

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

April 13, 2011

3:23 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Craig Johnson, Vice Chair
Representative Mike Chenault
Representative Dan Saddler
Representative Steve Thompson
Representative Lindsey Holmes
Representative Bob Miller

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 23(FIN)

"An Act relating to transferable film production tax credits and film production tax credit certificates; requiring the legislative audit division to audit the Alaska film production incentive program; and providing for an effective date by amending the effective dates of secs. 3 and 4, ch. 63, SLA 2008."

- MOVED HCS CSSB 23(L&C) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 23

SHORT TITLE: FILM PRODUCTION TAX CREDIT/AUDITS

SPONSOR(s): SENATOR(s) ELLIS

01/19/11	(S)	PREFILE RELEASED 1/7/11
01/19/11	(S)	READ THE FIRST TIME - REFERRALS
01/19/11	(S)	L&C, FIN
02/17/11	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/17/11	(S)	Heard & Held
02/17/11	(S)	MINUTE(L&C)
02/22/11	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/22/11	(S)	Moved SB 23 Out of Committee
02/22/11	(S)	MINUTE(L&C)
02/23/11	(S)	L&C RPT 4DP 1NR

02/23/11 (S) DP: EGAN, DAVIS, PASKVAN, MENARD
 02/23/11 (S) NR: GIESSEL
 03/21/11 (S) FIN AT 9:00 AM SENATE FINANCE 532
 03/21/11 (S) Heard & Held
 03/21/11 (S) MINUTE(FIN)
 04/04/11 (S) FIN RPT CS 7DP NEW TITLE
 04/04/11 (S) DP: HOFFMAN, STEDMAN, THOMAS, EGAN,
 MCGUIRE, OLSON, ELLIS
 04/04/11 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/04/11 (S) Moved CSSB 23(FIN) Out of Committee
 04/04/11 (S) MINUTE(FIN)
 04/06/11 (S) TRANSMITTED TO (H)
 04/06/11 (S) VERSION: CSSB 23(FIN)
 04/07/11 (H) READ THE FIRST TIME - REFERRALS
 04/07/11 (H) L&C, FIN
 04/08/11 (H) L&C AT 3:15 PM CAPITOL 106
 04/08/11 (H) Heard & Held
 04/08/11 (H) MINUTE(L&C)
 04/10/11 (H) L&C AT 3:15 PM BARNES 124
 04/10/11 (H) -- MEETING CANCELED --
 04/11/11 (H) L&C AT 3:15 PM BARNES 124
 04/11/11 (H) Heard & Held
 04/11/11 (H) MINUTE(L&C)
 04/12/11 (H) L&C AT 4:15 PM BARNES 124
 04/12/11 (H) Heard & Held
 04/12/11 (H) MINUTE(L&C)
 04/13/11 (H) L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

KONRAD JACKSON, Staff
 Representative Kurt Olson
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented amendments and answered questions during the discussion of SB 23.

ACTION NARRATIVE

3:23:23 PM

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:23 p.m. Representatives Olson, Johnson, Saddler, Thompson, Holmes, and Miller were present at the call to order. Representatives Chenault arrived as the meeting was in progress.

SB 23-FILM PRODUCTION TAX CREDIT/AUDITS

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CHAIR OLSON announced that the only order of business would be CS FOR SENATE BILL NO. 23(FIN), "An Act relating to transferable film production tax credits and film production tax credit certificates; requiring the legislative audit division to audit the Alaska film production incentive program; and providing for an effective date by amending the effective dates of secs. 3 and 4, ch. 63, SLA 2008." [Before the committee was Version G.]

[3:24:09 PM](#)

KONRAD JACKSON, Staff, Representative Kurt Olson, Alaska State Legislature, on behalf of the House Labor and Commerce Standing Committee offered to explain the draft amendments to SB 23 in members' packets.

[3:24:27 PM](#)

REPRESENTATIVE THOMPSON made a motion to adopt Amendment 1, labeled 27-LS0252\G.1, Bullock, 4/12/11, which read, as follows:

Page 6, line 10, following "accountant":
Insert "**, licensed in the state and**"

Page 6, line 11, following "office":
Insert ""

CHAIR OLSON objected for the purpose of discussion.

MR. JACKSON explained Amendment 1 was recommended by a committee member who wanted to ensure that any certified public accountants (CPAs) conducting the audits on the film production tax credits are licensed by the State of Alaska (SOA).

[3:25:03 PM](#)

REPRESENTATIVE SADDLER acknowledged Amendment 1 would require CPAs conducting audits to be licensed to practice in the state. He asked whether the business must also be domiciled in Alaska

MR. JACKSON answered that the specific requirement for being domiciled in Alaska is not specified in the language. He offered his belief that a person would not need to be domiciled in Alaska to obtain a business license. He also offered to confirm this with the department.

REPRESENTATIVE THOMPSON assumed licensure in Alaska meant that the CPA's credentials would be approved by the Alaska Board of Public Accountancy.

MR. JACKSON referred to page 6, line 7, of Version G, and related the proposed section addresses the verification by independent certified public accountants.

REPRESENTATIVE HOLMES clarified that the question the committee is considering is whether the CPA conducting the audit on the film production tax credits must have a CPA license or only a business license from the SOA.

MR. JACKSON remarked he did not delve into that detail during the discussion on licensure. He offered his belief that "licensed" in the SOA referred to the business license, not necessarily to the CPA's license. He offered to obtain further clarification from the Department of Commerce, Community & Economic Development (DCCED) or the legal drafter. He said he was unsure if this provision covered both licenses.

REPRESENTATIVE JOHNSON stated the language of Amendment 1 reads, as follows: "independent certified public accountant licensed in the state and..."

REPRESENTATIVE THOMPSON recalled previous wording related to licensure. He suggested that language read: certified public accountant firm doing business in and licensed in the State of Alaska."

MR. JACKSON referred to the regulations in 3 AAC, which listed the requirement that the CPA must hold a current license issued under AS 08.04 by the Board of Public Accountancy. Thus, the CPAs would be required to hold the CPA license by regulation.

CHAIR OLSON removed his objection. There being no further objection, Amendment 1 was adopted.

[3:28:26 PM](#)

REPRESENTATIVE JOHNSON made a motion to adopt Amendment 2, labeled 27-LS0252\G.2, Bullock, 4/12/11, which read:

Page 7, line 11, following "(10)":

Insert "**subject to the limitation in (c) of this section,**"

Page 7, following line 27:

Insert a new bill section to read:

"* **Sec. 19.** AS 44.33.236 is amended by adding new subsections to read:

(c) The qualified expenditures described in (a)(10) of this section may not exceed

(1) 15 percent of the total production budget after June 30, 2013, and before July 1, 2016;

(2) 12 percent of the total production budget after June 30, 2016, and before July 1, 2018; and

(3) 10 percent of the total production budget after June 30, 2018.

(d) For the purposes of (c) of this section, "total production budget" means the sum of the total qualified expenditures and the total expenditures that are not qualified expenditures that are incurred by the producer in connection with a film production approved by the film office."

Renumber the following bill sections accordingly.

CHAIR OLSON objected for the purpose of discussion.

[3:28:40 PM](#)

MR. JACKSON explained Amendment 2 would help limit some of the "above the line" expenditures that would qualify for film production tax credits. The intention of Amendment 2 would be to limit some "above the line" costs to make more of the film production tax credits available for the "below the line" costs related to film production.

REPRESENTATIVE SADDLER asked whether "above the line" refers to costs including actors, producers, and directors. He related his understanding that Amendment 2 would limit the percentage of the entire project's cost for productions that companies could receive related to the film production tax credits.

MR. JACKSON answered yes. He elaborated that "above the line" is a term of art in the film industry which refers to actors, writers, and producers, or the higher paid individuals, as opposed to the "below the line" which he characterized as the "worker bees."

REPRESENTATIVE SADDLER asked how the 15 percent credit and the "stair step" down percentages were determined as the percentage amounts of the tax credit.

MR. JACKSON answered that the "stair step" would range from 15 percent to 12 percent and then to 10 percent of the total production budget. He related "stair step" approach is an attempt to avoid a "major hit" to the entire film production tax credit program in the early years. The goal of the credit program is to build up the film industry in Alaska and the attractiveness of Alaska to the industry. Amendment 2 addresses a concern that Alaska does not have a full labor pool to perform the production work. The intention would be to gradually reduce the tax credits to allow Alaska's labor pool to increase.

REPRESENTATIVE SADDLER related his understanding the film production tax credits would be wider initially and then decrease as the industry becomes more established in Alaska. He asked how the specific percentages were determined.

MR. JACKSON explained that the film industry would be directly affected by this so obtaining industry input on the cap was important so as to not damage the program. The goal has been to provide incentives to hire Alaskans. "We did not want to kill the golden goose so to speak," he said.

CHAIR OLSON related his assessment of the bill's chances for support also determined the percentage of the tax credit.

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REPRESENTATIVE SADDLER offered this provision would relate to people that would not likely be Alaskan residents, for example actors. He asked whether Amendment 2 would limit the type of production. He further asked whether this would mean only big budget productions or small television productions would be interested.

MR. JACKSON related he heard anecdotally the effect of Amendment 2 could limit big star productions. He pointed out that it really is a policy call for the committee and the legislature as to whether the limits are appropriate. He acknowledged the committee has not had sufficient time to vet the percentages used, but offered that Amendment 2 would offer some steps to encourage local hire on productions in Alaska.

[3:32:46 PM](#)

REPRESENTATIVE SADDLER related everyone has heard about Everybody Loves Whales. He asked for the percentage of tax credit the film production film received.

MR. JACKSON answered he did not have the figures. He offered his belief that the final expenditures have not yet been filed. He suggested the film office may be able to address any cost claims on the film.

CHAIR OLSON removed his objection to Amendment 2. There being no further objection, Amendment 2 was adopted.

[3:33:24 PM](#)

REPRESENTATIVE JOHNSON made a motion to adopt Amendment 3, labeled 27-LS0252\G.3, Bullock, 4/12/11, which read:

Page 8, line 30:
Delete "2024"
Insert "2029"

Page 8, line 31:
Delete "one year"
Insert "six years [ONE YEAR]"

CHAIR OLSON objected for purpose of discussion.

MR. JACKSON referred to page 7, lines 28-30 of proposed Section 19 of Version G, which changed the "look back" period for the state to recover film production tax credits after an audit is conducted. Amendment 3 corrects a corresponding change at the tail end of bill that would go six years beyond the date the tax credit was awarded. Thus, the date of 2029 represents the corresponding change, and changing one year to six years.

CHAIR OLSON removed his objection. There being no further objection, Amendment 3 was adopted.

[3:35:03 PM](#)

REPRESENTATIVE JOHNSON made a motion to adopt Amendment 4, labeled 27-LS0252\G.4, Bullock, 4/12/11, which read:

Page 3, line 9:
Delete "this title"

Insert "AS 21.09.210, AS 21.66.110, AS 43.20, AS 43.55, AS 43.56, AS 43.65, AS 43.75, and AS 43.77"

CHAIR OLSON objected for the purpose of discussion.

MR. JACKSON referred to Amendment 4. Initially, the intention was to make tax credits available to other corporate tax payers, including programs in all of Title 43. It was decided to narrow the tax credit to eight programs. He previously outlined the programs affected when he introduced Amendment 4, but it was subsequently discovered the Fisheries Business Tax and Fishery Resource Landing Tax are taxes tied to municipal revenue sharing. The concern was that some communities may lose funding. He asked the committee to consider a conceptual amendment to delete line 4, which read: "AS 43.75, and AS 43.77" which would eliminate the two fisheries taxes which may adversely affect revenue sharing to some communities.

REPRESENTATIVE JOHNSON made a motion to adopt a Conceptual Amendment 1 to Amendment 4 to delete line 4, which read as follows:

AS 43.75, and AS 43.77"

There being no objection, Conceptual Amendment 1 to Amendment 4 was adopted.

CHAIR OLSON removed his objection. There being no further objection, Amendment 4, as conceptually amended, was adopted.

[3:37:34 PM](#)

REPRESENTATIVE JOHNSON made a motion to adopt Conceptual Amendment 5, labeled, By Representative Olson, (Olson #1), which read, as follows [original punctuation provided]:

Page 7, line 11:

Delete

"payroll"

Insert

"expenditures"

CHAIR OLSON objected for the purpose of discussion.

[3:38:01 PM](#)

MR. JACKSON referred to page 7, line 11, and explained that Conceptual Amendment 5 would help to ensure expenses are covered. It was discovered that some actors, the "above the line" members, are sometimes paid via limited liability corporations (LLCs) and are not included as part of the direct payroll.

CHAIR OLSON removed his objection. There being no further objection, Conceptual Amendment 5 was adopted.

[3:38:44 PM](#)

REPRESENTATIVE JOHNSON made a motion to adopt Conceptual Amendment 6, labeled, By Representative Saddler, (Saddler #1), which read [original punctuation provided]:

Page 5, line 7

After (2), insert **"both the immediate and long-term prospects for"**

Page 5, line 9

After (3), insert **"both the immediate and long-term prospects for"**

CHAIR OLSON objected for the purpose of discussion.

REPRESENTATIVE SADDLER explained that Conceptual Amendment 6 attempts to extend language on page 5, line 5 and apply it to the other two paragraphs in proposed Section 11. Since the proposed section would consider the immediate and long-term prospects for the film industry it made sense to extend the short and long-term effects of the production to the employment of Alaska residents and the economy of the state.

CHAIR OLSON remarked that Conceptual Amendment 6 would provide more tools.

REPRESENTATIVE SADDLER pointed out that some cases may exist in which the short-term benefits may exceed the long-term benefits.

CHAIR OLSON removed his objection. There being no further objection, Conceptual Amendment 6 was adopted.

[3:40:35 PM](#)

REPRESENTATIVE JOHNSON made a motion to adopt Conceptual Amendment 7, labeled By Representative Saddler, (Saddler #2), which read [original punctuation provided]:

Page 4, lines 16 - 20:
Delete all material.

Insert

"(5) the total amount of qualified expenditures that were paid by productions qualifying for the film production tax credit to Alaska businesses; and

(6) the total amount of qualified expenditures that were paid by productions qualifying for the film production tax credit to Alaska residents as wages."

CHAIR OLSON objected for the purpose of discussion.

[3:40:55 PM](#)

REPRESENTATIVE SADDLER explained the purpose of Conceptual Amendment 7 is to breakout more information with respect to how much was spent on wages to Alaska residents and how much was spent with Alaska businesses. This could help provide a tool to assess the benefits of the film production tax credit program on Alaska's businesses and its residents.

CHAIR OLSON removed his objection. There being no further objection, Conceptual Amendment 7 was adopted.

[3:41:31 PM](#)

REPRESENTATIVE JOHNSON made a motion to adopt Conceptual Amendment 8, labeled: By Representative Saddler, (Saddler #3), which read [original punctuation provided]:

Page 5, line 11

After (4) insert **"the public perception of"**

CHAIR OLSON objected for the purpose of discussion.

[3:41:46 PM](#)

REPRESENTATIVE SADDLER explained the importance of considering the productions subsidized by the film production tax credit program to ensure the tax credits don't harm Alaska's interests. A large part of the interest in Alaska is the public perception of how well state government safeguards and provides stewardship of its natural resources and our wildlife. Conceptual Amendment 8 would seek to include consideration of the public perception of the state's policy on utilization and development of the state's natural resources.

[3:42:11 PM](#)

REPRESENTATIVE MILLER asked for further clarification.

REPRESENTATIVE SADDLER referred to page 5, lines 1-12, of Version G, as modified by Conceptual Amendment 8, which read:

(b) In determining under (a) of this section whether a production is not contrary to the best interests of the state, the film office may consider

[(1)] the effect of the production on

(1) both the immediate and long-term prospects for the film industry in Alaska;

(2) [THE EFFECT OF THE PRODUCTION ON] the employment of Alaska residents; [AND]

(3) [THE EFFECT OF THE PRODUCTION ON] the economy of the state; and

(4) the public perception of state policy on the utilization and development of the natural resource of the state.

CHAIR OLSON removed his objection. There being no further objection, Conceptual Amendment 8 was adopted.

[3:43:04 PM](#)

REPRESENTATIVE JOHNSON made a motion to adopt Amendment 9, labeled, 27-LS0252\G.11, Bullock, 4/12/11, which read:

Page 1, line 6, through page 2, line 29:
Delete all material.

Page 2, line 30:
Delete "**Sec. 2**"
Insert "**Section 1**"

Renumber the following bill sections accordingly.

Page 8, line 12:
Delete "**July 1, 2023** [JULY 1, 2013]"
Insert "July 1, **2012** [2013]"

Page 8, following line 20:
Insert a new bill section to read:
"*** Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to read:
AUDIT OF PROGRAM. The legislative audit division shall conduct an audit of the Alaska film production incentive program (AS 44.33.231 - 44.33.239) and make the audit available on the first day of the Second Regular Session of the Twenty-Seventh Alaska State Legislature in 2012. The audit must include an itemized accounting of all approved and disapproved expenditures that were submitted for the film production incentive tax credit."

Page 8, line 24:
Delete "**2023**"
Insert "**2012**"

Page 8, line 30:
Delete "**2024**"
Insert "**2018**"

CHAIR OLSON objected for the purpose of discussion.

REPRESENTATIVE JOHNSON explained that Amendment 9 would create a one year sunset of the Alaska film production incentive program until the legislative audit program is conducted. He expressed concern over extending the Alaska film production incentive program for an additional ten years since this program has not yet been audited. He further expressed concern about the state "writing checks" to companies that are not licensed to do business in the SOA, which has happened. He said, "If we are not watching it any closer than that, it raises great concerns." He reiterated his concern over extending this program for ten years, without an audit or an accelerated audit of the program.

He would like to see an audit prior to the program being extended for ten years, he said.

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REPRESENTATIVE MILLER asked whether the Division of Legislative Budget and Audit has the capability to conduct an audit that quickly.

CHAIR OLSON recalled discussing this with Pat Davidson, the Legislative Auditor. He pointed out that any member of the legislature can request the Legislative Budget and Audit Committee (LB&A) conduct an audit. He offered his belief if an audit was requested and the division could not conduct the audit that it could be contracted out and completed within a reasonable time frame.

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REPRESENTATIVE JOHNSON expressed his concern, with any measure that is rushed through the process, noting these bills require additional scrutiny. He related that the Alaska film production incentive program would benefit from substantial funds. He recalled that New Mexico has experienced returns of \$.12 on the dollar. He referred to a study he obtained that questions the validity of the film production tax credit programs, noting many states are revisiting their programs. He further noted that cases involving fraud in Iowa have involved prosecutions. He maintained his concern to have this bill move so quickly through the process. He related that Amendment 9 would allow the legislature to revisit the film production tax credits next year. He said he thought it was prudent to review the program prior to spending \$100 million. He pointed out that the state has not yet expended the initial \$100 million. He remarked that SB 23 would double the state's appropriation for this program. This bill would also extend the program prior to the first audit. He related that it is harder to "put the genie back in the bottle than it is to let it out in the first place."

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REPRESENTATIVE HOLMES asked for clarification on Amendment 9. She offered her belief that Amendment 9 would delete the current audit requirements and replaces it with an immediate audit to be completed by January 2012. It would also sunset the program in one year.

CHAIR OLSON related that it would effectively "gut the bill."

REPRESENTATIVE JOHNSON argued that it would not take away everything in the bill, only the ability to provide tax credits without an audit. He stressed his seriousness to scrutinize the Alaska film production incentive program. He highlighted his substantial concern that the SOA would pay over \$1 million to a company not licensed to do business in the state. He said:

Red flags, red lights go off. It causes me a great amount of concern. This is something I will watch very, very closely. I will request an audit. It happened very quickly. I do recognize that it does do serious damage to the bill. Having said that and expressed my concerns and put it on the record, I will withdraw Amendment 9.

REPRESENTATIVE JOHNSON withdrew Amendment 9.

CHAIR OLSON pointed out a letter in members' packets from the Pat Davidson, Legislative Auditor which outlines those issues. He reiterated that Amendment 9 has been withdrawn.

[3:48:26 PM](#)

REPRESENTATIVE HOLMES moved to report Version G, HCS CSSB 23(L&C), labeled 27-LS0252\G, Bullock, 4/10/11, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

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REPRESENTATIVE CHENAULT objected. He spoke to his objection. He recalled previous concern about the length of time that the film production tax credits would apply. He also expressed concern about the way the credits are applied and who receives the tax credits. He highlighted that he likes the film industry, noting his son graduated from a film school. However, he expressed concern about the tax credits and the ten year time frame, yet the legislature does not know what the level of revenues will be in ten years. He maintained his concern on the amount of the film production tax credits and the way in which the Alaska film production incentive program is administered. He concluded that he would not object to moving the bill out of committee, but he hoped the legislature would review all issues, including that the revenue stream in the state is derived from the finite resources of the state. He pointed out the state's

primary resource is on the decline, yet the legislature spends hours in committee to consider ways to "give our money away." He contended that the legislature has not had meaningful conversations in terms of the health of the industry that provides the money to give away these film production tax credits. As the legislature continues to provide more and more money to agencies and opportunities, it is important to realize the source of the state's revenue. He concluded by not ensuring the healthy resource development in the state, that "we are setting ourselves up for a fall." He removed his objection to moving the bill out of committee. He added his belief committee members and all Alaskans need to understand the state has a revenue stream that is continuing to decline. The only thing masking the problem that the SOA does not have compared to other states in the U.S. is the high price of oil. He reiterated that he removed his objection.

[3:52:04 PM](#)

CHAIR OLSON recapped the work the committee has taken on SB 23. He explained that when SB 23 first came before the committee it was lacking any audit trigger or a sunset date. Now the bill contains three LB&A audit provisions. He offered his belief that the bill has been significantly tightened up.

[3:52:39 PM](#)

There being no further objection, the HCS CSSB 23(L&C) was reported from the House Labor and Commerce Standing Committee.

[3:52:51 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 3:52 p.m.