

2017 Regular Session

HOUSE BILL NO. 646

BY REPRESENTATIVES LEGER, WHITE, AND GLOVER

TAX CREDITS: Provides for changes to the sound recording investor tax credit and provides for the amount of the expenditure verification report fee and deposit

1 AN ACT

2 To amend and reenact R.S. 47:6023(A)(introductory paragraph), (1)(b), (B),

3 (C)(1)(introductory paragraph) and (b) and (3)(introductory paragraph),

4 (D)(1)(introductory paragraph), (2)(c), (d), and (e), and (4), (E), and (I), to enact R.S.

5 47:6023(C)(1)(c) and (d), (4), and (5), and to repeal R.S. 47:6023(A)(2), relative to

6 tax credits; to provide with respect to the sound recording investor tax credit; to

7 provide for an additional tax credit; to provide for the amount of the fee associated

8 with certain reports; to provide for definitions; to provide for administration of the

9 tax credit; to provide with respect to certain tax certification letters; to provide for

10 certain requirements and limitations; to provide with respect to review of the tax

11 credit program; to authorize the promulgation of rules and regulations; to provide for

12 the termination of the tax credit program; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 47:6023(A)(introductory paragraph), (1)(b), (B), (C)(1)(introductory

15 paragraph) and (b) and (3)(introductory paragraph), (D)(1)(introductory paragraph), (2)(c),

16 (d), and (e), and (4), (E), and (I) are hereby amended and reenacted and R.S.

17 47:6023(C)(1)(c) and (d), (4), and (5), are hereby enacted to read as follows:

18 §6023. Sound recording investor tax credit

19 A. Purpose. The primary objective of this Section is to encourage

20 development in Louisiana of a strong capital ~~and infrastructure~~ base for sound

1 recording productions in order to achieve a more independent, self-supporting music
2 and sound recording industry. This objective is divided into immediate and long-term
3 objectives as follows:

4 (1) Immediate objectives are to:

5 * * *

6 (b) Develop a tax and capital infrastructure which encourages private
7 investment. This tax infrastructure is to provide for state participation in the form of
8 tax credits to encourage investment in state-certified sound recording productions
9 and infrastructure.

10 * * *

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

12 (1) "Base investment" shall mean the actual investment made and expended
13 in the state by a state-certified production as production-related costs and QMC
14 payroll expenditures for Qualified Music Companies approved by the office and the
15 secretary on or after July 1, 2017 ~~or as capital costs of a state-certified sound~~
16 ~~recording infrastructure project~~. Expenditures comprising the base investment shall
17 not include the expenditure verification report fee paid by the sound recording
18 production company for purposes of verification of the company's cost report for
19 production ~~or project~~ expenditures.

20 (2) "Expended in the state" or an "expenditure in the state" means an
21 expenditure to acquire property from a source within the state which is subject to
22 state sales or use tax, or an expenditure as compensation for services performed
23 within the state which is subject to state income tax.

24 (3) "New jobs" means full-time employment in Louisiana of an average of
25 thirty hours or more per week, filled by Louisiana residents at the project site
26 designated in the contract, who were not previously on the QMC's payroll in
27 Louisiana, nor previously on the payroll of such QMC's parent entity, subsidiary, or
28 affiliate in Louisiana, or previously on the payroll of any business whose physical

1 location and employees are substantially the same as those of the QMC in Louisiana,
2 as approved by the Secretary.

3 (4) "Qualified Music Company" or "QMC" means an entity authorized to do
4 business in Louisiana, engaged directly or indirectly in the production, distribution
5 and promotion of music, certified by the secretary as meeting the eligibility
6 requirements of this Section, and executing a contract providing the terms and
7 conditions for its participation.

8 (5) "QMC payroll" means wages reported in box 1 on a W-2 form.

9 (6) "Sound recording" means a recording of music, poetry, or spoken-word
10 performance made in Louisiana, in whole or in part. The term "sound recording"
11 shall not include the audio portions of dialogue or words spoken and recorded as part
12 of television news coverage or athletic events.

13 ~~(4)~~ (7) "Sound recording production company" shall mean a company
14 engaged in the business of producing sound recordings as defined in this Section.
15 Sound recording production company shall not mean or include any person or
16 company, or any company owned, affiliated, or controlled, in whole or in part, by
17 any company or person, which is in default on a loan made by the state or a loan
18 guaranteed by the state, nor which has ever declared bankruptcy under which an
19 obligation of the company or person to pay or repay public funds or monies was
20 discharged as a part of such bankruptcy.

21 ~~(5)~~ (8) "State-certified production" means a sound recording production, or
22 a series of productions occurring over the course of a twelve-month period, and base
23 investment related to such production or productions that are approved by the
24 Louisiana Department of Economic Development within one hundred eighty days
25 of the receipt by the Department of Economic Development of a complete
26 application for initial certification of a production. If the production is not approved
27 within one hundred eighty days, the Department of Economic Development shall
28 provide a written report to the Senate Committee on Revenue and Fiscal Affairs and
29 the House Committee on Ways and Means which states the reason that the

1 production has not been approved.

2 ~~(6) "State-certified sound recording infrastructure project" means a sound~~
3 ~~recording capital infrastructure project and base investment related to such project~~
4 ~~that are approved by the Louisiana Department of Economic Development within~~
5 ~~one hundred eighty days of the receipt by the Department of Economic Development~~
6 ~~of a complete application for initial certification of an infrastructure project. If the~~
7 ~~infrastructure project is not approved within one hundred eighty days, the~~
8 ~~Department of Economic Development shall provide a written report to the Senate~~
9 ~~Committee on Revenue and Fiscal Affairs and the House Committee on Ways and~~
10 ~~Means which states the reason that the infrastructure project has not been approved.~~

11 C. Investor tax credit; state-certified productions ~~and infrastructure projects.~~

12 (1) ~~Until January 1, 2020, there~~ There is hereby authorized a credit against
13 the state income tax for investments made in state-certified productions ~~and state-~~
14 ~~certified sound recording infrastructure projects.~~ The tax credit shall be earned by
15 investors at the time expenditures are certified by the Louisiana Department of
16 Economic Development according to the total base investment certified for the sound
17 recording production company per calendar year; however, no credit shall be allowed
18 under this Section for any expenditures for which a credit was granted under R.S.
19 47:6007, 6022, or 6034.

20 * * *

21 (b) For state-certified productions certified on and after July 1, 2015, ~~and~~
22 ~~state-certified infrastructure projects~~ which have been applied on or after July 1,
23 2015, and before July 1, 2017, each investor shall be allowed a tax credit of eighteen
24 percent of the base investment made by that investor in excess of fifteen thousand
25 dollars or, if a resident of this state, in excess of five thousand dollars.

26 (c) Project-based production credit. For applications for state-certified
27 productions received on or after July 1, 2017, each investor shall be allowed a tax
28 credit of eighteen percent of the base investment made by that investor in excess of
29 twenty-five thousand dollars. However, if the investor who is applying for the tax

1 credit is a Louisiana resident, the eighteen percent tax credit shall be allowed on base
2 investments which exceed ten thousand dollars.

3 (d) Company-based QMC payroll credit. For applications for Qualified
4 Music Companies received on or after July 1, 2017, to the extent that base
5 investment is expended on payroll for Louisiana residents in connection with a
6 QMC, tax credits shall be earned at the following rates:

7 (i) Tier 1. A payroll credit of ten percent shall be earned for each new job
8 whose QMC payroll is equal to or greater than thirty-five thousand dollars per year,
9 up to sixty-six thousand dollars per year.

10 (ii) Tier 2. A payroll credit of fifteen percent shall be earned for each new
11 job whose QMC payroll is equal to or greater than sixty-six thousand dollars per
12 year, but no greater than two hundred thousand dollars per year.

13 * * *

14 (3) Except as otherwise provided in this Paragraph, the aggregate amount of
15 credits certified for all investors pursuant to this Section during any calendar year
16 shall not exceed two million one hundred sixty thousand dollars. However, fifty
17 percent of the aggregate amount of credits certified each year shall be reserved for
18 QMCs. No more than one hundred thousand dollars in tax credits may be granted
19 per project, per calendar year.

20 * * *

21 (4)(a) Company-based QMC payroll credit. A business shall be eligible for
22 participation in the program if the business meets all of the following criteria:

23 (i) The business is engaged directly or indirectly in the production,
24 distribution, and promotion of music.

25 (ii) The business creates a minimum of three new jobs meeting or exceeding
26 the Tier 1 minimum wage requirements, in accordance with the provisions of
27 Subparagraph (C)(1)(d) of this Section.

28 (iii) The business is approved by the secretary of the Department of
29 Economic Development.

1 (iv) The business is a music publisher, sound recording studio, booking
2 agent, or artist management. The secretary, in his discretion may approve other
3 businesses which are related to the music and sound recording industry which
4 permanently locate or expand existing operations in Louisiana.

5 (b) Notwithstanding the amount of the credit earned by the investor pursuant
6 to this Section, application of tax credits earned and claimed against an investor's
7 income tax liability shall never reduce the investor's income tax liability below fifty
8 percent of the amount of the liability prior to application of the credit. Any excess
9 credit may be carried forward for up to five years and shall be applied against the
10 subsequent income tax liability of the taxpayer.

11 (5) Sound recording investor tax credits associated with a state-certified
12 production shall never exceed the total base investment in that production.

13 D. Certification and administration.

14 (1) The secretary of the Department of Economic Development shall
15 determine through the adoption and promulgation of rules which ~~projects and~~
16 ~~expenditures, including amounts expended in this state on state-certified~~
17 ~~infrastructure projects~~; qualify according to this Section. In addition, these rules shall
18 be approved by the House Committee on Ways and Means and the Senate
19 Committee on Revenue and Fiscal Affairs in accordance with the provisions of the
20 Administrative Procedure Act. When determining which ~~projects~~ expenditures
21 qualify, the Louisiana Department of Economic Development shall take the
22 following factors into consideration:

23 * * *

24 (2)

25 * * *

26 (c)(i) The Louisiana Department of Economic Development shall directly
27 engage and assign a certified public accountant to prepare an expenditure verification
28 report on a sound recording production company's cost report of production ~~or~~
29 ~~project~~ expenditures. The applicant shall be responsible for payment of the

1 expenditure verification report fee in accordance with R.S. 36:104.1, and shall make
2 all records related to the tax credit application available to the department and the
3 accountant.

4 (ii) The applicant will be assessed the department's actual cost for the
5 expenditure verification report fee. The maximum fee ~~for the report shall be five~~
6 ~~thousand dollars for verification of a cost report reflecting production or project~~
7 ~~expenditures of between five thousand dollars and fifty thousand dollars, and a~~
8 ~~maximum fee of fifteen thousand dollars for verification of a cost report reflecting~~
9 ~~production or project expenditures in excess of fifty thousand dollars.~~ shall be as
10 follows:

11 (aa) One thousand five hundred dollars for verification of a cost report
12 reflecting expenditures of at least ten thousand dollars but less than twenty-five
13 thousand dollars.

14 (bb) Three thousand dollars for verification of a cost report reflecting
15 expenditures of at least twenty-five thousand dollars but less than fifty thousand
16 dollars.

17 (cc) Five thousand dollars for verification of a cost report reflecting
18 expenditures of at least fifty thousand dollars, but less than one hundred thousand
19 dollars.

20 (dd) Seven thousand five hundred dollars for verification of a cost report
21 reflecting expenditures of more than one hundred thousand dollars.

22 (iii) At the time of application, the applicant shall submit a deposit ~~of~~ in an
23 amount equal to fifty percent of the expenditure verification report fee ~~of two~~
24 ~~thousand five hundred dollars for productions or projects with qualified expenditures~~
25 ~~projected to be between five thousand dollars and fifty thousand dollars, and a~~
26 ~~deposit of five thousand dollars for those projected to be in excess of fifty thousand~~
27 ~~dollars~~ required pursuant to the provisions of Item (ii) of this Subparagraph.

28 (d) The Louisiana Department of Economic Development shall submit its
29 initial certification of a project as a state-certified production ~~or a state-certified~~

1 ~~sound recording infrastructure project~~ to investors and to the secretary of the
2 Department of Revenue. The initial certification shall include a unique identifying
3 number for each state-certified production ~~or state-certified project~~.

4 (e) ~~Upon project completion, the applicant shall make a request to the~~
5 ~~Louisiana Department of Economic Development to proceed to final certification by~~
6 Qualified Music Companies may submit one request for final certification of tax
7 credits per calendar year and state-certified productions may request final
8 certification of credits upon project completion by submitting to the department a
9 cost report of production ~~or project~~ expenditures to be formatted in accordance with
10 instructions of the department. The applicant shall make all records related to the
11 cost report available for inspection by the department and the accountant selected by
12 the department to prepare the expenditure verification report. After review and
13 investigation of the cost report, the accountant shall submit to the department an
14 expenditure verification report. Sound recording investor tax credits shall be certified
15 only upon the receipt and approval by the department of an expenditure verification
16 report submitted by a certified public accountant in accordance with this
17 Subparagraph. The department shall review the expenditure verification report, and
18 for those expenditures found to be qualified the department shall issue a tax credit
19 certification letter to the investors indicating the amount of tax credits certified for
20 the state-certified production ~~or state-certified infrastructure project~~.

21 * * *

22 (4) With input from the Legislative Fiscal Office, the Louisiana Department
23 of Economic Development shall prepare a written report to be submitted to the
24 House Committee on Ways and Means and the Senate Committee on Revenue and
25 Fiscal Affairs no less than sixty days prior to the start of the Regular Session of the
26 Legislature in 2007, and every second year thereafter. The report shall include the
27 overall impact of the tax credits, the amount of the tax credits issued, the number of
28 new jobs created, the amount of Louisiana payroll created, the economic impact of
29 the tax credits and sound recording industry, ~~the amount of new infrastructure that~~

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 ~~has been developed in the state~~, and any other factors that describe the impact of the
2 program.

3 E. Tax credit certification letter for project-based tax credit. After
4 certification, the Louisiana Department of Economic Development shall submit the
5 tax credit certification letter to the Department of Revenue on behalf of the investor
6 who earned the sound recording tax credits. The Department of Revenue may
7 require the investor to submit additional information as may be necessary to
8 administer the provisions of this Section. Upon receipt of the tax credit certification
9 letter and any necessary additional information, the secretary of the Department of
10 Revenue shall make payment to the investor in the amount to which he is entitled
11 from the current collections of the taxes collected pursuant to Chapter 1 of Subtitle
12 II of this Title, as amended.

13 * * *

14 I. ~~Commencing no later than January 31, 2016, the House Committee on~~
15 ~~Ways and Means and the Senate Committee on Revenue and Fiscal Affairs shall~~
16 ~~review the credit authorized pursuant to the provisions of this Section to determine~~
17 ~~if the economic benefit provided by such credit outweigh the loss of revenue realized~~
18 ~~by the state as a result of awarding such credit. The House and Senate committees~~
19 ~~shall make a specific recommendation no later than March 1, 2017, to either continue~~
20 ~~the credit or to terminate the credit. No credits shall be allowed pursuant to the~~
21 ~~provisions of this Section for applications received on or after January 1, 2022.~~

22 Section 2. R.S. 47:6023(A)(2) is hereby repealed in its entirety.

23 Section 3. Notwithstanding Section 8 of Act No. 125 of the 2015 Regular Session,
24 as amended by Act No. 29 of the 2016 First Extraordinary Session, R.S. 47:6023(C)(1) and
25 (3)(introductory paragraph) as enacted by Section 5 of that Act shall not become effective
26 and R.S. 47:6023(C)(1) and (3)(introductory paragraph) as amended and reenacted by
27 Section 2 of that Act shall remain effective.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 646 Reengrossed

2017 Regular Session

Leger

Abstract: Adds provisions for a project based production credit and a company based QMC payroll credit within the annual cap of the program and reduces the amount of the fee for verification of a cost expenditure verification report and the amount of the deposit for such report.

Present law provides for a state income tax credit for investments made in state-certified productions and state-certified sound recording infrastructure projects until Jan. 1, 2020. The tax credit shall be earned by investors at the time expenditures are certified by the Dept. of Economic Development (DED) according to the total base investment certified for the sound recording production company per calendar year.

Present law provides that the amount of the credit for each investor for state-certified productions certified on and after July 1, 2015, and state-certified infrastructure projects which have been applied on or after July 1, 2015, is 18% of the base investment made by that investor in excess of \$15,000 or, if a resident of this state, in excess of \$5,000.

Proposed law retains present law but extends the program from Jan. 1, 2020, to Jan. 1, 2022, and provides for the following additional tax credits for state-certified productions certified on and after July 1, 2017, as follows:

- (1) 10% of payroll for investors who create fewer than 10 new jobs, each with a minimum annual salary of \$35,000 per year.
- (2) 15% of payroll for investors who create 10 or more new jobs, each with a minimum annual salary of \$35,000 per year.

Present law defines "base investment" as the actual investment made and expended in the state by a state-certified production as production-related costs or as capital costs of a state-certified sound recording infrastructure project.

Proposed law changes present law by deleting references to state-certified sound recording infrastructure projects and by adding payroll expenditures from qualified music companies, hereinafter "QMCs", approved by the office and the secretary on or after July 1, 2017, to the definition of "base investment".

Proposed law defines a "QMC" as an entity authorized to do business in La., engaged directly or indirectly in the production, distribution and promotion of music, certified by the secretary as meeting the eligibility requirements of present law and proposed law, and executing a contract providing the terms and conditions for its participation.

Proposed law provides for a project based production credit for applications for state-certified productions received on or after July 1, 2017, for each investor equal to 18% of the base investment made by that investor in excess of \$25,000. However, if the investor who is applying for the tax credit is a La. resident, the 18% tax credit shall be allowed on base investments which exceed \$10,000.

Proposed law provides for a company based QMC payroll credit for applications for QMCs received on or after July 1, 2017, to the extent that base investment is expended on payroll for La. residents in connection with a QMC. The amount of the tax credits varies as follows:

- (1) Tier 1 - A payroll credit of 10% for each new job whose QMC payroll is equal to or greater than \$35,000 per year, up to \$66,000 per year.
- (2) Tier 2 - A payroll credit of 15% for each new job whose QMC payroll is equal to or greater than \$66,000 per year, but no greater than \$200,000 per year.

Present law prohibits the credits associated with a state-certified production from exceeding the total base investment in that production or sound recording infrastructure project.

Proposed law retains present law but deletes all references to sound recording infrastructure projects in present law.

Present law restricts the aggregate amount of credits certified for all investors during any calendar year from exceeding \$2,160,000.

Proposed law retains present law but requires 50% of the annual cap to be reserved for QMCs and limits the maximum amount of \$100,000 in tax credits may be granted per project, per calendar year.

Proposed law provides for eligibility requirements for applicants applying for the company based QMC payroll credit.

Proposed law prohibits a credit earned and claimed against an investor's income tax liability from reducing the investor's income tax liability below 50% of the amount of the liability prior to application of the credit. Further authorizes excess amounts of the credit to be carried forward for up to five years against the subsequent income tax liability of the taxpayer.

Present law requires DED to directly engage and assign a certified public accountant to prepare an expenditure verification report on a sound recording production company's cost report of expenditures. Applicants shall be assessed the department's actual cost for the expenditure verification report fee. The maximum amount of the fee for the report shall be \$5,000 for verification of expenditures of between \$5,000 and \$50,000, and a maximum fee of \$15,000 for verification of expenditures in excess of \$50,000.

Proposed law changes the amount of the expenditure verification report fee to the following:

- (1) \$1,500 for verification of cost expenditures of at least \$10,000 but less than \$25,000.
- (2) \$3,000 for verification of cost expenditures of at least \$25,000, but less than \$50,000.
- (3) \$5,000 for verification of cost expenditures of at least \$50,000, but less than \$100,000.
- (4) \$7,500 for verification of cost expenditures of more than \$100,000.

Present law requires an applicant to also submit a deposit fee of \$2,500 for productions or projects with qualified expenditures projected to be between \$5,000 and \$50,000 and a deposit of \$5,000 for those projected to be in excess of \$50,000.

Proposed law changes present law to reduce the amount of the deposit to 50% of the amount of the fee required for the verification of a cost report.

Present law requires the Dept. of Economic Development to submit a tax credit certification letter to the Dept. of Revenue on behalf of the investor who earned the sound recording tax credits.

Proposed law retains present law but limits the tax credit certification letter to project based tax credits.

Present law requires, beginning on Jan. 1, 2016, the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs to review the credit authorized in present law to determine if the economic benefit provided by the credit outweigh the loss of revenue realized by the state as a result of awarding such credit. Further requires the committees to make a specific recommendation no later than March 1, 2017, to either continue the credit or to terminate the credit.

Proposed law repeals present law.

Present law provides that until June 30, 2018, state-certified productions are eligible for a tax credit equal to 18% of the base investment in excess of \$15,000. Further provides that the total aggregate amount of credits certified for all investors each calendar year shall not exceed \$2,160,000. Beginning July 1, 2018, the amount of the credit increases from 18% of the base investment to 25% of the base investment and the total aggregate amount of credits that may be certified each calendar year increases from \$2,160,000 to \$3M.

Proposed law changes present law by making the reductions in the amount of the tax credit to 18% of the base investment and limiting the total aggregate amount of credits that may be certified each calendar year to \$2,160,000 permanent.

(Amends R.S. 47:6023(A)(intro. para.), (1)(b), (B), (C)(1)(intro. para.) and (b) and (3)(intro. para.), (D)(1)(intro. para.), (2)(c), (d), and (e), and (4), (E), and (I); Adds R.S. 47:6023(C)(1)(c) and (d), (4) and (5); Repeals R.S. 47:6023(A)(2))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Add payroll expenditures from QMCs approved by the office and the secretary on or after July 1, 2017, to the definition of "base investment".
2. Add definitions.
3. Delete references to an additional tax credit for investors with particular NAICS codes for state-certified productions certified on and after July 1, 2017.
4. Provide for a project based production credit for applications for state-certified productions received on or after July 1, 2017, equal to 18% of the base investment made by an investor in excess of \$25,000. However, if the investor is a La. resident, the 18% tax credit shall be allowed on base investments which exceed \$10,000.
5. Provide for a company based QMC payroll credit for applications for QMCs received on or after July 1, 2017, to the extent that base investment is expended on payroll for La. residents in connection with a QMC. The amount of the tax credit varies from 10% or 15% depending on the salary of the job created.
6. Add requirement that 50% of the annual cap be reserved for QMCs and caps the maximum amount of a credit at \$100,000 per project, per calendar year.
7. Add eligibility requirements for applicants applying for the company based QMC payroll credit.

8. Change the amount of the expenditure verification report fee and the graduated thresholds of the amounts of the expenditures verified in the reports.
9. Limit the tax credit certification letter to project based tax credits.
10. Delete the House Ways and Means and the Senate Revenue and Fiscal Affairs Committee review of the credit and requirement that the committees make recommendations regarding the return on investment of the credit.

The House Floor Amendments to the engrossed bill:

1. Add provision to ensure that the reduction in the amount of the tax credit percentage for base investment from 25% to 18% and the total aggregate amount of credits certified each calendar year from \$3M to \$2.160M are permanent.