

2017 Regular Session

HOUSE BILL NO. 686 (Substitute for House Bill No. 530 by Representative Broadwater)

BY REPRESENTATIVE BROADWATER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ECONOMIC DEVELOPMENT: Provides for the Louisiana Headquartered Motion Picture Production Cooperative Endeavor Program

1 AN ACT

2 To enact R.S. 51:2316, relative to the Louisiana Economic Development Corporation; to
3 authorize, create, and provide for the establishment of the Louisiana Headquartered
4 Motion Picture Production Cooperative Endeavor Program; to provide for the terms,
5 conditions, procedures, and requirements of the program; to provide for a tax credit;
6 to provide for definitions; to require the payment of certain fees and deposits; to
7 provide for certain limitations and requirements for participation in the program; to
8 provide for reporting requirements; to provide for an effective date; and to provide
9 for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 51:2316 is hereby enacted to read as follows:

12 §2316. Louisiana Headquartered Motion Picture Production Cooperative Endeavor
13 Program

14 A. There is hereby established the Louisiana Headquartered Motion Picture
15 Production Cooperative Endeavor Program for the purpose of encouraging
16 Louisiana-based financial institutions to extend qualified loans to qualified
17 production companies for use in connection with the financing of qualified
18 productions and qualified media. In recognition of, and to further enhance, the

1 substantial economic benefit to the state of maintaining and further developing
2 Louisiana's vibrant, Louisiana-based motion picture production activities, while
3 simultaneously encouraging Louisiana based financial institutions to enter new credit
4 markets, in a manner designed to achieve a direct, quantifiable, positive cash-on-cash
5 return to the state of Louisiana while promoting and facilitating the establishment of
6 an independent, self-supporting, sustainable motion picture industry that is less
7 reliant upon traditional tax credit programs, the Louisiana Headquartered Motion
8 Picture Production Cooperative Endeavor Program shall be administered as provided
9 in this Section.

10 B. Definitions. For purposes of this Section, the following words shall have
11 the following meanings ascribed to them unless the context clearly indicates
12 otherwise:

13 (1) "Adjusted bonded budget" means the bonded budget less the following:

14 (a) Non-production related overhead.

15 (b) Amounts reimbursed by the state or any other governmental entity.

16 (c) Costs related to the transfer of tax credits.

17 (d) Amounts that are paid to persons or entities as a result of their
18 participation in profits from the exploitation of the qualified production.

19 (e) Application fees.

20 (f) State or local taxes.

21 (g) Cost of the production expenditure verification report fee required in this
22 Section.

23 (h) Expenditures for related party transactions that would be otherwise
24 denied or limited by the office pursuant to R.S. 47:6007(D)(9).

25 (i) Expenditures for Above the Line services, as defined in R.S. 47:6007, that
26 exceed forty percent of total production expenditures in the state for the qualified
27 production.

28 (j) Expenditures for airfare.

1 (k) Expenditures for bond fees, insurance premiums, finance fees, loan
2 interest fees, or payments of a similar nature, paid to investors in the qualified
3 production, unless such expenditures are made to a Louisiana resident licensed
4 insurance producer that has its principal place of business in this state as required by
5 R.S. 22:1543, a Louisiana financial institution as defined in R.S. 6:2(8), or a
6 Louisiana Business and Industrial Development Company as defined in and provided
7 for in Chapter 39-B of Title 51 of the Louisiana Revised Statutes of 1950, R.S.
8 51:2386 et seq., that is regulated by the office of financial institutions and which
9 have one or more offices in the state, in which case, only to the extent allocated on
10 a pro rata basis, allocating the fees based on the relative percentage of production
11 activity occurring in and out of state.

12 (2) "Bonded amount" means the "strike price", as the term is generally
13 understood within the motion picture industry, of the bonded budget, as is set forth
14 in the completion bond with respect to the applicable qualified production.

15 (3) "Bonded budget" means the budget for a qualified production for which
16 a completion bond has been issued.

17 (4) "CEA tax credit" means tax credits earned and issued pursuant to this
18 Section.

19 (5) "Completion bond" means a bond, surety, or completion guarantee with
20 respect to a qualified production issued by a Louisiana approved completion
21 guarantor specializing in motion picture completion bonds.

22 (6) "Cooperative endeavor program" means the Louisiana Headquartered
23 Motion Picture Production Cooperative Endeavor Program.

24 (7) "Corporation" means the Louisiana Economic Development Corporation.

25 (8) "Distribution contract" means a fully executed bilateral contract pursuant
26 to which a domestic or foreign distributor agrees to pay a certain designated price for
27 the right to distribute a qualified production in a given territory or medium,
28 conditioned only upon the completion and delivery of specified deliverables to the
29 distributor.

1 (9) "Diversity plan" means a written document through which the qualified
2 production company commits to:

3 (a) Ensure that minorities and females have equal opportunities in
4 recruitment, selection, appointment, promotion, training, and related employment
5 areas in connection with the qualified production or qualified media; and

6 (b) Use good faith efforts to solicit bids from vendors certified as
7 Disadvantaged Business Enterprises under the Louisiana Unified Certification
8 Program with respect to the qualified production or qualified media by soliciting bids
9 from relevant vendors in the parish or parishes in which the qualified production or
10 qualified media will take place by utilizing the Louisiana Unified Certification
11 Program Directory Search.

12 (10) "Louisiana bank" means a financial institution as defined in R.S. 6:2(8)
13 that is regulated by the office of financial institutions and that has one or more
14 branches in the state.

15 (11) "Louisiana education plan" means a written document through which
16 the qualified production company commits to use good faith efforts to seek qualified
17 graduates of accredited vocational-technical schools, technical and community
18 colleges, and institutions of higher education located in Louisiana for recruitment,
19 selection, appointment, promotion, training, and related employment areas in
20 connection with the qualified production or qualified media.

21 (12) "Louisiana internship program" means an agreement between a
22 qualified production company and an accredited vocational-technical school,
23 technical college, community college, or institution of higher education located in
24 Louisiana in which the qualified production company agrees to maintain no less than
25 two internship positions for students enrolled in such school, college, or institution
26 of higher education.

27 (13) "Net proceeds" means all revenues from the exploitation of a qualified
28 production or qualified media net of third-party distribution and marketing fees and

1 costs, and customary payments such as those required by creative guilds and
2 licensing agencies.

3 (14) "Producer net profits" means with respect to a qualified production or
4 qualified media, one hundred percent of all funds derived from worldwide
5 exploitation after the repayment of all true debt obligations, distribution marketing
6 costs and fees, residuals, and reasonable deferred fees owed to writers, directors,
7 producers, and cast.

8 (15) "Production expenditure verification report" means a report issued by
9 a qualified accountant who is unrelated to the qualified production company and that
10 contains the qualified accountant's verification of the qualified production's cost
11 report of production expenditures. The production expenditure verification report
12 shall contain an opinion from the qualified accountant stating that the production's
13 cost report of production expenditures presents fairly, in all material aspects, the
14 production expenditures expended in Louisiana pursuant to the provisions of this
15 Section. The production expenditure verification report shall:

16 (a) Be performed in accordance with the accounting standards generally
17 accepted in the United States.

18 (b) Be addressed to the party which has engaged the qualified accountant,
19 with a copy addressed to the qualified production company and Louisiana bank.

20 (c) Contain the qualified accountant's name, address, and telephone number.

21 (d) Contain a certification that the qualified accountant is unrelated to the
22 qualified production company.

23 (e) Be dated as of the date of completion of the qualified accountant's field
24 work.

25 (f) Contain a statement of acknowledgment by the qualified accountant that
26 the state is relying on the qualified production expenditure verification report in the
27 issuance of the CEA tax credits under the provisions of this Section.

28 (16) "Qualified accountant" shall have the same meaning as the definition
29 in R.S. 47:6007(B).

1 (17) "Qualified indebtedness" means, with respect to a specific qualified
2 production, all indebtedness lawfully owed to a Louisiana bank on account of the
3 qualified production in accordance with a cooperative endeavor agreement executed
4 pursuant to this Section.

5 (18) "Qualified media" means a component part of a project that would
6 otherwise meet the definition of a qualified production, such as CGI, edited, color
7 corrected or otherwise modified or augmented footage, or visual effects that are
8 generated in the state by a qualified production company.

9 (19)(a) "Qualified production" means a feature-length film, short film, video,
10 television pilot, television series, television movie of the week, animated feature
11 film, animated short film, animated television series, documentary made in
12 Louisiana, in whole or in part, for theatrical or television viewing, or for viewing on
13 any digital or online platform, that is produced by a qualified production company
14 and is subject to a completion bond that guarantees all of the following:

15 (i) The qualified production will be completed and delivered in accordance
16 with all applicable distribution contracts; however, if the production is not completed
17 and delivered in accordance with the contract, the completion guarantor shall remit
18 to the Louisiana bank, or the state, as applicable, the full principal amount of all
19 amounts financed by, or owed to, such party pursuant to this Section.

20 (ii) No less than eighty-five percent of the bonded budget will be spent
21 within Louisiana.

22 (iii) The copyright for which is owned by a qualified production company
23 or a wholly-owned subsidiary of a qualified production company until the qualified
24 indebtedness has been repaid in full.

25 (iv) At least fifty percent of the producer net profits of which shall inure to
26 the benefit of Louisiana residents.

27 (b) The term "qualified production" shall not include the production of news
28 coverage, athletic events, music or other festivals, commercials, or what is generally

1 considered or marketed to be, reality television or reality programming or any other
2 production that is required to maintain records pursuant to 18 U.S.C. 2257.

3 (20) "Qualified Production Company" means a person, corporation,
4 partnership, limited liability company, or other business entity, organized, domiciled
5 and headquartered in Louisiana, that is primarily engaged in the business of creating
6 qualified productions or qualified media, or a wholly owned subsidiary of a person
7 or entity that is organized, domiciled, and headquartered in Louisiana and complies
8 with all of the following:

9 (a) Is in good standing with the Secretary of State.

10 (b) Has its principal place of business in Louisiana and does not have any
11 fixed locations outside of Louisiana in which executive management activities are
12 conducted.

13 (c) Is seventy-five percent directly or indirectly owned by Louisiana
14 domiciled natural persons.

15 (d) Is not directly or indirectly owned by any person or entity domiciled
16 outside of Louisiana.

17 (e) Is subject to Louisiana income tax jurisdiction and is required to file
18 Louisiana income tax returns. In the case of entities taxed as partnerships, the
19 partners or members are required to file Louisiana income tax returns.

20 (f) Maintains a physical office location in the state and either owns the
21 property, or is a tenant pursuant to a long-term arms-length fair market value lease
22 of not less than twenty-four months.

23 (g) Has a Louisiana internship program.

24 (21) "Redemption Date" means the date not later than thirty days after
25 written notice to the state following the second anniversary of execution of a
26 production financing loan agreement between the Louisiana bank and the qualified
27 production company party to a cooperative endeavor agreement with the state with
28 respect to a specific qualified production.

1 (22) "Senior bank" means any state or federal banking institution that
2 provides debt financing to a qualified production collateralized by a first-position
3 security interest or mortgage in and to specific collateral that may include, but not
4 be limited to, the copyright or distribution rights of the qualified production or
5 qualified media.

6 C. Certification of Qualified Production Companies. The corporation shall,
7 within thirty days after receipt of a request for certification, certify qualified
8 production companies that meet the following criteria:

9 (1) The company meets the definition of Qualified Production Company
10 contained in this Section.

11 (2) The company has provided the corporation with all of the following:

12 (a) A commitment letter from a Louisiana bank committing to participate,
13 subject to satisfaction of all applicable underwriting criteria, in a cooperative
14 endeavor agreement with the state and the company as authorized by this Section.

15 (b) In the case of qualified media, a copy of the underlying motion picture's
16 completion bond and bonded budget reflecting coverage of the qualified media, and
17 for a qualified production, a letter of recommendation from a corporation-approved
18 completion guarantor willing to issue, subject to satisfaction of issuance criteria, a
19 completion bond with respect to the qualified production.

20 (c) A commitment from a corporation-approved internationally recognized
21 collection account management company, which has not defaulted on any obligation
22 to the state that is willing to provide collection account management services.

23 (d) A statement of interest from one or more corporation approved
24 distributors or sales agents.

25 (e) A non-refundable application fee in accordance with the provisions of
26 R.S. 36:104, and a commitment to, within ten days of certification as a qualified
27 production company, deposit, escrow, or ensure via reputable bank letter of credit,
28 guaranty, surety or payment bond of up to one hundred thousand dollars to be

1 applied against the state's legal fees in connection with the cooperative endeavor
2 process.

3 (f) A commitment to, together with its qualified production company owners
4 and any wholly owned or commonly owned production company affiliates, within
5 thirty days of being certified as a qualified production company, employ no fewer
6 than three full-time, year-round employees domiciled in Louisiana for state income
7 tax purposes, and to, subject to reasonable short-term interruptions due to ordinary
8 employee transitions, continue to employ not less than three full-time, year-round
9 employees until the repayment of all qualified indebtedness owned by the company
10 and its affiliates.

11 (g) A Louisiana education plan.

12 (h) A statement that the qualified production company shall not be required
13 to maintain records pursuant to 18 U.S.C. 2257 in connection with any qualified
14 production.

15 D. Cooperative Endeavor Agreements. The state, through the corporation,
16 is authorized and directed to enter into cooperative endeavor agreements within
17 thirty days of a request submitted by a Louisiana bank and qualified production
18 company, each with a Louisiana bank and a qualified production company, for the
19 purpose of financing a portion of the production expenses of a qualified production
20 undertaken by the qualified production company, that, in addition to requiring the
21 satisfaction of all underwriting criteria and conditions precedent required by the
22 Louisiana bank, provide as follows:

23 (1) On or prior to the redemption date, the state shall issue CEA tax credits
24 equal to the full amount of qualified indebtedness, subject to the following
25 limitations:

26 (a) The CEA tax credits issued with respect to any particular qualified
27 production shall not exceed the lesser of:

28 (i) Fifty percent of the adjusted bonded budget, increased by an additional
29 fifteen percent if a diversity plan is approved by the corporation; or

1 (ii) If the qualified production or qualified media has distribution contracts
2 in an aggregate amount exceeding fifteen percent of the bonded budget, five million
3 dollars; or

4 (iii) If the qualified production or qualified media has distribution contracts
5 in an aggregate amount exceeding thirty-five percent of the bonded budget, eight
6 million dollars.

7 (b) In the aggregate, Above the Line producer and production company fees
8 related to any recognized category of producers or production companies who are
9 directly or indirectly related to the qualified production company shall not exceed
10 fifteen percent of the bonded budget. This limitation shall not apply to fees paid for
11 bona fide separate and distinct production-related services, such as writing, directing,
12 distributing, and financing activities, but in no case shall fees paid to related parties
13 exceed twenty five percent of the bonded budget.

14 (c) Subject to customary motion picture industry limitations, the Louisiana
15 bank's loan shall be secured by the qualified production or qualified media and all
16 proceeds of the foregoing. The Louisiana bank's loan may be subject to the terms
17 of an inter-creditor agreement with a senior bank and other financiers with respect
18 to the applicable qualified production or qualified media; provided that the Louisiana
19 bank shall be granted a security interest, all or part of which may be subordinate to
20 the senior bank, in the same collateral as the senior bank to the extent the collateral
21 is specific, and relative, to the qualified production or qualified media, and the
22 Louisiana bank's rights shall not be subordinate to any party other than the senior
23 bank, and, with respect to the state, the senior bank's rights with respect to the
24 applicable qualified production shall be exclusive of any cross-collateralization in
25 favor of senior bank with respect to any indebtedness not directly used in connection
26 with the production of the applicable qualified production.

27 (2) In exchange for issuing the CEA tax credits, the cooperative endeavor
28 agreement shall provide for the state to receive revenues derived from commercial

1 exploitation of the qualified production in all territories worldwide up to the face
2 value of the CEA tax credits.

3 (3) In addition to the right of repayment of the face value of the CEA tax
4 credits issued to the qualified production company, the state shall receive ten percent
5 of one hundred percent of all producer net profits of the qualified production. The
6 state shall be afforded "most-favored nations" treatment with respect to its profit
7 interest vis-à-vis all other producer net profit participants and shall receive
8 distributions from the collection account manager on a pro rata and pari passu basis
9 with all other producer net profits participants.

10 (4) The qualified production shall engage an internationally recognized
11 collection account management company which has not defaulted on any obligation
12 to the state, which shall commit to receive all proceeds into an account controlled by
13 it and, after the satisfaction of any senior bank obligations, remit proceeds first to the
14 state and then, and only after the state has fully recouped an amount equal to the face
15 value of the CEA tax credits issued to qualified production, to any other financiers,
16 equity investors or profit participants, including, without limitation, the state.
17 Notwithstanding the foregoing, the collection account management company may
18 make customary payments to itself for its fees and cost reimbursement, and to guilds
19 on account of the qualified production.

20 (5) Upon execution of a cooperative endeavor agreement pursuant to this
21 Section, the state shall reserve the requested amount from the first available fiscal
22 year allocation of CEA tax credits for ninety days. If the Louisiana bank's loan does
23 not close within ninety days, then the cooperative endeavor agreement and initial
24 reservation of CEA tax credits shall be terminated. No individual qualified
25 production company shall be allowed more than two reservations for the same
26 qualified production or qualified media, unless granting additional reservations
27 would have no impact on other qualified productions having applied for participation
28 in the program. To the extent evidenced by a written statement from a Louisiana
29 bank with respect to the whole or partial repayment of qualified indebtedness, the

1 corporation may release reservations with respect to CEA tax credits. To the extent
2 of any unreserved CEA tax credits for any given fiscal year CEA tax credit
3 allocation, the corporation may authorize and enter into additional cooperative
4 endeavor agreements in accordance with this Section.

5 (6) Except with respect to qualified media, the state's role shall be
6 recognized in the opening credits of the motion picture, or if a feature-length film,
7 short film, television pilot, television series, television movie of the week, animated
8 feature film, animated short film, animated television series, or documentary, on a
9 single card that reads: "Made in Louisiana", and otherwise, the credit shall appear
10 in the end credits.

11 (7) The qualified production shall maintain all standard liability insurance
12 and the state shall be an additional insured under all policies of insurance.

13 (8) A cooperative endeavor agreement shall in no way limit the Louisiana
14 bank's ability to syndicate, allow participation, or assign to any third party, in whole
15 or in part, its rights and obligations in connection with the underlying loan to the
16 qualified production company.

17 (9) The corporation shall issue CEA tax credits pursuant to the contractual
18 terms of a cooperative endeavor agreement, when due, provided the production
19 expenditure verification report requirements in Subsection (F) of this Section have
20 been completed.

21 (10) The corporation shall engage legal counsel to represent the state's
22 interests in connection with the negotiation, drafting, execution, and enforcement of
23 the cooperative endeavor agreement. The legal counsel shall be identified by the
24 qualified production company, acceptable to the Louisiana bank, and subject to the
25 approval of the corporation at its next scheduled meeting, or within thirty days,
26 whichever is sooner. All fees and expenses due and payable to counsel shall be paid
27 directly by the qualified production company.

28 E. Cooperative Endeavor Agreement Program Tax Credits.

1 (1)(a) There is hereby authorized a tax credit against state income tax for
2 Louisiana taxpayers awarded CEA tax credits pursuant to a cooperative endeavor
3 agreement as described in this Section. The CEA tax credits shall be earned by a
4 qualified production company as described in this Section. CEA tax credits shall be
5 regarded as separate and distinct from all other tax credits described in R.S. 47:6007;
6 however, CEA tax credits shall be recorded in the tax credit registry in accordance
7 with R.S. 47:1524 as with any other transferable tax credit.

8 (b) For the fiscal year beginning July 1, 2019, and each fiscal year thereafter,
9 out of the one hundred eighty million dollar total aggregate amount of claims for tax
10 credits or transfers of tax credits authorized pursuant to the provisions of R.S.
11 47:6007(J)(2) allowed each fiscal year, twenty million dollars shall be reserved each
12 fiscal year for the tax credit authorized pursuant to the provisions of this Section.

13 (c) Tax credits issued pursuant to the provisions of this Section shall have
14 priority over all other claims filed by taxpayers or transfers of tax credits to the
15 Department of Revenue that would otherwise be applied against the total aggregate
16 amount of credits authorized pursuant to the provisions of R.S. 47:6007(J)(2). To
17 the extent that the Louisiana Economic Development Corporation does not enter into
18 cooperative endeavor agreements allocating up to twenty million dollars in any fiscal
19 year, the unallocated portion of the amount reserved shall not be available for
20 allocation to other tax credit applicants.

21 (2) The CEA tax credit shall be allowed against the income tax for the
22 taxable period in which the CEA tax credit is reserved by the secretary of the
23 Department of Revenue pursuant to R.S. 47:6007(C). If the CEA tax credit allowed
24 pursuant to this Paragraph exceeds the amount of taxes due for the taxable period,
25 then any unused credit may be carried forward as a credit against subsequent tax
26 liability for a period not to exceed five years.

27 (3) Application of the credit.

28 (a) All entities taxed as corporations for Louisiana income tax purposes shall
29 claim the credit allowed under this Section on their corporation income tax return.

1 (b) Individuals, estates, and trusts shall claim any credit allowed under this
2 Section on their income tax return.

3 (c) Entities not taxed as corporations shall claim any credit allowed under
4 this Section on the returns of the partners or members as follows:

5 (i) Corporate partners or members shall claim their share of the credit on
6 their corporation income tax returns.

7 (ii) Individual partners or members shall claim their share of the credit on
8 their individual income tax returns.

9 (iii) Partners or members that are estates or trusts shall claim their share of
10 the credit on their fiduciary income tax returns.

11 (4) Transferability of the credit. CEA tax credits not previously claimed by
12 any taxpayer against its income tax may be transferred or sold to another Louisiana
13 taxpayer or to the Department of Revenue, subject to the following conditions:

14 (a) A single transfer or sale may involve one or more transferees. The
15 transferee of the CEA tax credits may transfer or sell such CEA tax credits subject
16 to the conditions of this Subsection.

17 (b) Transferors and transferees shall submit to the Department of Revenue
18 in writing, a notification of any transfer or sale of CEA tax credits within ten
19 business days after the transfer or sale of such CEA tax credits. No transfer or sale
20 of CEA tax credits shall be effective until recorded in the tax credit registry in
21 accordance with R.S. 47:1524. The notification shall include the transferor's CEA tax
22 credit balance prior to transfer, a copy of any CEA tax credit certification letter
23 issued by the corporation, the transferor's remaining CEA tax credit balance after
24 transfer, all tax identification numbers for both transferor and transferee, the date of
25 transfer, the amount transferred, a copy of the credit certificate, and price paid by the
26 transferee to the transferor. The CEA tax credit transfer value means the percentage
27 as determined by the price paid by the transferee to the transferor divided by the
28 dollar value of the CEA tax credits that were transferred in return. The notification
29 submitted to the Department of Revenue shall include a processing fee of not more

1 than two hundred dollars per transferee, and any information submitted by a
2 transferor or transferee shall be treated by the office and the Department of Revenue
3 as proprietary to the entity reporting the information and therefore confidential.
4 However, this shall not prevent the publication of summary data that includes no
5 fewer than three transactions.

6 (c) Failure to comply with this Subsection shall result in the disallowance of
7 the CEA tax credit until the taxpayer is in full compliance.

8 (d) The transfer or sale of this CEA tax credit shall not extend the time in
9 which the credit can be used. The carryforward period for the credit that is
10 transferred or sold begins on the date on which the credit was earned.

11 (e) To the extent that the transferor did not have rights to claim or use the
12 credit at the time of the transfer, the Department of Revenue shall either disallow the
13 credit claimed by the transferee or recapture the credit from the transferee through
14 any collection method authorized by R.S. 47:1561. The transferee's recourse is
15 against the transferor.

16 (f)(i) The qualified production company that earns CEA tax credits or the
17 company's irrevocable designee, as provided for in Item (iii) of this Subparagraph,
18 may transfer the credits to the Department of Revenue for one hundred percent of the
19 face value of the CEA tax credits in accordance with the procedures and
20 requirements of Item (iii) of this Subparagraph.

21 (ii) The Department of Revenue may require the transferor to submit
22 additional information as may be necessary to administer the provisions of this
23 Section. The secretary of the Department of Revenue shall make payment to the
24 qualified production company or its irrevocable designee in the amount to which he
25 is entitled from the current collections of the taxes collected pursuant to Chapter 1
26 of Subtitle II of this Title provided the tax credits are transferred to the Department
27 of Revenue within one calendar year of certification by the corporation.

28 (iii) A bank or other lender may be named as an irrevocable designee in a
29 cooperative endeavor agreement described in this Section. As an irrevocable

1 designee, a bank or other lender may elect to have the CEA tax credits issued directly
2 to it from the corporation, and in addition to the rights of a transferee, may also elect
3 to transfer the credits to the Department of Revenue in accordance with the
4 provisions of Items (i) and (ii) of this Subparagraph.

5 F. Data Collection and Verification Report.

6 (1) Each Louisiana bank participating in the program shall deliver to the
7 corporation, on a quarterly basis, a statement with respect to each qualified
8 production with respect to which qualified indebtedness was outstanding during the
9 immediately preceding calendar quarter in a form acceptable to the corporation.

10 (2) To identify and track in-state spending for purposes of economic impact
11 analyses, ensure compliance with the cooperative endeavor agreement, and to
12 determine the amount of CEA tax credits to be issued by the state, the corporation
13 shall directly engage and assign a qualified accountant to prepare for the corporation,
14 the required production expenditure verification report on a qualified production's
15 cost report of expenditures or claims. The qualified production company shall be
16 responsible for and assessed any production expenditure verification report fee which
17 may be required by law, including any up-front deposit of the fee. For purposes of
18 the report, the qualified production company shall make all records available to the
19 qualified accountant. The qualified production company shall be assessed the
20 corporation's actual cost for the production expenditure verification report fee. The
21 maximum fee for the report shall be fifteen thousand dollars for verification of a cost
22 report reflecting production expenditures between three hundred thousand dollars
23 and twenty-five million dollars, and the maximum fee shall be twenty-five thousand
24 dollars for verification of a cost report reflecting production expenditures in excess
25 of twenty-five million dollars.

26 (3) At the time of the request for a production expenditure verification report
27 and before the redemption date, the qualified production company shall submit a
28 deposit of the production expenditure verification report fee of seven thousand five
29 hundred dollars for a production with qualified expenditures projected to be between

1 three hundred thousand dollars and twenty-five million dollars, and a deposit of
2 fifteen thousand dollars for those projected to be in excess of twenty-five million
3 dollars.

4 (4) At the time of the request for a production expenditure verification
5 report, the qualified production company shall submit to the office a notarized
6 statement demonstrating conformity with, and agreeing to, the following:

7 (a) To pay all undisputed legal obligations the qualified production company
8 has incurred in Louisiana with respect to the qualified production.

9 (b) To publish, at completion of principal photography, a notice at least once
10 a week for three consecutive weeks in local newspapers in regions where filming has
11 taken place in order to notify the public of the need to file creditor claims against the
12 qualified production by a specified date; however, outstanding obligations shall not
13 be waived if a creditor fails to file by the specified date.

14 (5) In addition to any other requirements of this Subsection, the production
15 expenditure verification report shall include information concerning the total number
16 of people who were paid salary, wages, benefits, and other compensation which was
17 included as payroll, and the number of those who were Louisiana residents.

18 (6) In addition to any other requirements of this Subsection, the production
19 expenditure verification report shall include a sworn affidavit by the individual
20 responsible for providing the accounts, documents, records, and any other
21 information necessary to the accountant charged with preparing and filing the
22 production expenditure verification report that the accounts, documents, records, and
23 other information are true and correct; and that all related party transactions are
24 accurately reported in accordance with this Subsection; all to the best of the affiant's
25 knowledge, information, and belief. Any false statement under oath contained in the
26 affidavit required by this Subparagraph shall constitute perjury and shall be punished
27 as provided by R.S. 14:123(C)(4).

1 (7) Qualified productions or qualified media that are already subject to the
2 requirements of R.S. 47:6007(D) shall not also be subject to Paragraphs (2) through
3 (6) of this Subsection.

4 G. Reports. (1) With input from the Legislative Fiscal Office, the
5 corporation shall prepare an interim written report to be submitted to the Senate
6 Committee on Revenue and Fiscal Affairs and the House of Representatives
7 Committee on Ways and Means no less than sixty days prior to the start of the
8 Regular Session of the Legislature in 2021, and every second year thereafter. The
9 report shall include the overall impact of the cooperative endeavor program, the
10 amount of agreements executed, CEA tax credits issued per qualified production and
11 in the aggregate, payments received per qualified production and in the aggregate,
12 the number of net new jobs created, the amount of Louisiana payroll created, the
13 economic impact of the cooperative endeavor program, and any other factors that
14 describe the impact of the program.

15 (2) It is anticipated that the distribution window for motion pictures is
16 approximately seven years, and therefore at the conclusion of the eighth year of the
17 program, the corporation shall annually issue a final report for each particular year
18 of the program beginning with the first year. The corporation shall report to the
19 Senate Committee on Revenue and Fiscal Affairs and the House of Representatives
20 Committee on Ways and Means the average return on investment for all motion
21 pictures included in the program year.

22 Section 2. This Act shall become effective upon signature by the governor
23 or, if not signed by the governor, upon expiration of the time for bills to become law without
24 signature by the governor, as provided by Article III, Section 18 of the Constitution of
25 Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act
26 shall become effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 686 Engrossed

2017 Regular Session

Broadwater

Abstract: Establishes the La. Motion Picture Production Cooperative Endeavor Program and authorizes a tax credit against state income tax pursuant to the cooperative endeavor agreement.

Proposed law establishes the Louisiana Headquartered Motion Picture Production Cooperative Endeavor Program.

Proposed law defines a "Louisiana bank" as a financial institution that is regulated by the office of financial institutions and that has one or more branches in the state.

Proposed law defines a "qualified production company" as a person, corporation, partnership, limited liability company, or other business entity, organized, domiciled and headquartered in Louisiana, that is primarily engaged in the business of creating qualified productions or qualified media, or a wholly owned subsidiary of such a person or entity that is organized, domiciled and headquartered in Louisiana and complies with certain requirements as provided in proposed law.

Proposed law defines a "qualified production" as a feature-length film, short film, video, television pilot, television series, television movie of the week, animated feature film, animated short film, animated television series, documentary made in La., in whole or in part, for theatrical or television viewing, or for viewing on any digital or online platform, that is produced by a qualified production company and is subject to a completion bond that makes certain guarantees as provided in proposed law. Further, the term "qualified production" shall not include the production of news coverage, athletic events, music or other festivals, commercials, or what is generally considered or marketed to be, reality television or reality programming or any other production that is required to maintain records pursuant to federal law.

Proposed law authorizes the state, through the Louisiana Economic Development Corporation, to enter into cooperative endeavor agreements with a Louisiana bank and a qualified production company for the purpose of financing a portion of the production expenses of a qualified production undertaken by the qualified production company.

Proposed law authorizes a tax credit against state income tax for Louisiana taxpayers pursuant to a La. Headquartered Motion Picture Production Cooperative Endeavor program (CEA tax credit). The CEA tax credits shall be earned by a qualified production company. CEA tax credits shall be regarded as separate and distinct from all other tax credits provided in present law regarding the motion picture production tax credit.

Proposed law requires a qualified production company to submit a non-refundable application fee in accordance with the provisions of present law when applying for the CEA tax credit.

Present law (R.S. 47:6007) authorizes a tax credit for state-certified motion picture productions. Further provides that in Fiscal Years 2016 through 2018, the tax credit is limited to an aggregate total of \$180 million each fiscal year.

Proposed law provides that beginning in Fiscal Year 2019-2020, and each fiscal year thereafter, credits in an amount not to exceed \$20 million issued under the provisions of

present law shall be reserved for the La. Headquartered Motion Picture Production Cooperative Endeavor Program established in proposed law. Credits available for the cooperative endeavor program shall be included in the total aggregate amount of caps authorized pursuant to the provisions of present law and shall have priority over all other claims filed by taxpayers or transfers of tax credits to the Dept. of Revenue that would otherwise be applied against the total aggregate amount of caps authorized pursuant to the provisions of present law. To the extent that the Louisiana Economic Development Corporation does not enter into cooperative endeavor agreements in an amount up to \$20 million in any fiscal year, the unallocated portion shall not otherwise be available to be earned.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 51:2316)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Change the amount of the application fee for participation in the CEA tax credit program from \$10,000 to the amount authorized in present law.
2. Clarify that the \$20M allocation for CEA tax credits issued pursuant to proposed law is reserved from the \$180M annual Fiscal Year allocation of motion picture production tax credits established in present law.