SUBJECT: Establishing a tax credit program for certain media production companies

COMMITTEE: Culture, Recreation & Tourism — favorable, without amendment

VOTE: 8 ayes — Ashby, Martinez, Bailes, Collier, Flores, Garcia, Holland, Morrison

0 nays

1 absent — Troxclair

WITNESSES: For — Vincent Cordero, Jon Hockenyos, Mucho Mas Media; Sean Doherty, Sharpened Iron Studios LLC; Paul Jensen, Texas Media Production Alliance; Kyle Collinsworth; Mykle McCoslin; Jordan Willis (*Registered, but did not testify*: Jennifer Hutchins, Austin Entertainment Business; Jeffrey DeCoux, Autonomy Institute; Colby Gaines, Back Roads Entertainment; Bruce Barshop, Bardero Ventures LLC; Marc Rodriguez, Brooks San Antonio; TJ Patterson, City of Fort Worth; Alexa Aragonez, City of Houston, Mayor's Office; Michael Husband, Desert Pirate Productions; Grace Lanni, Giving Out Loud; Stephen Scurlock, Independent Bankers Association of Texas; James Barge, Lionsgate; Ryan Holliday, Painted Porch; Leticia Van de Putte, San Antonio Chamber of Commerce; Tommy Warren, Spiderwood Productions; Holly Collinsworth, Texas Accelerated Workforce Endowment; Stephanie Matthews, Texas Association of Business; Justin Yancy, Texas Business Leadership Council; Mindy Ellmer, Texas Cultural Trust; Carlton Schwab, Texas Economic Development Council; Chris Debiec, Texas Media Coalition; Ron Hinkle, Texas Travel Alliance; Ed Curtis, Y Texas; Christy Carlson Romano; Robert Hansen; Jeremy Latcham; Jamie Lynn Sigler)

Against — Dick Lavine, Every Texan

On — James LeBas, Texas Media Coalition (*Registered, but did not testify*: Stephanie Whallon, Texas Film Commission, Office of the Governor)

BACKGROUND: Some have suggested that a more robust media production program with better benefits could provide long-term predictability for large investment productions in Texas and capture more multimedia production investment for the state.

DIGEST: HB 3600 would require the Music, Film, Television, and Multimedia Office to implement and administer the Texas Multimedia Production Program, a tax credit program for production companies that produced moving image projects in the state. A moving image project would mean a visual and sound production, including a film, television program, national or multistate commercial, or education or instructional video. The term would not include a production that was obscene.

Procedure. The office would be required to develop a procedure by which a production company could apply for a certificate of eligibility for the tax credit program. The procedure would need to specify how an applicant would demonstrate their Texas residency. Before production of a project began, the procedure also would require the submission of:

- estimates of the applicant's total in-state project spending for the project;
- the shooting script or story board for the project;
- the estimated number of jobs for cast and production crew during the production and completion of the project; and
- any other information that the office required to determine the applicant's in-state spending.

Certificate of eligibility. HB 3600 would authorize the office to award a certificate of eligibility to a production company based only on in-state spending by the company that had been verified by the office. The office would deny an application for a production that the office determined to be obscene. The office would be required to provide written notice of the determination to the applicant within seven business days after the date the office made the determination.

The office could not award a certificate of eligibility unless the office reviewed a copy of the final script of the project and determined whether a substantial change occurred during production that rendered the production ineligible for the certificate.

HB 3600 would require the office to include the amount of the tax credit on the face of a certificate of eligibility. An applicant who received a certificate would provide the certificate to the comptroller, along with any other information the comptroller required, to receive the tax credit.

The office could by rule impose an application fee that was sufficient to offset the office's and comptroller's administrative costs of implementing the tax credit.

Qualifications. To qualify for a certificate of eligibility for a moving image project, a production company would need to:

- demonstrate to the office that the production company had made at least $15 million in in-state spending for the project;
- film at least 25 percent of the project in the state, including additional pick-up days and second unit days;
- submit a ledger of expenses to the office that listed all in-state spending and included all documentation required by the office to determine the production company's in-state spending; and
- meet certain principal photography requirements.

Unless the office determined and certified in writing that not enough qualified crew, actors, and extras were available at the start of principal photography, the bill would require at least 25 percent of the production crew, actors, and extras for the project be Texas residents.

Amount of credit. HB 3600 would require the office to adopt rules establishing how it would calculate the amount of credit to list on a certificate of eligibility awarded to a production company for a project. The office would publish a written summary of how the office developed the amount of credit before the date the office began to award certificates.

The method adopted by the office would provide that the amount of credit listed on a certificate of eligibility equaled the sum of certain percentages. The office could not consider the production company's in-state spending for the project when calculating the tax credit for the certificate of eligibility unless the production company provided the office with materials that could be used to promote economic development and tourism in the state, including a promotional video that met certain qualifications.

The office would be required to reduce the amount of credit listed on a certificate of eligibility by the amount equal to any delinquent amount owed to the state by the production company.

Tax credit. HB 3600 would amend the Tax Code to establish a tax credit for a production company that was awarded a certificate of eligibility by the Texas Multimedia Production Program. A production company would qualify for the tax credit if it submitted to the comptroller along with an application:

- a certificate of eligibility awarded by the Music, Film, Television, and Multimedia Office;
- an audited cost report prepared by a certified public accountant that itemized the costs and expenses to make the production and on which the amount of credit was based; and
- an attestation from the production company as to the total costs and expenses incurred to make the production.

An entity that sold or assigned the tax credit to another entity would be required to provide a copy of the certificate, audited cost report, and attestation to the buyer or assignee.

Amount of credit and limitations. Under the bill, the tax credit amount would be equal to the amount listed on a certificate of eligibility awarded to a production company. The bill would limit the total tax credit claimed for a report to the amount of franchise tax due for the report after any other applicable tax credits. An entity could not claim a credit on a report that was originally due before September 1, 2025, but could sell or assign a tax credit for which the entity qualified before that date.

Carryforward. If an entity was eligible for a tax credit that exceeded the above limitation, the entity could carry the unused credit forward for a maximum of five consecutive reports. A carryforward would be considered the remaining portion of a tax credit that could not be claimed in the current year because of the above limitation.

Application. An entity would be required to apply to the comptroller for the tax credit on or with the report for the period for which the credit was claimed. An entity would be required to submit a certificate of eligibility, an audited cost report, and an attestation, along with an application and any other information the comptroller deemed necessary for determining whether the entity qualified for the credit. The burden of establishing eligibility for the tax credit and the amount of the tax credit would be on the entity.

Sale or assignment of credit. Under the bill, an entity awarded a certificate of eligibility could sell or assign all or part of the tax credit to one or more entities, who also could sell or assign all or part of the tax credit to another entity. There would be no limit on the number of transactions for sale or assignment of the tax credit. An entity that sold or assigned a tax credit and the entity to which the tax credit was sold or assigned would jointly submit to the comptroller within 30 days of the date of sale or assignment written notice of the sale or assignment that contained certain required information.

The sale of assignment of a tax credit would not increase the total amount of the tax credit that could be claimed. After an entity claimed a tax credit for a production company expenditure that formed the basis for the certificate of eligibility, another entity could not use the same expenditure as the basis for another certificate.

Certain provisions of the bill would apply to the partners, members, or shareholders of a partnership, limited liability company, S corporation, or other pass-through entity that earned, bought, or was assigned the tax credit. The bill also would allow for the ability to claim the tax credit against certain premium taxes and would exempt entities that earned, bought, or were assigned the tax credit from paying any additional retaliatory tax levied as a result of claiming that credit.

The comptroller would be required to adopt rules and forms necessary to implement the bill.

The bill would take effect September 1, 2023.

NOTES: According to estimates by the Legislative Budget Board, the bill would have a negative impact to general revenue related funds of $1,010,596 during fiscal 2024-25. For fiscal 2026-27, implementing the provisions of the bill would have a negative impact to general revenue related funds of about $783,993,096. The bill also would have a direct impact of a revenue loss to the Property Tax Relief Fund of $137,000,000 for fiscal 2026-27. Any loss to the Property Tax Relief Fund would have to be made up with an equal amount of General Revenue to fund the Foundation School Program.