

Date of Hearing: April 12, 2016

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND
INTERNET MEDIA

Kansen Chu, Chair

AB 1941 (Lopez) – As Amended April 4, 2016

SUBJECT: California Film Commission: membership and duties.

SUMMARY: This bill would increase the number of members of the California Film Commission (CFC) to 27 by increasing the Governor's appointees from 13 to 14, as specified. The bill would also require the commission to establish procedures and services specifically directed to independent films.

Specifically, **this bill:**

- 1) Increases the membership of the CFC by one to 27 members by giving the Governor an additional appointment, from the current 13 up to 14 members.
- 2) Requires that one of the Governor's appointments shall be an independent filmmaker.
- 3) Provides that in addition to other duties as specified in law, the CFC shall establish procedures and services specifically directed to independent films.
- 4) Defines, "Independent filmmaker" for purposes of this section, to mean "a producer of a film with a running time of at least seventy-five (75) minutes intended for commercial distribution to a motion picture theater, directly to the home video market, directly to television, or via the internet. An independent film produced by an independent filmmaker shall be produced by a company that is not publicly traded and publicly traded companies do not own, directly or indirectly, more than 25 percent of the producing company."

EXISTING LAW:

- 1) Establishes the California Film Commission within the Governor's Office of Business and Economic Development (Government Code 14998.2. et seq).
- 2) States that the commission shall consist of 26 members, with the Governor appointing 13 members, the Senate Committee on Rules four members, the Speaker of the Assembly four members, and five members shall be ex officio.
- 3) Provides that all members of the commission, except legislators who are appointed either by the Senate Committee on Rules or by the Speaker of the Assembly for four year terms, shall serve at the pleasure of the appointing authority for a term of two years from the effective date of the appointment.
- 4) Declares that six of the 13 members appointed by the Governor shall be as follows:
 - a) One shall be a person who is a member or employee of a union or guild of motion picture artists.

- b) One shall be a person who is a member or employee of a union or guild representing motion picture craftsmen, technicians, or photographers.
 - c) Two shall be from major motion picture studios.
 - d) One shall be a member of the city council or a member of the county board of supervisors of a city or a county with a population of at least two million people.
 - e) One shall be a member of the city council or a member of the county board of supervisors of a city or a county with a population of less than two million people.
- 5) Defines “Independent film” within the California Film Tax Credit Program to mean a motion picture with a minimum budget of one million dollars (\$1,000,000) that is produced by a company that is not publicly traded and publicly traded companies do not own, directly or indirectly, more than 25 percent of the producing company. [Revenue and Taxation Code 17053.95.(b)(6)]

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) *Author and sponsor's statement of need for legislation.* According to the author, "Currently, the California Film Commission is not required by statute to include a board member who is an independent filmmaker, nor to provide services targeted to this unique sub-group. Despite this, California produced 177 independent films in 2012-13, which is the highest of any state in the United States with New York coming in second at 96 productions. This impressive output makes them a very important sector in our entertainment economy despite the comparatively small size of their budgets."

The sponsors state the following in support, "Since more independent film productions are made a year in California than large studio productions, it is critical that an independent filmmaker be added to the commission. Independent filmmakers will be able to bring a different perspective to filmmaking, discuss the current trends and needs of filmmakers and provide ideas as a whole to improve independent filmmaking in California."

The author concludes, "Independent filmmakers are resourceful artists, who have firsthand knowledge of solving unique issues that arise during the independent filmmaking process and have developed the core skill of grassroots networking. AB 1941 will ensure that the unique needs of independent filmmakers are served so that California can remain first in the United States in producing independent films."

- 2) *Background:*

- a) *California Film Production Tax Credit program is administered by the CFC.* In 1985, the Legislature established CFC to co-ordinate state and local governments' efforts at providing an environment conducive for the film industry. Twenty-six members of the film industry, private sector, and state and local governments are appointed by the Governor, Senate President Pro Tempore, and Speaker of the Assembly to sit on the CFC board.

In 2009, to combat "runaway production," the Legislature enacted a tax credit for qualified motion picture production in California as part of the State Budget Agreement, directing CFC to allocate \$100 million in credits annually (SB 15X3 (Calderon, Chapter 17) and AB 15X3 (Krekorian, Chapter 10) in Third Extraordinary Session). Last session that program was substantially expanded by AB 1839 (Gatto and Bocanegra).

- b) *Prior related legislation.* AB 1839 (Gatto and Bocanegra), Chapter 413, Statutes of 2014, created a new and expanded tax credit for qualified expenditures for the production of qualified motion pictures in California for taxable years beginning on or after January 1, 2016, and authorized the California Film Commission (CFC) to administer the program and allocate the tax credits, subject to a \$230 million cap in the first year (2015-16) and \$330 million aggregate annual cap for each fiscal year (FY) from the 2016-17 FY through and including the 2019-20 FY. In relevant part, AB 1839 required special treatment for independent films as follows:
- i) Requires the CFC to allocate the credit amounts subject to the following categories in order to insure like productions compete against each other under the jobs ratio formula:
 - (1) Independent films shall be allocated 5%.
 - (2) Features shall be allocated 35%.
 - (3) A relocating television series shall be allocated 20%.
 - (4) A new television series, pilots for a new television series, movies of the week, miniseries, and recurring television series shall be allocated 40%.
 - ii) Requires the CFC to audit final submissions for tax credits and compare the jobs ratio figures contained in original tax credit applications to those actual qualified expenditures, and provides for discrepancies as follows:
 - (1) If the CFC finds a reduction in actual qualified expenditures of no more than 10% they shall reduce the amount of credit allowed by an equal percentage, with limited exception for reasonable cause, as provided.
 - (2) In addition, if the CFC finds a reduction in actual qualified expenditures by more than 20%, the CFC shall not accept an application from that qualified taxpayer for one year, with exceptions for reasonable cause, as provided.
 - (3) Independent films would be treated differently, with any reduction of 30% or more in actual qualified expenditures reducing the amount of credit allowed by an equal percentage, plus subjecting them to a penalty of 10% of the difference in requested tax credit allowance and actual expenditures, with exceptions for reasonable cause, as provided.
 - iii) In addition, CFC must set aside \$10 million credits each year, for independent films. The CFC must provide the Franchise Tax Board (FTB) an annual list of qualified

taxpayers and the tax credit amounts allocated to each qualified taxpayer. The amount of the tax credit is equal to either:

- (1) 20% of the qualified production expenditures of a motion picture; or
- (2) 25% of the qualified expenditures of an independent film or a television series that relocated to California.

Please see committee analysis of AB 1839 for complete discussion of the issues of runaway production and the state's investment in the California Film Tax Credit program.

- 3) *Recent amendments adopt CFC definition of "independent film producer."* This measure would require the Governor to appoint an independent filmmaker to the CFC and would require the CFC to create and provide specific services to independent filmmakers. However, the existing code only defines an independent film for purposes of the California Film Production Tax Credit program with financial and investment limitations. In order to reach "independent filmmakers" and not simply independent film productions eligible for the California Film Production Tax Credit program, the author worked with the CFC in crafting their definition.

The bill defines the term for purposes of this section to mean "a producer of a film with a running time of at least seventy-five (75) minutes intended for commercial distribution to a motion picture theater, directly to the home video market, directly to television, or via the internet. An independent film produced by an independent filmmaker shall be produced by a company that is not publicly traded and publicly traded companies do not own, directly or indirectly, more than 25 percent of the producing company." This definition is the working definition used by the CFC, and represents the coordinated language of various parts of the California Film Production Tax Credit program.

REGISTERED SUPPORT / OPPOSITION:

Support

Groat Family Productions (sponsor)

Opposition

There is no opposition on file.

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