

Date of Hearing: May 5, 2025

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION

Mike Gipson, Chair

AB 1377 (McKinnor) – As Introduced February 21, 2025

2/3 vote. Tax levy. Fiscal committee.

SUBJECT: Income taxes: credits: motion picture credit

SUMMARY: Requires applicants seeking film tax credits to meet the diversity goals established in their diversity workplans before receiving a credit augmentation, and removes the "good-faith effort" standard for compliance. Specifically, **this bill:**

- 1) Modifies the state's Motion Picture Credit 4.0 for qualified taxpayers choosing to submit a diversity workplan by removing the good-faith effort standard, and instead requiring the California Film Commission to determine whether the qualified taxpayer has actually met the diversity goals in its diversity workplan.
- 2) Modifies, for taxable years beginning on or after January 1, 2025, the state's certified studio construction project credit to remove the good faith effort standard and to instead allow the California Film Commission to increase a qualified motion picture applicant's credit percentage by up to four percentage points only if the applicant has actually met the diversity goals in its diversity workplan.

EXISTING LAW:

- 1) Allows various tax credits under both the Personal Income Tax Law and the Corporation Tax Law. These credits are generally designed to encourage socially beneficial behavior or to provide relief to taxpayers that incur specified expenses. (Revenue and Taxation Code (R&TC) Sections 17041 *et seq.* and 23608 *et seq.*)
- 2) Allows a credit to a qualified taxpayer equal to 20% or 25%, as applicable, of qualified expenditures for the production of a qualified motion picture in California. (R&TC Sections 17053.98.1(a)(1) and 23698.1(a)(1).)
- 3) Allows a credit for taxable years beginning on or after January 1, 2022, and before January 1, 2032, in an amount equal to 20% or 25% of qualified expenditures for the production of a qualified motion picture produced in the state at a certified studio construction project. (R&TC Section 17053.98(k).)

FISCAL EFFECT: The Franchise Tax Board notes the following:

To determine the magnitude of the potential impact to the General Fund both the frequency of taxpayers meeting the diversity workplan goals and the amount of additional credits allocated would need to be known. Because it is difficult to predict these factors, the revenue impact to the General Fund is unknown. Since the FTB assumes the motion picture credit

would be fully allocated each year, it is estimated that a two to four percent increase in credits certified would result in an estimated revenue loss of less than \$100,000 per fiscal year.

COMMENTS:

- 1) The author has provided the following statement in support of this bill:

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.

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. 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) This bill is supported by the California Federation of Labor Unions, AFL-CIO, which notes the following:

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.

3) Committee Staff Comments:

- a) *The existing Motion Picture Credit 4.0:* Existing law allows a credit to a qualified taxpayer equal to 20% or 25%, as applicable, of qualified expenditures for the production of a qualified motion picture in California. The California Film Commission, however, is only permitted to certify a credit amount equal to 96% of the total credit allocated, unless the qualified taxpayer chooses to submit a diversity workplan and the California Film Commission determines that the qualified taxpayer has met *or made a good-faith effort to meet* the diversity goals in its diversity workplan.

Specifically, the California Film Commission shall certify an additional credit amount equal to 4% of the total credit allocated if a qualified taxpayer submits to the California Film Commission all of the following:

- i) A diversity workplan within 30 days of receiving a credit allocation letter. This workplan must be consistent with the diversity workplan checklist to address diversity and be broadly reflective of California's population in terms of race, ethnicity, gender, and disability status;
- ii) An interim assessment on the qualified taxpayer's efforts to meet the diversity workplan prior to the commencement of principal photography. Upon review, the California Film Commission shall determine whether the interim assessment indicates that the qualified motion picture is making a good faith effort to meet the goals of the diversity workplan; and,
- iii) A final diversity assessment that includes information about how the project met *or made a good-faith effort to meet* the diversity workplan, including, without limitation, aggregate data, voluntarily self-reported by individuals whose wages are included in qualified wages and individuals whose wages are excluded from qualified wages, with regard to their race, ethnicity, gender, and disability status.

The California Film Commission is charged with approving or rejecting the applicant's diversity workplan, to the extent allowed by federal and state law.

- b) *How would this bill modify the existing Motion Picture Credit 4.0?* This bill would eliminate the "good faith effort" standard and would condition the 4% augmentation on a finding by the California Film Commission that the qualified taxpayer has, in fact, met the diversity goals in its diversity workplan.
- c) *The existing certified studio construction project credit:* Existing law allows a credit for taxable years beginning on or after January 1, 2022, and before January 1, 2032, in an amount equal to 20% or 25% of qualified expenditures for the production of a qualified motion picture produced in the state at a certified studio construction project. To meet the definition of a qualified motion picture, the California Film Commission must receive and approve a "diversity workplan" that includes all of the following:

- i) A statement of the diversity goals the motion picture will seek to achieve in terms of qualified wages paid by race, ethnicity, gender, and disability status;
- ii) A statement of the diversity goals the motion picture will seek to achieve for individuals whose wages are excluded from qualified wages (e.g., above-the-line wages), with respect to both compensation and to the representation of diversity in the creative aspects of the motion picture; and,
- iii) A plan of what strategies the motion picture will employ to achieve the goals specified above.

Existing law requires any such diversity workplan to include goals that are broadly reflective of California's population in terms of race, ethnicity, gender, and disability status. The California Film Commission is charged with either approving or rejecting the applicant's diversity workplan to the extent allowed by federal and state law.

Additionally, the California Film Commission is prohibited from certifying a certified studio construction project credit until they have received a final "diversity report" from the qualified motion picture applicant. This diversity report shall calculate and provide evidence for the extent to which the applicant met the diversity goals laid out in their diversity workplan.

If the California Film Commission determines that the qualified motion picture applicant has met *or made a good-faith effort to meet* the diversity goals in its diversity workplan, the applicant's credit percentage shall be increased by up to four percentage points as follows:

- i) By two percentage points if the California Film Commission determines that the applicant has met *or made a good-faith effort to meet* the diversity goals with respect to the diversity of the workforce employed by the applicant in its diversity workplan statement; and,
 - ii) By two percentage points if the California Film Commission determines that the applicant has met *or made a good-faith effort to meet* the diversity goals with respect to individuals whose wages are excluded from qualified wages (e.g., above-the-line wages), in its diversity workplan statement.
- d) *How would this bill modify the certified studio construction project credit?* This bill would eliminate the "good-faith effort" standard for a taxpayer seeking a credit augmentation. Specifically, for taxable years beginning on or after January 1, 2025, the California Film Commission would have to determine that an applicant has, in fact, met the diversity goals in its diversity workplan before authorizing a credit increase of up to four percentage points as follows:
- i) By two percentage points if the California Film Commission 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; and,
 - ii) By 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 (e.g., above-the-line wages), in its diversity workplan statement.

Absent an affirmative finding that the applicant has met these diversity goals, the applicant would not be entitled to a credit augmentation.

- e) *Potential constitutional questions*: States are afforded considerable latitude in crafting tax measures, and may generally distinguish in favor of a given class of taxpayers. (*Haman v. County of Humboldt*, 8 Cal.3d 922 (1972).) That said, there are limits to this latitude and the Equal Protection Clause of the Fourteenth Amendment applies to tax measures. Moreover, laws drawing distinctions based on protected classes, like race, generally draw strict scrutiny review, meaning that the law will withstand legal challenge only if it is found to advance a compelling interest in a narrowly tailored fashion. It is possible that, by making the 4% credit "uplift" contingent upon a taxpayer meeting certain goals established in a diversity workplan, this provision may be subject to legal challenge.
- f) *Double referral*: This bill was double referred with the Assembly Committee on Arts, Entertainment, Sports, and Tourism, which passed this bill on April 22, 2025, by a vote of 7 to 0. For additional discussion of this bill's provisions, please refer to the analysis prepared by the Assembly Committee on Arts, Entertainment, Sports, and Tourism.

REGISTERED SUPPORT / OPPOSITION:

Support

California Arts Advocates
California Federation of Labor Unions, AFL-CIO
Entertainment Union Coalition
5 individuals

Opposition

None on file

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