

LFC Requester:	Laird Graeser
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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{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: **Date** March 4, 2015
Original **Amendment** **Bill No:** SB 565
Correction **Substitute**

Sponsor: Sen. William Payne **Agency Code:** Attorney General's Office - 305
Short Limit Film Production Tax **Person Writing** Joseph Dworak
Title: Credit **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. The Corporations and Transportation Committee provided a substitute bill. The Attorney General’s Office provided an analysis dated February 17 for the original bill.

Generally, the substitute bill clarifies a distinction made between film production companies that commence principal photography prior to January 1, 2016, and those commencing photography after January 1, 2016. The substitute bill does this by creating new sections for the Film Production Tax Credit Act for companies commencing photography after January 1, 2016.

Specifically, the substitute SB 565 differs from the original bill by:

- 1) Increasing the number of days shooting at a soundstage from six to seven for a production company seeking the 5% credit with a total New Mexico budget less than thirty million dollars and from eight to ten days for a company with a New Mexico budget greater than thirty million.
- 2) Removing proposed Subsection 7-2F-1(D) regarding a 15% tax credit for direct production expenditures and incorporated similar language in a new section which contemplated a 25% credit.
- 3) Clarifying definitions of “direct production expenditure,” “film production company,” and “vendor” used only used for Section 7-2F-1, and created a new, separate definition section with the same terms for tax credits claimed related to a film commencing principal photography after January 1, 2016.
- 4) Moving definitions of “film production company” and “vendor” from definitions Section 7-2F-2, into the language of Section 7-2F-1.
- 5) Adding definitions of “performing artist” and “principal photography” to definitions Section 7-2F-2.
- 6) Creating a new section (Section 4 of the bill) titled “Additional Definitions.” The definitions are only applied to Sections 5 through 11 of the 2015 Act, which contemplate productions commencing principal photography after January 1, 2016. The definitions includes the following: direct production expenditure, film production company, and vendor.

- 7) Creating a new section (Section 5 of the bill) titled “Film and Television Tax Credit—Film Production Companies That Commence Principal Photography on or After January 1, 2016.” The section provides for a tax credit in the amount of 25%.
- 8) Creating a new section (Section 6 of the bill) titled “Additional Credit—Television Pilots and Series.” The section provides an additional 5% tax credit for television pilots and series with New Mexico budget of at least \$50,000 per episode. A company applying for the credit is not eligible for the credit under new Section 7.
- 9) Creating a new section (Section 7 of the bill) titled “Additional Credit—Qualified Production Facilities.” The section provides an additional 5% to the film and television tax credit for production expenditures paid to New Mexico residents. The section places certain conditions depending on whether the total budget is less than or more than \$30,000,000. A company applying for the credit is not eligible for the credit under new Section 6.
- 10) Creating a new section (Section 8 of the bill) titled “Additional Credit—Nonresident Industry Crew.” The section provides a tax credit in the amount equal to 15% of the payment of wages, fringe benefits, and per diem for nonresident crew under certain conditions. The service must be rendered in New Mexico, certain crew are excluded, and the company must make a financial or promotional contribution toward state educational or workforce development efforts. The number of eligible positions varies depending upon the amount of the final New Mexico budget. Additional positions are eligible for a television pilot series and the maximum number of 30 positions can be increased to 40 at the discretion of the division if at least five other films are being produced in the state at the same time.
- 11) Creating a new section (Section 9 of the bill) titled “Payments For Performing Artists—Credit Limitation.” The section limits the amount of tax credit for expenditures for nonresident and featured resident principal performing artists at \$5,000,000.
- 12) Creating a new section (Section 10 of the bill) titled “Requirements to Contract with Certain Vendors.” The section requires production companies to make reasonable efforts to contract with specialized vendors.
- 13) Creating a new section (Section 11 of the bill) titled “Credit Claims—Aggregate Amount of Claims Allowed.” The section provides a process for filing a claim for a film and television tax credit with the department and sets an annual limit of \$50,000,000 for claimed expenditures. The section sets forth a method for the department to pay credit claims, depending upon the amount of the claim, with some claims being dispersed into as many as three payments over a 24 month period.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

- 1) Terms are now defined in three locations, 7-2F-1(U) and (V), the prior definitions section 7-2F-2, and the new additional definitions section (section 4 of the bill). It is clear why definitions are different between those defined in 7-2F-2 and in the new additional definitions section of the bill, but it may be helpful to remove terms that are defined in 7-2F-1 and place them with the other definitions in either 7-2F-2 or the new section, or both, unless the definitions in 7-2F-1 are explicitly intended to only be used within that section alone and not anywhere else in the Act.

- 2) There are multiple references throughout the act regarding the “total budget” and the “New Mexico budget.” Some of these references should be reviewed for consistency and determine if there is an intention to differentiate between each use and whether the some of the references should be uniform with one another.
- 3) Section 10 of the bill may be difficult to interpret without defining what a “specialized vendor” is or otherwise clarifying the use of the term. The current language is vague in multiple regards.

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

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A