

CONFERENCE COMMITTEE REPORT

HB 829

2015 Regular Session

Robideaux

June 11, 2015

To the Honorable Speaker and Members of the House of Representatives and the Honorable President and Members of the Senate.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning House Bill No. 829 by Representative Robideaux, recommend the following concerning the Reengrossed bill:

1. That Amendment Nos. 1, 2, 4, 6 through 9, 14 through 20, and 22 of the set of Committee Amendments proposed by the Senate Finance Committee and adopted by the Senate on June 4, 2015, be rejected.
2. That Amendment Nos. 3, 5, 10 through 13, and 21 of the set of Committee Amendments proposed by the Senate Finance Committee and adopted by the Senate on June 4, 2015, be adopted.
3. That Amendment Nos. 1, 2, and 4 of the set of Floor Amendments proposed by Senator Donahue and adopted by the Senate on June 6, 2015, be rejected.
4. That Amendment Nos. 3 and 5 of the set of Floor Amendments proposed by Senator Donahue and adopted by the Senate on June 6, 2015, be adopted.
5. That the Reengrossed bill be amended as follows:

AMENDMENT NO. 1

That Senate Committee Amendment No. 13, proposed by the Senate Finance Committee and adopted by the Senate on June 4, 2015, on page 2, line 11 after "expenditures" and before "outside" delete "incurred" and insert "occurring"

AMENDMENT NO. 2

That Senate Committee Amendment No. 13, proposed by the Senate Finance Committee and adopted by the Senate on June 4, 2015, on page 2, line 14 after "production" and before "in this" delete "incurred" and insert "incurring"

AMENDMENT NO. 3

That Senate Committee Amendment No. 21, proposed by the Senate Finance Committee and adopted by the Senate on June 4, 2015, on page 3, delete line 8, and insert the following:

"(ii)(aa) For Fiscal Years 2015-2016, 2016-2017, and 2017-2018, claims against"

AMENDMENT NO. 4

That Senate Committee Amendment No. 21, proposed by the Senate Finance Committee and adopted by the Senate on June 4, 2015, on page 3, between lines 22 and 23, insert the following:

"(cc) Beginning in Fiscal Year 2018-2019, the cap on the aggregate amount of tax credits that may be paid by the state or transferred to the state shall be inapplicable, inoperable, and of no effect."

AMENDMENT NO. 5

On page 1, line 2, after "and (d)" delete the remainder of the line and at the beginning of line 3, delete "and" and insert a comma "," and insert "(2), and (4)(introductory paragraph),"

AMENDMENT NO. 6

On page 1, line 3, after "R.S. 47:6007(C)(1)(e)" and before the comma "," insert "and (4)(f)(iii)"

AMENDMENT NO. 7

On page 1, line 9, after "credits;" and before "to provide" insert "to prohibit transfers of tax credits to the office for certain periods;"

AMENDMENT NO. 8

On page 1, line 13, after "and (d)" delete the remainder of the line and insert a comma "," and insert "(2), and (4)(introductory paragraph),"

AMENDMENT NO. 9

On page 1, line 14, after "R.S. 47:6007(C)(1)(e)" and before "hereby" delete "is" and insert "and (4)(f)(iii) are"

AMENDMENT NO. 10

On page 2, after line 28, insert the following:

"(7) "Marketing and promotion expenses" means expenditures in this state directly relating to the development of advertising and marketing campaigns for a state-certified production, such as the creation of film trailers and posters. Marketing and promotional expenses must be included in and expended from the production budget and may not exceed one million dollars, or fifteen percent of the total state-certified tax credits for the production, whichever is less. Marketing and promotional expenses shall not include media buys except for a fixed fee or commission payment made to a Louisiana company for services performed in the state in accordance with standard business practices as established by rule."

AMENDMENT NO. 11

On page 3, at the beginning of line 1, delete "(7)" and insert "(8)"

AMENDMENT NO. 12

On page 3, line 5, after "platform viewing" delete the remainder of the line, delete line 6 in its entirety and at the beginning of line 7, delete "Administrative Procedure Act"

AMENDMENT NO. 13

On page 3, at the beginning of line 9, delete "(8)" and insert "(9)"

AMENDMENT NO. 14

On page 3, at the beginning of line 17, delete "(9)" and insert "(10)"

AMENDMENT NO. 15

On page 3, at the beginning of line 21, delete "(10)" and insert "(11)"

AMENDMENT NO. 16

On page 3, line 23, after "state." insert the following:

" However, "payroll" ~~for purposes of the additional tax credit for Louisiana-resident payroll~~ shall exclude any portion of an individual salary in excess of ~~one~~ three million dollars."

AMENDMENT NO. 17

On page 3, at the beginning of line 26, delete "(11)" and insert "(12)"

AMENDMENT NO. 18

On page 4, at the beginning of line 4, delete "(12)" and insert "(13)"

AMENDMENT NO. 19

On page 4, at the beginning of line 25, delete "(13)" and insert "(14)"

AMENDMENT NO. 20

On page 5, at the beginning of line 13, delete "(14)" and insert "(15)"

AMENDMENT NO. 21

On page 5, at the beginning of line 17, delete "(15)" and insert "(16)"

AMENDMENT NO. 22

On page 5, at the beginning of line 23, delete "(16)" and insert "(17)"

AMENDMENT NO. 23

On page 5, between lines 24 and 25, insert the following:

"(18) "Slate of productions" or "slate" means an aggregation of motion picture production projects with a combined total of qualified expenditures that exceed three hundred thousand dollars for activities occurring over a maximum of twenty-four months within the state. A slate shall not include more than three state-certified productions. No single state-certified production in a slate shall exceed three hundred thousand dollars. Tax credits shall not be issued for any single state certified production included within a slate until the entire slate has been completed. A single application for the slate must identify all of the productions within the slate and the application shall be submitted to the office no less than thirty days prior to the beginning of production. Only expenditures made after the application for the slate received by the office may qualify for tax credits pursuant to the provisions of this Section."

AMENDMENT NO. 24

On page 5, at the beginning of line 25, delete "(17)" and insert "(19)"

AMENDMENT NO. 25

On page 5, at the beginning of line 28, delete "(18)" and insert "(20)"

AMENDMENT NO. 26

On page 6, at the beginning of line 1, delete "(19)" and insert "(21)"

AMENDMENT NO. 27

On page 6, line 24, after "production" delete the remainder of the line and delete lines 25 and 26 in their entirety and insert "there shall be allowed a tax credit"

AMENDMENT NO. 28

On page 6, at the beginning of line 29, delete "seventy-five" and insert "ninety"

AMENDMENT NO. 29

On page 7, at the end of line 1, delete "seventy-five" and insert "ninety"

AMENDMENT NO. 30

On page 7, line 9, after "owned" and before "by a" insert "or optioned to own for a minimum of twelve months prior to production"

AMENDMENT NO. 31

On page 7, line 11, after "residents" and before "shall" delete the comma "," and delete "each investor" and insert "for minimum of twelve months prior to production, there"

AMENDMENT NO. 32

On page 7, line 12, after "investment" and before the period "." insert "of the state-certified production"

AMENDMENT NO. 33

On page 7, at the beginning of line 13, delete "However, if" and insert "If"

AMENDMENT NO. 34

On page 7, at the end of line 15, insert the following:

"The tax credit authorized in this Item shall be in addition to the tax credit authorized in Item (i) of this Subparagraph. Prior to the office certifying any credits pursuant to the provisions of this Item, the secretary shall promulgate rules and regulations pursuant to the Administrative Procedure Act, subject to oversight by the House Ways and Means and the Senate Revenue and Fiscal Affairs Committees. The rules and regulations shall set forth criteria a Louisiana resident company with its principal place of business in this state shall meet in order to qualify for the additional credit. The secretary shall commence the promulgation of rules and regulations no later than October 1, 2015."

AMENDMENT NO. 35

On page 7, line 25, after "Louisiana," and before "shall" delete "each investor" and insert "there"

AMENDMENT NO. 36

On page 7, at the beginning of line 27, after "(d)" delete the remainder of the line and delete lines 28 and 29 in their entirety and page 8, delete lines 1 through 5 in their entirety and insert the following:

"(i) For state-certified productions approved on or after July 1, 2015, and on or before June 30, 2018, the maximum amount of credits that may be certified for an single state-certified production shall not exceed thirty million dollars. The credit for

these productions may be structured over two or more tax years as provided for in the initial certification letter."

AMENDMENT NO. 37

On page 8, at the beginning of line 10, delete "certified" and insert "earned or for the taxable period in which initial certification authorizes the credit to be taken"

AMENDMENT NO. 38

On page 8, between lines 14 and 15, insert the following:

"(4) Transferability of the credit. ~~Any~~ Except as provided for in Item (f)(iii) 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, subject to the following conditions:

* * *

(f)(i)

* * *

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

Respectfully submitted,

Representative Joel C. Robideaux

Senator Jack Donahue

Representative Walt Leger III

Senator Jean-Paul J. Morrell

Representative Chuck Kleckley

Senator Robert Adley

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)]

CONFERENCE COMMITTEE REPORT DIGEST

HB 829

2015 Regular Session

Robideaux

Keyword and oneliner of the instrument as it left the House

TAX CREDITS: Provides relative to the motion picture investor tax credit

Report adopts Senate amendments to:

1. Define "slate of productions" as an aggregation of projects with a combined total of qualified expenditures that exceed \$300,000 for activities occurring in La. occurring over a maximum of 24 months.
2. Cap the amount of credits that may be claimed against income tax allowed on returns or credits transferred to the state at \$180 million each fiscal year.
3. Add a definition for "slate of productions".
4. Make technical changes to the bill.

Report rejects Senate amendments which would have:

1. Reduced the cap on the initial certification of credits each fiscal year from \$200 million to \$180 million.
2. Reduced the additional "payroll" credit from 10% to 5% and expanded the limitation of payroll to which the additional credit for employing Louisiana residents applies to include other compensation such as benefits paid to an individual for purposes of calculating the \$1 million cap.
3. Deleted the additional tax credit of 15% for expenditures on music, the sound recording copyright or musical copyright of which is owned in whole or in part by a resident of Louisiana or a Louisiana company headquartered in the state with a majority ownership of residents of Louisiana.
4. Deleted the additional tax credit of 15% for productions in excess of \$300,000 based on a screenplay, the copyright or the right of use of the copyright of which, is owned by a La. resident company or a La. company with its principal place of business in the state which employs a minimum of three full-time La. residents.
5. Limited the maximum amount of "marketing and promotion expenses" eligible for the credit to the lesser of \$300,000 or 15% of the total state-certified credits for the production.
6. Required eligible "motion pictures" to be nationally and internationally distributed and requires productions for any online digital platform viewing to be viewed with a paid subscription.
7. Added the Student Assessment for a Valuable Education (SAVE) Credit Program to the bill that provided for a transferable, nonrefundable credit against the tax liability

of a student, or his parent or legal guardian, against income, sales and use, gasoline and special fuel taxes.

8. Required the credit to be transferred to the Board of Regents for application as provided in proposed law.

Report amends the bill to:

1. Delete the limit on the initial certification of credits each fiscal year.
2. Increase the additional "payroll" credit from 5% to 10%; deletes the limitation of payroll to which the additional credit for employing Louisiana residents applies to include other compensation such as benefits paid to an individual for purposes of calculating cap.
3. Increase the amount of the credit on the payroll cap from \$1 million to \$3 million.
4. Limit the maximum amount of "marketing and promotion expenses" eligible for the credit to the lesser of \$1 million or 15% of the total state-certified credits for the production.
5. Delete requirement that eligible "motion pictures" be nationally and internationally distributed and delete requirement that productions for any online digital platform viewing be viewed with a paid subscription.
6. Add an additional credit of 30% of the total base investment for a state-certified production which is greater than \$50,000 but less than \$300,000; however, a condition for earning this tax credit includes a requirement that no less than 90% of the total amount of the applicant's expenditures for above the line services shall be expended on La. residents and that 90% or more of the total number of jobs in the production shall be filled by La. residents. Failure to comply with these requirements shall void the certification and no tax credits shall be earned by the applicant.
7. Add an additional credit of 15% of the base investment for a state-certified production which is based on a screenplay, the copyright or the right of use of the copyright of which is owned or optioned to own for a minimum of 12 months prior to production by a La. resident company or a La. company with its principal place of business in the state.
8. Add an additional credit of 15% of the base investment expended on music, the sound recording copyright or musical copyright of which, is owned in whole or in part at no less than 25% by a La. resident or a La. company headquartered in the state with a majority ownership of La. residents.
9. Suspends authorization for credits to be transferred back to the office from July 1, 2015, through June 30, 2016.

Digest of the bill as proposed by the Conference Committee

Present law provides for an income tax credit for La. taxpayers for investment in state-certified productions earned at the time expenditures are made by a motion picture production company in a state-certified production. The amount of the credit is equal to 30% of the base investment made by the investor if the total base investment is more than \$300,000. Additionally provides for a credit equal to 5% of base investment expended on payroll for La. residents employed in connection with a state-certified production. However, this credit does not apply to the payroll of any one person that exceeds \$1 million. Present law further provides that the credit shall be allowed against the income tax for the taxable period in which the credit is earned or for the taxable period in which initial certification authorizes the credit to be taken.

Proposed law changes present law by providing that tax credits shall be earned at the time expenditures are certified rather than the time the expenditures are made and that the credits shall be allowed against income tax for the taxable period in which the credit is certified. Additionally, increases the amount of the tax credit for expenditures on payroll for La. residents from 5% to 10% and increases the income limitation from the salary of any person that exceeds \$1 million to the salary of any person that exceeds \$3 million.

Proposed law caps the maximum amount of credits available for any single state-certified production at \$30 million.

Proposed law adds credits for the following:

- (1) If the total base investment is greater than \$50,000 but less than \$300,000, each state-certified production shall be allowed a credit of 30% of the total base investment made by that investor. However, a condition for earning this tax credit includes a requirement that no less than 90% of the total amount of the applicant's expenditures for above the line services shall be expended on La. residents and that 90% or more of the total number of jobs in the production shall be filled by La. residents. Failure to comply with these requirements shall void the certification and no tax credits shall be earned by the applicant.
- (2) If the total base investment is greater than \$300,000 and the state-certified production is based on a screenplay, the copyright or the right of use of the copyright of which, is owned or optioned to own for a minimum of 12 months prior to the production by a La. resident company or a La. company with its principal place of business in the state which employs a minimum of three full-time La. residents, each investor shall be allowed an additional tax credit of 15% of the base investment in the state-certified production.
- (3) To the extent that the base investment is expended on music, the sound recording copyright or musical copyright of which, is owned in whole or in part at no less than 25% by a La. resident or a La. company headquartered in the state with a majority ownership of La. residents, each investor shall be allowed an additional tax credit of 15% of the base investment.

Proposed law defines "above the line services" for purposes of defining expenditures eligible for the credit as services of a producer, executive producer, line producer, co-producer, assistant producer, actor, director, casting director, screenwriter, and other services performed by personnel of the production that are associated with the creative or financial control of a production and customarily considered above the line services in the film and television industry.

Proposed law defines a "Louisiana resident company" as a motion picture production company licensed to conduct business in this state, with its principle place of business in this state which is owned 100% by a natural person who is a legal resident and who has been domiciled in this state and has maintained a permanent home in this state for no less than 12 consecutive months. A Louisiana resident company is required to file a La. income tax return and maintain a physical location in the state.

Proposed law defines "principal place of business" as the state where the administrative or management activities of a business are conducted. A company claiming that its principal place of business is in La. must be headquartered in La., and shall not have any fixed locations outside of this state in which administrative or management activities are conducted, and the company shall be required to maintain a physical location in the state. Furthermore, the company shall be licensed to conduct business in this state, shall be required to file a La. income tax return.

Present law defines a "motion picture" to include nationally or internationally distributed feature-length film, video, television pilot, and television series made in La. The term "motion picture" shall not include the production of television coverage of news and athletic events.

Proposed law expands a "motion picture" to include animated short films, and documentaries made in La. for any online digital platform viewing approved by the office.

Present law defines "production expenditures" to include preproduction, production, and postproduction expenditures in this state directly relating to a state-certified production. However, this term does not include expenditures for marketing and distribution.

Proposed law changes present law by adding eligibility for marketing and promotion expenses of the state-certified production; however, the amount of these expenses eligible for tax credits shall not exceed 15% of the total state certified tax credits for the production.

Proposed law defines "marketing and promotion expenses" as expenditures in this state directly relating to the development of advertising and marketing campaigns for a state-certified production, such as the creation of film trailers and posters. Marketing and promotion expenses must be included in and expended from the production budget and may not exceed \$1 million, or 15% of the total state- certified tax credits for the production, whichever is less.

Proposed law defines a "slate of productions" means an aggregation of motion picture production projects with a combined total of qualified expenditures that exceed \$300,000 for activities occurring over a maximum of 24 months within the state. A slate shall not include more than three state- certified productions.

Present law requires an application fee to be submitted with a tax credit application. The amount of the fee shall be based on two-tenths of 1% multiplied by the estimated total of the credit. The minimum amount of the fee shall be \$200 and the maximum amount of the fee shall be \$5,000. Further requires the application fee to be deposited into the Entertainment Promotion and Marketing Fund to be used solely for promotion and marketing of entertainment industry in this state.

Proposed law changes present law by providing that the monies deposited into the Entertainment Promotion and Marketing Fund can be used for costs associated with the administration of the motion picture investor tax credit program.

Effective July 1, 2015.

(Amends R.S. 47:6007(B), (C)(1)(intro. para.), (c), and (d), (2), and (4)(intro. para) and (D)(4)(ii)(aa); Adds R.S. 47:6007(C)(1)(e) and (4)(f)(iii))