

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 616  
Ways and Means

(Delegate M. Washington, *et al.*)

Budget and Taxation

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Income Tax - Film Production Activity Tax Credit - Small or Independent Film  
Entities

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This bill alters the film production activity tax credit program by requiring the Department of Commerce (Commerce) to reserve the first \$500,000 in tax credits in each fiscal year for qualified small or independent film entities. **The bill takes effect June 1, 2018, and applies to all film production activity tax credit certificates issued after June 30, 2019.**

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Fiscal Summary

**State Effect:** Allowing additional entities to qualify for the program and requiring Commerce to reserve in each fiscal year the first \$500,000 in tax credits for these entities will not alter the fiscal impact of the program beyond that provided under current law.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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Analysis

**Bill Summary:** Commerce must reserve \$500,000 in tax credits for small or independent film entities in any fiscal year in which the amount appropriated to the program exceeds \$500,000. 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.

**Current Law/Background:** A qualified film production entity that meets specified requirements and is approved by 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 Governor's proposed fiscal 2019 budget includes \$5.0 million in funding for the program.

**State Fiscal Effect:** The bill allows qualified small or independent film entities to qualify for the program and requires Commerce to reserve in each fiscal year the first \$500,000 in tax credits for these entities. The bill will not alter the overall fiscal impact of the tax credit

program, since it is expected that, under current law, Commerce will award the maximum amount of tax credits in each fiscal year.

**Small Business Effect:** Businesses that qualify will benefit from claiming the credit; however, it is unknown what portion of these businesses qualify as a small business. Given that the credit is budgeted, increasing the credit awarded to certain companies will decrease the credit available to all other companies. Other small businesses that do not meet the bill's requirements or small businesses that benefit from spending from other film entities that do not qualify may be negatively impacted from this reduction in the credit and/or spending.

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### **Additional Information**

**Prior Introductions:** SB 723 of 2017 received a hearing in the Senate Budget and Taxation Committee, but no further action was taken.

**Cross File:** SB 20 (Senator Young, *et al.*) - Budget and Taxation.

**Information Source(s):** Department of Commerce; Comptroller's Office; Department of Legislative Services

**Fiscal Note History:** First Reader - February 5, 2018  
md/hlb Third Reader - March 17, 2018  
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