

SESSION OF 2023

SUPPLEMENTAL NOTE ON SENATE BILL NO. 91

As Amended by Senate Committee on
Commerce

Brief*

SB 91, as amended, would enact the Kansas Film and Digital Media Production Development Act (Act). The Act would create a sales tax exemption and nonrefundable income tax credits for qualifying film production activities to incentivize and promote the growth of film and digital media production and industry in Kansas. The bill would also create definitions pursuant to its implementation and specify reporting requirements on relevant tax incentives for the Secretary of Commerce (Secretary).

Kansas Film and Digital Media Industry Development Program

The bill would establish the Kansas Film and Digital Media Industry Development Program (Program) to be administered by the Secretary in consultation with the Kansas Creative Arts Industries Commission. The Secretary would be authorized to approve and to provide tax incentives for eligible projects, to be certified and approved according to requirements prescribed by the bill. In consideration of projects to approve, the Secretary would be required to consider the immediate and potential impact on the growth of the Kansas film and digital media industry.

Eligible projects would include new films, videos, or digital projects that are:

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Produced in Kansas;
- Fixed on a media format for viewing or reproduction;
- Intended for multimarket commercial distribution; and
- Anticipated to incur qualified expenditures, as defined by the bill, of at least \$50,000.

Eligible projects would not include:

- News or athletic event coverage;
- Local interest programming or advertising;
- Instructional or corporate videos;
- Projects not intended for multimarket commercial distribution;
- Any portion of a project not shot, recorded, or created in Kansas; or
- Any production of obscene material or an obscene performance, as defined by Kansas law.

To apply for eligibility for the Program, production companies would be required to submit an application to the Secretary for approval. In addition to the application, production companies would be required to submit the following to the Secretary prior to commencement of the project, in order to be eligible for the income tax credit and sales tax exemption provided for by the bill:

- Evidence of adequate financing for the project;
- Evidence of general liability insurance of \$1.0 million, or more if required by the Secretary;

- Evidence of workers' compensation coverage in compliance with state law;
- A description of the project, including anticipated:
 - Timeline and completion date;
 - Eligible expenditures, as defined by the bill;
 - Project activities to be conducted in Kansas;
 - Employment of personnel who are Kansas residents;
 - Use of Kansas-based vendors;
 - Construction or contribution of production infrastructure; and
 - Participation in Kansas film and digital media industry development activities; and
- A statement of economic impact of the activities of the project on the region and the state as a whole.

Production companies that enter into an agreement with the Secretary would be considered certified projects, for purposes of the bill, and would be eligible for the income tax credit and sales tax exemption provided for by the bill. The amounts of tax credits, described in more detail below, would be determined based on amounts of qualified expenditures as determined and approved by the Secretary.

The bill would require any agreement entered into between a production company and the Secretary to include provisions for repayment of tax credits or exemptions should the production company violate the Act or any rules and regulations pertaining to the Act.

For purposes of the bill, production and postproduction expenditures would be defined to include costs associated with eligible productions for:

- Various categories of goods and services associated with typical production and postproduction activities, as provided for by the bill;
- Wages or salaries of principal cast members, producers, screenwriters, directors, and crew members;
- Transportation costs;
- Food and lodging;
- Facility rental;
- Insurance costs; and
- Other direct costs associated with generally accepted entertainment industry practice.

For purposes of the bill, production and postproduction expenditures would not include expenditures for:

- Goods, equipment, or vehicles not purchased, rented, or leased in Kansas;
- Production activities or services not conducted in Kansas and services not performed at the filming site unless by a Kansas-based vendor;
- Postproduction activities or services not conducted in Kansas by Kansas-based vendors; or
- Footage shot outside of the state, marketing, story rights, or distribution.

Qualified production and postproduction expenditures, for purposes of the bill, would include eligible production and postproduction expenditures actually made by production companies for certified projects. Qualified production expenditures would not include salaries and wages of principal cast members, producers, screenwriters, or

directors, constituting more than 25 percent of total production expenditures. The Secretary would have discretion to limit specified eligible expenditures or total amounts approved as qualified production or postproduction expenditures.

Production companies entering into an agreement with the Secretary would be required to regularly provide documentation and information as requested by the Secretary to determine qualified expenditures and ensure compliance with the program.

The bill would authorize the Secretary of Revenue and the Secretary of Commerce to adopt rules and regulations to implement its provisions.

Income Tax Credits

The bill would create a nonrefundable income tax credit for tax year 2023 through tax year 2032 for production companies or their affiliates that make qualified expenditures on certified projects.

The credit would be equal to 30.0 percent of qualified production expenditures, or 30.0 percent of qualified postproduction expenses for projects lacking qualified production expenditures.

Certain production-related activities would be available for additional credit amounts, as approved by the Secretary, as follows:

- Up to 5 percent of qualified expenditures for one of the following:
 - Multi-film deal;
 - Television series;
 - Production for which total expenditures are at least \$50.0 million, one-third of which are

qualified expenditures approved by the Secretary;

- Contributions to film-related infrastructure or workforce development in Kansas; or
- Up to 5 percent for qualified production expenditures for productions in which at least 50 percent of the the crew or “above-the-line” personnel (principal cast member, producer, screenwriter, or director) are Kansas residents.

An additional credit amount of up to 5 percent of qualified expenditures would be available to a production company that was a previous recipient of an income tax credit provided for under the bill.

Income Tax Credit for Kansas-based Companies

The bill would also create a nonrefundable income tax credit for 25 percent of qualified production expenditures of at least \$25,000 for Kansas-based production companies. For purposes of this credit, eligible projects would include projects not intended for multimarket commercial distribution.

This credit could be received in addition to or in lieu of the the general income tax credit created by the bill, as determined by the Secretary.

Income Tax Credit General Provisions

The bill would specify that the income tax credits provided for by the bill would be:

- Applied against the income tax in the tax year such qualified expenditures were made;
- Transferable to any individual or entity subject to income tax in Kansas; and

- Able to be carried forward for up to ten future tax years.

Limits on Tax Credit Amounts

The bill would further specify limits on income tax credit amounts as follows:

- The total amount of income tax credits in aggregate could not exceed \$10.0 million per tax year;
- Ten percent of the aggregate total amount of tax credits per tax year would be required to be designated to Kansas-based production companies;
- The tax credit amount for expenditures on a single individual who is a principal cast member, producer, screenwriter, or director could not exceed \$500,000; and
- The maximum cumulative amount of credits claimed by a production company in a tax year could not exceed 40 percent of the total qualified production expenditures for that tax year.

Tax Credit Administration

The bill would further specify the following regarding the administration of tax credit claims:

- Claims would be filed with the Secretary of Revenue and would be required to be submitted within one year of the last eligible expenditure;
 - The Secretary of Revenue would be required to grant up to a six month extension at the request of a production company;

- Claims submitted by a production company would be required to be filed as a single claim;
- Claims for closely integrated activities of multiple affiliates could be required by the Secretary of Revenue to be submitted as a single claim;
- Claims for expenditures made by production companies hired by another production company would be required to be filed by the hiring company;
- Claims would be required to include:
 - A copy of the project certification;
 - A determination of qualified expenditures by the Secretary of Commerce; and
 - A report by a Kansas-licensed certified public accountant verifying compliance of expenditures with the bill; and
- Credits claimed by S-corporations, partnerships, or limited liability companies would be distributed proportionally by shareholders, partners, or members.

Sales Tax Exemption

The bill would create a sales tax exemption for expenditures for certified projects made in Kansas on production and postproduction activities, as defined by the bill.

The bill would require the Secretary, in considering approval of applications for the sales tax exemption, to prioritize expenditures in rural or economically depressed urban areas to the extent feasible. The Secretary would be permitted to require that all or a portion of expenditures eligible for the exemption be made with businesses in such areas.

Tax Incentive Reporting

The bill would require the Secretary to provide an annual report to the Senate Committee on Commerce and the House Committee on Commerce, Labor and Economic Development on or before January 31 of each year, beginning in 2024. The report would be required to include:

- Amounts and recipients of tax incentives approved during the prior year;
- Amount of tax incentives anticipated for the current year;
- The companies that have applied for and that have been certified for projects; and
- A description of ongoing and completed projects and their impact on the Kansas film and digital media production industry.

The Secretary of Revenue would be required to provide the Secretary of Commerce with information as necessary for the report.

Sunset on Tax Incentives

The bill would specify no income tax credits or sales tax exemptions would apply or be awarded for expenditures made on or after January 1, 2033.

Background

The bill was introduced by the Senate Committee on Commerce at the request of a representative of Grow Kansas Film.

Senate Committee on Commerce

In the Senate Committee hearing, **proponent** testimony was provided by Senator Baumgardner and Senator Pittman; and by representatives of First City Film Festival; Grow Kansas Film; Hallmark Cards, Inc.; Johnson County Community College; Kansas Department of Commerce; Lawrence Chamber of Commerce; Lights On; Tallgrass Film Association; University of Kansas Film and Media Studies; Wichita State University School of Digital Arts & Studios. Proponents generally stated this bill would aid the Kansas film industry to grow and to help retain Kansas graduates who are obtaining degrees in film production and related fields. Proponents stated the majority of other states have similar incentive programs and that the bill is necessary to get film productions to occur in Kansas rather than in other states.

Written-only proponent testimony was provided by representatives of the METL Coalition of Chambers of Commerce of Manhattan, Emporia, Topeka, and Lawrence; Digital Innovation in Media Programs; Gordon Parks Museum Foundation; Greater Kansas City Chamber of Commerce; Grow Kansas Film; Kansas Association of Broadcasters; Kansas Economic Development Alliance; Motion Picture Association; Overland Park Chamber of Commerce; Teamsters Joint Council 56; Travel Industry Association of Kansas; Visit KC; Visit Kansas City Kansas; Visit Wichita; and Wichita Regional Chamber of Commerce; and by five private citizens.

Opponent testimony was provided by a representative of the Kansas Policy Institute, who stated that the rate of return found in similar programs is very low. The conferee also noted incentive programs similar to the bill can lead to a “race to the bottom” between states as they compete against each other.

Written-only neutral testimony was provided by a representative of the League of Kansas Municipalities.

The Senate Committee amended the bill to:

- Remove language granting sole discretion to the Secretary of Commerce in determining qualified expenditures;
- Grant an extension of up to six months for submitting a claim for the income tax credit at the request of the production company;
- Make both income tax credits nonrefundable;
- Allow the income tax credits to carry forward for ten years; and
- Remove provisions creating educational and workforce development training grant and loan programs.

The Senate Committee also made a technical amendment correcting the year in which first appropriation would be made, as required by other provisions of the bill.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department of Revenue estimates the income tax credit provisions of the bill, if enacted, would decrease State General Fund revenues by \$10.0 million in FY 2024, and in each future fiscal year through FY 2033, assuming the full amount of available tax credits would be awarded by the Department of Commerce each fiscal year.

The Department could not provide an estimate for the fiscal effect of the sales tax exemption that would be provided for the bill.

The Department further indicates a total of \$148,851 from the State General Fund would be required in FY 2024 to implement the bill and to modify the automated tax system.

The Department of Commerce indicated that bill would require \$90,633 from the State General Fund in FY 2024 and 1.00 new FTE position to implement the bill.

The Kansas Department of Transportation (KDOT) indicates the sales tax provision of the bill would reduce state revenues to the State Highway Fund by unknown amounts.

The Kansas Association of Counties and the League of Kansas Municipalities indicated the bill also has the potential to provide a net reduction to local sales tax collections by unspecified amounts.

The fiscal effect associated with the \$10.0 million cap on the film, video, or digital media production income tax credit provisions in the bill are reflected in *The FY 2024 Governor's Budget Report*.

Film production; digital media; economic development; tax credits; income tax; sales tax exemptions