# F I S C A L   I M P A C T   R E P O R T

| | | | | | |
|---|---|---|---|---|---|
| | | **ORIGINAL DATE** | 02/14/13 | | |
| **SPONSOR** | McCamley | **LAST UPDATED** | | **HB** | 490 |
| **SHORT TITLE** | Evaluate Film Production Tax Credit | | | **SB** | |
| | | | | **ANALYST** | Walker-Moran |

## APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|
| **FY13** | **FY14** | | |
| | $50.0 | Nonrecurring | Office of The State Auditor |

(Parenthesis ( ) Indicate Expenditure Decreases)

Related to HB 379

**SOURCES OF INFORMATION**
LFC Files

Responses Received From
Department of Finance and Administration (DFA)
Economic Development Department (EDD)
Office of the State Auditor (OSA)

**SUMMARY**

Synopsis of Bill

House Bill 490 (HB 490) makes an appropriation of $50 thousand from the general fund to the Office of the State Auditor (OSA) for expenditure in FY14 to evaluate the effect of the film production tax credit and the effectiveness of the cap on the film production tax credit and to produce a report based on the findings. Any unexpended or unencumbered balance remaining at the end of FY14 shall revert to the general fund.

There is no effective date of this bill. It is assumed that the new effective date is 90 days after this session ends (June 14, 2013).

**FISCAL IMPLICATIONS**

The appropriation of $50 thousand contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY14 shall revert to the general fund.

The cost of tax expenditures is increasing, as reported to the legislature on February 11, 2013. Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

The New Mexico Film Office and the Consensus Revenue Estimating Group are forecasting that the $50 million cap will be reached in each of the forecast period fiscal years. Below is a summary of film credits by date approved and date distributed.

### Table 1: SUMMARY OF FILM CREDITS — MATRIX OF YEAR AWARDED VERSUS YEAR CREDIT DISTRIBUTED

| | FY FILM CREDIT DISTRIBUTED (in thousands of dollars) | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| FY FILM CREDIT AWARD APPROVED | **FY03** | **FY04** | **FY05** | **FY06** | **FY07** | **FY08** | **FY09** | **FY10** | **FY11** | **FY12** | **Grand Total** |
| FY03 | $1,116.2 | $103.3 | | | | | | | | | $1,219.5 |
| FY04 | | $1,633.3 | $1,771.6 | | | | | | | | $3,405.0 |
| FY05 | | | $333.0 | $1,446.9 | $285.5 | | | | | | $2,065.3 |
| FY06 | | | | $4,274.2 | $4,320.4 | $6.3 | | | | | $8,600.8 |
| FY07 | | | | | $13,917.8 | $2,250.5 | $477.2 | | | | $16,645.6 |
| FY08 | | | | | | $40,312.5 | $5,248.1 | $6.4 | | | $45,567.1 |
| FY09 | | | | | | | $76,336.8 | $86.6 | | $1.1 | $76,424.4 |
| FY10 | | | | | | | | $45,274.5 | $20,632.6 | $0.2 | $65,907.3 |
| FY11 | | | | | | | | | $75,559.6 | $1,411.5 | $76,971.2 |
| FY12 | | | | | | | | | | $8,081.6 | $8,081.6 |
| Grand Total | $1,116.2 | $1,736.7 | $2,104.6 | $5,721.1 | $18,523.7 | $42,569.3 | $82,062.1 | $45,367.4 | $96,192.3 | $9,494.5 | $304,887.8 |

## SIGNIFICANT ISSUES

This bill conflicts with the study currently being conducted by the EDD, LFC, TRD, and DFA.

In 2011, SB 44, sponsored by Senator Tim Keller, was passed and signed into law (Section 7-2F-4 NMSA 1978) requiring the Economic Development Department (EDD) with the assistance of the Legislative Finance Committee and Taxation and Revenue Department to collect data to be used in an econometric tool to objectively assess the effectiveness of the tax credit.

According to the Department of Finance and Administration (DFA), a Request for Proposal for the film production tax credit study mandated by SB 44 is expected to be released this spring. The study mandated by HB 490 seems somewhat superfluous in light of SB 44 and the pending issuance of the RFP.

It appears that the evaluation required by HB 490 is similar to that of Section 7-2F-4 NMSA 1978, but the language of the bill is vague regarding the specific effects to be evaluated. In accordance with the professional standards followed by the OSA, the report produced would most likely follow an agreed-upon procedures engagement. In accordance with AICPA AT Section 201.03 a report of findings is issued based on the specific procedures performed on the subject matter. The parties (either the Legislature and the OSA or the EDD and the OSA) would need to agree to the specific procedures to be performed in advance including the timeframe to be included in the scope of the review and sample sizes. The procedures would also need to define if the evaluation is focused on the EDD's compliance with the accountability section and/or would include procedures to determine if the data is properly supported.

If the intent of HB 490 is to determine the effect of the tax credit and the effectiveness of the cap in terms of an economic and fiscal impact, these services are not the primary function of the OSA and would require resources in terms of expertise, training and potentially software. The OSA could perform the services or subcontract the work to an audit firm with expertise in those areas.

## PERFORMANCE IMPLICATIONS

As reported by the OSA, the bill is broad in scope and does not specify the components to be evaluated. As a result, it may be difficult to carry out the intent of the legislation.

The LFC tax policy of accountability is met with the bill's requirement to produce a report to determine whether the deduction is meeting its purpose. There is no detail on who the report will be presented to and when the report will be produced.

## ADMINISTRATIVE IMPLICATIONS

According to the EDD, reviewing and assessing the effectiveness of the film production tax credit and the cap on the film production tax credit would require additional administrative support from the Film Division.

## OTHER SUBSTANTIVE ISSUES

The New Mexico film production tax credit was first enacted as a refundable tax credit equal to 15 percent of qualified direct New Mexico production expenditures during the 2002 legislative session and went into effect in 2003. In 2005 the credit was extended to include post-production expenditures. In 2006 the credit was increased to 25 percent. During the 2011 legislative session, the aggregate credit amount was capped at $50 million annually beginning in FY12, and a delayed payment schedule was established for larger productions. Annual payments of film credits have fluctuated over time, reaching a maximum of over $90 million in the year prior to the introduction of the cap at the beginning of FY12.

Additional funding may be required to complete a study and this may conflict with current legislation.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

EWM/svb:blm