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FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/08

SPONSOR Robinson LAST UPDATED _____ HB _____

SHORT TITLE NM Filmmakers Production Fund SB 383

ANALYST Earnest

APPROPRIATION (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

*See narrative

Duplicates House Bill 634.

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 Bill

Senate Bill 383 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.

EDD is required to employ a professional film advisor to advise the secretary on the selection of projects.

The bill allows producers to choose profit sharing options with state, including (1) a pre-

approved agreement for the state's post break-even revenue participation of a contingent deferral of 100 basis points per year of the outstanding loan amount until repayment to be paid prior to any net profits to third parties plus 5 percent of post break-even revenue or (2) to negotiate an agreement with the state.

FISCAL IMPLICATIONS

The bill creates a new fund but does not make an appropriation to the fund.

The bill provides for continuing appropriations from this new fund. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

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 fund and loan agreements 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.

SIC notes that "there is also no stipulation in SB 383 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.

EDD reports that the sustainability of New Mexico's film industry is largely dependent on indigenous talent, and this program provides an excellent opportunity for funding emerging local and underrepresented minority filmmakers, the biggest challenge a filmmaker encounters. The fund would broaden the local arts and culture community and increase the exposure of these filmmakers.

ADMINISTRATIVE IMPLICATIONS

EDD notes that it would incur the cost of the employment of a professional film advisor to assist with the selection of projects and it is estimated that this individual could cost \$100,000 per year. However, the structure could provide for revenue to the fund to potentially cover the cost of the advisor.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 383 duplicates House Bill 634.

OTHER SUBSTANTIVE ISSUES

SB 383 would add to other state incentive program 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

BE/mt