

2015 Regular Session

HOUSE BILL NO. 604

BY REPRESENTATIVE STOKES

TAX CREDITS: Requires verification of qualified expenditures for certification of certain tax credits by the Dept. of Economic Development

1 AN ACT

2 To amend and reenact R.S. 47:6007(B)(9) through (11) and (D)(2)(c) through (e),

3 6015(B)(3)(i)(i), (4), and (5)(introductory paragraph) and (F)(5),

4 6022(C)(10)(b)(vii), (F)(2) and (3)(b) and (c), 6023(B)(1), (D)(2)(c) and (d) and (4)

5 and (5), and 6034(B)(4) and (7)(b), and (E)(1)(e) and (f) and to enact R.S.

6 36:104(B)(9) and 104.1, R.S. 47:6007(C)(1)(e) and (D)(2)(f), 6015(B)(6),

7 6023(D)(2)(e), and 6034(E)(2)(c), relative to tax credits; to provide for the powers

8 and duties of the Department of Economic Development; to require an independent

9 verification of expenditures for certification of certain tax credits; to establish

10 procedures and program requirements; to provide definitions; to authorize the

11 imposition of a fee; to authorize contracting with certain private entities; to establish

12 requirements for certain contracting entities; to authorize rulemaking; to provide for

13 applicability; to provide for effectiveness; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 36:104(B)(9) and 104.1 are hereby enacted to read as follows:

16 §104. Powers and duties of the secretary of economic development

17 \* \* \*

18 B. The secretary shall have the authority to:

19 \* \* \*

1           (9) Establish and collect a verification report fee, as defined in R.S. 36:104.1,  
2           as required for a Department of Economic Development incentive program. The fee  
3           shall be established and collected as provided in R.S. 36:104.1, and as may be further  
4           provided by rule promulgated in accordance with the Administrative Procedure Act.

5           §104.1. Fee for independent certified public accountant or tax attorney verification  
6           reports required for certain Department of Economic Development programs

7           A. In order to protect the integrity of its programs by ensuring that tax credits  
8           are certified only for eligible expenditures, and to provide for uniformity in  
9           expenditure verification reporting, the Department of Economic Development shall  
10           directly engage and assign an independent certified public accountant, hereinafter  
11           referred to as "CPA" or tax attorney to prepare for the department any required  
12           expense or expenditure verification report on a tax credit applicant's cost report of  
13           expenditures or claimed expenditures for all of the following programs:

14                   (1) Motion picture investor tax credit program, R.S. 47:6007.

15                   (2) Research and development tax credit program, R.S. 47:6015.

16                   (3) Digital interactive media and software tax credit program, R.S. 47:6022.

17                   (4) Sound recording investor tax credit program, R.S. 47:6023.

18                   (5) Musical and theatrical production income tax credit program, R.S.  
19           47:6034.

20                   (6) Any other program as provided by statute or department rule.

21           B. For purposes of this Section, the term certified public accountant, or  
22           "CPA", shall mean a person who meets all of the following qualifications:

23                   (1) Maintains an active unrestricted original certified public account license.

24                   (2) Maintains a current Louisiana certified public account firm permit.

25                   (3) Actively participates in a Peer Review Program approved by the State  
26           Board of Certified Public Accountants of Louisiana.

27                   (4) Completes eight hours of continuing professional education in approved  
28           Department of Economic Development tax credit attestation courses per reporting  
29           cycle.

1           (5) Capable of conducting two levels of review within the CPA firm or, if  
2           not within the firm, then through a cooperative endeavor with another CPA for the  
3           review of a verification report prior to its issuance.

4           C. The applicant seeking certification of tax credits shall be responsible for  
5           and assessed an expenditure or expense verification report fee which shall be equal  
6           to the actual cost of the verification report. The fee shall not exceed twenty-five  
7           thousand dollars and shall be based upon either an hourly rate not to exceed two  
8           hundred twenty-five dollars per hour for contract services, or the pro rata cost of  
9           salary and benefits for a department-employed CPA.

10           D. The applicant seeking certification of tax credits shall be required to  
11           submit an up-front deposit of the expenditure or expense verification report fee,  
12           which shall not exceed fifteen thousand dollars, as required by the relative program  
13           statute or rules.

14           E. The applicant seeking tax credits shall make all records related to the tax  
15           credit application available to the CPA or tax attorney assigned by the department  
16           to prepare and submit to the department a verification report on the applicant's cost  
17           report of expenditures or expenses.

18           F. The term "verification report" shall include any agreed-upon procedure,  
19           tax opinion, attestation, or other report required by statute or department rule. Prior  
20           to submission to the department, a verification report shall require two levels of  
21           review either within a CPA firm, or a second review through a cooperative endeavor  
22           with another CPA.

23           Section 2. R.S. 47:6007(B)(9) through (11) and (D)(2)(c) through (e),  
24           6015(B)(3)(i)(i), (4), and (5)(introductory paragraph) and (F)(5), 6022(C)(10)(b)(vii), (F)(2)  
25           and (3)(b) and (c), 6023(B)(1), (D)(2)(c) and (d) and (4), and (5), and 6034(B)(4) and (7)(b),  
26           and (E)(1)(e) and (f), are hereby amended and reenacted and R.S. 47:6007(C)(1)(e) and  
27           (D)(2)(f), 6015(B)(6), 6023(D)(2)(e), and 6034(E)(2)(c) are hereby enacted to read as  
28           follows:

1 §6007. Motion picture investor tax credit

2 \* \* \*

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

4 \* \* \*

5 (9) "Production ~~audit~~ expenditure verification report" means ~~an audit~~ a report  
6 issued by a qualified accountant who is unrelated to the motion picture production  
7 company and that is a report of the qualified accountant's ~~audit~~ verification of the  
8 motion picture production's cost report of production expenditures. The production  
9 ~~audit~~ expenditure verification report shall contain an opinion from the qualified  
10 accountant stating that the production's cost report of production expenditures  
11 presents fairly, in all material aspects, the production expenditures expended in  
12 Louisiana pursuant to the provisions of this Section. The production ~~audit~~  
13 expenditure verification report shall ~~require~~:

14 (a) ~~The production audit report to be~~ Be performed in accordance with the  
15 ~~auditing~~ accounting standards generally accepted in the United States.

16 (b) ~~The production cost report to be~~ Be addressed to the party which has  
17 engaged the qualified accountant, with a copy addressed to the motion picture  
18 production company or motion picture investor tax credit applicant.

19 (c) ~~The production cost report to contain~~ Contain the qualified accountant's  
20 name, address, and telephone number.

21 (d) ~~The production cost report to contain~~ Contain a certification that the  
22 qualified accountant is unrelated to the motion picture production company.

23 (e) ~~The production cost report to be~~ Be dated as of the date of completion of  
24 the qualified accountant's field work.

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

1           (10) "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. This term shall not include expenditures for marketing and distribution,  
10 non-production related overhead, amounts reimbursed by the state or any other  
11 governmental entity, costs related to the transfer of tax credits, amounts that are paid  
12 to persons or entities as a result of their participation in profits from the exploitation  
13 of the production, the application fee, the production expenditure verification report  
14 fee, or state or local taxes.

15           (11) "Qualified accountant" means ~~an independent certified public~~  
16 ~~accountant authorized to practice in this state who has sufficient knowledge of~~  
17 ~~accounting principles and practices generally recognized in the film and television~~  
18 ~~industry.~~ a certified public accountant or "CPA" who meets all of the following  
19 qualifications:

20           (a) Maintains an active unrestricted original certified public accountant  
21 license.

22           (b) Maintains a current Louisiana certified public accountant firm permit.

23           (c) Actively participates in a Peer Review Program approved by the State  
24 Board of Certified Public Accountants of Louisiana.

25           (d) Completes eight hours of continuing professional education in approved  
26 Department of Economic Development tax credit attestation courses for each  
27 reporting cycle.

1 (e) Capable of conducting two levels of review within the CPA firm or, if not  
2 within the firm, then through a cooperative endeavor with another CPA for the  
3 review of a verification report prior to its issuance.

4 \* \* \*

5 C. Investor tax credit; specific productions and projects.

6 (1) There is hereby authorized a tax credit against state income tax for  
7 Louisiana taxpayers for investment in state-certified productions. The tax credit  
8 shall be earned by investors at the time expenditures are made by a motion picture  
9 production company in a state-certified production. However, credits cannot be  
10 applied against a tax or transferred until the expenditures are certified by the office  
11 and the secretary. For state-certified productions, expenditures shall be certified no  
12 more than twice during the duration of a state-certified production unless the motion  
13 picture production company agrees to reimburse the office for the costs of any  
14 additional certifications. The tax credit shall be calculated as a percentage of the  
15 total base investment dollars certified per project.

16 \* \* \*

17 (e) Motion picture investor tax credits shall be certified only upon the receipt  
18 and approval by the office of a production expenditure verification report submitted  
19 by a qualified accountant in accordance with the provisions of Subparagraph  
20 (D)(2)(a) of this Section.

21 \* \* \*

22 D. Certification and administration.

23 \* \* \*

24 (2)

25 \* \* \*

26 (c)(i) The office shall directly engage and assign a qualified accountant to  
27 prepare a production expenditure verification report on an applicant's cost report on  
28 production expenditure. The applicant shall be responsible for payment of the  
29 production expenditure verification report fee in accordance with R.S. 36:104.1, and

1        shall make all records related to the tax credit application available to the department  
2        and the accountant.

3                (ii) The applicant will be assessed the department's actual cost for the  
4        production expenditure verification report fee. The maximum fee for the report shall  
5        be fifteen thousand dollars for verification of a cost report reflecting qualified  
6        production expenditures between three hundred thousand dollars and twenty-five  
7        million dollars, and the maximum fee shall be twenty-five thousand dollars for  
8        verification of a cost report reflecting qualified production expenditures in excess of  
9        twenty-five million dollars.

10               (iii) At the time of application, the applicant shall submit a deposit of the  
11        production expenditure verification report fee of seven thousand five hundred dollars  
12        for a production with qualified expenditures projected to be between three hundred  
13        thousand dollars and twenty-five million dollars, and a deposit of fifteen thousand  
14        dollars for those projected to be in excess of twenty-five million dollars.

15               (d) The office and the secretary shall submit their initial certification or  
16        written denial of a project as a state-certified production to investors and to the  
17        secretary of the Department of Revenue indicating the total base investment which  
18        shall be expended in the state on the state-certified production within sixty days of  
19        their receipt of all required information. The initial certification shall include a  
20        unique identifying number for each state-certified production.

21               ~~(d)(i) Prior to any final certification of the state-certified production, the~~  
22        ~~motion picture production company~~ (e)(i) Upon project completion or at any time  
23        after project costs are deemed final by the motion picture production company or  
24        applicant, the applicant shall make a request to the office to proceed to final  
25        certification by submitting to the office a cost report of production expenditures to  
26        be formatted in accordance with instructions of the office. The applicant shall make  
27        all records related to the cost report available for inspection by the office and the  
28        qualified accountant selected by the office to prepare the production expenditure  
29        verification report. After review and investigation of the cost report, the accountant

1 shall submit to the office and the secretary a production ~~audit~~ expenditure  
2 verification report. The office and the secretary shall review the production ~~audit~~  
3 expenditure verification report and may require additional information needed to  
4 make a determination. Within one hundred twenty days of the receipt of the  
5 production ~~audit~~ expenditure verification report and all required supporting  
6 information, the office and the secretary shall issue a tax credit certification letter  
7 indicating the amount of tax credits certified for the state-certified production to the  
8 investors for all qualifying expenditures verified by the office. Any expenditures for  
9 which tax credits were neither denied nor certified due to insufficient information or  
10 other issues, the office and secretary shall diligently work to resolve the outstanding  
11 issues in a timely manner, and the office and secretary may subsequently issue a  
12 supplemental tax credit certification at the time of such resolution.

13 (ii) The department may request an additional production ~~audit~~ expenditure  
14 verification report of the expenditures submitted by the motion picture production  
15 company with the cost of the additional report paid by the motion picture production  
16 company. The motion picture production company may submit an amended  
17 ~~production—audit cost~~ report of production expenditures if additional expenditures  
18 are incurred or discovered after the approval of the initial production ~~audit reports~~  
19 expenditure verification report issued pursuant to Item (i) of this Subparagraph, and  
20 the office and secretary may issue a supplemental tax credit certification if so  
21 warranted.

22 ~~(e)~~(f) In addition to the requirements of Subparagraph ~~(d)~~ (e) of this  
23 Paragraph, prior to any final certification of a state-certified production or  
24 infrastructure project, the motion picture production company or infrastructure  
25 project applicant shall submit to the office a notarized statement demonstrating  
26 conformity with, and agreeing to, the following:

27 (i) To pay all undisputed legal obligations the film production company has  
28 incurred in Louisiana.



1 (ii) To publish, at completion of principal photography, a notice at least once  
2 a week for three consecutive weeks in local newspapers in regions where filming has  
3 taken place in order to notify the public of the need to file creditor claims against the  
4 film production company by a specified date.

5 (iii) That the outstanding obligations are not waived should a creditor fail to  
6 file by the specified date.

7 (iv) To delay filing a claim for the film production tax credit until the office  
8 delivers written notification to the secretary of the Department of Revenue that the  
9 film production company has fulfilled all requirements for the credit.

10 §6015. Research and development tax credit

11 \* \* \*

12 B.

13 \* \* \*

14 (3) Each taxpayer seeking the credits authorized in this Section shall apply  
15 to the Department of Economic Development for the credits. The taxpayer shall  
16 remit an application fee of two hundred fifty dollars with the application. The  
17 application shall include all of the following:

18 \* \* \*

19 (i) A taxpayer who employs less than fifty employees may apply for credits  
20 without providing a federal income tax return as required by Subparagraph (a) of this  
21 Paragraph if all of the following criteria are met:

22 (i) ~~Unless waived by the secretary of the department, the taxpayer provides~~  
23 ~~the department with a report from~~ The department shall engage and assign either a  
24 certified public accountant authorized to practice in the state of Louisiana or a tax  
25 attorney authorized to practice in the state of Louisiana to prepare and submit to the  
26 department an expenditure verification report on the taxpayer's claimed qualified  
27 research expenditures. The report shall be rendered based upon procedures and  
28 regulations developed by the department in accordance with the Administrative  
29 Procedure Act.

1            (aa) The taxpayer shall be responsible for payment of the expenditure  
2            verification report fee in accordance with R.S. 36:104.1, and shall make all records  
3            related to the tax credit application available to the certified public accountant or tax  
4            attorney selected by the department to prepare the expenditure verification report.

5            (bb) The taxpayer will be assessed the actual cost for the expenditure  
6            verification report fee. The maximum fee for the report shall be fifteen thousand  
7            dollars for verification of an application with claimed qualified research expenditures  
8            of up to one million dollars, and the maximum fee shall be twenty-five thousand  
9            dollars for verification of an application with claimed qualified research expenditures  
10           in excess of one million dollars.

11           (cc) At the time of application, the taxpayer shall submit a deposit of the  
12           expenditure verification report fee of seven thousand five hundred dollars for an  
13           application with claimed qualified research expenditures of up to one million dollars,  
14           and a deposit of fifteen thousand dollars for an application with claimed qualified  
15           research expenditures in excess of one million dollars.

16                                    \*        \*        \*

17            (4) An expenditure verification report shall be required only for applicants  
18            with less than fifty employees that have not filed for federal research and  
19            development tax credit on IRS Form 6765-Credit for Increasing Research Activities  
20            or that are not applicants for either the Small Business Technology Transfer Program  
21            or the Small Business Innovation Research Program. Research and development tax  
22            credits shall be certified only upon the receipt and approval by the Department of  
23            Economic Development of an expenditure verification report as provided for in Item  
24            (3)(i)(i) of this Subsection.

25            (5) The Department of Economic Development shall approve or disapprove  
26            each application. No credits shall be granted to a taxpayer under this Section unless  
27            the credit is approved by the Department of Economic Development.

28            ~~(5)~~(6) The following types of businesses that do not have a pending or issued  
29            United States patent directly related to the qualified research expenditures claimed

1 under this Section are ineligible to apply for or receive benefits under this Section,  
2 unless specifically invited by the secretary of the department to do so:

3 (a) Professional services firms as defined by departmental rule.

4 (b) Businesses primarily engaged in custom manufacturing and custom  
5 fabricating as defined by departmental rule.

6 \* \* \*

7 F. The department shall administer the provisions of this Section and shall  
8 have the following powers and duties in addition to those granted by other laws of  
9 this state:

10 \* \* \*

11 (5) To ~~audit~~ verify all relevant records and accounts of any taxpayer  
12 applying for credits provided for by this Section.

13 \* \* \*

14 §6022. Digital interactive media and software tax credit

15 \* \* \*

16 C. Definitions. For the purposes of this Section:

17 \* \* \*

18 (10)

19 \* \* \*

20 (b) "Production expenses" shall not include any of the following:

21 \* \* \*

22 (vii) Any application fee, expense verification report fee, or state or local  
23 taxes.

24 \* \* \*

25 F. Administration.

26 \* \* \*

27 (2) Application. A company seeking to participate in the tax credit program  
28 shall apply to the department through an application process established by the  
29 department.

1           (i) The office shall directly engage and assign a certified public accountant  
2           to perform an expense verification report on an applicant's cost report of production  
3           expenses. The applicant shall be responsible for payment of the expense verification  
4           report fee in accordance with R.S. 36:104.1, and shall make all records related to the  
5           tax credit application available to the accountant.

6           (ii) The applicant will be assessed the office's actual cost for the expense  
7           verification report fee. The maximum fee for the report shall be fifteen thousand  
8           dollars for verification of a cost report reflecting production expenses of up to one  
9           million dollars, and the maximum fee shall be twenty-five thousand dollars for  
10          verification of a cost report reflecting production expenses in excess of one million  
11          dollars.

12          (iii) At the time of application, the applicant shall submit to the office a  
13          deposit of the expenditure verification report fee of seven thousand five hundred  
14          dollars for a production with qualified production expenses projected to be no more  
15          than one million dollars, and a deposit of fifteen thousand dollars for those projected  
16          to be in excess of one million dollars.

17               (3) Certification.

18                                 \*       \*       \*

19           (b) Prior to final certification of tax credits of a state-certified production or  
20           any portion thereof, the company Upon project completion or no more than once  
21           annually, the applicant shall make a request to the office to proceed to final  
22           certification by submitting to the office a cost report of production expenses to be  
23           formatted in accordance with instructions of the office. The applicant shall make all  
24           records related to the cost report available for inspection by the office and the  
25           certified public accountant selected by the office to prepare the expense verification  
26           report on the cost report of production expenses. After review and investigation of  
27           the cost report, the accountant shall submit to the office a cost report of production  
28           expenditures. The report of expenditures shall be subject to an agreed-upon  
29           procedures engagement conducted by a certified public accountant in accordance

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

1 ~~with statements on standards for attestation engagements established by the~~  
 2 ~~American Institute of Certified Public Accountants. The accountant shall issue a~~  
 3 ~~report in the form of procedures and findings. The accountant shall be a certified~~  
 4 ~~public accountant licensed in the state of Louisiana and shall be an independent third~~  
 5 ~~party unrelated to the company. The agreed-upon procedures shall be established by~~  
 6 ~~the office and secretary, with assistance from the Society of Louisiana Certified~~  
 7 ~~Public Accountants: an expense verification report. The ~~department~~ office may~~  
 8 ~~request additional audits expense verification reports for any additional cost~~  
 9 ~~reports of the project expenditures for production expenses, the cost of which shall~~  
 10 ~~be borne by the company.~~

11 (c) ~~Upon completion of all or a portion of a state-certified production, the~~  
 12 ~~Digital interactive media and software tax credits shall be certified only upon the~~  
 13 ~~receipt and approval by the office of an expense verification report submitted by a~~  
 14 ~~certified public accountant in accordance with the provisions of Subparagraph (b) of~~  
 15 ~~this Paragraph. The office shall review the ~~production expenses and, if approved by~~~~  
 16 ~~the office and secretary, expense verification report, and for those expenses found~~  
 17 ~~to be qualified by the department shall issue a final tax credit certification letter to~~  
 18 ~~the company. The certification letter shall include the identifying number assigned~~  
 19 ~~to that state-certified production in the initial certification.~~

\* \* \*

21 §6023. Sound recording investor tax credit

\* \* \*

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

24 (1) "Base investment" shall mean the actual investment made and expended  
 25 in the state by a state-certified production as production-related costs or as capital  
 26 costs of a state-certified sound recording infrastructure project. Expenditures  
 27 comprising the base investment shall not include the expenditure verification report

1 fee paid by the sound recording production company for purposes of verification of  
2 the company's cost report for production or project expenditures.

3 \* \* \*

4 D. Certification and administration.

5 \* \* \*

6 (2)

7 \* \* \*

8 (c)(i) The Louisiana Department of Economic Development shall directly  
9 engage and assign a certified public accountant to prepare an expenditure verification  
10 report on a sound recording production company's cost report of production or  
11 project expenditures. The applicant shall be responsible for payment of the  
12 expenditure verification report fee in accordance with R.S. 36:104.1, and shall make  
13 all records related to the tax credit application available to the department and the  
14 accountant.

15 (ii) The applicant will be assessed the department's actual cost for the  
16 expenditure verification report fee. The maximum fee for the report shall be five  
17 thousand dollars for verification of a cost report reflecting production or project  
18 expenditures of between five thousand dollars and fifty thousand dollars, and a  
19 maximum fee of fifteen thousand dollars for verification of a cost report reflecting  
20 production or project expenditures in excess of fifty thousand dollars.

21 (iii) At the time of application, the applicant shall submit a deposit of the  
22 expenditure verification report fee of two thousand five hundred dollars for  
23 productions or projects with qualified expenditures projected to be between five  
24 thousand dollars and fifty thousand dollars, and a deposit of five thousand dollars for  
25 those projected to be in excess of fifty thousand dollars.

26 (d) The Louisiana Department of Economic Development shall submit its  
27 initial certification of a project as a state-certified production or a state-certified  
28 sound recording infrastructure project to investors and to the secretary of the

1 Department of Revenue. The initial certification shall include a unique identifying  
2 number for each state-certified production or state-certified project.

3 ~~(d) Prior to any certification of the state-certified production or infrastructure~~  
4 ~~project, the sound recording production company shall submit to the Louisiana~~  
5 ~~Department of Economic Development a cost report of production or project~~  
6 ~~expenditures which the Louisiana Department of Economic Development may~~  
7 ~~require to be prepared by an independent certified public accountant. The Louisiana~~  
8 ~~Department of Economic Development~~

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

24 \* \* \*

25 ~~(4) Any taxpayer applying for the credit shall be required to reimburse the~~  
26 ~~Louisiana Department of Economic Development for any audits required in relation~~  
27 ~~to granting the credit.~~

28 ~~(5) With input from the Legislative Fiscal Office, the Louisiana Department~~  
29 ~~of Economic Development shall prepare a written report to be submitted to the~~

1 House Committee on Ways and Means and the Senate Committee on Revenue and  
 2 Fiscal Affairs no less than sixty days prior to the start of the Regular Session of the  
 3 Legislature in 2007, and every second year thereafter. The report shall include the  
 4 overall impact of the tax credits, the amount of the tax credits issued, the number of  
 5 new jobs created, the amount of Louisiana payroll created, the economic impact of  
 6 the tax credits and sound recording industry, the amount of new infrastructure that  
 7 has been developed in the state, and any other factors that describe the impact of the  
 8 program.

9 \* \* \*

10 §6034. Musical and theatrical production income tax credit

11 \* \* \*

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

13 \* \* \*

14 (4) "Infrastructure expenditures" means expenditures directly related to a  
 15 state-certified infrastructure project or state-certified higher education infrastructure  
 16 project including land and land acquisition costs, construction costs, design fees,  
 17 furniture, fixtures, and equipment purchased subject to a sale agreement or capital  
 18 lease. Infrastructure expenditures shall not include indirect costs such as general  
 19 administrative costs, insurance, ~~or~~ any costs related to the transfer or allocation of  
 20 tax credits, or the expenditure verification report fee. The Department of Economic  
 21 Development may determine whether expenditures submitted as production-related  
 22 costs of capital costs related to an infrastructure facility represent legitimate  
 23 expenditures for the actual costs of related goods or services that have economic  
 24 substance and a business purpose related to the certified production or facility, or  
 25 such costs constitute constructive dividends, self-dealing, inflated prices or similar  
 26 transactions entered into for the purpose of inflating the amount of tax credits earned  
 27 rather than for the benefit of the production or facility.

28 \* \* \*



1 (7)

2 \* \* \*

3 (b) "Production expenditures" shall not include any indirect costs, any  
4 expenditures later reimbursed by a third party, and costs related to the transfer of the  
5 tax credits, ~~or~~ any amounts that are paid to persons or entities as a result of their  
6 participation in profits from the exploitation of the production, or the expenditure  
7 verification report fee.

8 \* \* \*

9 E. Certification and administration:

10 (1)

11 \* \* \*

12 (e) ~~Prior to the final certification of a production or infrastructure project, the~~  
13 ~~applicant shall submit to the Department of Economic Development an audit of the~~  
14 ~~final amount of expenditures qualifying for credits pursuant to this Section, which~~  
15 ~~report the Department of Economic Development may require to be prepared by an~~  
16 ~~independent certified public accountant. The Department of Economic Development~~  
17 ~~shall review the audit and~~ Upon project completion, the applicant shall make a  
18 request to the Department of Economic Development to proceed to final certification  
19 by submitting to the department a cost report of production or project expenditures  
20 to be formatted in accordance with instructions of the department. The applicant  
21 shall make all records related to the cost report available for inspection by the  
22 department and the certified public accountant selected by the department to prepare  
23 the expenditure verification report. After review and investigation of the cost report,  
24 the accountant shall submit to the department an expenditure verification report.  
25 Musical and theatrical production income tax credits shall only be certified upon the  
26 receipt and approval by the department of an expenditure verification report  
27 submitted by a certified public accountant in accordance with the provisions of this  
28 Subparagraph. The department shall review the expenditure verification report, and  
29 for those expenditures found to be qualified the department shall issue a final tax

1 credit certification letter, certifying the applicant and indicating the type and amount  
2 of tax credits for which the applicant or other companies or financiers are eligible  
3 pursuant to this Section.

4 ~~(f) An applicant applying for the credits shall be required to reimburse the~~  
5 ~~Department of Economic Development for any audits required in relation to granting~~  
6 ~~the certification or tax credits.~~

7 (2)

8 \* \* \*

9 (c)(i) The department shall directly engage and assign a certified public  
10 accountant to prepare an expenditure verification report on an applicant's cost report  
11 of production or project expenditures. The applicant shall be responsible for the  
12 payment of an expenditure verification report fee in accordance with R.S. 36:104.1,  
13 and shall make all records related to the tax credit application available to the  
14 department and the accountant.

15 (ii) The applicant will be assessed the department's actual cost for the  
16 expenditure verification report fee. The maximum fee shall be five thousand dollars  
17 for verification of a cost report of production or project expenditures reflecting  
18 expenditures of between five thousand dollars and fifty thousand dollars, and the  
19 maximum fee shall be fifteen thousand dollars for verification of a cost report  
20 reflecting expenditures in excess of fifty thousand dollars.

21 (iii) At the time of application, the applicant shall be required to submit a  
22 deposit of the expenditure verification report fee of two thousand five hundred  
23 dollars for a production or project with qualified expenditures projected to be  
24 between five thousand dollars and fifty thousand dollars, and a deposit of five  
25 thousand dollars for those projected to be in excess of fifty thousand dollars.

26 \* \* \*

27 Section 3. The provisions of this Act shall apply to all applications or submissions  
28 for certification or issuance of tax credits submitted to the department on or after January 1,  
29 2016.

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

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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)]

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HB 604 Reengrossed

2015 Regular Session

Stokes

**Abstract:** Requires a verification of expenditures by an independent CPA or tax attorney before certification of expenditures for purposes of receiving the entertainment industry tax credits and the research and development tax credit, all administered by the Dept. of Economic Development.

**General Provisions**

Present law establishes the following four tax credit programs for the entertainment industry, and the research and development tax credit, all of which provide for tax credits based on expenditures which are eligible for "certification" by the Dept. of Economic Development ("DED"). The amount of the tax credit is derived from the amount of eligible expenditures.

- (1) Motion picture investor tax credit program, R.S. 47:6007.
- (2) Digital interactive media and software tax credit program, R.S. 47:6022.
- (3) Sound recording investor tax credit program, R.S. 47:6023.
- (4) Musical and theatrical production income tax credit program, R.S. 47:6034.
- (5) Research and development tax credit program, R.S. 47:6015.

Present law requires that cost reports of expenditures be submitted to DED for consideration for the granting of tax credits based on "certification" of the expenditures as eligible for the tax credit.

Proposed law changes present law by requiring the preparation and submission of a verification report prepared by a CPA who is engaged and assigned by DED to provide independent verification of the cost reports of expenditures submitted by a production company or a business seeking for purposes of certification of tax credits.

Proposed law establishes certain requirements for a CPA engaged by DED, including licensing and continuing education.

Proposed law authorizes DED to impose and collect a verification report fee to reflect the actual cost of the report. The amount of the fee shall be established by rule promulgated in accordance with the Administrative Procedure Act, it shall not exceed \$25,000, and shall be based upon either an hourly rate not to exceed \$250 per hour for contract services, or the pro rata cost of salary and benefits for an internal CPA.

Proposed law requires that an applicant seeking certification of expenditures for tax credits shall be responsible for and assessed the fee, and further requires an up-front deposit of the fee, not to exceed \$15,000.

Proposed law requires that an applicant seeking tax credits make all records related to the tax credit application available to the CPA or tax attorney assigned by the department to prepare and submit to the department the verification report on the applicant's cost report of expenditures.

Proposed law defines "verification report" as any agreed upon procedure, tax opinion, attestation, or other report required by statute or department rule. Further, prior to submission to DED, a verification report shall require two levels of review either within a CPA firm or through a cooperative endeavor with another CPA.

Proposed law provides that only those expenditures which are confirmed verified within the verification report shall be eligible for certification for tax credit purposes.

#### **Motion picture investor tax credit and Digital media and software development tax credits**

Proposed law provides, for purposes of the motion picture investor tax credit and the digital interactive media and software tax credit program, the following amounts required for the deposit and maximum fee for a verification report as follows:

- (1) A deposit of \$7,500 and a maximum report fee of \$15,000 for verification of a cost report reflecting qualified production expenditures between \$300,000 and \$25,000,000.
- (2) A deposit of \$15,000 and a maximum report fee of \$25,000 fee for verification of a cost report reflecting qualified production expenditures in excess of \$25,000,000.

Present law requires that for certification of motion picture investor tax credits, the tax credit applicant shall submit to DED a production audit report issued by a "qualified accountant". The report is an audit of the motion picture production's cost report of production expenditures.

Present law defines "qualified accountant" as an independent CPA authorized to practice in La. with sufficient knowledge of accounting principals and practices generally recognized in the film and television industry.

Proposed law substitutes the expenditure verification report for the production audit report as the basis for DED's review of a production's cost report of production expenditures.

Proposed law expands the definition of "qualified accountant" provided in present law by establishing specific requirements as to peer reviews, continuing education, and ability to conduct a two level review of a verification report.

#### **Sound recording investor tax credit and Musical and theatrical production tax credit**

Proposed law provides, for purposes of the sound recording investor tax credit program and the musical and theatrical production income tax credit program, the following amounts required for the deposit and maximum fee for a verification report as follows:

- (1) A deposit of \$2,500 and a maximum report fee of \$5,000 for verification of a cost report reflecting qualified production expenditures between \$5,000 and \$50,000.
- (2) A deposit of \$5,000 and a maximum report fee of \$15,000 fee for verification of a cost report reflecting qualified production expenditures in excess of \$50,000.

#### **Research and development tax credit**

Proposed law provides, for purposes of the research and development tax credit program, the following amounts required for the deposit and maximum fee for a verification report as follows:

- (1) A deposit of \$7,500 and a maximum report fee of \$15,000 for verification of a cost report reflecting qualified production expenditures of up to \$1,000,000.
- (2) A deposit of \$15,000 and a maximum report fee of \$25,000 fee for verification of a cost report reflecting qualified production expenditures in excess of \$1,000,000.

Proposed law restricts the requirement for a verification report to certain business that employ less than 50 persons and who are not participants in certain federal programs or a recipient of the federal research and development tax credit.

Provisions of this Act shall be applicable for all projects and productions receiving initial certification on or after Jan. 1, 2016.

Effective Aug. 1, 2015.

(Amends R.S. 47:6007(B)(9)-(11), (D)(2)(c)-(e), 6015(B)(3)(i)(i), (4) and (5)(intro. para.) and (F)(5), 6022(C)(10)(b)(vii), (F)(2) and (3)(b) and (c), 6023(B)(1), (D)(2)(c) and (d) and (4), and (5), and 6034(B)(4) and (7)(b), and (E)(1)(e) and (f); Adds R.S. 36:104(B)(9) and 104.1, R.S. 47:6007(C)(1)(e) and (D)(2)(f), 6015(B)(6), 6023(D)(2)(e), and 6034(E)(2)(c))

#### Summary of Amendments Adopted by House

##### The House Floor Amendments to the engrossed bill:

1. Change the definition of "qualified accountant" for purposes of the motion picture investor tax credit.
2. Add a limitation on the requirement for a verification report for purposes of a research and development tax credit regarding certain small businesses.
3. Technical amendments.