

State Notes

TOPICS OF LEGISLATIVE INTEREST

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Lights, Camera, Action: Will Michigan Become the Hollywood of the Midwest? **By Patrick Affholter, Legislative Analyst**

A recently enacted package of legislation provides incentives to filmmakers to make movies, television shows, and other film and digital media productions here in the Great Lakes State. The comprehensive measure offers tax credits for a portion of a film project's expenditures in Michigan, a portion of certain job training costs until September 30, 2015, and a portion of a base investment in a film and digital media production facility until that date; includes a film and digital media production business among those eligible for a tax credit for high-technology businesses; establishes public loan programs for certain production companies and private equity funds; provides for free use of public property; and restructures the Michigan Film Office.

While advocates of the legislation tout its likelihood to diversify Michigan's economy by drawing film and digital media projects to the State, some have suggested that the credits are simply taxpayer-funded subsidies to private industry that will never garner a positive return on investment.

This article reviews the bills enacted earlier this year, discusses some of the fiscal implications of the tax credits, and examines some of the views expressed in favor of and in opposition to the film incentive program.

The Legislation

The broad package of legislation widely referred to as the film incentive program includes Public Acts 74 through 87 of 2008.¹

Public Act 74 (Senate Bill 1176) amended the Michigan Business Tax Act (MBT) to allow the Michigan Film Office, with the State Treasurer's concurrence, until September 30, 2015, to give an eligible production company an MBT credit equal to 50.0% of qualified job training expenditures (i.e., salary and other expenditures to give production crew personnel on-the-job training that is intended to upgrade or enhance their skills and address deficiencies in skills among Michigan residents). If this credit exceeds a filmmaker's tax liability, the excess is not refundable but may be carried forward to offset future tax liabilities for up to 10 years.

Public Acts 75 and 85 (Senate Bills 1177 and 1183) restructured the Michigan Film Office and its operations, transferring the Film Office from the Department of History, Arts, and Libraries (HAL) to the Michigan Strategic Fund (MSF) and expanding the Film Office's functions. Public Act 75 also created the Michigan Film Promotion Fund, into which certain fees and earnings from loans must be deposited. Money in the Fund may be spent, upon appropriation, to support the functions of the Film Office. Public Act 85 deleted provisions of the HAL Act dealing with the Film Office and Film Commission.

¹ For a more detailed description of the legislation, see the Senate Fiscal Agency Summaries as Enacted of Senate Bills 1173, 1174, 1176-1178, and 1183 and House Bills 5852-5854, and the Floor Summaries of House Bills 5841-5844, 5848, and 5855 (which reflect the enacted versions of the bills). These documents may be located through the bill analysis links on the SFA website (www.senate.michigan.gov/sfa).



Public Acts 76, 81, 82, and 83 (Senate Bill 1178 and House Bills 5852, 5853, and 5854) amended various statutes to allow certain State officials to authorize the use of State property without charge for the purpose of producing a film. Similarly, Public Act 84 (House Bill 5855) created the Local Government Filming Location Access Act to allow a local unit of government to authorize the use of local property without charge for the purpose of producing a film.

Public Acts 77 and 79 (House Bills 5841 and 5844) amended the MBT Act and the Income Tax Act, respectively, to permit an eligible production company to claim a credit against the tax imposed under either Act. Public Act 77 allows an MBT credit for 42.0% of direct production expenditures for a State-certified qualified production in certain core communities; 40.0% of those expenditures elsewhere; and 30.0% of qualified personnel expenditures, excluding expenditures for which the taxpayer claimed an MBT credit for job training expenditures. If a credit exceeds the taxpayer's tax liability, Public Act 77 requires the excess to be refunded. Public Act 79 allows an eligible production company to claim an income tax credit equal to the amount of the MBT credit the company is eligible to claim under Public Act 77, unless the company claimed that MBT credit. The credit under either Act must be reduced by an application and redemption fee equal to 0.5% of the credit.

Public Act 78 amended the General Sales Tax Act to limit sales tax credits previously available for production expenditures by a motion picture production company to agreements entered into before February 29, 2008. The Act had allowed a credit of up to 12.0% of production spending of \$200,000 to \$1,000,000; up to 16.0% of production spending of \$1,000,000.01 to \$5,000,000; and up to 20.0% for production spending of \$5,000,000.01 to \$10,000,000.

Public Act 80 (House Bill 5848) amended the Michigan Strategic Fund Act to allow a loan under the Small Business Capital Access Program to be issued to an eligible production company or film and digital media private equity fund; require the MSF to establish a Michigan Film and Digital Media Investment Loan Program to invest in loans from the Jobs for Michigan Investment Fund to eligible production companies or film and digital media private equity funds; establish conditions for loans under the Investment Loan Program, including a limitation of \$15.0 million on the amount that may be loaned to any one eligible production company or private equity fund for one qualified production; require the MSF to establish the Choose Michigan Film and Digital Media Loan Fund to invest in loans from the Jobs for Michigan Investment Fund to eligible production companies or film and digital media private equity funds eligible for a tax credit under the Michigan Economic Growth Authority (MEGA) Act or the MBT Act; establish conditions for loans issued under the Loan Fund, including a minimum interest rate of 1.0%, a minimum loan amount of \$500,000, and a maximum term of 10 years including up to three years of deferred principal payments; and require that, under both the Loan Program and the Loan Fund, 100% of principal repaid be deposited in the Jobs for Michigan Investment Fund and half of any earnings on a loan or investment be deposited in that Fund and the remainder in the Michigan Film Promotion Fund.

Public Act 86 (Senate Bill 1173) amended the MBT Act to allow the Michigan Film Office, with the State Treasurer's concurrence, until September 30, 2015, to give an MBT credit of 25.0% of a base investment to a taxpayer who invests at least \$100,000 before 2009, or \$250,000 after 2008, in a qualified film and digital media infrastructure project (i.e., a film, video, television, or



digital media production and postproduction facility located in Michigan, movable and immovable property and equipment related to the facility, and any other facility that supports and is a necessary component of the primary facility, but not a movie theater or other commercial exhibition facility). The total amount of credits authorized in a year is limited to \$20.0 million. The credit must be reduced by 0.5% for a credit application and redemption fee. If the credit exceeds a filmmaker's tax liability, the excess is not refundable but may be carried forward to offset future tax liabilities for up to 10 years.

Public Act 87 (Senate Bill 1174) amended the MEGA Act to include a film and digital media production business among the businesses eligible for a business tax credit under the Act, and include technology used in the design and development of film and digital media production in the Act's definition of "high-technology activity". (Under the Act, the Authority may enter into an agreement with a qualified high-technology business that meets certain job creation and wage criteria to provide a tax credit to the business.)

Fiscal Implications

As the film incentive bills quickly advanced through the legislative process, fiscal analyses suggested that the cost of providing the tax credits could be great. As the fiscal impact statement of the Senate Fiscal Agency (SFA) committee summary of House Bill 5841 and 5844 indicated, "The bills would decrease State revenue, mostly to the General Fund, by an unknown and potentially significant amount, depending on the expenses affected and the number of agreements the State entered into."

While the SFA also projected that, when combined with other related bills, the legislation "would likely provide a significant incentive for films to increase the amount of activity within Michigan", it also warned that "the fiscal impact of the bills is such that the tax revenue generated from the additional activity would be unlikely to offset completely, or in some cases, even offset significantly, the cost of the proposed credits and deductions, even in the long run".

The SFA also forecast that the legislation providing an MBT credit for film production job training and allowing film and digital media production businesses to claim a business tax credit under the MEGA Act (Senate Bills 1176 and 1174, respectively) would decrease State General Fund revenue by a potentially significant amount.

According to the revenue estimates for fiscal year (FY) 2008-09 adopted in May 2008 at the Consensus Revenue Estimating Conference (CREC), the film tax credits will cost the State far more in business tax credits than it is expected to gain in income and sales tax revenue. The CREC said that the effect of the credits on State revenue is expected to be \$99.1 million. According to the projections, if a film production company spends \$10.0 million in Michigan, the State will gain less than \$700,000 in income and sales tax revenue but will pay out about \$4.0 million to the production company in the form of MBT credits. The cost to the State is likely to be even greater in FY 2009-10.



Diverging Views

Boon to Economy. Proponents of the film incentives have touted their likelihood to draw film industry investment to Michigan, not only in the form of location filming for feature motion pictures but also for the development of film and digital media infrastructure such as film and sound studios. Indeed, the economic impact of the new laws has been sudden and dramatic.

According to a Michigan Economic Development Corporation official who testified before the House Commerce Committee on June 17, in just the first nine weeks after the film incentive program was enacted, 30 films representing more than \$233.0 million in in-State production had entered into agreements with the State. Film crews are working, or soon will be, in many areas of Michigan including Brooklyn, Holland, Jackson, Saginaw, Traverse City, and the Detroit metropolitan area. Actor-director Clint Eastwood is scheduled to shoot a film in Detroit soon; Sigourney Weaver was in Royal Oak recently to shoot a movie for Lifetime cable television; and there have been reports of Drew Barrymore scouting locations in the Detroit area for an upcoming film project.

Location filming means jobs for Michigan workers involved in all technical aspects of film-making as well as new business for support services such as caterers, hotels, restaurants, and retail outlets. Reportedly, these new Michigan-based productions are filling some empty office and warehouse space, and a mobile office company that makes construction site trailers is making a major investment to transform unused trailer inventory into film-set wagons for bathrooms, wardrobes, hair and makeup trailers, and dressing rooms for actors.

There also have been recent announcements about possible new developments to build film production studios in the Ann Arbor, Kalamazoo, and Lansing areas.

Cost to Taxpayers. Critics of the film incentive legislation claim that its tax credits amount to a giveaway of taxpayer revenue to an industry that has had little or no history or presence in Michigan. Businesses struggling to survive in Michigan's sluggish economy will continue to pay their taxes, but that money will go toward enticing Hollywood filmmakers to do business here.

The main incentive consists of an MBT credit of up to 42.0% of film production costs (not of tax liability) and makes the credit refundable, meaning that the filmmaker receives the production-cost rebate even if its amount exceeds the business's tax liability. Indeed, under the legislation, the State will refund the amount of the tax credit for film production expenditures to a filmmaker even if the filmmaker has no tax liability. Essentially, the State's taxpayers will be paying private industry to choose to do business in the Great Lakes State.

As discussed above, the CREC estimated that the film industry tax credits will cost the State \$99.1 million in FY 2008-09 and that amount is likely to increase in the following fiscal year.

Future Outlook

The film incentive legislation has been characterized as an economic developer's dream and a budget officer's nightmare. As evidenced by its early success in drawing film projects to

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Michigan, there is little doubt that the legislation will result in increased economic activity in the State. The question is, "at what cost to taxpayers?".

Already, there have been reports of some interest in scaling back the incentives, perhaps by setting an annual cap on the amount of credits awarded, making all of the credits nonrefundable, or placing a sunset on awarding the production cost credits and State-funded loans. (The job training and infrastructure credits already include a sunset and the infrastructure credits have a \$20.0 million annual cap.)

Advocates of Michigan's generous film incentive tax credits urge the State to stay the course. Rather than suggesting that these new policies would bolster the State budget directly or in the short-run, supporters claimed during the legislative process that the incentives would have an immediate and sustainable impact on economic activity. One Michigan-bred filmmaker who pushed for the legislation has suggested that the film incentives are a long-term plan and will need three to five years to get the film industry rooted in Michigan (Mike Binder, "Don't Go Wobbly on State Film Credit", *Detroit Free Press*, 6-16-08). He and others point to economic successes in the States of Louisiana and New Mexico and the Cities of New Orleans, New York, Toronto, and Vancouver, all of which have drawn film industry business and enjoyed job growth after enacting generous tax credits for the film industry. They believe that Michigan may need to make an early investment but the recently enacted film incentive package should be a successful, long-running feature.