

Legislative Analysis



MOTION PICTURE PRODUCTION TAX BENEFITS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5958 as passed by the House
Sponsor: Rep. Bill Huizenga

House Bill 5959 as passed by the House
Sponsor: Rep. Lorence Wenke

House Bill 5960 as passed by the House
Sponsor: Rep. Michael C. Murphy

House Bill 6027 as passed by the House
Sponsor: Rep. Virgil Smith

Committee: Tax Policy
First Analysis (7-7-04)

BRIEF SUMMARY: The bills would provide tax benefits to motion picture production companies.

FISCAL IMPACT: The fiscal impact of the bills cannot be determined since data is not available on how much new activity will be generated by the tax incentives or on how much existing activity would qualify for the tax benefits.

THE APPARENT PROBLEM:

Michigan is said to rank approximately 21st among the states in the film business and in the top 10 for production of commercials. In recent years, the state has hosted several major movies, including *Road to Perdition*, which was filmed in the Saugatuck area and other areas of West Michigan, and *8 Mile*, which was filmed in the metropolitan Detroit area. Despite recent (and historical) successes in luring film and commercial producers to the state, the film and commercial industry in the state has been struggling somewhat over the fast few years. While the state offers great scenery and a strong workforce, it has a particularly difficult time competing with Canada and other states that offer film companies a host of incentives to film in their country, province, or state. The reason why the film incentives have proliferated in recent years is because of the potential economic impact those films generate in the few weeks (though sometimes longer periods of time) the film company shoots its movie. For instance, according to information provided by the Michigan Film Office, Universal Studios spent between \$8 million and \$10 million in the Detroit area while filming *8 Mile*. When multipliers are factored into that spending, the economic impact on the Detroit area was even greater. That being said, legislation providing film companies with certain tax incentives has been introduced.

THE CONTENT OF THE BILL:

The bills would amend various acts to provide a movie production company with tax benefits.

House Bill 5958 (Single Business Tax)

The bill would amend the Single Business Tax Act (MCL 208.37g) to provide a SBT credit to a motion picture production company that spends at least \$250,000 in the state for purposes related to the filming or production of a single motion picture. The credit would equal the company's tax liability that is attributable to the filming or production of that motion picture, and would be available for tax years that begin prior to January 1, 2007. The bill would only apply to the tax liability of a company attributable to the production of a motion picture that began after the effective date of the bill.

If the credit and any unused carryforward exceed the taxpayer's tax liability, the excess would not be refundable, but could be carried forward for five years or until the excess credit is exhausted, whichever occurs first. The bill is tie-barred to House Bill 6027, which provides definitions of "motion picture" and "motion picture production company" (as described later).

House Bill 5959 (Sales Tax) and House Bill 5960 (Use Tax)

The bills would amend the General Sales Tax Act (MCL 205.54bb) and Use Tax Act (MCL 205.94y), respectively, to provide a motion picture company with a credit equal to the amount of sales tax and use tax paid, if the company has spent at least \$250,000 in the state for purposes related to the filming or production of a single motion picture, and the tangible personal property purchased is used exclusively as an integral part of the production activities in the state.

The credits would only be available to production companies that begin production after the bill's effective date, and credits would be available through the end of 2006.

House Bill 6027 (Single Business Tax)

The bill would amend the Single Business Tax Act (MCL 208.37h) to add definitions of "motion picture" and "motion picture production company." The bill is also tie-barred to House Bill 5958.

The bill would define "motion picture" to mean a feature-length film distributed in two or more states, and that is not required under federal law (18 US 2257) to maintain certain production records regarding "performers" in the production, or a television series made in the state in whole or in part for theatrical or television viewing or as a television pilot. The term would not include the production of television coverage of news or sporting events. [The federal law referenced in the bill requires records on the performers in a film

or videotape, among other media, that contains actual sexually explicit conduct. This would prohibit so-called adult films from qualifying for the credit.]

The bill would define “motion picture production company” to mean a company in the business of producing motion pictures. It would not, however, include a company wholly or partially owned, affiliated, or controlled by a company or individual that is in default on a loan made by the state or a loan guaranteed by the state.

House Bills 5959 and 5960 include the same definitions of “motion picture” and “motion picture production company” as provided in House Bill 6027.

BACKGROUND INFORMATION:

State Film Agencies

The Michigan Film Office is the state agency charged with trying to attract film, television, and related media business to the state. The office, which is staffed by one civil servant and student interns, was established in 1979 by an executive order by Governor Milliken. The office was formally established in statute with the enactment of Public Act 508 of 2002. Public Act 508 also established the Michigan Film Advisory Commission, a 13-member commission that assists in the promotion and marketing of the state’s film industry.

Feature Films in Michigan

The state has played host to numerous films over the past several decades, including *Somewhere in Time* (1979), *Beverly Hills Cop* (1984), *Beverly Hills Cop 2* (1987), *Roger and Me* (1989), *Die Hard 2* (1990), *Hoffa* (1992), *Renaissance Man* (1994), *Cobb* (1994), *Grosse Pointe Blank* (1997), *Out of Sight* (1998), *Detroit Rock City* (1999), *Escanaba in da Moonlight* (2000), *61** (2000), *Road to Perdition* (2001), *Super Sucker* (2001), *8 Mile* (2002), and *Bowling for Columbine* (2002).

Film Incentives Provided in Other States

South Carolina - The South Carolina General Assembly recently passed the “South Carolina Motion Picture Incentive Act” (House Bill 4968). The bill would relieve motion picture production companies that spend at least \$250,000 in the state during a 12-month period from the burden of paying the state sales and use taxes related to the filming or production of a movie in the state. In addition, the bill would provide a portion of the revenue from the state admissions tax to the South Carolina Film Commission. The film commission would provide production companies with a rebate of up to seven percent of the cost of goods and services purchased if the production company spends at least \$1 million in the state. The film commission would also receive revenue from the admissions tax to promote collaborative productions and educational efforts between state colleges and universities and motion picture related entities. The bill would also permit the film commission to negotiate below-market rates for the temporary (up to 12

months) use of “underutilized property” Finally, the bill would provide production companies with an income tax credit, and would rebate all of the accommodations tax paid by the company for employees who have stayed in the state for at least 30 days over a 12-month period.

Minnesota - Until recently, the Minnesota offered production companies a rebate, through the Snowbate program, with a rebate of up to 10 percent of production-related expenditures in the state. The rebate itself was capped at \$100,000 per project. The Minnesota Film and TV board notes that between FY 1998 and FY 2001, the program provided a rebate of nearly \$1.6 million for in-state expenditures totaling nearly \$48 million. The Associated Press reported in 2003 that when Minnesota ended the rebate program three movies and a cable television series dropped plans to film in Minnesota, resulting in a loss of an estimated \$66 million in economic activity. Since 1999, the state has exempted the sales of commercials and the purchase of items used or consumed during the production process of a commercial from the 6.5 percent state sales tax.

Illinois - The Illinois Film Production Tax Credit provides a 25 percent tax credit on Illinois Income Tax for wages paid by a production company to each employee that is an Illinois resident. The credit is limited to the first \$25,000 in wages paid to each employee. The wages used to determine the credit must be at least \$100,000 for productions lasting at least 30 minutes or at least \$50,000 for productions lasting less than 30 minutes, and exclude the salary paid to the two highest paid employees in the production.

New Mexico - New Mexico provides numerous incentives to film, and has been successful in attracting at least 14 film and television projects to the state over the past 18 months. The state provides an income tax credit equal to 15 percent of the direct production expenditures made in the state and subject to taxation. In addition, the state offers a gross receipts (sales) tax deduction permitting certain expenditures to be exempt from taxation. Tax-exempt expenditures cannot be included in production expenditures when determining the income tax credit. Finally, the state permits the state to use up to 2.5 percent of the funds from the Severance Tax Permanent Fund to be invested in New Mexico film private equity funds or in a New Mexico film project, limited to \$7.5 million per equity fund or project.

ARGUMENTS:

For:

This package of bills is about one thing: economic activity. People in the field say the state has many of the assets needed to attract business, including its wide variety of rural and urban locations; experienced crews; and post-production facilities. Obviously, when film producers select an area as a location for filming, there are substantial economic benefits, from work for Michigan-based crews and actors and similar "talent", to hotel and meal expenses, carpentry and construction work, costuming supplies, and so on. Moreover, film locations tend to attract tourists, as well, and the finished products can sometimes attract people to the state. Canada and several states have already developed

various economic incentives in an effort to lure filmmakers. The tax incentives provided by this package are necessary for the state to remain competitive with other states in luring the film industry. As a case in point, the Associated Press reported in 2003 that when Minnesota ended its rebate program, three movies and a cable television series dropped plans to film in Minnesota and resulting in an estimated \$66 million in economic activity.

Response:

The state's efforts in luring the film industry could be markedly improved if the Michigan Film Office was provided with greater financial resources enabling it to hire additional staff. Also, the definition of a "motion picture" should probably be even more restricted. Under the bills, motion picture specifically excludes coverage or news and sporting events. It should be pointed out that the Illinois Film Production Services Tax Credit Act specifically also excludes a program that includes weather or market reports, talk shows, game shows, gala presentations or award shows, and finished productions that solicit funds.

POSITIONS:

The Department of Treasury supports the concept of the bills. (6-23-04)

The Department of History, Arts, and Libraries supports the bills. (6-23-04)

The Michigan Film Office supports the bills. (6-23-04)

The National Association of Theater Owners (NATO) of Michigan indicated support for the bills. (6-16-04)

Compass Arts Film Academy indicated support for the bills. (6-16-04)

The Screen Actors Guild indicated support for the bills. (6-23-04)

The Michigan Cable Telecommunications Association indicated support for the bills. (6-23-04)

SWC Films Inc. indicated support for the bills. (6-23-04)

Legislative Analyst: Mark Wolf
Fiscal Analyst: Jim Stansell

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.