Date of Hearing:

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, AND TOURISM
Christopher M. Ward, Chair
AB 1377 (McKinnor) – As Introduced February 21, 2025

SUBJECT: Income taxes: credits: motion picture credit

SUMMARY: This bill would remove the "good-faith effort" standards in the Film and Television Tax Credit 4.0 program in regards to diversity workplans and diversity goals submitted by motion picture applicants to the California Film Commission (CFC).

Specifically, **this bill**:

1) Allows CFC to determine whether a qualified motion picture applicant has met the diversity goals in its diversity workplan, and provide an uplift on the applicant's credit percentage of qualified expenditures by 4% as follows:

   a) Two percentage points if CFC determines that the applicant has met the diversity goals with respect to the diversity of the workforce employed by the applicant in its diversity workplan statement.

   b) Two percentage points if the California Film Commission determines that the applicant has met the diversity goals with respect to individuals whose wages are excluded from qualified wages in its diversity workplan statement.

2) Deletes from existing law the "good-faith effort" standard used by CFC to determine whether diversity workplans and diversity goals were met by qualified taxpayers.

EXISTING LAW:

1) Allows, effective for taxable years starting on or after January 1, 2020, CFC to issue a credit certificate to qualified taxpayers for a tax credit of either 20% or 25% of qualified expenditures for producing a qualified motion picture in California. The credit is applicable in the taxable year when CFC issues the credit certificate, but not before July 1, 2020. Additionally, for taxable years beginning on or after January 1, 2022, and before January 1, 2032, the credit is also available for qualified motion pictures produced at certified studio construction projects. (Revenue and Taxation Code (RTC) Section 17053.98)

   a) A qualified motion picture is a feature with qualified expenditures of up to $100 million, a miniseries with qualified expenditures of up to $100 million, a television series with qualified expenditures of up to $100 million per season, or an independent film with qualified expenditures of up to $10 million.

   b) The applicable credit percentage of qualified expenditures is 20% for a feature or a television series that relocated to California that is in its second or subsequent years of receiving a tax credit allocation, 25% for a television series that relocated to California in its first year of receiving a tax credit allocation, and 25% for an independent film. An extra 5% credit is available for certain expenditures, such as those related to original photography outside the Los Angeles zone or qualified visual effects.

c) "Certified studio construction project" is defined as a construction or renovation project certified for a period of five years by CFC, including soundstages located in the state where actual construction or renovation expenditures are at least $25 million.

d) In order to receive the credit, a qualified tax payer must provide information to CFC including the specific start and end dates of production; total wages paid; aggregate data for individuals whose wages are excluded from qualified wages including their gender, ethnic, and racial makeup; and data regarding the diversity of the workforce employed by an applicant on a qualified motion picture.

e) Excluded from qualified wages are expenses, including wages, paid per person per qualified motion picture for writers, directors, music directors, music composers, music supervisors, producers, and performers, other than background actors with no scripted lines.

f) If CFC determines that a qualified motion picture applicant has met or made a good faith effort to meet the diversity goals in its diversity workplan, an applicant's credit percentage described will be increased by up to four percentage points.

2) Allows qualified taxpayers to receive a refund if the credit exceeds their tax liability for the taxable year, for taxable years beginning on or after January 1, 2025. (RTC 17053.98.1)

a) This section re-established the motion picture tax credit for taxable years beginning on or after January 1, 2025. The credit is applicable in the taxable year when CFC issues the credit certificate, but not before July 1, 2025.

b) A qualified taxpayer may make a one-time election to be paid a refund for each taxable year of the refundable period, not to exceed the annual refundable amount, which is 20% of the total refundable amount. "Total refundable amount" if defined to mean 90% of the credit amount that exceeds the "net tax" in the first taxable year of the refundable period.

c) Beginning January 1, 2025, CFC is required to collect information to the extent available and based on data provided by the Career Pathways Training program. This includes a breakdown of spending by the Career Pathways Program, how participation in the Career Pathways Program by both program partners and participants has changed in comparison to prior years, whether graduates of the program are accessing jobs in the film industry upon completion of the program, what projects the students have worked on, whether those projects received a tax credit, whether students are employed in California or another state, and the aggregated self-reported and voluntarily provided ethnic, racial, gender, and disability status of such individuals.

d) Beginning in January 1, 2028, CFC, in collaboration with labor and industry stakeholders, has the authority to increase the Career Pathways Training program fee by 0.25% per year, up to 1% of the approved credit amount for a qualified motion picture, based on evaluation of available information, including, but not limited to, the number of jobs available, job growth in the industry, and information included in the required annual reports of the Career Pathways Training program.

e) On or before May 1, 2028, the Legislative Analyst's Office shall provide to the Assembly Committee on Revenue and Taxation, the Senate Committee on Governance and Finance, and the public a report evaluating the effectiveness of the tax credits allowed by this section.

3) Provides, effective for taxable years starting on or after January 1, 2020, a tax credit to corporate taxpayers of either 20% or 25% of qualified expenditures for producing a qualified motion picture in California. The specific percentage depends on criteria outlined in the statute. The credit is applicable in the taxable year when the California Film Commission issues the credit certificate, but not before July 1, 2020. Additionally, for taxable years beginning on or after January 1, 2022, and before January 1, 2032, the credit is also available for qualified motion pictures produced at certified studio construction projects. (RTC 23698)

4) Allows corporate taxpayers to receive a refund if the credit exceeds their tax liability for the taxable year, for taxable years beginning on or after January 1, 2025. (RTC 23698.1)

5) Sets the aggregate amount of credits that may be allocated for the film tax credit per fiscal year at $330 million. (RTC 17053.98, 17053.98.1, 23698, and 23698.1 sections (h)(3)(i)(1)(A))

FISCAL EFFECT: Unknown. This measure has been keyed fiscal by the Legislative Counsel.

COMMENTS:

1) <u>Author's statement.</u> According to the author, "AB 1377 will require California film and television productions seeking diversity, equity, inclusion and accessibility credits from future film tax credit programs to report the actual outcomes of their diversity outreach and recruitment efforts to the California Film Commission.

   "The California Film & Television Tax Credit Program 3.0 provides tax credits based on qualified expenditures for eligible TV and films that are produced in California. The $1.55 billion program runs for 5 years, with a sunset date of June 30, 2025. Each fiscal year – July 1 to June 30 – the $330-million funding is categorized in: TV Projects, Relocating TV, Indie Features, and Non-Indie Features. To date, the program has generated tens of billions of dollars in investments while creating nearly 200,000 jobs.

   "As part of the 2023 Film & Television Tax Credit Program 3.0, the program expanded its diversity, equity, inclusion and accessibility efforts and provided an additional tax incentive for film and television productions to recruit and hire workers that reflect the diversity of California. Unfortunately, this program only required film and television productions to make a 'good faith effort' at reporting the outcomes of their diversity outreach and recruitment, not the actual outcomes of that outreach and recruitment work.

   "Good faith efforts are not enough. In order to ensure that all Californians have access to jobs in the film and television industries, accurate data collection will help to guide current and future efforts to retain and grow this important and uniquely California industry."

2) <u>Background.</u> The California Film & Television Tax Credit Program was enacted as a part of an economic stimulus plan to promote production spending, jobs, and tax revenues in California. The program is administered by the CFC. The credit first became available in July of 2009. To be eligible for the credit, a project must meet have a minimum 75% of its

production days or total production budget in California, and must be a qualifying motion picture.

California's Film and TV Tax Credit Program has struggled to compete with more attractive incentives from states like New York and Georgia, along with the UK. The decline in production is impacting the state's film industry and the cast and crew who depend on consistent work, prompting some to seek opportunities out of state. The Motion Picture Pension Plan reported a significant decrease in union jobs, with a loss of over 17,000 full-time jobs between 2022 and 2024. To revitalize California's film industry, collective action is crucial to protect existing jobs and create new opportunities, restoring the state's position as a hub of creativity and innovation.

Programs in New York, the United Kingdom, and Georgia have been particularly effective in drawing work away from California. In 2023, a report by the California Film Commission found that the state lost 74% of production spending by those projects that applied for but did not receive a California tax credit; 39 out of 66 projects that did not receive a tax credits, left California to be produced out-of-state. These runaway projects accounted for $1.5 billion in production spending loss. These figures however do not include jobs and economic losses for film and television production.

The LAEDC reported that the economic output from 2015-2020 showed that 157 out of the 312 projects that applied for but did not receive a California tax credit left California for another state. The loss of this spending in California cost the state $7.7 billion in generated economic activity, 28,000 total jobs, labor income of approximately $2.6 billion, and state and local tax revenues, which have totaled $345.4 million.

The loss of production and economic output harms one of California's longest-standing industries and the hard-working cast and crew members who struggle to find work. Due to a lack of employment opportunities and high costs of living, workers are forced to work out of state or consider changing fields. According to reports on contributions to the Motion Picture Pension Plan, the decline in production in California has led to a sharp drop in union jobs, particularly in 2022 and 2024. In that same time frame, reported hours to the Motion Picture Pension Plan dropped by 34,654,648. This represents a loss of over 17,000 full-time equivalent jobs. It is critical that the state act to increase production to save and create jobs.

3) Diversity workplans. As part of the Film and Television Tax Credit 3.0 program, CFC requires applicants to submit a diversity workplan. This initiative is meant to support the state's ongoing efforts to improve diversity, equity, and inclusion (DEI) within the film and television production industry. The plans are an outline of the applicant's strategies to increase participation from underserved and underrepresented communities in various aspects of production, and include the development and implementation of training, mentorship, internship, or apprenticeship programs.

   While demographic data on workforce composition may be voluntarily submitted, such data is not mandatory and is not used to determine eligibility for the program. Some legislators have previously expressed concern that while the workplan requirement represents a positive step toward increasing inclusion in the film and television industry, there is limited oversight or enforcement to ensure that productions actually meet the diversity goals outlined in their plans. The submission of a workplan is required, but there are few mechanisms in place to verify compliance or outcomes post-production. Especially due to the lack of production in the state due to shutdowns during the COVID-19 pandemic and recent strikes in the industry, there is a very little data to demonstrate the effectiveness of the requirement in achieving meaningful and measurable diversity.

Critics have noted the lack of accountability measures, such as mandatory reporting or penalties for non-performance, which could result in the plans being treated as a procedural formality rather than a commitment to systemic change.

4) Legislative Analyst Office (LAO). In February 2025, the LAO released a report on California's film tax credit that raised a number of questions about its value to the state. In their assessment, they say that the evidence is clear that increasing the size of the credit will lead to an increase in the number of productions that choose to film in California; however, the evidence is lacking from their perspective that expanding the tax credit will have a benefit to the economy when compared to other economically beneficial programs. For example, according to their research on two of California's U.S. competitors for film and production, New York and Georgia, every $1 of credit allocation provided significantly less than a $1 return in state revenue. Georgia has no cap on their film tax credit, whereas New York's is $700 million, or $50 million less that California is proposing to increase the credit to under Program 4.0. California is also dealing with competition from outside of the U.S., with many productions choosing to film in Canada and the United Kingdom.

   The LAEDC responded to the LAO reports, saying that their numbers reflect date provided by CFC from 169 productions that were allocated credits as of February 2020. They found that from $915 million in tax credits that these productions generated a total of $7.4 billion in production spending, and that for each $1 of credit allocated led to $24.40 in economic activity.

   Of note, LAEDC's data does not take into account the significant downturn in statewide film production due to disruptions including the COVID-19 pandemic, the SAG-AFTRA and Writer's Guild of America strikes, and the recent wildfires in the Los Angeles area.

5) Refundability. Starting with the Film and Television Tax Credit 4.0 when it goes into effect on July 1, 2025, regardless of changes made during the current legislative session, participants in program with insufficient tax liability to make use of the certified tax credits awarded, may make a one-time election to utilize the refundability option. The election to utilize the refundability option must be made in the first taxable year in which the tax credit certificate is issued to the applicant. Refundability is not an option for an applicant allocated credits under any previous iteration of the program, such as Program 2.0 or Program 3.0, or under the Soundstage Filming Program.

   Under the current law version of Program 4.0, the total amount of tax credits an applicant may elect to make refundable is 90% of the certified tax credit amount that exceeds the applicants tax liability in the first taxable year. Once the election has been made, tax credits will be refunded over five years (refundable period), including the year of election. This means that the permitted maximum annual amount is 20% of the total refundable amount which effectively results in a maximum annual amount of 18% of the certified tax credit amount that exceeds the applicants tax liability in the first taxable year.

The election to utilize the refundability option is irreversible and must be made on the entity's tax return filed with the California Franchise Tax Board (FTB) in accordance with FTB requirements. If the taxpayer does not make the one-time irrevocable election to potentially get a refund, then the film tax credit will be administered similarly to prior versions of the program. The taxpayer will be able to use the credit against tax liability and to carry the credit forward in the following nine years following the first year.

Tax credits must be applied to any tax liability, annually, and only the excess is subject to refundability. If an applicant elects to utilize the refundability option, no amount of tax credits will be allowed after the maximum refundable period of five years, meaning the applicant cannot elect to hold on to tax credits for use against future liability.

6) Impacts to tourism. Film and television production in California can boost the state's tourism industry by attracting visitors who are looking to visit the settings of their favorite movies and shows. Cities and various filming locations across California can become global landmarks in part due to their frequent appearances on screen. Tourists visit places like Hollywood Boulevard, the Hollywood Walk of Fame, and film studios such as Universal and Warner Bros., where behind-the-scenes tours offer a glimpse into the filmmaking process. These attractions not only bring in revenue through ticket sales and merchandise but also support local hotels, restaurants, and other businesses.

   The state's diverse geography enables filmmakers to shoot a wide array of scenes without leaving the state, and in turn, helps these areas gain recognition and tourist traffic. Local governments often embrace these opportunities by promoting their towns as filming-friendly and capitalizing on the resulting tourism. California also benefits from international exposure due to its prominence in global entertainment. As a result, the entertainment industry not only plays a key role in the state's economy through direct employment and production but also indirectly drives significant revenue through tourism.

7) Arguments in support. According to the California Federation of Labor Unions, AFL-CIO, "The film tax credit is an important tool to ensure that the entertainment industry continues to retain and create good union jobs in California. The industry is heavily unionized and has provided a secure career and path to the middle class for generations of Californians. The Labor Federation has supported the program because it supports union jobs and has strong transparency and accountability protections to ensure the credit only goes to the creation of jobs for crew and middle-class jobs.

   "As part of the 2023 Film & Television Tax Credit Program 4.0, the program expanded its diversity, equity, inclusion, and accessibility efforts and provided an additional tax incentive for film and television productions to recruit and hire workers that reflect the diversity of California. This expansion was made to meet the intertwined goals of good union job creation and equitable access for a diverse group of Californians to those good jobs.

   "This program required film and television productions to make a good faith effort at reporting the outcomes of their diversity outreach and recruitment, not the actual outcomes of that outreach and recruitment work. In order to ensure that all Californians have access to jobs in the film and television industries, accurate data collection will be able to guide current and future efforts to retain and grow this important and uniquely California industry."

8) Double-referral. Should this bill pass out of this committee, it will be re-referred to the Assembly Committee on Revenue and Taxation.

9) Policy considerations. This bill proposes to enhance the diversity workplan component of California's Film and Television Tax Credit Program by strengthening accountability and encouraging more inclusive hiring practices. Under current law, applicants are required to submit a diversity workplan demonstrating a "good faith effort" to expand employment and training opportunities for individuals from underrepresented communities. These workplans are considered during the application review process but do not impose mandatory hiring outcomes or quotas. This approach reflects the state's interest in promoting diversity while avoiding constitutional concerns related to compelled outcomes.

   Requiring productions to meet specific diversity thresholds as a condition of receiving tax credits could raise issues under California's Proposition 209, which prohibits state-sponsored programs from granting preferential treatment on the basis of race, sex, ethnicity, or national origin. Any policy that conditions access to public funds on such criteria is subject to strict scrutiny.

10) Prior and related legislation:

   a) AB 1138 (Zbur), of 2025, makes numerous changes to the Film and Television Tax Credit 4.0 program. The bill is currently in the Assembly Committee of Arts, Entertainment, Sports, and Tourism.

   b) SB 630 (Allen), of 2025, makes numerous changes to the Film and Television Tax Credit 4.0 program in a similar manner to AB 1138 (Zbur). The bill is currently in the Senate Revenue and Taxation Committee.

   c) SB 132 (Senate Committee on Budget and Fiscal Review), Chapter 56, Statutes of 2023, extended the authority for CFC to allocate, and for qualified taxpayers to claim, the Film and Television Tax Credit for an additional five years, starting in 2025-26, authorized at $330 million per year, and makes the credit. In addition, this bill made various changes to the current version of the credit (Film and Television Credit 3.0) and the California Soundstage Filming Tax Credit and includes set safety provisions.

   d) SB 144 (Portantino), Chapter 114, Statutes of 2021, made changes to the Film and Television Credit 3.0, including allocating an additional $90 million in the 2021-22 and 2022-23 fiscal years, and established a new credit for productions filmed at certified studio construction projects.

   e) SB 871 (Senate Committee on Budget and Fiscal Review), Chapter 54, Statutes of 2018, enacts Film and TV Tax Credit 3.0 from July 1, 2020 to July 1, 2025.

   f) AB 1839 (Gatto), Chapter 413, Statutes of 2014, increased the annual amount of tax credits available for film and television productions, from $100 million to $330 million per year, and extended the program for five more years. It also broadened the eligibility criteria to include big-budget feature films, network television shows, and pilots, which had previously been excluded.

g) AB 2026 (Fuentes) Chapter 841, Statutes of 2012, extended the film production tax credit program for two years, until 2017

h) AB 1069 (Fuentes), Chapter 731, Statutes of 2011, extended the film production tax credit program for one year, until 2015.

i) ABX3 15 (Krekorian), Chapter 10, Statutes of the 2009-10 Third Extraordinary Session, established a five-year $500M tax credit for qualified expenditures on qualified productions. Limited allocations to $100M/year.

REGISTERED SUPPORT / OPPOSITION:

Support

California Federation of Labor Unions, AFL-CIO
Entertainment Union Coalition
One Individual

Opposition

No opposition on file.

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