LFC Requester:	Laird Graeser

AGENCY BILL ANALYSIS
2015 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment** ____
Correction ___ **Substitute** ____

Date Feb. 17, 2015
Bill No: SB 565

Sponsor: Sen. William Payne
Short Title: Limit Film Production Tax Credit

Agency Code: Attorney General's Office - 305
Person Writing Joseph Dworak
Phone: 827-6986 **Email** jdworak@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE
This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

BILL SUMMARY

Synopsis: Senate Bill 565 amends the Film Production Tax Credit Act Sections 7-2F-1 and 7-2F-2. Generally, SB 565 amends language of the Act for clarity, places limits on the types of expenditures eligible for tax credits, and decreases the amount of credit for nonresident film personnel.

Specifically, SB 565 would:

1) Add TV series stand-alone pilot productions as eligible for additional 5% tax credit
2) Eliminate 5% credit for direct production expenditures for nonresident performing artists
3) Restrict additional 5% credit for production expenditures paid to a New Mexico resident who has filed NM state income tax returns as a resident in the previous two (2) taxable years.
4) Clarify that the additional 5% tax credit is available based on total "New Mexico" budgets, not a production budget total that includes costs occurred outside of the state.
5) Require a company seeking the 5% credit to shoot a minimum number of days principal photography days within New Mexico depending upon the total New Mexico budget eligible for the tax credit. This provision also includes photography be shot at either a sound stage or standing set classified as qualified production facilities, including a minimum number of days a sound stage, and that each eligible day must include at least 8 hours of work done by industry crew.
6) Create a new clause providing for a 15% tax credit for direct production for wages, fringe benefits, and per diem for nonresident industry crew for services rendered in New Mexico. This provision excludes payments for a production designer, directors of photography, line producer, costume designer, still unit photographer, and drivers. This clause also places restrictions on the number of positions eligible for the credit depending upon the production's final New Mexico budget.
7) Incorporate television episodes to the existing requirement on films to include an acknowledgement in the screen credits that the production was filmed in New Mexico.
8) Change application requirements to align with the tax year instead of the calendar year.

9) Reduces reporting requirements for the division to post on its website quarterly, instead of monthly, the projected amount of credits claims made for the fiscal year.

10) Add an exception to the $5M limit placed tax credits for expenditures for services of performing artists, which would exclude expenditures for services by "background artists and resident performing artists who are not cast in standard industry principal lead roles."

11) Clarify and change the definition of "direct production expenditure." This includes limiting nonresident expenditures to only include wages and per diem and adding services provided by an accounting firm conducting an extern audit.

12) Adds "industry crew" as a definition

13) Amends the definition of "personal service business" to include businesses without a physical presence (ie: virtual presence).

14) Amends the definition of "qualified production facility" to exclude "back lot facilities" not owned or controlled by the same entity that owns actual associated building. Also adds that a qualified production facility must contain either a sound stage or standing set used on a continual basis and located on at least 50 acres of space.

15) Amends the definition of "vendor" by eliminating an enumerated list of exceptions and broadly defining the scope of a vendor's goods and services to those "related to a standard industry category of inventory . . ."

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

PERFORMANCE IMPLICATIONS
N/A

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

1) HB 216 – Assignment of Film Production Tax Credits – Rep. Jim Trujillo

2) HB 325 – Remove Some TV Shows From Film Tax Credit Cap – Rep. Brian Egolf

3) HB 18 – Separate Tax Deductions & Exemptions – Rep. Bill McCamley
   Amends NMSA 1978, Section 7-9-86, Deductions on gross receipts tax for sales to qualified film production companies.

4) SB 346 – Tax Reform – Sen. William E. Sharer

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

1) Consistency for specific restrictions placed on “annual” budgets versus “final” budgets should be reviewed. Subsection 7-2F-1(D)(3)(d) (page 6, lines 22-25), which provides credits for nonresident industry crew in excess of $50,000,000, may be read to conflict with Subsection 7-2F-1(F) (page 8, lines 5-23), which provides that the aggregate amount of tax credit claims authorized for payment is $50,000,000. Our office does not find a definitive conflict, but some clarity may be helpful.
2) Section 7-2F-1(G) addresses circumstances specific to fiscal years 2013 through 2015, and could conceivably be deleted for brevity if no longer applicable (this would require changes to be made to internal citations of the subsections).
3) Some clarification would be helpful in defining the term “New Mexico budget,” and consider distinguishing between “budget” and “actual cost” or “expenses.”
4) Some terms could be defined more clearly, including background artists and resident performing artists, unless they are common industry terms and would not likely create any confusion from those who interpret the law.

ALTERNATIVES
N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL
Status quo

AMENDMENTS
N/A