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FISCAL IMPACT REPORT

SPONSOR HBIC DATE TYPED 2/11/04 HB 469/HBICS

SHORT TITLE Film Production Tax Credit Eligibility SB _____

ANALYST Gilbert

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
Indeterminate	Indeterminate	Indeterminate	Recurring	Severance Tax Permanent Fund
Indeterminate	(\$1,000.0)	(\$1,100.0)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to HB 222

SOURCES OF INFORMATION

LFC Files

Response Received From

State Investment Council (SIC)
 Department of Finance and Administration (DFA)
 Economic Development Department (EDD)
 New Mexico Tourism Department (NMTD)
 Taxation and Revenue Department (TRD)
 Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

The House Business and Industry Committee Substitute for House Bill 469 allows the State Investment Council (SIC) to intercept the refundable tax credit for film production in New Mexico, or file for such credit on behalf of a New Mexico film project if the SIC has purchased the estimated refundable tax credit from the film project in order to provide additional funding for use in the production of a New Mexico film project. HB 469/HBICS expands the film production tax credit eligibility for certain types of technology expenditures made in New Mexico.

This bill also allows the SIC to loan to, at a market rate of interest, an eligible New Mexico film project up to eighty percent of an expected and estimated film production tax credit available to a

film production company pursuant to the provisions of Section 7-2F-1 NMSA 1978; provided that the film production company agrees to name the SIC as its agent for the purpose of filing an application for the film production tax credit to which the company is entitled, should the company fail to apply for the credit. The New Mexico film division of the economic development department shall determine the estimated amount of a film production tax credit. The SIC shall establish guidelines for the state investment officer's initiation of a loan and the terms of the loan.

Additionally, HB 469/HBICS contains an emergency clause and would become effective immediately.

Significant Issues

This bill amends current statutes to allow the SIC to offer production companies 80% of their expected tax rebate, upfront. The bill also adds language specifying that to receive the tax rebate, a production company must provide access to a print of the film for the purpose of a New Mexico premiere.

The expansion of eligible expenditures to include new technologies reflects the movement in the film industry towards a wholly digital process. New Mexico companies and personnel working in these technologies for film is the fastest growing part of the film industry. With technologies currently available in the state, New Mexico is positioned to become a forerunner in these fields. This tax credit expansion will encourage more companies to work in New Mexico, and is crucial to the growth of our film infrastructure.

HB 469/HBICS gives the state EDD Film Division a greater and more independent role in certifying that a film company has met the requirements for the tax credit. One new requirement in the substitute bill is that a film company must notify, through newspaper notices, that public creditors have a right to file creditor claims against the company.

FISCAL IMPLICATIONS

The Taxation and Revenue Department (TRD) estimates that this bill will increase utilization of film credits by (1) expanding the definition of eligible film productions; (2) expanding the types of expenditures eligible for credits; and (3) facilitating use of credits by enabling the state to apply for them on behalf of a taxpayer. Credits claimed and approved in the first year of the program will be about \$4 million.

The 1997 Economic Census for New Mexico reports total revenue of "post-production and other motion picture and video industries" was \$2.135 million. This amount has probably increased significantly since 1997, judging from the 300% increase in receipts of "motion picture and video production" companies. The fiscal impact estimates assume that post-production company receipts eligible for the 15% credit under the bill are \$5 million annually. This translates into \$750 thousand per year of credits. In addition, the estimate assumes an increase in credits for video production companies not previously eligible of \$250 thousand per year.

The Department of Finance and Administration (DFA) believes that the fiscal impact of this bill is indeterminate. Up to \$87 million is available to invest in local film production at a maximum investment of \$7.5 million per film. The fiscal impact is dependant upon the number of companies that take advantage of the funds provided in statute.

According to the EDD, the tax rebate expansion to film technologies is at worst a revenue-neutral proposition. From the inception of the film tax rebate program, New Mexico has seen a surge of film activity within the state. From FY02 to FY03, the economic impact from film went from \$8.8M to \$79.1M, almost a 1000% increase and worker days rose from 7,698 to 58,567. These film and multimedia projects coming into the state have not only brought jobs and paid taxes in the state, but spent countless dollars on hotels, restaurants, lumber, art, and a full array of other goods and services. From the last two surges of production - in the 80's and again in the 90's -the tourism department experienced a tremendous upswing in tourist activity that they attribute to the film activity.

ADMINISTRATIVE IMPLICATIONS

The TRD states that it will incur significant additional costs under this proposal. All forms, instructions and publications associated with the film production credit will have to be updated. Additional FTE will be required to process credit claims and applications.

RELATIONSHIP

HB 222 appropriates \$75 thousand to the Economic Development Department (EDD) to finance the operations of the film advisory board.

TECHNICAL ISSUES

The substitute bill again does not correct the potential anti-donation clause problem in Section 7-2F-1(G). The TRD and Attorney General's Office (AGO) raised this issue in prior years and it has never been corrected. The concern is that if a company has paid \$100 (tax liability) and qualified for \$120 in tax credits, it will receive a refund of \$120. This extra \$20 is above its liability and thus constitutes a gift/donation.

Section 2 of the bill states the company shall name the NM Film Division and State Investment Council as its "agents." According to the AGO, this term should be defined, particular to this statute, because the term has many other legal connotations.

OTHER SUBSTANTIVE ISSUES

According to the Department of Tourism, studies have shown that many visitors to New Mexico come because of the State's beautiful scenery. Studies have also shown that people often travel to see the places where films were made. New Mexico enjoyed its highest annual number of visitors in the year following the release of the film *City Slickers II*.

Costs associated with hosting film premieres are normally paid through New Mexico Film Museum fundraising efforts.

RLG/lg:yr