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FISCAL IMPACT REPORT

ORIGINAL DATE 2/10/07

SPONSOR Robinson LAST UPDATED _____ HB _____

SHORT TITLE Severance Tax Fund Investment in Film Funds SB 739

ANALYST Francis

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	Indeterminate			
	* See Narrative			

(Parenthesis () Indicate Revenue Decreases)

Relates to SB 865

SOURCES OF INFORMATION

LFC Files

Responses Received From
State Investment Council (SIC)

SUMMARY

Synopsis of Bill

Senate Bill 739 increases the maximum allocation of severance tax permanent fund (STPF) investments for film loans to six percent. Under current law, the State Investment Council (SIC) is restricted to five percent of the permanent fund or \$219 million. SIC would be able to invest an additional \$43.8 million in film loans.

FISCAL IMPLICATIONS

The fiscal impact is indeterminate. While investments in film project so far have yielded very little return, most of the loans are guaranteed loans with a profit percentage. Assuming that the loans will not generate any revenue, the fiscal impact is the foregone interest by not investing the funds elsewhere. SIC generally assumes an 8 percent interest rate target, so the short term impact would be \$3.8 million in reduced interest to the STPF. There are other impacts not counted that arise from the investments in film projects, such as jobs and purchases of goods and services, which could offset some of the foregone interest. Over the long term, however, there

should be returns generated from the loan participation percentages. With most of the loans, SIC is essentially buying a share of the post breakeven profits. So far, none of the investments have generated any profits.

SIC reports that they have invested approximately 70 percent of their capacity of \$219 million in 15 film loans (13 outstanding and 2 in closing). Attached to this FIR is a summary of the investments. Table 1 summarizes some of the information. The film loans are all guaranteed by bank letters of credit except for those made to Lionsgate.¹

Table 1: SIC Annual Investments

	# Films	Amount	Average Investment	Share of Largest Project
2002	2	\$ 12.3	\$ 6.1	61%
2003	1	7.5	7.5	100%
2004	2	5.8	2.9	71%
2005	8	82.0	10.3	18% *
2006	8	74.1	9.3	20% **

* There were three loans of the maximum \$15 million.

** Two of the 8 films are in closing; 3 of the films are at the maximum \$15 million

Source: SIC

As of the close of the *Wildfire* Series Four, the television series will make up 39 percent of the film loan portfolio. Loans to Lions Gate make up almost 50 percent of the loan portfolio, \$60 million of which is guaranteed by Lions Gate Entertainment rather than a qualified bank.

SIGNIFICANT ISSUES

SIC:

While the film industry in NM is undoubtedly robust, active and growing, and the NM Film Office predicts an increase in film production over the next year, the SIC has no specific formula to estimate how many qualifying projects will approach the SIC for an investment, as less than one in three of the films shot in NM qualify/participate. That said, and with growing attention being brought to NM's film incentives, it is likely the state will see more projects brought here rather than less. This week *MovieMaker* magazine ranked Albuquerque the #4 best American city for making movies, behind only New York, Philadelphia and Austin.

PERFORMANCE IMPLICATIONS

SIC:

Thus far, none of the projects have returned profit to the state, though six films have repaid their loans, and only four have yet been released to theatres and/or video. The SIC anticipates one of the four released projects, *Employee of the Month*, will be profitable after accounting of video and premium television sales. The SIC is due 10.15% of post break-even revenues from this project.

¹ The latest season of *Wildfire* requires that Lionsgate provide a bank guarantee or place the amount of the loan in escrow.

In addition, another investment is a television series, *Wildfire*, which is a popular program on cable's ABC Family Network, now renewed for its fourth season. Assuming continued success of the show, and the standard 5 years of episodes necessary for syndication, this should also be a good investment story, in addition to a very good training and development vehicle for NM's industry.

Originally graded as an "A" investment, or an investment with high potential returns, *Employee of the Month* has been downgraded to "B+" by SIC's film consultant.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 865 increases the investment cap for NM private equity.

Attachment

NF/csd

Film Investment Program
Outstanding Loans
 Since Inception through December 31, 2006

Project Name	Date Approved	Loan Amount	Maturity Date	Participation Percentage	Total Film Budget	Guarantor	Borrower	Comments	Current Rating
<i>Bordertown</i>	06/28/05	\$2,350,000	03/31/06	See Note ⁽¹⁾	See Below	Refundable Film Production Tax Credits	Mobius Entertainment/Bordertown Productions, Inc.	Not Yet Paid. Project will need to Refile for Tax Credit. Default Interest Rate Being Charged.	FPTCL
<i>Elvis Has Left the Building</i>	08/26/03	\$7,500,000	10/31/07	6.00%	\$8,000,000	Union Bank of California LOC	Harmony Productions (UK) Limited	Released Straight to DVD. Rating downgraded from C+. No Domestic Theatrical Release.	C
<i>Seraphim Falls</i>	10/25/05	\$15,000,000	01/31/08	5.00%	\$18,024,702	Comerica Bank LOC	Icon Productions	Expected Release Date January 26, 2007	B+
<i>Bordertown</i>	06/28/05	\$12,650,000	11/14/08	10.00%	\$21,053,000	Union Bank of California LOC	Mobius Entertainment/Bordertown Productions, Inc.	Expected Release Date February 2007	B+
<i>Wanted: Undead or Alive</i>	01/25/06	\$3,798,410	12/22/08	17.00%	\$3,798,410	Comerica & JP Morgan Chase LOCs	UOA, LLC	Post Production	A-
<i>Living Hell (The Horror Chronicles)</i>	01/26/06	\$3,858,646	12/30/08	17.00%	\$3,858,646	Comerica & JP Morgan Chase LOCs	Horror One, LLC	Post Production	B
<i>Buried Alive (The Horror Chronicles)</i>	06/27/06	\$3,450,001	01/06/09	17.00%	\$3,450,001	Comerica & JP Morgan Chase LOCs	Horror Two, LLC	Post Production	B
<i>Employee of the Month</i>	02/28/06	\$13,002,694	03/30/09	10.15%	\$13,002,694	Lionsgate	Lions Gate Entertainment	Released 10/6/06. Rating downgraded from A. \$30 million Theatrical Gross Below Estimate.	B+
<i>Funny Farm</i>	10/25/05	\$12,420,000	04/17/09	20.00%	\$12,420,000	RBC Centura Bank LOC	Scion Productions Ltd. / Funny Farm Financing	Not Yet Released	B
<i>Wildfire - The Series - Season 1</i>	06/28/05	\$15,000,000	10/14/10	11.00%	\$16,687,000	Lionsgate	Lions Gate Entertainment	Year 1 Series completed first run September 2005	A
<i>Wildfire - The Series - Season 2</i>	11/22/05	\$15,000,000	03/28/11	11.00%	\$21,775,000	Lionsgate	Lions Gate Entertainment	Year 2 Series completed first run April 2006	A
<i>Wildfire - The Series - Season 3</i>	06/27/06	\$15,000,000	09/18/11	11.00%	\$22,514,009	Lionsgate	Lions Gate Entertainment	Year 3 Series Debuted January 1, 2007	A
<i>In the Valley of Elah</i>	10/24/06	\$15,000,000	12/28/09	10.25%	\$22,900,000	CitiBank LOC	Summit Entertainment	Production Started 12/4/06	A
Total Outstanding		\$134,029,751			\$167,483,462				
Total Capacity[†]		\$219,193,364							
Total Outstanding + Total In Closing		\$154,064,575							
Remaining Capacity		\$65,128,789							

[†] 5 Per Cent of the Market Value of the Severance Tax Permanent Fund

Note⁽¹⁾ *Bordertown* will pay simple interest of 4.32%, no participation. Default rate is 9.32%

Film Investment Program
Matured and Paid Loans
Since Inception through December 31, 2006

Project Name	Date Approved	Loan Amount	Maturity Date	Participation Percentage	Total Film Budget	Guarantor	Borrower	Comments	Current Rating
<i>Blind Horizon</i>	11/26/02	\$4,780,000	02/07/05	5.00%	\$5,500,000	Comerica Bank LOC	Blind Horizon Productions, Inc.	Released as Showtime Original Movie.	C
<i>Wildfire</i>	10/26/04	\$4,094,897	04/07/08	5.00%	\$4,094,897	Lionsgate	Lions Gate Entertainment	Paid Off Early. Shown as Two Hour Premiere Episode.	A
<i>Cruel World</i>	04/27/04	\$1,700,000	07/16/06	5.00%	\$1,700,000	Wells Fargo Bank LOC	The Experiment Productions, LLC	Not Yet Released. Replacing International Distributor.	C
<i>First Snow</i>	01/25/05	\$7,300,000	08/14/06	3.00%	\$7,300,000	Imperial Capital Bank	Bob Yari Productions/Happy Ending Productions/First Snow Productions	Expected Release Date March 23, 2007	B+
<i>The Flock</i>	09/19/05	\$2,300,000	11/10/06	See Note ⁽²⁾	\$32,000,000	Refundable Film Production Tax Credits	BMS Picture Two, Inc.	Paid Off Early. Earned \$93,330.10 Interest. Expected Release Date March 2007	FPTCL
<i>Suspect Zero</i>	07/23/02	\$7,500,000	12/12/06	2.50%	\$27,000,000	Union Bank of California LOC	SZ Productions, Inc. & IM Film Produktions and Vertriebs Gmbh & Co. KG	Released Theatrically Fall 2004. Released on DVD Spring 2005	C
Total Matured		\$27,674,897			\$77,594,897				

**Ratings Legend
for pages 1 through 4**

A - Returns Principal, High Potential Upside Participation
B - Returns Principal, Average Potential Upside Participation
C - Returns Principal, Minimal Potential Upside Participation
D - Returns Most Principal

F - Returns Little Principal
N/A - Expired or Withdrawn Deal
FPTCL - Tax Credit Loan, Pays Interest, No Participation

Note⁽²⁾ *The Flock* paid simple interest of 4.98%, no participation

Film Investment Program
Loans In Closing
As of December 31, 2006

Project Name	Date Approved	Loan Amount	Maturity Date	Participation Percentage	Total Film Budget	Guarantor	Borrower	Comments	Current Rating
<i>Gideon's Gift</i>	10/24/06	\$5,034,824	3 Years	22.30%	\$5,034,824	Washington Mutual LOC	Promenade Pictures / Global Creative Media	Pre-Production Starts 1/8/07. Production Starts 2/19/07.	B+
<i>Wildfire - Season 4</i>	12/14/06	\$15,000,000	5 Years	11.00%	\$23,241,985	Cash Escrow or LOC	Lions Gate Entertainment	Year 4 Series Production starts January 29, 2007	A
Total In Closing		\$20,034,824			\$28,276,809				

Film Investment Program
Other Loans Approved but Never Closed
Since Inception through December 31, 2006

Project Name	Date Approved	Loan Amount	Maturity Date	Participation Percentage	Total Film Budget	Borrower	Comments	Current Rating
<u>Expired Loans</u>								
<i>Latin Queens of Comedy</i>	06/30/04	\$1,303,683	3 Years	6.00%	\$1,700,000	Payaso Entertainment, Inc.	Unable to find guarantor	N/A
<i>Walkout</i>	07/27/04	\$7,500,000	5 Years	First \$1mm profit then 50%. 3.67% Annual Interest	\$9,600,000	Esparza-Katz Productions, Inc.	Unable to find guarantor	N/A
<u>Withdrawn Loans</u>								
<i>A Night in Old Mexico</i>	04/27/04	\$7,500,000	3 Years	5.00%	\$12,000,000	A Night in Old Mexico, LLC	Unable to complete additional financing	N/A
<i>Believe In Me</i>	07/27/04	\$3,500,000	3 Years	5.00%	\$7,000,000	Believe Productions, LLC	Declined financing from SIC	N/A
<i>Zero Dark Thirty (The Horror Chronicles)</i>	02/28/06	\$3,199,722	2-1/2 Years	17.00%	\$3,300,000	Horror Three, LLC	Cancelled	N/A
<i>Love Lies Bleeding</i>	04/04/06	\$8,677,465	2 Years	25.00%	\$8,677,465	Samdel Pictures, LLC / Love Lies Bleeding, LLC	Lost distributor. Looking for new distribution.	N/A

Film Investment Program

Economic Impact as of December 31, 2006

Project Name	Loan Amount	Total NM Below the Line Payroll	Total New Mexico Crew	Total Spent in New Mexico
<i>Suspect Zero</i>	\$7,500,000	\$1,500,000	121	\$5,400,000
<i>Blind Horizon</i>	\$4,780,000	\$787,000	107	\$3,100,000
<i>Elvis Has Left the Building</i>	\$7,500,000	\$1,268,000	132	\$4,600,000
<i>Cruel World</i> ⁽¹⁾	\$1,700,000	\$334,000	48	\$700,000
<i>Wildfire</i>	\$4,094,897	\$1,039,000	117	\$3,017,880
<i>First Snow</i>	\$7,350,080	\$968,000	85	\$1,903,003
<i>Bordertown</i>	\$15,000,000	\$2,455,000	137	\$18,203,431
<i>Wildfire - The Series - Season 1</i>	\$15,000,000	\$4,063,000	212	\$14,500,000
<i>The Flock</i>	\$2,300,000	\$4,201,022	235	\$17,042,467
<i>Funny Farm</i>	\$11,675,000	\$1,239,872	71	\$3,286,493
<i>Seraphim Falls</i>	\$15,000,000	\$2,987,866	263	\$9,486,516
<i>Wildfire - The Series - Season 2</i> ⁽²⁾	\$15,000,000	\$5,791,970	163	\$13,500,000
<i>Wanted: Undead or Alive</i>	\$3,800,801	\$972,678	153	\$2,734,289
<i>Living Hell (The Horror Chronicles)</i>	\$3,859,823	\$1,192,737	139	\$2,664,525
<i>Buried Alive (The Horror Chronicles)</i>	\$3,403,876	\$990,534	119	\$2,120,279
<i>Employee of the Month</i> ⁽²⁾	\$13,002,694	\$1,394,961	124	\$7,000,000
<i>Wildfire - The Series - Season 3</i> ⁽²⁾	\$15,000,000	\$6,000,000	174	\$15,000,000
<i>Wildfire - The Series - Season 4</i> ⁽²⁾	\$15,000,000	\$6,200,000	184	\$15,000,000
Totals	\$160,967,171	\$43,385,640	2,584	\$139,258,883

⁽¹⁾AKA *The Experiment*

⁽²⁾Estimates

Note: All Dollar Amounts are Actual Dollars Spent. **No** Multiplier Effect Has Been Calculated.