SLS 17RS-1134 **ORIGINAL**

2017 Regular Session

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

BY SENATOR MORRELL

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

AN ACT

To amend and reenact 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), the introductory paragraph of R.S. 47:6007(C)(1), R.S. 47:6007(C)(1)(a) and (b), the introductory paragraphs of R.S. 47:6007(C)(1)(c) and (4), R.S. 47:6007(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, and (I), to enact R.S. 47:6007(B)(28), (29), (30), (31), (32), (D)(1)(d)(v) and (2)(a)(ii) and (e)(iv), and (J), and to repeal 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, relative to the motion picture production tax credit; to provide for definitions applicable to the credit; to provide for base investment credit enhancements; to provide for conditions required to earn the credit; to provide for payroll credits for qualified entertainment companies; to provide for credit caps, structured pay outs, and project size limitations; to remove duplicate provisions; to provide for a sunset date; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. 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), the introductory paragraph of R.S. 47:6007(C)(1), R.S. 47:6007(C)(1)(a) and (b), the introductory paragraphs of R.S. 47:6007(C)(1)(c) and (4), R.S. 47:6007(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, and (I) are hereby amended and reenacted and R.S. 47:6007(B)(28), (29), (30), (31), (32), (D)(1)(d)(v) and (2)(a)(ii) and (e)(iv) and (J) are hereby enacted to read as follows:

§6007. Motion picture production tax credit

* * *

B. Definitions. For the purposes of this Section:

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

* * *

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

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

~~promotions.~~

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

* * *

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

* * *

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

* * *

(16) "Production expenditure verification report" means a report issued by a qualified accountant who is unrelated to the motion picture production company and that is a report of the qualified accountant's verification of the motion picture

production's cost report of production expenditures. The production expenditure verification report shall contain an opinion from the qualified accountant stating that there are no related party transactions or that material transactions of related party relationships are properly reported and accounted for as required by Paragraph (D)(9) of this Section, adequately disclosed, and explained in the report and that the production's cost report of production expenditures presents fairly, in all material aspects, the production expenditures expended in Louisiana pursuant to the provisions of this Section. The production expenditure verification report shall:

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

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

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

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

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

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

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

(b) For all state-certified productions approved on or after January 1, 2004, this term shall not include expenditures for marketing and distribution, non-production related overhead, amounts reimbursed by the state or any other governmental entity, costs related to the transfer of tax credits, amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production, the application fee, state, or local taxes, or any expenditures occurring outside of Louisiana. ~~For all state-certified productions approved on or after January 1, 2016, marketing expenditures shall be considered "production expenditures".~~ **This term shall not include expenditures for related party transactions denied or limited by the office pursuant to Paragraph (D)(9) of this Section, the production expenditure verification report fee, expenditures for Above the Line (ATL) services salaries for the production that exceed forty percent of total production expenditures in the state for the production, or expenditures for airfare. This term shall not include expenditures for bond fees, insurance premiums, finance fees, loan interest fees, or payments of a similar nature, paid to investors in the production unless such expenditures are made to a Louisiana resident licensed insurance producer that has its principal place of business in this state as required by R.S. 22:1543, a Louisiana financial institution as defined in R.S. 6:2(8), or a Louisiana Business and Industrial Development Company as defined in and provided for in Chapter 39-B of Title 51 of the Louisiana Revised Statutes of 1950, R.S. 51:2386 et seq., that is regulated by the office of financial institutions and which have one or more offices in the state, in which case, the expenditures may be allocated only on a pro rata basis, allocating the fees based on the relative percentage of production activity occurring in and out of state.**

* * *

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

* * *

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

* * *

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

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

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

(31) "Qualified Entertainment Company (QEC)" means an entity authorized to do business in the state of Louisiana, engaged in the development

or distribution of audio, visual, or both audio visual entertainment products for public consumption, directly or indirectly, certified by the secretary as meeting the eligibility requirements of this Section, and executing a contract providing the terms and conditions for its participation.

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

* * *

C. Production tax credit; specific productions and projects.

(1) There is hereby authorized a tax credit against state income tax for Louisiana taxpayers for expenditures related to state-certified productions **and qualified entertainment companies**. The tax credit shall be earned by a motion picture production company at the time expenditures are certified by the office and the secretary for a motion picture production company in a state-certified production. However, credits cannot be applied against a tax or transferred until the expenditures are certified by the office and the secretary. For state-certified productions, expenditures shall be certified no more than once per production, after project completion. However, if at the time of application for initial certification, the office is notified that post-production activities will take place in Louisiana, a supplemental request for certification of expenditures directly related to such post-production activity may be submitted for consideration by the office. The cost of any verification or audit of such expenditures shall be borne by the motion picture production company. The tax credit shall be calculated as a percentage of the total base investment dollars certified per project.

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

(i) ~~If the total base investment is greater than three hundred thousand dollars and less than or equal to eight million dollars, each taxpayer shall be allowed a tax credit of ten percent of the actual investment made by that taxpayer.~~ **Base**

investment credit. If the total base investment is greater than three hundred thousand dollars, each investor shall be allowed a tax credit of thirty percent of the base investment made by the investor. Investors may receive an increased base investment credit rate by satisfying any of the following criteria:

(aa) Out of zone filming. A five percent increase in the base investment rate may be allowed for state-certified productions with their production office and sixty percent of principal photography based and occurring outside of the New Orleans Metro Statistical Area.

(bb) Louisiana screenplay. A five percent increase in the base investment rate may be allowed for state-certified productions on the first ten million of base investment based upon a screenplay created by a Louisiana resident as evidenced by documents such as certificate of authorship, a WGA registration certificate, the records of the United States Copyright Office, or a reasonable legal opinion issued to the office.

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

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

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

(cc) The maximum tax credit that a production can earn pursuant to this Paragraph for the base investment credit and the additional payroll and visual

effects credits is forty percent of base investment.

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

(aa) State-certified productions for scripted episodic content, with estimated expenditures of ten million dollars in qualifying in state expenditures per calendar year, for up to five years, shall be issued an initial certification effective for qualifying expenditures made until sixty months after the date of initial certification, under terms and conditions approved by the office and the secretary, as set forth in the initial certification.

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

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

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

(i) ~~If the total base investment is greater than three hundred thousand dollars, each investor shall be allowed a tax credit of twenty-five percent of the base~~

~~investment made by that investor.~~ **Tier 1. A payroll credit of ten percent shall be earned for each new job whose QEC payroll is equal to or greater than forty-five thousand dollars per year, up to sixty-six thousand dollars per year.**

(ii) ~~To the extent that base investment is expended on payroll for Louisiana residents employed in connection with a state-certified production, each investor shall be allowed an additional tax credit of ten percent of such payroll. However, if the payroll to any one person exceeds one million dollars, this additional credit shall exclude any salary for that person that exceeds one million dollars.~~ **Tier 2. A payroll credit of twenty percent shall be earned for each new job whose QEC payroll is equal to or greater than sixty-six thousand dollars per year, but no greater than two hundred thousand dollars per year.**

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

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

* * *

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

* * *

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

~~(ii)~~ **(aa)** For projects ~~which receive initial certification~~ **that apply** on and

Coding: Words which are ~~struck through~~ are deletions from existing law; words **in boldface type and underscored** are additions.

after July 1, 2009**, and before July 1, 2017**, the motion picture production company that earned the motion picture production tax credits pursuant to such certification or the company's irrevocable designee, as provided for in Item ~~(iv)~~**(iii)** of this Subparagraph, may transfer the credits to the Department of Revenue for eighty-five percent of the face value of the credits in accordance with the procedures and requirements of Item ~~(iii)~~**(ii)** of this Subparagraph.

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

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

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

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

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

* * *

D. Certification and administration.

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

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

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

(cc) Is approved by the secretary.

(I) The following business types are ineligible:

(aaa) Telecommunication.

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

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

* * *

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

* * *

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

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

* * *

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

* * *

(c)(i) In order to protect the integrity of the motion picture investor tax credit program by ensuring that tax credits are certified only for eligible expenditures and to provide for uniformity in expenditure verification reporting, the department shall directly engage and assign an independent certified public accountant, hereinafter referred to as "CPA", to prepare, for the department, the required production expenditure verification report on a tax credit applicant's cost report of expenditures or claims. The applicant shall be responsible for and assessed any production expenditure verification report fee ~~which~~ **that** may be required by law, including any up-front deposit of the fee. For purposes of the report, the applicant shall make all records related to the tax credit application available to the CPA.

* * *

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

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

* * *

(e)(i)**(aa)** ~~No~~ **For projects with initial certification letters issued on or after July 1, 2015, no** later than six months after the expiration of the initial certification period for the applicable state-certified production, a state-certified motion picture production company applicant shall make a request to the office to proceed to final certification by submitting to the office a cost report of production expenditures to be formatted in accordance with instructions of the office. The applicant shall make all records related to the cost report available for inspection by the office and the qualified accountant selected by the office to prepare the production expenditure verification report, after which time all such claims to tax credits shall be deemed waived. After review and investigation of the cost report, the accountant shall submit to the office and the secretary a production expenditure verification report. The office and the secretary shall review the production expenditure verification report and may require additional information needed to make a determination as to final certification of all tax credits for that production. Within one hundred twenty days of the receipt of the production expenditure verification report and all required supporting information, the office and the secretary shall issue a tax credit certification letter indicating the amount of tax credits certified for the state-certified production to the applicant for all qualifying expenditures verified by the office. Any expenditures for which tax credits were neither denied nor certified due to insufficient information or other issues, the office and secretary shall diligently work to resolve the outstanding issues in a timely manner, and the office and secretary may subsequently issue a supplemental tax credit certification at the time of such resolution.

(bb) For projects with initial certification letters issued before July 1, 2015, upon project completion or at any time after project costs are deemed final by the motion picture production company or applicant, the applicant shall make a request to the office to proceed to final certification by submitting to the office a cost report of production expenditures to be formatted in accordance with instructions of the office promulgated in compliance with the Administrative Procedure Act. The applicant shall make all records related to the cost report available for inspection by the office and the qualified accountant selected by the office to prepare the production expenditure verification report. After review and investigation of the cost report, and after two levels of review within a CPA firm or a second review through a cooperative endeavor with another CPA, the accountant shall submit to the office, the secretary, and the motion picture production company or motion picture investor tax credit applicant a production expenditure verification

report and the affidavit required by Subparagraph (g) of this Paragraph. The office and the secretary shall review the production expenditure verification report and may require additional information needed to make a determination. Within one hundred twenty days of the receipt of the production expenditure verification report and all required supporting information, the office and the secretary shall issue a tax credit certification letter indicating the amount of tax credits certified for the state-certified production to the investors for all qualifying expenditures verified by the office. Any expenditures for which tax credits were neither denied nor certified due to insufficient information or other issues, the office and secretary shall diligently work to resolve the outstanding issues in a timely manner, and the office and secretary may subsequently issue a supplemental tax credit certification at the time of such resolution.

* * *

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

* * *

I. ~~Commencing no later than January 31, 2016, the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs shall review the credit authorized pursuant to the provisions of this Section to determine if the economic benefit provided by such credit outweigh the loss of revenue realized by the state as a result of awarding such credit. The House and Senate committees shall make a specific recommendation no later than March 1, 2017, to either continue the credit or to terminate the credit~~ **No credits shall be allowed pursuant to this Section for applications received on or after July 1, 2023**.

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

(1) Department of Economic Development program issuance cap.

Coding: Words which are ~~struck through~~ are deletions from existing law; words **in boldface type and underscored** are additions.

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

(b) For applications for state-certified productions and qualified entertainment companies submitted on or after July 1, 2017, and before July 1, 2020, the total amount of all tax credits granted in a final certification letter by the department in any fiscal year shall not exceed one hundred fifty million dollars. For applications for state-certified productions and qualified entertainment companies submitted on or after July 1, 2020, the total amount of all tax credits granted in a final certification letter by the department in any fiscal year shall not exceed one hundred eighty million dollars. Ten percent of the annual program cap shall be reserved for productions with a total production budget of fifteen million or less. Five percent of the annual program cap shall be reserved for qualified entertainment companies. If the total amount of credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for that year, the excess shall be treated as having been applied for on the first day of the subsequent year.

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

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

(2) Department of Revenue taxpayer claim cap.

(a) Beginning July 1, 2017, claims against state income tax allowed on returns for tax credits or transfers of such tax credits, including legacy credits,

to the Department of Revenue as provided for in Paragraph (C)(4) of this Section shall be limited to an aggregate total of one hundred eighty million dollars each fiscal year. If less than one hundred eighty million dollars of such tax credits and transfers are allowed in a fiscal year, the remaining amount, plus any amounts remaining from previous fiscal years, shall be added to the one hundred eighty million dollar limit of subsequent fiscal years until that amount of tax credits or tax credit transfers to the Department of Revenue are claimed and allowed.

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

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

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

(c) For all completed applications for transfer submitted to the Department of Revenue on or after July 1, 2017, the face value of the credits transferred to the Department of Revenue shall be subtracted from the

remaining available Department of Revenue taxpayer claim cap.

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

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

(a) Project based production tax credit. For applications for state-certified productions on or after July 1, 2017, the maximum amount of credits that may be granted for a single state-certified production shall not exceed twenty million dollars, except for state-certified productions for scripted episodic content that may be granted up to twenty-five million dollars per season. The credit for these productions shall be structured over two or more tax years as provided for in the initial certification letter.

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

(4) Department of Economic Development company based QEC payroll tax credit cap. Company based QEC payroll tax credit. For applications for qualified entertainment company contracts on or after July 1, 2017, the maximum amount of credits that may be granted for QEC payroll shall be two hundred thousand dollars per person, for each employee reported on a Form W-2.

(5) Department of Economic Development structured pay outs.

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

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

state.

Section 2. 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 are hereby repealed.

Section 3. The Louisiana State Law Institute is hereby directed to alphabetize the definitions contained in Subsection B of this Section.

Section 4. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Leonore Heavey.

DIGEST

SB 254 Original 2017 Regular Session Morrell

<u>Present law</u> 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.

<u>Proposed law</u> authorizes five types of tax credits for state-certified productions:

(1) A base investment credit of 30% for projects in excess of $300,000.

(2) An additional base investment credit of 5% for projects filmed outside the New Orleans Metro Zone.

(3) An additional base investment credit of 5% of the first $10 million of base investment 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.

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 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.

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.

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.

Proposed law establishes an annual LED issuance cap of $150 million for applications received between July 1, 2017, and June 30, 2020, and increases the cap to $180 million for applications received after July 1, 2020.

Proposed law reserves 10% of the annual cap for productions with budgets of $15 million or less, and five percent for qualified entertainment companies.

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, 2023.

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)(intro para), R.S. 47:6007(C)(1)(a) and (b), (C)(1)(c)(intro para) and (4)(intro para), (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, and (I); adds R.S. 47:6007(B)(28), (29), (30), (31), (32), (D)(1)(d)(v) and (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)