

# DEPARTMENT OF TAXATION

## 2022 Fiscal Impact Statement

1. **Patron** Don L. Scott

3. **Committee** House Finance

4. **Title** Motion Picture Production Tax Incentives;  
Extension of Sunset Dates and Technical  
Changes

2. **Bill Number** HB 589

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would provide that any Motion Picture Production Tax Credits ("MPPTC") allocated to digital interactive media, episodic content, gaming, virtual reality, and augmented reality productions would not be subject to the credit's fiscal year cap. All other types of productions qualifying for the MPPTC would be subject to the fiscal year cap. However, this bill would increase such cap from \$6.5 million to \$15 million per fiscal year beginning with Fiscal Year 2021. This bill would also provide that, beginning with Fiscal Year 2021, unused portions of the fiscal year cap would be allowed to rollover to increase the next fiscal year's cap.

The bill would authorize credits to be issued for multiyear periods. Under current law, if production continues for more than one year, the taxpayer must file a separate application for each year. This bill would repeal the MPPTC's sunset provision. Under current law, the MPPTC's will sunset after Taxable Year 2026.

If enacted during the regular session of the 2022 General Assembly, this bill would become effective July 1, 2022.

6. **Budget amendment necessary:** Yes.

Item(s): Page 1, Revenue Estimates

7. **Fiscal Impact Estimates are:** Unknown. (See Line 8.)

8. **Fiscal implications:**

#### Administrative Costs

The Department of Taxation ("the Department") and Virginia Tourism Authority consider implementation of this bill as routine, and do not require additional funding.

#### Revenue Impact

The provisions of this bill increasing the credit cap, eliminating the credit for certain types of productions, and allowing unclaimed credit amounts to carry over to future years would have a potentially significant negative General Fund revenue impact. The portion of the bill that would increase the credit cap from \$6.5 million to \$15 million per fiscal year would generally result in an annual negative General Fund revenue impact of \$8.5 million. However, this bill would also retroactively increase the credit cap for Fiscal Year 2021. It is unclear if and how the Virginia Tourism Authority would allocate a retroactive credit cap. If the Virginia Tourism Authority would allocate the Fiscal Year 2021 credit cap during a subsequent fiscal year, the revenue impact of this bill in that fiscal year would double to \$17 million.

The other provisions of this bill would have a potentially significant negative impact on General Fund revenues in addition to the \$8.5 million impact attributable to the proposed cap increase. One portion of this bill would make the following productions not subject to the fiscal year cap:

- Digital interactive media,
- Episodic content,
- Gaming,
- Virtual reality, and
- Augmented reality.

It is unknown how many taxpayers would be in one of the categories above and potentially qualify for the uncapped refundable credit provided by this bill. Because the aggregate amount of credit that taxpayers may claim would be uncapped, this portion of the bill would result in a significant negative revenue impact beginning as early as Fiscal Year 2022.

The portion of the bill that would allow unused portions of the fiscal year cap to be rolled over to increase a subsequent fiscal year's cap would result in an unknown, potentially significant, negative revenue impact. Under current law, no more than \$6.5 million of Motion Picture Production Tax Credits may be allocated. The bill would provide an affirmative mechanism for permitting unallocated credits to pour over to future fiscal years for allocation to taxpayers. Therefore, this bill would have a negative revenue impact to the extent that such unallocated credits are provided to taxpayers in excess of the statutory annual credit cap for a given fiscal year. The impact is unknown and would depend on the amount of unallocated credits that would accrue and be allocated in such years

The portion of this bill that would repeal the MPPTC's sunset provision would have no impact on General Fund revenue because the extension of the sunset date for income tax credits is assumed in the official General Fund revenue forecast.

## **9. Specific agency or political subdivisions affected:**

Virginia Tourism Authority  
Department of Taxation

**10. Technical amendment necessary:** As currently written, the rollover of the unused credit cap under this bill would be tied to the amount of credits “actually claimed.” Because the timing of when credits are claimed can depend on when taxpayers choose to file their returns or amended returns, among other factors, it is unclear how this amount could be accurately determined. In addition, even if this amount could be determined, there may be confidentiality issues because state law generally prohibits the Department from sharing confidential taxpayer information.

**11. Other comments:**

Motion Picture Production Tax Credit

During the 2011 Session, the General Assembly enacted the Motion Picture Production Tax Credit. This credit consists of a series of refundable individual and corporate income credits for motion picture production companies that meet certain criteria. A motion picture production company with qualifying expenses of at least \$250,000 may receive a credit equal to 15 percent of qualifying expenses or 20 percent of qualifying expenses if the production is filmed in an economically distressed area of Virginia.

A motion picture production company may receive an additional credit equal to 10 percent of the total aggregate payroll for Virginia residents employed in connection with the production of a film in Virginia when total production costs in Virginia are at least \$250,000, but not more than \$1 million. This additional credit is equal to 20 percent of the total aggregate payroll of such residents when total production costs in Virginia exceed \$1 million.

A motion picture production company may also receive an additional credit equal to 10 percent of the total aggregate payroll for Virginia residents employed for the first time as actors or members of a production crew in connection with the production of a film in Virginia.

“Qualifying expenses” are defined as the sum of the following amounts spent in Virginia by a production company for the production of a motion picture film or an episodic television series filmed in Virginia:

- Goods and services leased or purchased.
- Compensation and wages of up to \$1 million per individual for personal services with respect to a single motion picture production.

The aggregate amount of all credits that may be allocated to taxpayers is capped at \$6.5 million per fiscal year.

Proposed Legislation

This bill would provide that any MPPTCs allocated to the following types of productions would not be subject to a fiscal year cap:

- Digital interactive media,

- Episodic content,
- Gaming,
- Virtual reality, and
- Augmented reality.

All other types of productions not listed above and qualifying for the MPPTC would be subject to a fiscal year cap. However, this bill would increase such cap from \$6.5 million to \$15 million per fiscal year beginning with Fiscal Year 2021. This bill would also provide that, beginning with Fiscal Year 2021, unused portions of the fiscal year cap would be allowed to rollover to increase the next fiscal year's cap.

This bill would define "motion picture film production" to include episodic content, gaming, virtual reality, and augmented reality productions, provided such productions comply with all other requirements of the MPPTC.

The bill would authorize credits to be issued for multiyear periods. Under current law, if production continues for more than one year, the taxpayer must file a separate application for each year. This bill would repeal the MPPTC's sunset provision. Under current law, the MPPTC's will sunset after Taxable Year 2026.

If enacted during the regular session of the 2022 General Assembly, this bill would become effective July 1, 2022.

#### Similar Legislation

**Senate Bill 520** is identical to this bill.

cc : Secretary of Finance

Date: 1/20/2022 RWC  
HB589F161