HOUSE
RESEARCH
ORGANIZATION bill analysis 4/10/2007

HB 1634
Dukes, et al.
(CSHB 1634 by Dukes)

SUBJECT: Incentives for the film, television, and multimedia production industries

COMMITTEE: Culture, Recreation, and Tourism — committee substitute recommended

VOTE: 7 ayes — Hilderbran, Kuempel, Dukes, Homer, D. Howard, O'Day, Phillips

0 nays

WITNESSES: For — Stephen Belsky, Hector Garcia, Texas Motion Picture Alliance (TXMPA), ITSE, and "Swingtown" CBS Pilot filming in Austin; Gazzy A. Brown, 20th Century Fox Television - Prison Break; Betty Dunkerley, City of Austin; Rodney Gibbs, David Holt, Veronica Kelley-Albiez; Gene McMenamin, The Omni Austin Hotel; Sherry Mills; Brian O'Leary, NBC Universal; John Schrimpf, Panavision Dallas; Carissa Smith, Omni Austin Hotel Downtown; *(Registered, but did not testify:* Janis Burkland, Dallas Film Commission and Dallas Convention and Visitors Bureau; Tony Estrade, Susan Fowler, Meredith Melville, Clark Richards, Bea Rouse, TXMPA; Shari Hamrick, Spirit Horse Productions; Scott Joslove, Texas Hotel and Lodging Association; Jeremy Martin, Austin Chamber of Commerce; Ken Rector, IATSE Local 484 (Motion Picture Crafts Union); Jody Richardson, Motion Picture Association of America; Joyce D. Slocum, HIT Entertainment; Ann Travis, City of Houston; and 12 others)

Against — None

On — Bob Hudgins, Carol Pirie, Texas Film Commission

BACKGROUND: During the 2005 regular session, the 79th Legislature enacted HB 2954 by Hamric, et al., which created Government Code, chap. 485, subch. B, establishing the Film Industry Incentive Program. This program is administered by the Governor's Music, Film, Television and Multimedia Office and can provide grants for film, television programs, or major commercials that pay at least $500,000 in wages to Texas residents per film or television program or $50,000 per commercial. Qualifying projects could receive an incentive equal to 20 percent of the wages paid to Texas residents up to $750,000. No funding was appropriated to the program for fiscal 2006-07.

Government Code, sec. 485.025 allows a production company that spends at least 25 percent of its production filming days in an "underused area" to be eligible for an additional grant of 5 percent of the wages paid to Texas residents on the project. Underused areas currently are defined in Government Code, sec. 485.021 as any area of the state outside the Austin, Houston, or Dallas-Fort Worth metropolitan areas.

Federal law (18 USC sec. 2257) requires those who produce media content that contains visual depictions of sexually explicit conduct to maintain records with the federal government or be subject to fines and imprisonment.

DIGEST:

CSHB 1634 would amend Government Code, ch. 485, subch. B to include television programs, commercials, and digital interactive media, along with film, in a Moving Image Industry Incentive Program.

Qualifying applicants could receive a grant not to exceed the lesser of 20 percent of the wages paid to Texas residents on the project or:

- $2 million for a film;
- $2.5 million for a television program;
- $200,000 for a commercial or series of commercials; or
- $250,000 for a digital interactive media production.

To be eligible for moving image industry incentive grants, a project would have to meet the following standards:

- the project would have to generate $10 million in in-state spending for film or television programs, or $500,000 in in-state spending for commercials or a digital interactive media production;
- at least 70 percent of the production crew, actors and extras would have to be Texas residents;
- at least 80 percent of the project would have to be filmed in Texas; and
- a digital interactive media production could not contain intense violence, blood and gore, graphic sexual content, nudity, or strong language.

A Texas resident would be defined as a person who had been in the state for at least 120 days before production began. The bill would exclude productions required to maintain records under 18 USC, sec. 2257. CSHB 1634 would limit the wage estimate per Texas resident to $50,000 for a film, commercial, or digital interactive media production and $100,000 for a television program.

The bill would include Houston as an under-used area so film productions in that city could be eligible for the additional 5 percent wage grant.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS SAY:

CSHB 1634 would support the state's moving image production industry, which now employs more than 18,000 Texans, and would help entice producers to locate more projects in Texas. The Texas Film Commission estimates that since 2003, Texas has lost more than $700 million in production budgets and 4,500 jobs to other states that have implemented the types of incentives that the bill would allow.

Thirty-seven states and all Canadian provinces already have similar programs, and these incentive programs are dramatically altering film production location decisions. For example, the New Mexico State Film Commission saw production revenues soar from $8 million in 2002, before incentives were enacted, to $428 million in 2006. At the same time, Texas lost its market share in the moving image industry, commanding nearly 85 percent of the regional market in 2002 and only 18 percent of the market in 2006. Without an active incentive program, Texas risks losing its once promising moving image production industry.

CSHB 1634 would improve the state's existing grant program by increasing some project grant caps, tailoring the grant caps to encourage specific types of projects, and ensuring that productions increase employment for Texas production crews. The current grant program ignores the impact of the gaming and animation industries, which employ 1,835 people in Texas and have significant overlaps with the film industry in the development of post-production and special effects editing talent. The bill would add incentives to encourage digital interactive media production in the state and would place more emphasis on television production because it creates a more stable source of in-state spending and local jobs than do feature films.

The bill also would require that 70 percent of the production crew, actors, and extras be from Texas and more than 80 percent of the filming be done in the state. This change to the program is vital because it would ensure that productions receiving funding would do the bulk of their work in Texas and would keep Texans from leaving the state looking for seasonal work. While the moving image industry is increasingly mobile, it is of primary importance to the state that these productions not depend on the relocation of crews from other states when Texas has its own base of expert production crews. Further, the bill would cap the wage estimates for all Texas residents associated with a project at $50,000. This would ensure that a production would not simply claim the wages of a high-paid Texas-based actor, such as Sandra Bullock or Matthew McConaughey, in order to get a $2 million subsidy and then hire an out-of-state production crew. Ultimately, this would be a production workers' bill, not a film subsidy.

CSHB 1634 would ensure the Moving Image Industry Incentive Program was fiscally responsible. Because Texas is home to highly skilled production crews, it could provide a fraction of the incentives other states offer and still make an impact. While Louisiana and New Mexico currently offer 20 percent and 25 percent respectively off total production expenditures, Texas would provide only a capped 20 percent reduction on wages provided to Texas residents. In addition, the funding recommended for this program by HB 1 for fiscal 2008-09 would be contingent on the comptroller's certifying that the moving image industry generated sufficient revenue to offset the cost of the appropriation. The bill would not create a dedicated account, so if the grant program was found not to be self-sufficient, the funding would remain in general revenue to fund other state priorities.

To further ensure financial accountability, any funding requests above the current appropriation would have to go through an extensive approval process and guarantee a 200 percent return on investment. The contingency rider for the program in HB 1 would mandate a statewide economic impact and industry review, so performance measures could be developed and legislators could benchmark success in growing the moving image industry.

CSHB 1634 would provide economic benefits to the entire state. Texas offers a wealth of geographic locations, including deserts, plains, mountains, canyons, beaches, pasture land and urban areas that are of interest to industry producers. While most other businesses set up in major metropolitan areas and along interstate highways, film productions venture outside of those areas as scripts demand different settings. For example, although the television show *Prison Break* is based in Dallas, it has brought production crews to more than 25 different cities across the region. Smaller communities are particularly affected by the arrival of a production crew, through spending on hotels, food, and other goods and services. An increase in salaries paid by the moving image production industry also results in more sales tax revenue.

The bill would not benefit only the developed production industry in specific cities. El Paso could benefit from production incentives because its topography closely resembles that found in New Mexico. The Houston area could benefit by being included among the underused areas of the state. Increasing the presence of Texas in movies also could increase tourism. For example, the city of Smithville, which appeared in the movie "Hope Floats," has seen an increase in tourists since the film was produced. Just as some cities provide incentives to nurture local production in their area, it will require state action to ensure that the moving image industry has a statewide impact.

OPPONENTS SAY:

While increasing film production is important, the state cannot afford to support corporate welfare. The current budget for Film and Music Marketing in the state is $1.8 million, and the Moving Image Industry Production Incentive Program aims to dole out more than ten times that amount over the biennium. In 2003, Illinois initiated a film incentives program and by 2006 had to double its tax incentive in order to remain competitive. Like any spending program, this budget is not a fixed cost, but likely would grow over time. While it is contended that the incentive program would be self-supporting, it is unclear if the comptroller's calculations also would examine the benefits the state could derive by simply returning the $20 million to Texas taxpayers.

The state of Texas is not in the business of moving image production. The industry is made up of private businesses and is region-specific. Because most of the moving image production happens in the Dallas and Austin areas, these municipalities should develop more robust incentive packages to attract projects to their areas. It would be unfair to tax every person and business in the state in order to provide incentives that ultimately would benefit only one or two metropolitan areas. Moreover, filmmakers already are eligible for several incentives, including exemption from sales tax on many of the items and services used in the manufacture of the film, exemption from the state hotel occupancy tax if they stay for more than 30 days, and fuel sales tax refunds for fuel used off-road, such as for generators and boats.

OTHER OPPONENTS SAY:

CSHB 1634 should not raise the in-state spending eligibility requirements for films and television. While $10 million in-state spending budgets would support studio-backed feature film and television productions, projects with in-state spending of $500,000 to $5 million should be eligible for incentives because they are predominantly independent projects that nurture regional talent. Similarly, the threshold for commercials is too high and should be lowered to $250,000 to support the music video industry and to encourage a synergy between Texas music and film.

The bill would not do enough to support Texas talent. Texas residents should make up more than 70 percent of a production crew, actors and extras. Also, the bill should designate a portion of the incentive funding to support the projects of Texas production companies rather than base eligibility solely on in-state spending and inadvertently provide all benefits to out-of-state production companies.

This bill should include a minimum diversity standard. Texas production crews should reflect the makeup of our state. Historically, crews in the moving image production industry have been predominantly Anglo, but the state includes a diverse population of skilled workers.

This bill should not penalize Austin and Dallas for having a thriving film industry by providing additional incentives to projects that locate in other areas of the state.

This bill should include Fort Worth among the underused areas of the state because Dallas receives the benefit of most of the productions in that region, not Fort Worth.

This bill should not restrict incentives based on violence, language, or sexual content because that would amount to censorship of artistic expression.

NOTES:

The committee substitute differs from the bill as filed by adding Houston to the list of underused areas; reduced the eligibility threshold for commercials to $500,000 in in-state spending; reduced to 70 percent the amount of production crew, actors and extras who would have to be Texas residents; specified that digital interactive media productions could not contain intense violence, blood and gore, graphic sexual content, nudity, or strong language; increased the maximum incentive for a film and a television program by $500,000 each; increased the maximum incentive for a commercial by $100,000; increased the maximum incentive for a digital interactive media production by $150,000; and increased the maximum wage estimate for a television program by $50,000.

The companion bill, SB 782 by Deuell, et al., has been referred to the Senate Finance Committee.

HB 1 by Chisum, the general appropriations bill for fiscal 2008-09 as passed by the House on March 30, contains Rider 20, in Art. 1, which would appropriate $20 million over the biennium to the Office of the Governor, Trusteed Programs for the purpose of funding the film incentive program. The appropriation would be contingent on the following factors:

- the comptroller would have to certify that there was sufficient revenue generated by the film industry and related activity in Texas to offset the cost of the appropriation;
- additional grant requests, in increments of $5 million, would have to include a financial plan created by the Texas Film Commission and the comptroller that was approved by the Legislative Budget Board and the Governor's Office of Budget and Planning and outlined an amount of revenue and other fiscal activity that was at least 200 percent of the cost of the additional grant amounts requested; and
- the comptroller, in conjunction with the Texas Workforce Commission and the Texas Film Commission, would have to develop an economic profile of the Texas film industry, including tax revenues, job growth, income growth, and increases in general economic activity within the industry.
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CSHB 1634 originally was set on the General State Calendar for April 3, but was returned to committee on a point of order.