

2017 Regular Session

SENATE BILL NO. 254 (Substitute of Senate Bill No. 235 by Senator Morrell)

BY SENATORS MORRELL AND GARY SMITH

TAX/TAXATION. Provides for the Motion Picture Production Tax Credit. (gov sig)

1 AN ACT
2 To amend and reenact R.S. 47:6007(B)(1), (8), (11) as amended by Acts 2015, No. 129,
3 (14), (16) as amended by Acts 2015, No. 141, (17) as amended by Acts 2015, No.
4 129, (21), (24), the introductory paragraph of R.S. 47:6007(C)(1), R.S.
5 47:6007(C)(1)(a) and (b), the introductory paragraphs of R.S. 47:6007(C)(1)(c) and
6 (4), R.S. 47:6007(C)(4)(b) and (C)(4)(f) as amended by Acts 2015, No. 129 and 134,
7 R.S. 47:6007(D)(1)(a) and (2)(c)(i) as amended by Acts 2015, No. 141, (d),
8 (D)(2)(e)(i) as amended by Acts 2015, No. 144, (9)(b)(i), and (I), to enact R.S.
9 47:6007(B)(28), (29), (30), (31), (32), (33), (34), and (C)(3)(d), (C)(4)(g),
10 (D)(1)(d)(v) and (2)(a)(i)(gg) and (hh), (2)(a)(ii), and (e)(iv), and (J), and to repeal
11 R.S. 47:6007(B)(4), (11) as amended by Acts 2015, Nos. 134 and 144, (16) as
12 amended by Acts 2015, No. 134 and 412, (17)(c), (d), and (e) all as amended by Acts
13 2015, Nos. 134, 141, 142, 143, 144, and 412, (23), (C)(1)(d), (C)(4)(f) as amended
14 by Acts 2015, No. 144, (D)(2)(c)(i) as amended by Acts 2015, No. 412, (D)(2)(e)(i)
15 as amended by Acts 2015, Nos. 129, 141, and 412, relative to the motion picture
16 production tax credit; to provide for definitions applicable to the credit; to provide
17 for base investment credit enhancements; to provide for a maximum overall credit

1 rate; to provide for conditions required to earn the credit; to provide for payroll
 2 credits for qualified entertainment companies; to provide for a sunset date for third-
 3 party credit transfers; to provide for permanent credit caps, structured pay outs, and
 4 project size limitations; to remove duplicate provisions; to provide for a sunset date;
 5 to provide for an effective date; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 47:6007(B)(1), (8), (11) as amended by Acts 2015, No. 129, (14),
 8 (16) as amended by Acts 2015, No. 141, (17) as amended by Acts 2015, No. 129, (21), (24),
 9 the introductory paragraph of R.S. 47:6007(C)(1), R.S. 47:6007(C)(1)(a) and (b), the
 10 introductory paragraphs of R.S. 47:6007(C)(1)(c) and (4), R.S. 47:6007(C)(4)(b) and
 11 (C)(4)(f) as amended by Acts 2015, No. 129 and 134, R.S. 47:6007(D)(1)(a) and (2)(c)(i)
 12 as amended by Acts 2015, No. 141, (d), (D)(2)(e)(i) as amended by Acts 2015, No. 144,
 13 (9)(b)(i), and (I) are hereby amended and reenacted and R.S. 47:6007(B)(28), (29), (30),
 14 (31), (32), (33), (34), and (C)(3)(d), (C)(4)(g), (D)(1)(d)(v) and (2)(a)(i)(gg) and (hh), (ii),
 15 and (e)(iv) and (J) are hereby enacted to read as follows:

16 §6007. Motion picture production tax credit

17 * * *

18 B. Definitions. For the purposes of this Section:

19 (1) "Above the Line ~~services salaries~~" or "ATL ~~services salaries~~" means **all**
 20 **salary, wages, fees, and fringe benefits paid for** services such as those of a
 21 producer, executive producer, ~~line producer~~, coproducer, ~~assistant producer~~, actor,
 22 director, ~~casting director~~, screenwriter, **lead cast, supporting cast, day players**, and
 23 other services of job positions performed by personnel of the production that are
 24 associated with the creative or financial control of a production and customarily
 25 considered as above the line services in the film and television industry.

26 * * *

27 (8) "Louisiana promotional graphic" means a graphical brand or logo for
 28 promotion of the state which has been approved by the office ~~for a production~~,
 29 ~~consisting of either of the following~~:

1 (a) ~~A five-second long static or animated graphic that promotes Louisiana in~~
 2 ~~the end credits before the below-the-line crew crawl for the life of the production,~~
 3 ~~and which includes a link to Louisiana on the production's website and online~~
 4 ~~promotions.~~

5 (b) ~~An embedded five-second long static or animated graphic that promotes~~
 6 ~~Louisiana during each broadcast worldwide for the life of the production, and which~~
 7 ~~includes a link to Louisiana on the production's website and online promotions.~~

* * *

9 (11) "Motion picture" means a nationally or internationally distributed
 10 feature-length film, short film, video, television pilot, television series, television
 11 movie of the week, animated feature film, animated short film, animated television
 12 series, commercial, or documentary made in Louisiana, in whole or in part, for
 13 theatrical or television viewing, or for viewing on any digital online platform as may
 14 be further defined by the office through the promulgation of rules. The term "motion
 15 picture" shall not include the production of television coverage of news and athletic
 16 events **or music festivals.**

* * *

17 (14) "Payroll" means all salary, wages, and ~~other compensation of any kind~~
 18 ~~whatsoever, including but not limited to services, benefits, per diem, housing, box~~
 19 ~~rentals and any other type of benefit~~ **fringe benefits** paid, provided, or rendered to
 20 an individual for services relating to a state-certified production and for which taxes
 21 are withheld and remitted to the Department of Revenue in accordance with R.S.
 22 47:164(D)(2) and taxable in this state as verified by the office through the use of
 23 information which may be provided to them upon request by the office from the
 24 Louisiana Workforce Commission, or the Department of Revenue. Any information
 25 so furnished shall be considered and held confidential and privileged by the ~~Depart~~
 26 **Department** of Economic Development. ~~However, "payroll" shall exclude any~~
 27 ~~portion of an individual salary in excess of three million dollars.~~

* * *

1 (16) "Production expenditure verification report" means a report issued by
2 a qualified accountant who is unrelated to the motion picture production company
3 and that is a report of the qualified accountant's verification of the motion picture
4 production's cost report of production expenditures. The production expenditure
5 verification report shall contain an opinion from the qualified accountant stating that
6 there are no related party transactions or that material transactions of related party
7 relationships are properly reported and accounted for as required by Paragraph
8 (D)(9) of this Section, adequately disclosed, and explained in the report and that the
9 production's cost report of production expenditures presents fairly, in all material
10 aspects, the production expenditures expended in Louisiana pursuant to the
11 provisions of this Section. **The production expenditure verification report shall**
12 **contain an opinion from the qualified accountant stating that any allocation of**
13 **credits proposed by the motion picture production company to its partners or**
14 **members is not a disguised sale of the credits and has "substantial economic**
15 **effect" as that term is defined by 26 U.S.C.A. §704 and the federal regulations**
16 **thereunder.** The production expenditure verification report shall:

17 (a) Be performed in accordance with the accounting standards generally
18 accepted in the United States.

19 (b) Be addressed to the party which has engaged the qualified accountant,
20 with a copy addressed to the motion picture production company or motion picture
21 investor tax credit applicant.

22 (c) Contain the qualified accountant's name, address, and telephone number.

23 (d) Contain a certification that the qualified accountant is unrelated to the
24 motion picture production company.

25 (e) Be dated as of the date of completion of the qualified accountant's field
26 work.

27 (f) Contain a statement of acknowledgment by the qualified accountant that
28 the state is relying on the qualified production expenditure verification report in the
29 issuance of the tax credits under the provisions of this Section.

1 (17)(a) "Production expenditures" means preproduction, production, and
2 postproduction expenditures in this state directly relating to a state-certified
3 production, including without limitation the following: set construction and
4 operation; wardrobes, makeup, accessories, and related services; costs associated
5 with photography and sound synchronization, lighting, and related services and
6 materials; editing and related services; rental of facilities and equipment; leasing of
7 vehicles; costs of food and lodging; digital or tape editing, film processing, transfer
8 of film to tape or digital format, sound mixing, special and visual effects; and
9 payroll. **For all state-certified productions approved on or after July 1, 2015, this**
10 **term shall include marketing and promotion expenses of the state-certified**
11 **production incurred in this state.**

12 (b) For all state-certified productions approved on or after January 1, 2004,
13 this term shall not include expenditures for marketing and distribution,
14 non-production related overhead, amounts reimbursed by the state or any other
15 governmental entity, costs related to the transfer of tax credits, amounts that are paid
16 to persons or entities as a result of their participation in profits from the exploitation
17 of the production, the application fee, state, or local taxes, or any expenditures
18 occurring outside of Louisiana. ~~For all state-certified productions approved on or~~
19 ~~after January 1, 2016, marketing expenditures shall be considered "production~~
20 ~~expenditures".~~ **This term shall not include expenditures for related party**
21 **transactions denied or limited by the office pursuant to Paragraph (D)(9) of this**
22 **Section, the production expenditure verification report fee, expenditures for**
23 **Above the Line (ATL) salaries for the production that exceed forty percent of**
24 **total production expenditures in the state for the production, or expenditures**
25 **for airfare. This term shall not include expenditures for bond fees, insurance**
26 **premiums, finance fees, loan interest fees, or payments of a similar nature, paid**
27 **to investors in the production unless such expenditures are made to a Louisiana**
28 **resident licensed insurance producer that has its principal place of business in**
29 **this state as required by R.S. 22:1543, a Louisiana financial institution as**

1 defined in R.S. 6:2(8), or a Louisiana Business and Industrial Development
 2 Company as defined in and provided for in Chapter 39-B of Title 51 of the
 3 Louisiana Revised Statutes of 1950, R.S. 51:2386 et seq., that is regulated by the
 4 office of financial institutions and which have one or more offices in the state,
 5 in which case, the expenditures may be allocated only on a pro rata basis,
 6 allocating the fees based on the relative percentage of production activity
 7 occurring in and out of state.

8 (c) For all applications received on or after July 1, 2017, this term shall
 9 not include expenditures for catering and craft services unless such
 10 expenditures are made to a source within the state.

11 * * *

12 (21) "Resident" or "resident of Louisiana" means a natural person who is a
 13 ~~legal resident and who has been domiciled in the state and has maintained a~~
 14 ~~permanent place of abode in this state for no less than twelve consecutive months~~
 15 required to file a Louisiana resident individual income tax return.

16 * * *

17 (24) "Source within the state" means a physical facility in Louisiana,
 18 operating with posted business hours and employing at least one full-time equivalent
 19 employee. Procurement companies shall not be considered a source within the
 20 state.

21 * * *

22 (28) "Fringe benefit" means an additional benefit which supplements an
 23 employee's salary and may include meal per diems, housing per diems, pension
 24 or retirement contributions, health insurance premium payments, box rental
 25 that includes an inventory list and car allowances.

26 (29) "Independent film production" means a state-certified production,
 27 with a production budget no greater than ten million dollars, produced outside
 28 of the major film studio system, as approved by the office.

29 (30) "Legacy credit" is a certified credit that is evidenced by a final

1 certification letter issued before July 1, 2017, that has not expired, that has not
 2 been claimed as a credit against state income tax on a tax return filed before
 3 July 1, 2017, and that has not been transferred to the Department of Revenue
 4 pursuant to the provisions of Subitem (C)(4)(f)(i)(aa) of this Section before
 5 July 1, 2017.

6 (31) "Louisiana screenplay production" means a state-certified
 7 production meeting the Louisiana screenplay base investment enhancement
 8 eligibility criteria set forth in Subitem (C)(1)(a)(i)(bb) of this Section.

9 (32) "New jobs" means full-time employment in this state working an
 10 average of thirty hours or more per week, filled by residents of the state, at the
 11 project site designated in the contract, who were not previously on the QEC's
 12 payroll in Louisiana, nor previously on the payroll of the QEC's parent entity,
 13 subsidiary, or affiliate in Louisiana, or previously on the payroll of any business
 14 whose physical location and employees are substantially the same as those of the
 15 QEC in Louisiana, as approved by the secretary.

16 (33) "Qualified Entertainment Company (QEC)" means an entity
 17 authorized to do business in the state of Louisiana, engaged in the development
 18 or distribution of audio, visual, or both audio-visual entertainment products for
 19 public consumption, directly or indirectly, certified by the secretary as meeting
 20 the eligibility requirements of this Section, and executing a contract providing
 21 the terms and conditions for its participation.

22 (34) "QEC Payroll" means W-2, box 1 wages.

23 * * *

24 C. Production tax credit; specific productions and projects.

25 (1) There is hereby authorized a tax credit against state income tax for
 26 Louisiana taxpayers for expenditures related to state-certified productions **and**
 27 **qualified entertainment companies**. The tax credit shall be earned by a motion
 28 picture production company at the time expenditures are certified by the office and
 29 the secretary for a motion picture production company in a state-certified production.

1 However, credits cannot be applied against a tax or transferred until the expenditures
2 are certified by the office and the secretary. For state-certified productions,
3 expenditures shall be certified no more than once per production, after project
4 completion. However, if at the time of application for initial certification, the office
5 is notified that post-production activities will take place in Louisiana, a supplemental
6 request for certification of expenditures directly related to such post-production
7 activity may be submitted for consideration by the office. The cost of any
8 verification or audit of such expenditures shall be borne by the motion picture
9 production company. The tax credit shall be calculated as a percentage of the total
10 base investment dollars certified per project, or as otherwise provided in this
11 Paragraph.

12 (a) ~~For state-certified productions approved by the office and the secretary~~
13 ~~on or after January 1, 2004, but before January 1, 2006:~~ **Project Based Production**
14 **tax credit. For applications for state-certified productions on or after July 1,**
15 **2017:**

16 (i) ~~If the total base investment is greater than three hundred thousand dollars~~
17 ~~and less than or equal to eight million dollars, each taxpayer shall be allowed a tax~~
18 ~~credit of ten percent of the actual investment made by that taxpayer.~~ **Base**
19 **investment credit. If the total base investment is greater than three hundred**
20 **thousand dollars, or if a production is a Louisiana screenplay production, each**
21 **investor shall be allowed a tax credit of twenty-five percent of the base**
22 **investment made by the investor. Investors may receive an increased base**
23 **investment credit rate by satisfying any of the following criteria:**

24 **(aa) Out-of-zone filming. A five percent increase in the base investment**
25 **rate may be allowed for state-certified productions with their production office**
26 **and sixty percent of principal photography based and occurring outside of the**
27 **New Orleans Metro Statistical Area, as delineated by the federal Office of**
28 **Management and Budget, but not including St. John the Baptist Parish.**

29 **(bb) Louisiana screenplay. A ten percent increase in the base investment**

1 rate may be allowed for state-certified production expenditures equal to or
2 greater than fifty thousand dollars but no greater than five million dollars,
3 based upon a screenplay created by a Louisiana resident as evidenced by
4 documents such as certificate of authorship, a Writers Guild of America
5 registration certificate, the records of the United States Copyright Office, or a
6 reasonable legal opinion issued to the office.

7 (ii) ~~If the total base investment is greater than eight million dollars, each~~
8 ~~taxpayer shall be allowed a tax credit of fifteen percent of the actual investment~~
9 ~~made by that taxpayer.~~ **Additional payroll and visual effects credits.**

10 **(aa) Louisiana payroll. To the extent that base investment is expended**
11 **on payroll for Louisiana residents employed in connection with a state-certified**
12 **production, each investor shall be allowed an additional tax credit of ten percent**
13 **of such payroll.**

14 **(bb) Visual effects. To the extent that base investment is expended on**
15 **visual effects expenditure, each investor shall be allowed an additional tax credit**
16 **of five percent of such expenditures if at least seventy-five percent of the visual**
17 **effects budget is expended for services performed in Louisiana by an approved**
18 **QEC, or a minimum of ten million dollars in qualified visual effects**
19 **expenditures are made in Louisiana.**

20 **(cc) The maximum tax credit that a production can earn pursuant to this**
21 **Paragraph for the base investment credit, including base investment increases**
22 **for out-of-zone filming and Louisiana screenplay, and the additional payroll and**
23 **visual effects credits is forty percent of base investment.**

24 (iii) The initial certification shall be effective for qualifying expenditures
25 made within a period ~~of~~ **of** twelve months prior to ~~and twelve~~ **the date of application,**
26 **and twenty-four** months after the date of initial certification., **except that:**

27 **(aa) State-certified productions for scripted episodic content, with**
28 **estimated expenditures of at least ten million dollars in qualifying in state**
29 **expenditures per calendar year, for up to five years, shall be issued an initial**

1 certification effective for qualifying expenditures made until sixty months after
2 the date of initial certification, under terms and conditions approved by the
3 office and the secretary, as set forth in the initial certification.

4 (iv) As a condition of receiving tax credits pursuant to this Section,
5 state-certified productions shall be required to acknowledge the financial
6 assistance of the state of Louisiana, either through the inclusion of a Louisiana
7 promotional graphic, or an alternative marketing option, as approved by the
8 office.

9 (v) As a condition of receiving tax credits pursuant to this Section,
10 state-certified productions shall be required to participate in a career-based
11 learning and training program approved by the office. The secretary and the
12 office shall determine through the promulgation of rules, approved programs
13 as well as the minimum criteria that an applicant must meet in order to qualify
14 according to this Section.

15 ~~(b) For state-certified productions approved by the office and the secretary~~
16 ~~on or after January 1, 2006, but before July 1, 2009:~~ Company-based QEC payroll
17 tax credit for Qualified Entertainment Companies approved by the office and
18 the secretary on or after July 1, 2017. To the extent that base investment is
19 expended on payroll for Louisiana residents in connection with a QEC, tax
20 credits shall be earned at the following rates:

21 ~~(i) If the total base investment is greater than three hundred thousand dollars,~~
22 ~~each investor shall be allowed a tax credit of twenty-five percent of the base~~
23 ~~investment made by that investor.~~ Tier 1. A payroll credit of ten percent shall be
24 earned for each new job whose QEC payroll is equal to or greater than
25 forty-five thousand dollars per year, up to sixty-six thousand dollars per year.

26 ~~(ii) To the extent that base investment is expended on payroll for Louisiana~~
27 ~~residents employed in connection with a state-certified production, each investor~~
28 ~~shall be allowed an additional tax credit of ten percent of such payroll. However, if~~
29 ~~the payroll to any one person exceeds one million dollars, this additional credit shall~~

1 ~~exclude any salary for that person that exceeds one million dollars.~~ **Tier 2. A payroll**
 2 **credit of twenty percent shall be earned for each new job whose QEC payroll**
 3 **is equal to or greater than sixty-six thousand dollars per year, but no greater**
 4 **than two hundred thousand dollars per year.**

5 ~~(iii) The initial certification shall be effective for qualifying expenditures~~
 6 ~~made within a period twelve months prior to and twelve months after the date of~~
 7 ~~initial certification.~~

8 ~~(c) For state-certified productions approved by the office and the secretary~~
 9 **applications for state-certified productions approved** on or after July 1, 2009, **and**
 10 **before July 1, 2017:**

11 * * *

12 (3) Application of the credit.

13 * * *

14 **(d) In order to prevent disguised sales of the credits, allocations of credits**
 15 **through partnership and membership agreements shall not be recognized unless**
 16 **they have "substantial economic effect" as that term is defined by 26 U.S.C.A.**
 17 **§704 and the federal regulations thereunder.**

18 (4) Transferability of the credit. Except as provided for in ~~Item (f)(iii)~~
 19 **Subparagraph (g)** of this Paragraph, motion picture tax credits not previously
 20 claimed by any taxpayer against its income tax may be transferred or sold to another
 21 Louisiana taxpayer or to the office **Department of Revenue**, subject to the following
 22 conditions:

23 * * *

24 (b) Transferors and transferees shall submit to the Department of Revenue
 25 in writing, a notification of any transfer or sale of tax credits within ten business days
 26 after the transfer or sale of such tax credits. No transfer or sale of tax credits shall be
 27 effective until recorded in the tax credit registry in accordance with R.S. 47:1524.
 28 The notification shall include the transferor's tax credit balance prior to transfer, a
 29 copy of any tax credit certification letter(s) issued by the office and the secretary of

1 the Department of Economic Development the transferor's remaining tax credit
2 balance after transfer, all tax identification numbers for both transferor and
3 transferee, the date of transfer, the amount transferred, a copy of the credit
4 certificate, price paid by the transferee to the transferor, in the case when the
5 transferor is a state-certified production, for the tax credits, and any other
6 information required by the office or the Department of Revenue. For the purpose
7 of reporting transfer prices, the term "transfer" shall include allocations pursuant to
8 Paragraph ~~(2)~~**(3)** of this Subsection as provided by rule. The tax credit transfer value
9 means the percentage as determined by the price paid by the transferee to the
10 transferor divided by the dollar value of the tax credits that were transferred in
11 return. The notification submitted to the Department of Revenue shall include a
12 processing fee of up to two hundred dollars per transferee, and any information
13 submitted by a transferor or transferee shall be treated by the office and the
14 Department of Revenue as proprietary to the entity reporting such information and
15 therefore confidential. However, this shall not prevent the publication of summary
16 data that includes no fewer than three transactions.

17 * * *

18 ~~(f)(i) Beginning on and after January 1, 2007, the investor who earned the~~
19 ~~motion picture investor tax credits may transfer the credits to the office for seventy-~~
20 ~~two percent of the face value of the credits. Beginning January 1, 2009, and every~~
21 ~~second year thereafter, the percent of the face value of the tax credits allowed for~~
22 ~~transferring credits to the office shall increase two percent until the percentage~~
23 ~~reaches eighty percent.~~

24 (ii) **(aa)** For projects which receive initial certification **that apply** on and
25 after July 1, 2009, **and before July 1, 2017**, the motion picture production company
26 that earned the motion picture production tax credits pursuant to such certification
27 or the company's irrevocable designee, as provided for in Item ~~(iv)~~**(iii)** of this
28 Subparagraph, may transfer the credits to the Department of Revenue for eighty-five
29 percent of the face value of the credits in accordance with the procedures and

1 requirements of Item ~~(iii)~~**(ii)** of this Subparagraph.

2 **(bb) For projects that apply on and after July 1, 2017, the motion picture**
3 **production company that earned the motion picture production tax credits**
4 **pursuant to such certification or the company's irrevocable designee, as**
5 **provided for in Item (iii) of this Subparagraph, may transfer the credits to the**
6 **Department of Revenue for ninety percent of the face value of the credits in**
7 **accordance with the procedures and requirements of Item (ii) of this**
8 **Subparagraph.**

9 **(cc) Beginning July 1, 2017, legacy credits that are recorded in the**
10 **Louisiana Tax Credit Registry before January 1, 2018, may be transferred to**
11 **the Department of Revenue for eighty-five percent of face value. The**
12 **Department of Revenue shall make payment for the legacy credits in the**
13 **amount to which the transferor is entitled from the current collections of the**
14 **taxes collected pursuant to Chapter 1 of Subtitle II, of this Title. The**
15 **Department of Revenue may require the transferor to submit such additional**
16 **information as may be necessary to administer the provisions of this Section.**

17 ~~(iii)~~**(ii)** The Department of Revenue may require the transferor to submit such
18 additional information as may be necessary to administer the provisions of this
19 Section. The secretary of the Department of Revenue shall make payment to the
20 motion picture production company or its irrevocable designee in the amount to
21 which he is entitled from the current collections of the taxes collected pursuant to
22 Chapter 1 of Subtitle II, of this Title provided such tax credits are transferred to the
23 Department of Revenue within one calendar year of certification.

24 ~~(iv)~~**(iii)** A bank or other lender may be named as an irrevocable designee in
25 the initial tax credit certification or other document submitted thereafter by a motion
26 picture production company to the office. As an irrevocable designee, a bank or other
27 lender may elect to have the tax credits issued directly to it from the office, and in
28 addition to the rights of a transferee may also elect to transfer the credits to the
29 Department of Revenue in accordance with the provisions of Items ~~(ii)~~**(i)** and ~~(iii)~~**(ii)**

1 of this Subparagraph.

2 ~~(v) The office shall not accept the transfer of motion picture investor tax~~
3 ~~credits from July 1, 2015 through June 30, 2016.~~

4 **(g) Beginning January 1, 2018, except as provided for in Subparagraph**
5 **(f) of this Paragraph, motion picture tax credits not previously claimed by any**
6 **taxpayer against its income tax may not be transferred or sold to another**
7 **taxpayer.**

8 * * *

9 D. Certification and administration.

10 **(1)(a)(i) Company-based QEC payroll tax credit. It is the intent of the**
11 **Louisiana Legislature that the tax credits provided in this Section should be**
12 **used primarily as an inducement for qualified entertainment businesses to**
13 **permanently locate new or expand existing operations in Louisiana. A business**
14 **may be eligible for participation in the program if it meets all of the following**
15 **criteria:**

16 **(aa) The business is engaged in the development or distribution of audio,**
17 **visual, or both audio-visual entertainment product for public consumption,**
18 **directly or indirectly, as approved by the secretary.**

19 **(bb) Creates a minimum of five new jobs meeting or exceeding the Tier**
20 **1 minimum wage requirements, in accordance with the provisions of Item(C)**
21 **(1)(b)(i) of this Section.**

22 **(cc) Is approved by the secretary.**

23 **(I) The following business types are ineligible:**

24 **(aaa) Telecommunication.**

25 **(bbb) Any other businesses as determined by rule promulgated by the**
26 **Department of Economic Development.**

27 **(ii) The secretary of the Department of Economic Development and the office**
28 **shall determine through the promulgation of rules the minimum criteria that a project**
29 **must meet in order to qualify according to this Section. ~~The secretary, the office, and~~**

1 ~~the division of administration shall determine through the promulgation of rules the~~
2 ~~minimum criteria that a project must meet in order to qualify according to this~~
3 ~~Section.~~

4 * * *

5 (d) When determining which productions may qualify, the office and the
6 secretary of the Department of Economic Development shall take the following
7 factors into consideration:

8 * * *

9 **(v) Filming location, project size, project type, and availability of tax**
10 **credits in any given year.**

11 (2)(a) Application. An applicant for the motion picture investor credit shall
12 submit an application for initial certification to the office and the secretary of the
13 Department of Economic Development that includes the following information:

14 (i) For state-certified productions the application shall include:

15 * * *

16 **(gg) The format of the project, for example whether it is a feature film**
17 **or television series, and whether it seeks qualification as a QEC, independent**
18 **film project, or Louisiana screenplay project.**

19 **(hh) A statement of which of the base credit rate enhancements or**
20 **additional credits for payroll or visual effects, if any, will apply to the project**
21 **and an estimate of expenditures in each applicable category.**

22 **(ii) Company-based QEC payroll tax credit. Applications shall be**
23 **submitted to the office on a form prescribed by the department, or if available**
24 **submitted electronically, to include such information as may be required by the**
25 **department to determine if the applicant is qualified.**

26 * * *

27 (c)(i) In order to protect the integrity of the motion picture investor tax credit
28 program by ensuring that tax credits are certified only for eligible expenditures and
29 to provide for uniformity in expenditure verification reporting, the department shall

1 directly engage and assign an independent certified public accountant, hereinafter
 2 referred to as "CPA", to prepare, for the department, the required production
 3 expenditure verification report on a tax credit applicant's cost report of expenditures
 4 or claims. The applicant shall be responsible for and assessed any production
 5 expenditure verification report fee ~~which~~ that may be required by law, including any
 6 up-front deposit of the fee. For purposes of the report, the applicant shall make all
 7 records related to the tax credit application available to the CPA.

8 * * *

9 **(d)(i) The Project based production tax credit. After application review**
 10 **and consideration of all discretionary factors, the** office and the secretary shall
 11 submit their initial certification or written denial of a project as a state-certified
 12 production to investors and to the secretary of the Department of Revenue indicating
 13 the total base investment which shall be expended in the state on the state-certified
 14 production within sixty days of their receipt of all required information. The initial
 15 certification shall include a unique identifying number for each state-certified
 16 production **and shall provide for a preliminary allocation of tax credits by year.**

17 **(ii) Company-based QEC payroll tax credit. After application review and**
 18 **consideration of all discretionary factors, the office and the secretary may**
 19 **execute a contract with an applicant for a period of up to five years, providing**
 20 **the terms and conditions for its participation. A five-year renewal contract may**
 21 **be authorized if the applicant has complied with all the terms of the contract**
 22 **and has not performed any act, nor failed to perform any act, which would have**
 23 **made the applicant liable for suspension, and has complied with the provisions**
 24 **of this Section. The contract shall set forth an estimate of jobs and payroll per**
 25 **calendar year, which will be tentatively allocated to the QEC for annual cap**
 26 **computation purposes.**

27 * * *

28 **(e)(i)(aa) No For projects with initial certification letters issued on or**
 29 **after July 1, 2015, no** later than six months after the expiration of the initial

1 certification period for the applicable state-certified production, a state-certified
2 motion picture production company applicant shall make a request to the office to
3 proceed to final certification by submitting to the office a cost report of production
4 expenditures to be formatted in accordance with instructions of the office. The
5 applicant shall make all records related to the cost report available for inspection by
6 the office and the qualified accountant selected by the office to prepare the
7 production expenditure verification report, after which time all such claims to tax
8 credits shall be deemed waived. After review and investigation of the cost report, the
9 accountant shall submit to the office and the secretary a production expenditure
10 verification report. The office and the secretary shall review the production
11 expenditure verification report and may require additional information needed to
12 make a determination as to final certification of all tax credits for that production.
13 Within one hundred twenty days of the receipt of the production expenditure
14 verification report and all required supporting information, the office and the
15 secretary shall issue a tax credit certification letter indicating the amount of tax
16 credits certified for the state-certified production to the applicant for all qualifying
17 expenditures verified by the office. Any expenditures for which tax credits were
18 neither denied nor certified due to insufficient information or other issues, the office
19 and secretary shall diligently work to resolve the outstanding issues in a timely
20 manner, and the office and secretary may subsequently issue a supplemental tax
21 credit certification at the time of such resolution.

22 **(bb) For projects with initial certification letters issued before July 1,**
23 **2015, upon project completion or at any time after project costs are deemed**
24 **final by the motion picture production company or applicant, the applicant**
25 **shall make a request to the office to proceed to final certification by submitting**
26 **to the office a cost report of production expenditures to be formatted in**
27 **accordance with instructions of the office promulgated in compliance with the**
28 **Administrative Procedure Act. The applicant shall make all records related to**
29 **the cost report available for inspection by the office and the qualified**

1 accountant selected by the office to prepare the production expenditure
 2 verification report. After review and investigation of the cost report, and after
 3 two levels of review within a CPA firm or a second review through a
 4 cooperative endeavor with another CPA, the accountant shall submit to the
 5 office, the secretary, and the motion picture production company or motion
 6 picture investor tax credit applicant a production expenditure verification
 7 report and the affidavit required by Subparagraph (g) of this Paragraph. The
 8 office and the secretary shall review the production expenditure verification
 9 report and may require additional information needed to make a determination.
 10 Within one hundred twenty days of the receipt of the production expenditure
 11 verification report and all required supporting information, the office and the
 12 secretary shall issue a tax credit certification letter indicating the amount of tax
 13 credits certified for the state-certified production to the investors for all
 14 qualifying expenditures verified by the office. Any expenditures for which tax
 15 credits were neither denied nor certified due to insufficient information or other
 16 issues, the office and secretary shall diligently work to resolve the outstanding
 17 issues in a timely manner, and the office and secretary may subsequently issue
 18 a supplemental tax credit certification at the time of such resolution.

* * *

20 (iv) State-certified productions for scripted episodic content and
 21 approved QEC's may submit more than one request for final certification of tax
 22 credits, but no more frequently than once per calendar year, in accordance with
 23 the terms of the initial certification letter or QEC contract and instructions by
 24 the office.

* * *

(9) * * *

27 (b) Tax credits certified for goods and services provided by related parties to
 28 a state-certified production shall be further limited as follows:

29 (i) Qualifying production expenditures for Above the Line, or "ATL",

1 ~~services~~ **salaries** provided by related parties shall be limited to twelve percent of
2 total Louisiana production expenditures.

3 * * *

4 I. ~~Commencing no later than January 31, 2016, the House Committee on~~
5 ~~Ways and Means and the Senate Committee on Revenue and Fiscal Affairs shall~~
6 ~~review the credit authorized pursuant to the provisions of this Section to determine~~
7 ~~if the economic benefit provided by such credit outweigh the loss of revenue realized~~
8 ~~by the state as a result of awarding such credit. The House and Senate committees~~
9 ~~shall make a specific recommendation no later than March 1, 2017, to either continue~~
10 ~~the credit or to terminate the credit.~~ **No credits shall be allowed pursuant to this**
11 **Section for applications received on or after July 1, 2025.**

12 **J. Credit caps, structured pay outs, and project size limitations**

13 **(1) Department of Economic Development program issuance cap.**

14 **(a) The department shall by rule establish the method of provisionally**
15 **allocating available tax credits in initial certification letters, and the method for**
16 **granting tax credits in final tax credit certification letters, including but not**
17 **limited to a first-come, first-served system, reservation of tax credits for a**
18 **specific time period, or other method which the department, in its discretion,**
19 **may find beneficial to the program.**

20 **(b) For applications for state-certified productions and qualified**
21 **entertainment companies submitted on or after July 1, 2017, the total amount**
22 **of all tax credits granted in a final certification letter by the department in any**
23 **fiscal year shall not exceed one hundred fifty million dollars. Twenty percent of**
24 **the annual program cap shall be reserved as follows: five percent for qualified**
25 **entertainment companies, five percent for Louisiana screenplay productions,**
26 **and ten percent for independent film productions. If the total amount of credits**
27 **applied for in any particular year exceeds the aggregate amount of tax credits**
28 **allowed for that year, the excess shall be treated as having been applied for on**
29 **the first day of the subsequent year.**

1 (c)(i) If the total amount of credits granted to QEC's in any fiscal year
2 is less than the QEC cap, any residual amount of unused credits shall carry
3 forward for use in subsequent years and may be granted in addition to the QEC
4 cap for each year.

5 (ii) If the total amount of credits granted in any fiscal year to screenplay
6 productions or independent film productions is less than their respective caps,
7 any residual amount may be available for issuance by the department during
8 that fiscal year as established by rule.

9 (d) The department shall make reasonable efforts to post a listing of
10 estimated amounts available under the cap on its website.

11 (2) Department of Revenue taxpayer claim cap.

12 (a) Beginning July 1, 2017, claims against state income tax allowed on
13 returns for tax credits or transfers of such tax credits, including legacy credits,
14 to the Department of Revenue as provided for in Paragraph (C)(4) of this
15 Section shall be limited to an aggregate total of one hundred eighty million
16 dollars each fiscal year. If less than one hundred eighty million dollars of such
17 tax credits and transfers are allowed in a fiscal year, the remaining amount,
18 plus any amounts remaining from previous fiscal years, shall be added to the
19 one hundred eighty million dollar limit of subsequent fiscal years until that
20 amount of tax credits or tax credit transfers to the Department of Revenue are
21 claimed and allowed.

22 (b)(i) Claims for tax credits or transfers of tax credits to the Department
23 of Revenue shall be allowed on a first-come, first-served basis. Any taxpayer
24 whose claim for such tax credits or transfer to the Department of Revenue is
25 disallowed because the fiscal year cap has been reached may use the tax credits
26 against state income tax due in an original return filed in the next fiscal year or
27 may transfer tax credits to the Department of Revenue the next fiscal year, and
28 his claim or transfer shall have priority over other claims filed or transfers
29 applied for after the date of his original claim or application for transfer.

1 (ii) If a claim against state income tax for a tax credit is disallowed
2 because the fiscal year cap has been reached, the Department of Revenue may
3 provide for an abatement of interest pursuant to R.S. 47:1601 and a waiver of
4 delinquent payment penalties pursuant to R.S. 47:1603.

5 (iii) Any transferor whose transfer of legacy credits to the Department
6 of Revenue exceeds ten million dollars in one fiscal year shall be paid a
7 maximum of ten million dollars that year and may transfer the remaining
8 legacy credits, up to a maximum of ten million dollars for each subsequent fiscal
9 year, to the Department of Revenue and his transfer shall have priority over
10 other transfers applied for after the date of his original application for transfer.

11 (c) For all completed applications for transfer submitted to the
12 Department of Revenue on or after July 1, 2017, the face value of the credits
13 transferred to the Department of Revenue shall be subtracted from the
14 remaining available Department of Revenue taxpayer claim cap.

15 (d) The Department of Revenue shall make reasonable efforts to post a
16 listing of estimated amounts available under the cap on its website.

17 (3) Department of Economic Development individual project issuance
18 cap.

19 (a) Project-based production tax credit. For applications for
20 state-certified productions on or after July 1, 2017, the maximum amount of
21 credits that may be granted for a single state-certified production shall not
22 exceed twenty million dollars, except for state-certified productions for scripted
23 episodic content that may be granted up to twenty-five million dollars per
24 season.

25 (b) Company-based QEC payroll tax credit. For applications for
26 qualified entertainment company contracts on or after July 1, 2017, the
27 maximum amount of credits that may be granted for a single company shall not
28 exceed one million dollars per year.

29 (4) Department of Economic Development individual payroll cap.

1 (a) Project-based production tax credit. For applications for
2 state-certified productions on or after July 1, 2017, the maximum amount of
3 qualifying payroll expenditures made for the services rendered by an individual,
4 whether directly to an individual, or indirectly through a loan out company,
5 shall be three million dollars per person and no tax credits shall be earned for
6 payroll expenditures in excess of three million dollars per person.

7 (b) Company-based QEC payroll tax credit. For applications for
8 qualified entertainment company contracts on or after July 1, 2017, the
9 maximum amount of qualifying QEC payroll expenditures shall be two hundred
10 thousand dollars per person, for each employee as reported on a Form W-2, and
11 no tax credits shall be earned for payroll expenditures in excess of two hundred
12 thousand dollars per person.

13 (5) Department of Economic Development structured pay outs.

14 (a) The department may, at its discretion, require credits for any size
15 production or approved QEC to be structured over the course of two or more
16 years, as provided for in the initial certification letter or QEC contract.

17 (b) The department shall by rule establish the circumstances under
18 which a structured pay-out of credits may be required, including but not limited
19 to the availability of tax credits in any given year or the best interests of the
20 state.

21 Section 2. R.S. 47:6007(B)(4), (11) as amended by Acts 2015, Nos. 134 and 144,
22 (16) as amended by Acts 2015, No. 134 and 412, (17)(c), (d), and (e) all as amended by Acts
23 2015, Nos. 134, 141, 142, 143, 144, and 412, (23), (C)(1)(d), (C)(4)(f) as amended by Acts
24 2015, No. 144, (D)(2)(c)(i) as amended by Acts 2015, No. 412, (D)(2)(e)(i) as amended by
25 Acts 2015, Nos. 129, 141, and 412 are hereby repealed.

26 Section 3. The Louisiana State Law Institute is hereby directed to alphabetize the
27 definitions contained in R.S. 47:6007(B).

28 Section 4. This Act shall become effective upon signature by the governor or, if not
29 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 2 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 3 effective on the day following such approval.

The original instrument was prepared by Leonore F. Heavey. The following digest, which does not constitute a part of the legislative instrument, was prepared by J. W. Wiley.

DIGEST

SB 254 Reengrossed 2017 Regular Session Morrell

Present law authorizes five types of tax credits for state-certified motion picture productions:

- (1) A base investment credit of 30% for projects in excess of \$300,000.
- (2) A base investment credit of 30% for projects between \$50,000 and \$300,000, meeting certain hiring criteria.
- (3) An additional base investment credit of 15% for projects meeting certain Louisiana screenplay criteria.
- (4) An additional credit of 10% for Louisiana resident payroll expenditures.
- (5) An additional credit of 15% for certain Louisiana music expenditures.

Proposed law authorizes five types of tax credits for state-certified productions:

- (1) A base investment credit of 25% for projects in excess of \$300,000, or if a production is a LA screenplay production.
- (2) An additional base investment credit of 5% for projects filmed outside the New Orleans Metro Zone, as delineated by the federal OM&B but not including St. John the Baptist Parish.
- (3) An additional base investment credit of 10% for certain expenditures equal to or greater than \$50,000 but no greater than \$5 million for projects meeting certain Louisiana screenplay criteria.
- (4) A 10% credit for Louisiana resident payroll expenditures.
- (5) A 5% credit for certain Louisiana-based visual effects expenditures meeting certain requirements.

Proposed law limits the maximum credit available for the combined base investment, the out-of-zone and Louisiana screenplay base investment enhancements, and the additional Louisiana payroll and visual effects credits to 40% of base investment.

Proposed law also creates a new payroll tax credit for qualified entertainment companies. The tax credit is 10% for Tier 1 new jobs with payroll between \$45,000 and \$66,000 per year, or 20% for Tier 2 new jobs with payroll between \$66,000 and \$200,000 per year.

Proposed law adds numerous definitions, eligibility criteria, and procedural requirements for new qualified entertainment company payroll credit.

Proposed law requires the "production expenditure verification report" contain an opinion

from the qualified accountant that all allocations of the tax credits to partners of a partnership or members of an L.L.C. conform with federal tax requirements.

Proposed law requires all state-certified productions participate in a career-based learning and training program approved by the office.

Present law specifies that state-certified productions may only seek one final certification of tax credits after the expiration of the initial certification period, except for state-certified productions with Louisiana post production activities.

Proposed law adds an exception for state-certified productions for scripted episodic content and qualified entertainment credits, which may request final certification of tax credits more than once.

Proposed law requires that catering and craft services be purchased from a Louisiana source to be eligible for the tax credit.

Proposed law defines "independent film production" and "Louisiana screenplay production".

Proposed law ends transfers of certain motion picture tax credits to third parties after 12/31/17.

Present law provides that motion picture production companies may transfer credits to the Department of Revenue for 85% of the face value.

Proposed law retains present law for projects with an application date before July 1, 2017.

Proposed law provides that projects with an application date on or after July 1, 2017, may transfer credits to the Department of Revenue for 90% of the face value.

Proposed law adds requirements to the application process that prevents stacking of film credits.

Proposed law makes the \$150 million annual credit granting cap permanent for applications submitted on or after July 1, 2017. Adds a 5% carve out of the front-end cap to qualified entertainment companies, a 5% carve out for Louisiana screenplay productions and a 10% carve out for independent film productions.

Present law provides that a single state-certified production shall not exceed \$30 million.

Proposed law provides that a single state-certified production shall not exceed \$20 million, except for state-certified productions for scripted episodic content which may grant up to \$25 million per season.

Present law requires the Senate Committee on Revenue and Fiscal Affairs and House Committee on Ways and Means to study this tax credit and make a recommendation regarding the tax credit by March 1, 2017.

Proposed law replaces the study and recommendation provision with a sunset provision that provides that no credits shall be authorized for applications received after July 1, 2025.

Present law specifies that for fiscal years 2015-2018, no more than \$180 million may be claimed on returns, and that there shall be no cap beginning in Fiscal Year 2018-2019.

Proposed law specifies that beginning July 1, 2017, no more than \$180 million of credits may be claimed on tax returns or transferred to the Department of Revenue per fiscal year.

Proposed law provides for a procedure for the transfer of legacy tax credits that have been

recorded in the Louisiana Tax Credit Registry by January 1, 2018, to the Department of Revenue for 85% of face value.

Proposed law requires the Department of Revenue to subtract the face value of the credit from the remaining available cap when a credit or legacy credit is transferred to the Department of Revenue for completed transfer applications submitted to the Department of Revenue after July 1, 2017.

Present law contains several duplicate provisions of law that proposed law removes or merges.

Proposed law repeals amendments to R.S. 47:6007 contained in Act Nos. 129, 134, 141, 142, 143, 144, 412, 417, 425, and 452 of the 2015 Regular Session of the Legislature to the extent they conflict with proposed law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 47:6007(B)(1), (8), (11) as amended by Acts 2015, No. 129, (14), (16) as amended by Acts 2015, No. 141, (17) as amended by Acts 2015, No. 129, (21), (24), R.S. 47:6007(C)(1), R.S. 47:6007(C)(1)(a) and (b), (C)(1)(c)(intro para) and (4)(intro para), (C)(4)(b) and (C)(4)(f) as amended by Acts 2015, No. 129 and 134, R.S. 47:6007(D)(1)(a) and (2)(c)(i) as amended by Acts 2015, No. 141, (d), (D)(2)(e)(i) as amended by Acts 2015, No. 144, (D)(9)(b)(i), and (I); adds R.S. 47:6007(B)(28), (29), (30), (31), (32), (33), (34), and (C)(3)(d), (C)(4)(g), (D)(1)(d)(v) and (2)(a)(i)(gg) and (hh), (2)(a)(ii) and (e)(iv) and (J); repeals R.S. 47:6007(B)(4), (11) as amended by Acts 2015, Nos. 134 and 144, (16) as amended by Acts 2015, No. 134 and 412, (17)(c), (d), and (e) all as amended by Acts 2015, Nos. 134, 141, 142, 143, 144, and 412, (23), (C)(1)(d), (C)(4)(f) as amended by Acts 2015, No. 144, (D)(2)(c)(i) as amended by Acts 2015, No. 412, (D)(2)(e)(i) as amended by Acts 2015, Nos. 129, 141, and 412)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Requires a CPA to certify that all tax credits allocated to partners of a partnership or members of an L.L.C. conform with federal tax requirements.
2. Requires that catering and craft services purchased from a LA source be eligible for the tax credit.
3. Defines "independent film production" and "Louisiana screenplay production".
4. Reduces the base investment credit from 30% to 25%.
5. Changes boundaries of the additional base investment credit of 10%
6. Adds the payroll credit and the visual effects credits to the provision that limits the maximum credit rate a production can receive to 40% of the total base investment.
7. Ends transfers of tax credits to third parties after 12/31/17.
8. Changes the sunset date from 1/1/2023 to 7/1/2025.
9. Makes the \$150 million annual credit granting cap permanent.

10. Adds a 5% carve out of the front-end cap to qualified entertainment companies, a 5% carve out for Louisiana screenplay productions, and a 10% carve out for independent film productions.
11. Makes technical corrections.