3) requiring the Secretary of Commerce to reserve 10% of all tax credits in each fiscal year for qualified small or independent film entities. The bill also alters specified eligibility and reporting requirements. **The bill takes effect July 1, 2018, and applies to tax year 2018 and beyond**.

Fiscal Summary

State Effect: General fund revenues decrease by up to $3.0 million in FY 2019 due to credits claimed against the income tax. Future year revenue losses reflect limitations specified by the bill. General fund expenditures decrease by $5.0 million annually beginning in FY 2020 due to the repeal of the program reserve fund.

($ in millions)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
GF Revenue	($3.0)	($11.0)	($14.0)	($17.0)	($20.0)
GF Expenditure	$0	($5.0)	($5.0)	($5.0)	($5.0)
Net Effect	($3.0)	($6.0)	($9.0)	($12.0)	($15.0)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local highway user revenues decrease to the extent credits are claimed against the corporate income tax. Local expenditures are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill specifies that film production activity does not include an infomercial, a digital project, an animation project, or a multimedia project. Under current law, to qualify as a film production entity, total direct costs incurred in the State must exceed $500,000. The bill lowers this threshold to $250,000 and specifies that total direct costs do not include any salary, wages, or other compensation for writers, directors, or producers. The bill also requires that an applicant include the estimated number of Maryland resident and out-of-state employees and total wages.

A small or independent film entity is a film production entity that (1) is independently owned and operated; (2) is not a subsidiary of another firm; (3) is not dominant in its field of operation; and (4) did not employ more than 25 individuals in its most recent fiscal year. In addition, the entity must have (1) been incorporated in Maryland for at least one year; (2) Maryland residents comprising at least 40% of the workforce in the qualifying film production activity; (3) total direct costs incurred in the State of at least $25,000; and (4) at least 50% of the film production activity occurring within the State. These entities can claim a tax credit equal to 25% of total qualifying direct costs, not to exceed $125,000. Under current law, the Secretary of Commerce may require the information submitted by an applicant to be verified by an independent auditor selected and paid for by the applicant. This requirement would not apply to qualified small or independent film entities.

The bill specifies that the Secretary of Commerce may award in each fiscal year a maximum of (1) $8 million in fiscal 2019; (2) $11 million in fiscal 2020; (3) $14 million in fiscal 2021; (4) $17 million in fiscal 2022; and (5) $20 million annually in fiscal 2023 and thereafter. The Secretary of Commerce may not award in aggregate more than $10 million for a single film production activity. This limitation applies to each season of a television series.

Current Law: A qualified film production entity that meets specified requirements and is approved by the Department of Commerce (Commerce) may receive a tax credit equal to 25% of qualified film production costs incurred in the State. For a television series, the value of the credit is increased to 27%. If the amount of the tax credit exceeds the total tax liability in the tax year, the entity can claim a refund in the amount of the excess. In order to qualify for the tax credit, the estimated total direct costs incurred in the State must exceed $500,000. Any salary, wages, or other compensation for personal services of an individual who receives more than $500,000 in salary, wages, or other compensation for personal services in connection with any film production activity may not be included in total direct costs.

The film production entity must notify Commerce of its intent to seek the tax credit before the production activity begins. A film production entity is also required to submit an application containing specified information, including the project's estimated total budget and the anticipated dates for carrying out the major elements of the film production activity.

"Film production activity" is defined as the production of a film or video product that is intended for nationwide commercial distribution and includes a(n) feature film, television project, commercial, infomercial, corporate film, music video, digital project, animation project, or multimedia project. Film production activity does not include a student film; noncommercial personal video; sports broadcast; broadcast of a live event; talk show; video, computer, or social networking game; or pornography.

Chapter 486 of 2015 repealed the program's termination date and converted the program into a budgeted tax credit. Beginning in fiscal 2017, the total amount of initial credit certificates issued by Commerce in each fiscal year cannot exceed the amount appropriated to the film production activity reserve fund in the State budget. Any amount of money in the fund that is not expended in the fiscal year remains in the fund and is rolled over into the next fiscal year. The fiscal 2019 State budget includes $5.0 million in funding for the program.

Background: Louisiana was the first U.S. state to establish significant state tax incentives for the film and television industry. By 2009, 44 states, Puerto Rico, and the District of Columbia offered some type of incentives. According to the National Conference of State Legislatures (NCSL), support for the film industry has decreased in recent years even as some states continue to provide generous subsidies. Since 2009, 13 states have ended film incentive programs, and several states have reduced the level of support provided. Michigan, after providing significant tax credits up to 42%, ended its program in 2015.

Most recently, film incentive programs were terminated in Wyoming and in West Virginia, soon after that state's legislative auditor concluded that the program produced minimal economic benefit. Louisiana recently for the first time limited the annual amount of tax credits that can be issued ($150 million) due to fiscal concerns about the program. In the last decade, Louisiana has awarded about $1 billion in tax credits to the film industry.

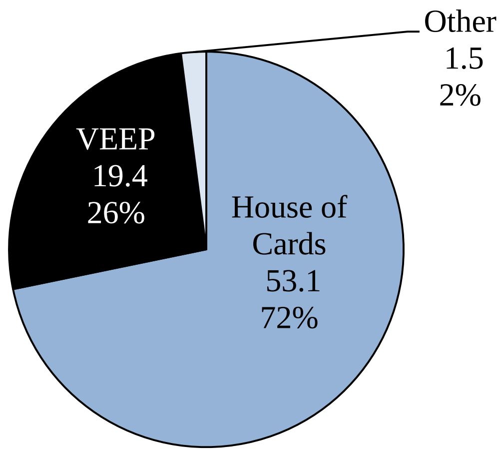
Despite the decrease in film production tax credits in many states, several states are competing with one another to draw productions into their state. New York provides up to $420 million in tax credits annually, and California provides up to $330 million annually. Georgia also offers significant tax credits – the state is expected to provide a total of $1.1 billion in film tax credits in fiscal 2016 and 2018.

State Fiscal Effect: The bill (1) repeals the program reserve fund and (2) specifies that Commerce may award a maximum of $8 million in tax credits in fiscal 2019, $11 million in fiscal 2020, $14 million in fiscal 2021, $17 million in fiscal 2022, and $20 million in fiscal 2023 and thereafter. As a result, general fund revenues will decrease by $3 million in fiscal 2019, $11 million in fiscal 2020, $14 million in fiscal 2021, $17 million in fiscal 2022, and by $20 million in fiscal 2023.

The fiscal 2019 State budget includes $5.0 million in funding for the program. It is assumed that the program is level funded in each year. As a result, general fund expenditures will decrease by $5.0 million annually beginning in fiscal 2020.

Small Business Effect: According to the *Maryland Film Production Activity Annual Report*, issued in December 2016, a total of $74.0 million in tax credits and grants have been awarded in fiscal 2012 through 2017. Of that amount, $72.5 million, or 98% of the total, has been awarded to two productions – House of Cards and VEEP. During that time period, only three other productions have been awarded tax credits, for a total of $1.5 million. **Exhibit 1** shows the distribution of the tax credits by production.

Exhibit 1
Distribution of Maryland Film Production Tax Credits
Fiscal 2012-2017
($ in Millions)



Note: Totals reflect amounts reported in program annual report issued in December 2016 and includes $7.5 million grant provided to House of Cards during fiscal 2014.

Source: Department of Commerce; Department of Legislative Services

The Department of Legislative Services (DLS) notes that the primary beneficiaries of the tax credit are the film production entities and that the majority of tax credits have been awarded to or encumbered for companies that are not Maryland small businesses. An increase in local film production expenditures leads to additional purchases from local vendors, an unknown number of which are small businesses.

Pursuant to the Tax Credit Evaluation Act of 2012, DLS evaluated the film production activity tax credit and made several recommendations in a report issued in September 2015. The DLS evaluation report concluded that the economic development activity generated by film productions is of a short duration. As soon as a film production ends, all positive economic impacts cease as well.

As discussed above, the State has provided $72.5 million in financial assistance to VEEP and House of Cards. After filming four seasons in Maryland, the producers of VEEP moved production to California. In addition, the producers of House of Cards recently announced that production would end at the conclusion of an abbreviated season six.

The bill requires that Commerce reserve 10% of all tax credits in each fiscal year for qualified small or independent film entities. Accordingly, a portion of the program funding provided in each year may benefit small businesses.

The DLS evaluation of the film production activity tax credit can be found on the Maryland General Assembly website.

Additional Information

Prior Introductions: None.

Cross File: HB 1449 (Delegate Luedtke, *et al.*) - Ways and Means.

Information Source(s): Department of Commerce; Comptroller's Office; Department of Budget and Management; National Conference of State Legislatures; Department of Legislative Services

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