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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/08  
 LAST UPDATED 2/11/08

SPONSOR HTRC HB CS/634/aHAFC

SHORT TITLE NM Filmmakers Production Fund SB \_\_\_\_\_

ANALYST Earnest/Francis

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
NFI	NFI*		

(Parenthesis ( ) Indicate Expenditure Decreases)  
 \*See narrative

Relates to SB383

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Economic Development Department (EDD)  
 State Investment Council (SIC)  
 Department of Finance and Administration (DFA)

### SUMMARY

#### Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amended the House Taxation and Revenue Committee substitute for House Bill 634:

- Removed language automatically allowing a deferral of loan repayment
- Clarified that a “pre-approved agreement” has to be developed and adopted by the State Investment Council’s Private Equity Investment Advisory Committee
- Require 60 percent of the above the line participants be New Mexico residents or 60 percent of the above the line participants be underrepresented minorities *so long as* at least one is a New Mexico resident
- Includes women in the definition of minority
- Defines above the line participant to mean a producer, writer, screenwriter, director or leading cast member.

Synopsis of HTRC substitute

The House Taxation and Revenue Committee substituted House Bill 634 adding a new section to the severance tax bonding act [7-27-5 NMSA 1978] allowing the State Investment Council to invest up to 0.5 percent of the market value of the severance tax permanent fund (STPF) in independent or underrepresented minority filmmakers who are New Mexican residents. No investment can be more than \$5 million. The private equity investment advisory committee (PEIAC), a committee of the SIC, will promulgate rules which must be adopted by SIC. SIC can make a below market rate loan to a qualified project in return for a participation percentage in the film and all derivative properties.

Specific investment criteria for below market loans:

- PEIAC should develop a priority point system subject to review by the governor’s council on film and media industries.
- PEIAC can create a pre-approved agreement or the filmmaker can negotiate an agreement.
- PEIAC can require a letter of credit from a bank, an entity with a BBB credit rating, or a cash equivalent instrument that is held in an interest bearing account.
- PEIAC should decide rules for default.
- PEIAC can require completion bonding.
- PEIAC can require 80 percent of the principal photography be made in New Mexico, 60 percent of the payroll be New Mexico payroll and two of the three principal “above the line” participants be New Mexico residents or underrepresented minorities.

“Minority” is defined as African American, Hispanic American, Asian American or Native American.

Synopsis of Original Bill

House Bill 634 creates the New Mexico filmmakers production fund, administered by the Economic Development Department, to provide zero-interest loans for local and underrepresented minorities filmmakers for the purpose of economic development. The loan must be guaranteed in full by an A- or better rated banking institution, BBB credit rated or better entity, or cash-equivalent instruments held in an interest-bearing secure account. In addition, to be eligible a production must have a completion bond, 80 percent of the principal photography must take place in New Mexico, 60 percent of the payroll must go to New Mexicans, and two of the three principal above-the-line participants must be New Mexico residents or underrepresented minorities.

**FISCAL IMPLICATIONS**

The fiscal impacts are indeterminate. SIC has reported that these types of films, particularly ones that do not have distribution agreements, do not perform very well in the market place. If the entire amount of 0.5 percent, or \$23.1 million, is invested in these films, the fiscal impact could be almost \$2 million in lost earnings to the fund (assuming an 8.5 percent rate of return). There is an annual distribution of 4.7 percent of the corpus of the fund to the general fund so the fiscal impact may be a \$94,000 reduction in general fund revenues.

Since the SIC has wide latitude over these investments, this calculation is an example of how the general fund may be affected but it is more likely that SIC will not invest the full amount. The example also assumes that there is no upside return on the investments but a single film that finds broad commercial success could positively impact the fund.

## **SIGNIFICANT ISSUES**

This bill stems from concerns that local filmmakers have not been able to participate in the State Investment Council's film loan program. The investment criteria in this bill are modeled after the SIC program, but with the following notable differences:

- No requirement for producer to have distribution agreements for their film;
- A less rigid guarantee of investment principal;
- No requirement that the project's commercial viability be a criteria for funding

According to SIC, these elements have been the biggest hurdles for independent NM filmmakers who have applied for film investments from the SIC.

However, unlike the original bill, the substitute uses the word "may" rather than "shall" allowing SIC some latitude in determining the core elements of any program. For example, Section A states that "no more than one-half of one percent of the market value of the severance tax permanent fund *may* be invested in ...." This means that SIC may invest from 0 to 0.5 percent in such a program but need not invest anything.

SIC notes that "there is also no stipulation in HB 634 regarding how much a project can pay its principals from the fund's money versus what it pays crew. If this is intended to be a job creation program rather than an educational one where interns could potentially earn educational credit for their film work in lieu of wages, it might be improved with a cap on what an applicant can pay his or her self."

According to SIC, the current commercial market for independent films is extremely depressed, with thousands of movies being produced by independents every year but only a handful being bought and sold for wide distribution. Non-studio productions, no matter how worthy or good, have immense challenges in gaining widespread or commercial success.

## **TECHNICAL ISSUES**

The terms "independent" and "underrepresented" are not defined in the proposal. Minority is defined but it is unclear which of the definitions are "underrepresented" and who makes that determination.

Section 2-D (6) (c) allows two of the three above the line participants to be New Mexico residents *or* underrepresented minorities. This conflicts with Section 2-A that requires NM residence.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The substitute for House Bill 634 relates to Senate Bill 383 that creates a fund for these investments. There are also several related bills concerning film being considered in the 2008 session:

<b>Bill</b>	<b>Title</b>	<b>Description</b>
S 413	SANTA FE SUMMER YOUTH FILM PROGRAM	Film program for native american youth
S 325	COUNCIL ON FILM & MEDIA TERM LENGTHS	Changes term of Governor's Council on Film and Media members from four years to two
S 383	NM FILMMAKERS PRODUCTION FUND	Creates a fund for EDD to make grants/loans to NM and underrepresented minority filmmakers
S 519	FILM PRODUCTION TAX CREDIT ANNUAL CAP	Caps the film production tax credit
H 211	FILM PERFORMING ARTIST TAX EXEMPTION	Changes how performing artists and personal services companies representing performing artists are treated by the film production tax credit
H 294	CULTURALLY DIVERSE NM FILM CREWS	Appropriation for training and mentorship programs aimed at building a culturally diverse crew
H 470	NMSU GRANTS FILM TECHNICIAN PROGRAM	Film equipment and training for NMSU-Grants programs
H 507	GALLUP FILM OFFICE	Creation of Gallup film office
H 634	NM FILMMAKERS PRODUCTION FUND	Allows SIC to invest in small films

## OTHER SUBSTANTIVE ISSUES

HB 634 would add to other state incentive programs for the film industry. Currently, the state offers a 25 percent rebate on production expenditures, zero-interest loans from the SIC and wage subsidies and training through the Job Training Incentive Program. The state also has invested \$22 million in capital outlay appropriations in media production education programs at New Mexico's colleges and universities. These incentives, coupled with New Mexico's varied landscape and proximity to Los Angeles, have led to significant growth in the number of films made in the state.

### Film Incentives in NM

- 25 percent film production tax credit
- Zero percent film loans
- Gross receipts tax deduction
- JTIP training
- Capital outlay for media education

NF:BE/mt:bb