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Bill Analysis
Legislative Service Commission

Sub. S.B. 155
126th General Assembly
(As Passed by the Senate)

Sens. Clancy, Dann, Coughlin, Spada, Grendell, Kearney, D. Miller, Mumper, Padgett, Prentiss, Zurz, R. Miller, Hagan

BILL SUMMARY

- Authorizes a nonrefundable income tax credit for individuals who invest money in a motion picture production certified by the Director of Development as a state-certified production.
- Provides that the credit is: (1) 15% of an individual's actual investment, if the production company expended \$300,000 to \$8 million in Ohio, or (2) 20% of an individual's actual investment, if the production company expended more than \$8 million in Ohio.
- Caps at \$3 million the total dollar amount of credits that may be issued in a taxable year, and caps at \$500,000 the dollar amount of credits that may be claimed for a single state-certified production.
- Creates the 22-member Ohio Media Production Advisory Committee to conduct a study of the media production industry in Ohio and make recommendations that lead to job growth in that industry.
- Requires the Director of Development to provide up to \$50,000 out of existing funds to pay for the study and report.

CONTENT AND OPERATION

Income tax credit

(R.C. 122.85(A), 5747.66, and 5747.98)

Beginning in taxable year 2007, the bill authorizes a nonrefundable income tax credit for a taxpayer who is an individual who invests money in a state-certified production of a motion picture for which a tax credit certificate has been issued by the Director of Development (see "Certification of motion pictures by

the state," below). A taxpayer cannot obtain the tax credit without a certificate. Under the bill, a "motion picture production" is a nationally distributed feature-length film, video, or television series made in Ohio, in whole or in part, for theatrical or television viewing, or as a television pilot, or a commercial made in Ohio that will be broadcast or cablecast to at least 25% of the households in the United States, and includes home videos for foreign or domestic retail distribution, digital interactive media for retail distribution, music videos, episodics, serials, infomercials, documentaries, pilots, and programs produced for theatrical, cable, television network, or syndicated release. A "motion picture production" does not include political advocacy commercials, the production of radio or television coverage of news or athletic events, or any other production utilizing station staff.

The credit is calculated as a percentage of the individual taxpayer's investment in the production, according to the total "base investment" dollars certified for the production, i.e., the expenditures of the production in Ohio that are certified as production-related costs (see "*Base investment,*" below), as follows:

(1) If the total base investment is greater than \$300,000 and less than or equal to \$8 million, the taxpayer is allowed to claim a credit of 15% of the taxpayer's actual investment;

(2) If the total base investment is greater than \$8 million, the taxpayer is allowed to claim a credit of 20% of the taxpayer's actual investment.

The total dollar amount of credits that may be issued to taxpayers in a taxable year cannot exceed \$3 million.

The credit must be claimed in the taxable year indicated on the tax credit certificate. The taxpayer is required to claim the credit in the order established for income tax credits by current law and the bill. The taxpayer may carry forward any credit amount in excess of income tax due, after allowing for all other credits preceding the investment credit in that order. The excess credit, if any, may be carried forward for no more than three taxable years following the taxable year for which the credit is first claimed. The total tax credits taken for a state-certified production can never exceed the total base investment for that production, and the total dollar amount of tax credits that may be taken for a single production cannot exceed \$500,000.

Certification of motion pictures by the state

(R.C. 122.85)

The bill provides that for the purpose of encouraging the development of a strong capital base for motion picture productions in Ohio, the Director of



Development may certify a motion picture produced by a motion picture production company as a state-certified production, the investment in which may qualify for the new income tax credit. A "motion picture production company" to which the certification applies is a corporation, partnership, limited liability company, or other business entity engaged in the business of producing motion pictures, but cannot include a company owned, affiliated, or controlled, in whole or in part, by any company or person that is in default on a loan made by Ohio or guaranteed by Ohio.

The bill requires that the Director, in consultation with the Tax Commissioner, adopt rules that establish criteria for determining what motion picture productions qualify as "state-certified productions" for purposes of the tax credit. The rules must require that the motion picture production company be headquartered in Ohio;¹ that a motion picture production that is a theatrical film include a credit acknowledgment in the film that it was filmed in this state and give credit to any Ohio film office rendering services to the production; and that the form and content of applications for certificates include, at a minimum, all of the following information:

- (1) The name and telephone number of the motion picture production company;
- (2) The name and telephone number of the company's contact person;
- (3) A list of the first pre-production date through the last production date in Ohio;
- (4) The Ohio production office address and telephone number;
- (5) The total budget of the motion picture production;
- (6) The total expenditures in Ohio;
- (7) The total percentage of the motion picture production being shot in Ohio;
- (8) The level of employment of Ohio cast and crew;
- (9) A synopsis of the script;

¹ For purposes of the bill and the rules, a corporation is "headquartered in Ohio" if it is incorporated in Ohio, and a partnership, limited liability company, or other business entity is "headquartered in Ohio" if it is domiciled and headquartered in Ohio.

(10) A creative elements list that includes the names of the principal cast and crew, and the producer and director;

(11) The date principal photography of the motion picture production will begin; and

(12) The distribution plan for the motion picture production, including domestic and international distribution, and the sales estimates for the production.

An application for a tax credit certificate must be completed before production of a motion picture commences. Expenditures made prior to initial certification of a motion picture production as a state-certified production cannot be included in the calculation of base investment for purposes of calculating the percentage and amount of the tax credit an investor may claim.

The Director must submit the initial certification of a motion picture production as a state-certified production to the Tax Commissioner, with a unique identifying number for each production. Upon completion of the production, the Director must review the motion picture production company's base investment and issue a tax credit certificate to any individual who invested in the production and who may be eligible to claim the tax credit. The tax credit certificate must include the identifying number that was assigned to that state-certified production in the initial certification. The Director must issue certificates in the order in which the principal photography of the motion picture production was scheduled to begin. The bill prohibits the Director from issuing a tax credit certificate if the production, in the Director's opinion, violates any Ohio obscenity statute.

Base investment

Under the bill, the "base investment" by which an investor's tax credit is calculated is expenditures paid by a motion picture production company to companies headquartered in Ohio, expenditures for Ohio resident talent employees, and that portion of expenditures paid to Ohio residents for below-the-line employee wages, benefits, payroll costs, production equipment and facility rentals or purchases, legal services, accounting services, and post-production services. Nonresident crew wages, benefits, and payroll costs may be included in the calculation of base investment if at least 70% of a state-certified production's crew wages and benefits are allocated to Ohio residents and nonresident crew are treated as Ohio employees and have Ohio employee withholding taxes withheld from their wages. "Base investment" also includes:

(1) Guaranteed holding fees and residuals for commercials in an amount that does not exceed three times the Screen Actors Guild/American Federation of Television and Radio Artists scale;

(2) Payments made to a talent or crew personal service corporation if the corporation pays the commercial activity tax on such payments, and the person receiving payments from the corporation pays the income tax on such payments and is covered by the corporation under Ohio workers' compensation and unemployment insurance;

(3) Up to 20% of combined talent agent commissions or service fees; and

(4) The cost of renting or purchasing highly specialized production equipment from entities outside Ohio, provided that the equipment is not available in Ohio and provided that the application for the tax credit certificate clearly states the reason for having to do so.

"Base investment" does not include talent wages, salaries, and benefits paid in excess of three times the Screen Actors Guild/American Federation of Television and Radio Artists scale for actors or artists with an equity box office interest or similar interest in a motion picture production; advertising, marketing, distribution, or post-production of a motion picture production; meals, except craft services; car rentals; air transportation; or lodging, except for Ohio resident talent or crew.

Ohio Media Production Advisory Committee

Committee members

(Sections 3(A) and 4(A) and (B))

The bill creates the Ohio Media Production Advisory Committee to conduct a comprehensive study of the media production industry in Ohio and to advise the Director of Development on issues pertaining to electronic media production growth throughout Ohio. The Committee also must evaluate and advise the General Assembly as to the effectiveness of the bill's income tax credit and offer advice to the Director regarding the Director's adoption of rules for, and the interpretation and implementation of, the tax credit. The Committee consists of the following 22 members:

? Three members of the House of Representatives, to be appointed by the Speaker of the House of Representatives in consultation with the Minority Leader.

? Three members of the Senate, to be appointed by the President of the Senate in consultation with the Minority Leader.

? One representative of one film commission in Ohio, to be appointed by the Governor.



? One representative of the Department of Taxation, to be appointed by the Tax Commissioner.

? One representative of the Department of Development, to be appointed by the Director of Development.

? One representative of each of the following entities headquartered in Ohio, to be appointed by the Governor:

- (1) A national advertiser;
- (2) An advertising agency;
- (3) A production company;
- (4) A post-production company;
- (5) A sound recording facility;
- (6) A production payroll, production tax, or production accounting firm;
- (7) An independent producer;
- (8) An equipment and crew service provider;

(9) Talent from the Screen Actors Guild or the American Federation of Television and Radio Artists.

? One representative each from a full service production company headquartered in northeast Ohio, in central Ohio, and in southwest Ohio, all three appointed by the Governor.

? One representative of higher education in Ohio involved with media production, to be appointed by the Governor.

The bill requires that appointments to the Committee be made within 30 days after the bill's effective date. The chairperson of the Committee must be one of the Senate members of the Committee, selected by the President of the Senate. The Committee is required to meet at least every two months. Committee members serve without compensation.

Committee duties

(Sections 3(A) and (B) and 4(C))

The Committee's study must identify and benchmark Ohio's current and potential capabilities for growth in the sectors and sub-sectors of commercials and



industrial, educational, and entertainment media. Based on its study, the Committee must prepare a comprehensive report of its findings, along with recommendations for private sector and public policy initiatives that can lead to the future growth of the electronic media production industry, increase job opportunities, and enhance Ohio's image as a desirable place to do business. Broadcast and cable television, radio stations, and musical and performing arts groups are not within the Committee's purview and cannot be addressed in its study or report.

In carrying out its duties, the bill requires the Committee to identify competitive market factors and seek input and advice from specialists in Ohio and elsewhere who are involved in the production of electronic media, including national, regional, and local advertisers and advertising agencies; production, post-production, and sound recording studios; equipment and crew service vendors; independent producers; writers; the academic community; specialists in entertainment law, accounting, and finance; elected and appointed officials; and business, trade, labor, and professional organizations.

Not later than nine months after the bill's effective date, the Committee must provide to the General Assembly copies of its recommendations and report. Upon submission of its report, the Committee ceases to exist.

Funding

(Section 5)

The bill requires the Director of Development to provide up to \$50,000 to pay for the Committee's study and report, from fiscal year 2007 appropriations to the Department of Development that may be used for this purpose.

HISTORY

ACTION	DATE
Introduced	06-14-05
Reported, S. Ways & Means & Economic Development	11-29-06
Recommitted to S. Ways & Means & Economic Development	12-05-06
Re-reported, S. Ways & Means & Economic Development	12-06-06
Passed Senate (31-0)	12-06-06

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