ASSEMBLY BILL NO. 418–ASSEMBLYMAN AIZLEY

MARCH 21, 2011

Referred to Committee on Taxation

SUMMARY—Provides for transferable tax credits to attract filmmakers to Nevada. (BDR 32-913)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to taxation; authorizing the Commission on Economic Development to approve and the Nevada Tax Commission to issue a transferable tax credit for a company that produces a film production in this State under certain circumstances; requiring a company that receives a transferable tax credit to consent to an audit by the Department of Taxation and to the disclosure of the audit report to the Commission on Economic Development and to the public with certain limited exceptions; requiring the Commission on Economic Development to provide notice of certain hearings; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 8 of this bill requires the Commission on Economic Development to approve a transferable tax credit for a company that produces a film production in this State if, in addition to certain other requirements, at least 60 percent of the film production is filmed, shot, taped or recorded in this State and the production costs of the film production exceed a certain amount. Upon approval of a transferable tax credit by the Commission on Economic Development, **section 8** requires the Nevada Tax Commission to issue to the company the transferable tax credit. **Section 9** of this bill requires that, as a condition of approval, a company must consent to: (1) an audit by the Department of Taxation to determine whether the company is in compliance with the requirements to receive a transferable tax credit; and (2) the disclosure of the audit report to the Commission on Economic Development and to the public with certain limited exceptions. **Section 10** of this bill requires the Commission on Economic Development to meet certain notice requirements before holding a meeting to approve or disapprove a transferable tax credit.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 360 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 10, inclusive, of this act.

Sec. 2. ***As used in sections 2 to 10, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 3. ***"Commercial project" means:***

1. A national or regional commercial or series of commercials;

2. An infomercial;

3. An interstitial advertisement;

4. A music video; or

5. An educational or instructional video.

Sec. 4. ***"Digital media simulation" means a video game.***

Sec. 5. ***"Film or television project" means:***

1. A theatrical or direct-to-video motion picture;

2. A made-for-television motion picture;

3. Visual effects or digital animation sequences produced in conjunction with a motion picture;

4. A documentary film;

5. A television pilot program;

6. Interstitial television programming; or

7. A television series, including, without limitation, a drama, a reality show, a talk show, a comedy, a soap opera, a telenovela, a game show, an awards show or a miniseries.

Sec. 6. ***1. "Film production" means:***

(a) A film or television project;

(b) A commercial project; or

(c) A digital media simulation.

2. The term does not include:

(a) A news, weather or current events program;

(b) A production that is primarily produced for industrial, corporate or institutional use;

(c) A production that solicits money other than a production which is produced for national distribution;

(d) A political advertisement;

(e) A sporting event; or

(f) Any other type of production that is excluded by regulations adopted by the Commission on Economic Development pursuant to section 8 of this act.

Sec. 7. *"Local government" means any county, city, district, agency or other political subdivision of this State that receives any portion of the proceeds of a tax.*

Sec. 8. *1. A company that produces a film production in this State, either in whole or in part, may apply to the Commission on Economic Development for a transferable tax credit for any tax that is imposed by the State or a local government.*

2. The Commission on Economic Development shall approve an application for a transferable tax credit if the Commission finds that the company producing the film production qualifies for the transferable tax credit pursuant to subsection 3.

3. To be eligible for a transferable tax credit pursuant to this section, a company must:

(a) Film, shoot, tape or record at least 60 percent of the film production in this State;

(b) Incur production costs in this State of:

(1) If the film production is a film or television project, $250,000 or more; or

(2) If the film production is a commercial project or digital media simulation, $100,000 or more;

(c) Meet the consent requirements pursuant to subsection 1 of section 9 of this act; and

(d) Meet any other requirements prescribed by regulation pursuant to this section.

4. If the Commission on Economic Development approves an application for a transferable tax credit pursuant to this section, the Commission shall immediately forward a certificate of eligibility for the tax credit to:

(a) The Department;

(b) The Nevada Tax Commission; and

(c) If the credit is for a tax imposed by a local government, to the appropriate governing body.

5. Upon receipt of a certificate of eligibility pursuant to subsection 4, the Nevada Tax Commission shall issue to the eligible company a transferable tax credit pursuant to regulations adopted by the Nevada Tax Commission pursuant to subsection 8.

6. An applicant for a transferable tax credit pursuant to this section shall, upon the request of the Executive Director of the Commission on Economic Development, furnish the Executive Director with copies of all records necessary to verify that the applicant meets the requirements of subsection 3.

7. The Commission on Economic Development:

(a) Shall adopt regulations prescribing:

(1) The amount of a transferable tax credit that is available to a company pursuant to this section;

(2) Any additional requirements to receive a transferable tax credit, including, without limitation, criteria for determining eligible production costs and expenditures by an applicant;

(3) The form and contents of an application and the application review process;

(4) Any type of film production which, due to obscene or sexually explicit material, is not eligible for a transferable tax credit; and

(5) The requirements for notice pursuant to section 10 of this act; and

(b) May adopt any other regulations that are necessary to carry out the provisions of this section and sections 9 and 10 of this act.

8. The Nevada Tax Commission:

(a) Shall adopt regulations prescribing the manner in which a transferable tax credit:

(1) Is issued by the Commission; and

(2) May be used, applied or transferred by a company; and

(b) May adopt any other regulations that are necessary to carry out the provisions of this section and sections 9 and 10 of this act.

Sec. 9. *1. As a condition of approval, a company that applies for a transferable tax credit pursuant to section 8 of this act must consent to:*

(a) An audit by the Department to determine whether the company is in compliance with the requirements for the transferable tax credit; and

(b) The disclosure of the audit report in the manner set forth in this section.

2. If the Department conducts an audit of a company to determine whether the company is in compliance with the requirements for a transferable tax credit, the Department shall, upon request, provide the audit report to the Commission on Economic Development.

3. Until a company has exhausted all appeals to the Department and the Nevada Tax Commission relating to an audit, the information contained in the audit report provided to the Commission on Economic Development:

(a) Is confidential and proprietary information of the company;

(b) Is not a public record; and

(c) Must not be disclosed to any person who is not a member of the Commission on Economic Development unless the company consents to the disclosure.

4. After a company has exhausted all appeals to the Department and the Nevada Tax Commission relating to an audit:

(a) The audit report provided to the Commission on Economic Development is a public record; and

(b) Upon request by any person, the Executive Director of the Commission on Economic Development shall disclose the audit report to the person who made the request, except for any information in the audit report that is not disclosed pursuant to subsection 5.

5. Before the Executive Director of the Commission on Economic Development discloses an audit report to the public, a company may submit a request to the Executive Director to protect from disclosure any information in the audit report which, under generally accepted business practices, would be considered a trade secret or other confidential or proprietary information of the company. After consulting with the company, the Executive Director shall determine whether to disclose the information. The decision of the Executive Director is final and is not subject to judicial review.

6. If the Executive Director of the Commission on Economic Development does not disclose information in an audit report pursuant to subsection 5, the information:

(a) Must be redacted by the Executive Director before the audit report is disclosed to the public; and

(b) Must not be disclosed to any person who is not a member of the Commission on Economic Development unless the company consents to the disclosure.

Sec. 10. ***1. If the Commission on Economic Development receives an application for a transferable tax credit pursuant to section 8 of this act, the Commission shall, at least 30 days before a hearing on the application, provide notice of the hearing to:***

(a) The applicant;

(b) The Department; and

(c) The governing body of any local government that could be affected by the decision of the Commission.

2. The notice required by this section must set forth the date, time and location of a hearing on an application.

Sec. 11. The Commission on Economic Development and the Nevada Tax Commission shall each adopt such regulations as are necessary to implement the provisions of this act on or before December 31, 2011.

Sec. 12. This act becomes effective upon passage and approval for the purpose of adopting regulations and on January 1, 2012, for all other purposes.

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