

New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

25-1080.3

SB 286, *creating the New Hampshire office of film and creative media.*

Executive Departments and Administration

This bill:

I. Establishes an office of film and creative media within the department of business and economic affairs.

II. Establishes business enterprise tax credits for qualifying film and motion picture companies.

III. Appropriates funds to staff the office of film and creative media.

The proposed legislation creates a comprehensive framework to create the Office of Film and Creative Media within the Department of Business and Economic Affairs (DBEA) and provides two business enterprise tax (BET) credits as incentive for film and creative media production companies to film in New Hampshire. In this fiscal note, the DRA has limited its analysis to the sections of the proposed legislation that fall within the DRA's purview, namely the creation of the Film and Motion Picture tax credits (FMPTCs) in sections 2 and 4.

Section 2 of the proposed legislation adds new subdivisions 15 through 17 to RSA 77-E collectively titled Film and Motion Picture (FMP) Tax Credits. The program contains two BET credits, one for FMP payroll costs and one for FMP production costs.

New RSA 77-E:15 defines "film and motion picture" for the purposes of allowing the payroll and production credits.

New RSA 77-E:16 establishes the FMP Payroll tax credit. The credit is allowed against the tax due for film and motion picture production companies that incur at least \$50,000 worth of production-related expenses in a fiscal year. The term "production-related expenses" is not defined and does not appear to be geographically limited. For companies that meet the spending threshold, the credit amount is equal to 25% of qualifying payments made to employees (up to a maximum \$250,000 per employee) connected with filming or production of a motion picture within this state. DRA interprets this to mean that the credit allowed is up to \$62,500 per employee for work performed anywhere that is connected to filming or production activities within this state. The DRA further assumes that fiscal year means the film and motion picture production company's tax year and that there is no limit to the number of employees eligible to earn the credit.

New RSA 77-E:17 establishes the FMP Production tax credit. The credit is allowed against the tax due for film and motion picture production companies that spend at least 50% of their time

filming in New Hampshire for any project they work on, produce or release. The proposed legislation also provides that to qualify for the credit, the New Hampshire-related production expenses of the company must exceed 50% of the total production-related expenses of the company. DRA understands these provisions, in combination, to mean that not less than 50% of a company's filming time must be spent in New Hampshire for all projects and that more than 50% of a company's production expenses must be related to production activities within this state. For companies that meet this test, the credit is 25% of the business' production-related expenses (excluding payroll expenses) connected to filming and producing a motion picture in New Hampshire. DRA interprets this to mean that the credit may be claimed for expenses incurred anywhere that are connected to filming or production activities within this state.

The DRA assumes that both FMP credits established under RSA 77-E:16 and RSA 77-E:17 are non-refundable, non-transferable, and cannot be used to offset Business Profits Tax (BPT) liability. Further, the DRA assumes that there is no annual or total program cap for either FMP credit.

Section 4 of the proposed legislation sets the effective date 60 days after its passage. The DRA assumes that the credit will be in effect for BET tax year 2025 but realistically taxpayers may not be eligible until tax year 2026.

The proposed legislation would not result in any additional ongoing administrative costs for the DRA to amend its forms, the taxpayer portal, Granite Tax Connect, and DRA's Revenue Information Management System ("RIMS") that could not be absorbed in the DRA operating budget.

The fiscal impact of this proposed legislation as it relates to the cost of the credits is indeterminable. The DRA is unable to know how many film and television productions will be eligible for the FMP tax credits. However, based on the effective date of the proposed legislation, the DRA as assumes there will be decreases to the General and Education Trust funds beginning in FY 2026.

It should also be noted that the FMP tax credits will decrease BET liability and as a result, decrease the BET credit available to offset the BPT, increasing BPT revenue. However, the BPT increase will be less than the BET decrease because not all taxpayers have a BPT liability to be offset by a BET credit and not all taxpayers' BET liability exceeds the BPT credit. In those situations, the BET loss in revenue is not offset by increased BPT liability.