HB 1449

Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1449 (Delegate Luedtke, *et al.*)
Ways and Means

Income Tax - Film Production Activity Tax Credit - Alterations

This bill alters the film production activity tax credit by (1) eliminating the program's reserve fund and (2) specifying that the Secretary of Commerce may award up to $30 million in tax credits annually in fiscal 2019 through 2021 and an unlimited amount of credits thereafter. 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 $25.0 million in FY 2019 due to credits claimed against the income tax. Future year revenue losses reflect limitations specified by the bill and estimated qualifying film production activity. 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	($25.0)	($30.0)	($30.0)	($70.0)	($100.0)
GF Expenditure	$0	($5.0)	($5.0)	($5.0)	($5.0)
Net Effect	($25.0)	($25.0)	($25.0)	($65.0)	($95.0)

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.

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 Governor's proposed fiscal 2019 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.

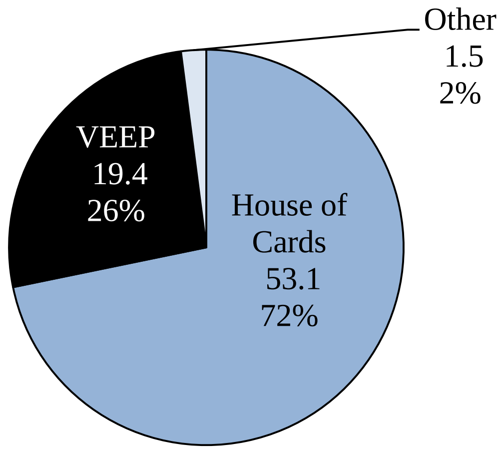
State Fiscal Effect: The bill (1) repeals the program reserve fund and (2) in fiscal 2019 through 2021 limits to $30 million annually the total amount of tax credits that Commerce may award. After fiscal 2021, there is no limitation on the total credits that may be awarded.

As a result, general fund revenues may decrease by up to $25 million in fiscal 2019 and by $30 million annually in fiscal 2020 and 2021. Based on the amount of tax credits provided in other states, general fund revenues may decrease by an estimated $70 million in fiscal 2022 and by $100 million in fiscal 2023. Revenue losses could continue to increase and likely will be significantly greater.

The Governor's proposed fiscal 2019 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 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: SB 1154 (Senator Peters, *et al.*) - Budget and Taxation.

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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