

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 2242

SPONSOR: Governmental Oversight and Productivity Committee, Commerce and Economic Opportunities Committee and Senator Saunders

SUBJECT: Economic Development

DATE: March 5, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	CM	Favorable/CS
2.	Wilson	Wilson	GO	Favorable/CS
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute creates the entertainment industry financial incentive program (program) to provide 10 percent reimbursements of qualifying expenditures to production companies and payments to digital effects companies based on their billings. Maximum reimbursements authorized are as follows: a motion picture, \$2 million; a made-for-television movie, \$150,000; a television episode, \$50,000; and a television commercial, \$25,000. A digital effects company located in Florida that furnishes services or digital material to an entity producing motion pictures or television programs is eligible for payment from the program in the amount of 5 percent of its gross billings, less sales tax. A digital effects company that relocates to Florida from another state or Canada is eligible for a bonus payment from the program equal to one-half of 5 percent of its billings for the period from one year before to one year after the business relocates to Florida.

Applications for payment from the program must be submitted to the Office of Film and Entertainment for a determination of the applicant's eligibility for payment and the amount of payment due. The Office of Film and Entertainment shall recommend to the Office of Tourism, Trade, and Economic Development that payments be made in accordance with its determinations.

An eligible entity that fraudulently receives payment for a claim under the program is liable for reimbursement of the amount paid plus a penalty of double the amount of the payment and the state's investigative costs.

This committee substitute creates section 288.1254, Florida Statutes.

II. Present Situation:

State of Entertainment Industry

Over the past several years, increasing numbers of films by U.S. companies have been produced outside the United States largely due to the lower production costs, tax incentives, and subsidies provided by Canada and other countries. U.S. Department of Commerce, *Impact of the Migration of U.S. Film and Television Production ("Film Report")*, p. 1, March, 2001. This migration of film production to other countries for economic reasons is commonly referred to as "runaway production." As a result, many states have recently created or expanded their own incentives and subsidies to prevent such runaway production.

Existing Florida Incentives

Currently, Florida provides a single application process for qualified entertainment industry production companies to obtain a certificate of exemption to take advantage of exemptions under ss. 212.031, 212.06, and 212.08, F.S.

- *Lease or rental of real property:* Section 212.031(1)(a)9., F.S., provides that property used as an integral part of performance of any activity or service performed directly in connection with the production of a qualified motion picture is tax exempt. Examples of things included in exempt services are photography, sound and recording, casting, location managing and scouting, shooting, creation of special and optical effects, animation, adaptation, etc.
- *Fabrication labor exemption for motion picture producers:* Section 212.06(1)(b), F.S., provides that fabrication labor is not taxable when a motion picture producer uses his or her own equipment and personnel to produce a qualified motion picture defined in Florida law.
- *Master tapes, records, films, or video tapes (partial exemption):* Section 212.08(12), F.S., provides that gross receipts from the sale or lease of, and the storage, use, or other consumption in Florida of, master tapes or master records embodying sound, or master films or master video tapes are exempt from taxation. Amounts paid to studios for the tangible elements of such masters are taxable.
- *Equipment exemptions:* Section 212.08(5)(f), F.S., provides an exemption on the purchase or lease of certain equipment used exclusively as an integral part of production activities in Florida. This pertains to motion picture equipment, video equipment, and sound recording equipment. In order to be exempt at the point of sale, the production company must apply for a certificate of exemption to be presented to a registered Florida sales and use tax dealer when making purchases and rentals of qualified production equipment.

Section 288.1258, F.S., provides the single application process for qualified entertainment industry production companies to obtain a certificate of exemption from sales and use taxes on the lease or rental of real property used as an integral part of the performance of qualified production services; motion picture or video equipment and sound recording equipment that are purchased or leased for use in this state in certain specific entertainment production activities; and, part of the sales price of master tapes, records, films, or video tapes. The

Office of Film and Entertainment is responsible for determining if a company is a “qualified production company” and is, therefore, eligible for exemption certification. The Department of Revenue provides the certificate of exemption. The office and the Department of Revenue work together on the implementation of this application and certification process. Last year, the film production industry saved \$1,441,129 by using these sales and use tax exemptions. Governor’s Office of Film and Entertainment, *Annual Report: Motion Picture Sales & Use Tax Exemption*, p. 3, January 2002.

Other economic development incentives that may be available to the film production industry include:

- *Qualified Target Industry Refund*: authorizes tax refunds of \$3,000 per new job created or \$6,000 per new job created in an enterprise zone or rural county. Refunds may be even higher if the average wage of the new jobs is higher than the average wage in the community. Section 288.106, F.S.
- *Urban High-Crime Area Job Tax Credit Program*: authorizes new and existing businesses located in designated high crime area to receive a tax credit against corporate income tax or sales and use tax in the amount of \$500 to \$2,000 for each new employee under certain conditions. Sections 212.097 and 220.1895, F.S.
- *Rural Job Tax Credit Program*: authorizes new and existing businesses located in certain rural areas to receive a tax credit against corporate income tax or sales and use tax in the amount of \$1,000 to \$1,500 for each new employee under certain conditions. Sections 212.098 and 220.1895, F.S.
- *Enterprise Zone Program*: authorizes a variety of state and local tax credits and other economic development incentives for businesses located in designated geographic areas.

Canadian Incentives

The Canadian federal and provincial governments offer incentives to the film industry to assist domestic producers and attract foreign production. *Film Report*, p.71. As the result of these incentives and other cost reducing characteristics of producing in Canada, U.S.-developed productions located in Canada may save up to 26 percent on production costs. *Film Report*, p. 72 (citing The Monitor Company, *The Economic Impact of U.S. Film and Television Runaway Film Production*, p. 23, June 1999). Examples of some of the incentives offered by Canada and its provinces are provided below

Federal

Film Production Service Tax Credit (PSTC): This is a tax credit equal to 11 percent of salary and wages paid to Canadian residents, with no cap on the amount. Eligibility: Available to taxable corporations with a permanent establishment in Canada whose primary business is the production of film and videos. Production costs must be at least C\$1.0 million for a film, or C\$100,000 for a pilot or episode of less than 30 minutes.

Canadian Film or Video Production Tax Credit (CPTC): This credit is equal to 25 percent of eligible labor costs, to a maximum of 12 percent of total production costs. Total production costs are reduced by provincial tax credits and other

grants. Eligibility: Available to Canadian-controlled taxable corporations whose primary business is Canadian films and videos. A minimum of 75 percent of production costs must be paid to Canadian individuals and 75 percent of production must take place in Canada.

Provinces

British Columbia

Film Production Services Tax Credit: A credit of 11 percent of the labor costs paid to taxable Canadian residents and corporations. Taxable Canadian corporations or foreign-owned corporations with permanent facilities in British Columbia are eligible for this program. Production costs must be at least C\$1.0 million for a film, or C\$200,000 for an episode of a series.

Ontario

The Ontario Film Development Corporation (OFDC) administers a tax credit program worth an estimated C\$50 million a year. The OFDC administers four tax credits based on eligible Ontario labor expenditures.

Ontario Production Services Tax Credit: An 11 percent refundable tax credit on Ontario labor costs, available to foreign-based and domestic productions. A bonus of 3 percent is provided for projects with at least five production days in Ontario, and at least 85 percent of production days outside of the Greater Toronto Area.

Ontario Computer Animation & Special Effects Tax Credit: A 20 percent rebate of qualifying labor expenditures. Available to Canadian or foreign-owned corporations.

Ontario Interactive Digital Media Tax Credit: This 20 percent refundable tax credit on labor costs is eligible for projects involving interactive digital media.

Quebec

Film Tax Credits: An 11 percent refundable tax credit for film or television productions, applicable to labor costs. There is also a special 31 percent tax credit for certain labor expenditures related to computer animation and special effects. Minimum production costs are C\$100,000 for a 30-minute TV episode, C\$200,000 for a longer episode, and C\$1.0 million for a film production.

Refunds of Provincial Sales Tax: A refund to non-residents of the 7.5 percent tax on the cost of goods and services.

Quebec City Film Incentives: Granted to foreign film producers when billing for municipal services. This eliminates the 20 percent administration fee, as well as approximately 30 percent of the gross cost of municipal services provided.

Film Report, pp. 75-76 (referencing research conducted by the *US&FCS – December 2000 and Canadian Audio-Visual Certification Office Information Bulletin*).

Other Nations

Other nations in addition to Canada provide subsidies and tax incentives to the film industry. However, because the runaway production to those countries is relatively insignificant compared

to runaway production to Canada, no discussion about their specific incentives or subsidies is contained in this staff analysis.

New Incentives in Other States

Although this staff analysis does not attempt to provide a comprehensive state-by-state review of the film production incentives provided by other states, the following are examples from some states that have recently enacted incentives to benefit the film production industry.

Alabama

Effective December 2001, a production company filming in the state of Alabama may qualify for a sales and use tax exemption under Alabama Code ss. 40-23-43 and 40-23-62, and a lodging tax exemption pursuant to Alabama Code s. 40-26-1. See also, <http://www.alabamafilm.org/action/incentives.htm>.

California

California enacted legislation in 2000 to stop the decline of its film production industry by authorizing film industry companies to lease state property at below market rates. Cal. Gov't Code s. 15363.71.

Hawaii

In 2000, Hawaii created the Hawaii television and film development fund. Haw. Rev. Stat. s. 201-113. The fund provides grants to eligible Hawaii projects and provides venture capital to eligible Hawaii projects. *Id.*

New Mexico

The New Mexico Legislature recently passed the Film Production Tax Credit and the Film Investment Bills. New Mexico Film Office, *New Mexico Sends Hollywood a Valentine!*, February 22, 2002, at <http://www.edd.state.nm.us/FILM/index.html>. The bills are expected to be signed by the Governor. *Id.* The Film Production Tax Credit Bill allows companies to receive a 15 percent rebate on all direct film expenditures made in New Mexico during production, including but not limited to talent, crew, food, lodging, travel, and equipment. *Id.* The Film Investment Bill adds language to an earlier statute to allow both debt and equity investments, provided that an approved guarantee is in place. *Id.*

North Carolina

In 2000, the North Carolina Legislature created the Film Industry Development Account. N.C. Gen. Stat. s. 143B-434.3. The account provides grants not to exceed 15 percent of the amount a production company spends for goods and services in North Carolina during a calendar year. Grants may not exceed \$200,000. *Id.*

Oklahoma

In 2001, the Oklahoma Legislature specifically found in statute that high production costs were driving motion picture production to Canada. Okla. Stat. tit. 68, s. 3622. Based on that finding, the Legislature manifested its intent to enact incentives for the film production industry that stand out from among other states offering incentives. *Id.* The incentive created by the Oklahoma Legislature is the Oklahoma Film Enhancement Rebate Program, which provides a rebate in the

amount of 15 percent to film production companies for documented expenditures made in Oklahoma directly attributable to the production of a long-form narrative film or television production. Okla. Stat. tit. 68, s. 3624. Payments from the rebate program are limited to \$2,000,000 per year. *Id.*

Office of Tourism, Trade, and Economic Development

The Office of Tourism, Trade, and Economic Development (OTTED) was created within the Executive Office of the Governor by s. 14.2015, F.S., to administer economic development programs. OTTED is also responsible for providing administrative oversight for the Office of Film and Entertainment. Section 14.2015(2)(h), F.S.

Office of Film and Entertainment

The Office of Film and Entertainment is responsible for promoting and providing services to the state's entertainment industry. Section 288.1251, F.S. As part of that responsibility, the Office of Film and Entertainment is required to review and approve applications for entertainment industry sales and use tax exemptions, an incentive to encourage the growth of Florida's entertainment industry. Section 288.1258, F.S.

III. Effect of Proposed Changes:

Entertainment Industry Financial Incentive Program

This committee substitute finds that a public purpose is served by creating the entertainment industry financial incentive program (program) to provide incentives to production companies and digital effects companies.

Authorized Reimbursements

An entity that that makes qualifying expenditures for the total or partial production of a motion picture, made-for-television movie, television episode, or commercial may receive a reimbursement of 10 percent of certain expenditures within this state from the program. Maximum reimbursements authorized are as follows:

- a motion picture, \$2 million;
- a made-for-television movie with a running time of 90 minutes or more, \$150,000;
- a television episode, \$50,000; and
- a television commercial, \$25,000, with at least \$1 million in qualified expenditures.

Expenditures qualifying for reimbursement generally include salaries paid to Florida residents and other production expenditures made in Florida. However, reimbursement is authorized for actor salaries except for the two that are the highest paid.

Digital Effects Company Payments

A digital effects company located in this state that furnishes services or digital material to an entity producing motion pictures or television programs is eligible for payment from the program in the amount of 5 percent of its gross billings, less sales tax. Because the payment to a digital effects company is based on billings rather than receipts, the committee substitute may be construed to authorize payments from the program for services or digital material provided for which receipt of the billed payment is never expected or realized.

Digital Effects Company Relocation Payment

A digital effects company that relocates to Florida from another state or Canada is eligible for a bonus payment from the program equal to one-half of 5 percent of its billings for the period from one year before to one year after the business relocates to Florida. Because the payment to a digital effects company is based on billings rather than receipts, the committee substitute may be construed to authorize payments from the program for services or digital material provided for which receipt of the billed payment is never expected or realized.

Program Administration

Applications for payment from the program must be submitted to the Office of Film and Entertainment for a determination of the applicant's eligibility for payment and the amount of payment due. The Office of Film and Entertainment shall recommend to the Office of Tourism, Trade, and Economic Development (OTTED) that payments be paid in accordance with its determinations. Payments shall be made on a first-come, first-served basis until the appropriation for that fiscal year is exhausted. OTTED is authorized to adopt rules pursuant to ch. 120, F.S., to implement the program.

Fraudulent Applications

An eligible entity that fraudulently receives payment for a claim under the program is liable for reimbursement of the amount paid, a penalty of double the amount of the payment, and the state's investigative costs. Because the penalty provisions of this committee substitute are applicable only to an "eligible entity," an ineligible entity that fraudulently receives payment from the program may avoid these penalty provisions.

Appropriation

The committee substitute appropriates the sum of \$10 million from the General Revenue Fund to the Office of Tourism, Trade, and Economic Development to implement the program in FY 2002-2003, of which \$50,000 may be used for administration.

Effective Date

The committee substitute takes effect on July 1, 2002.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Committee Substitute for Senate Bill 2244 creates a trust fund for the moneys appropriated for the entertainment industry financial incentive program created by this committee substitute.

D. Other Constitutional Issues:

Section 10, Art. VII, State Constitution prohibits the state from becoming a joint owner with, or stockholder of, or giving, lending or using its taxing power or credit to aid any corporation, association, partnership or person. Cases interpreting this section of the Constitution have upheld various projects including the use of tax-exempt municipal bonds to finance the construction of a hotel and a sports stadium. *State v. Orange County Industrial Development Authority*, 417 So. 2d 959 (Fla. 1982); *Poe v. Hillsborough County*, 695 So. 2d 672 (Fla. 1997). However, no analogous judicial decisions have been found determining whether the direct cash benefits such as the type contemplated by this committee substitute have a sufficient public purpose to survive scrutiny under s. 10, Art. VII, State Constitution. However, Attorney General opinions have found that a public purpose exists for the disbursements of funds to private businesses pursuant to economic development programs after a finding from a legislative body that a public purpose exists. See AGO 94-53, June 8, 1994; AGO 96-50, June 27, 1996.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The Office of Tourism, Trade, and Economic Development (OTTED) will be authorized to reimburse motion picture and film production companies for up to 10 percent of their qualifying expenditures made in this state. OTTED will be authorized to provide incentives to digital effects companies that relocate to this state in the amount of one-half of 5 percent of the business's billings from one year before to one year after the business relocates to Florida. OTTED will also be authorized to pay a digital effects company located in Florida 5 percent of its billings, less sales tax, for services or digital material provided to an entity producing motion pictures or television programs.

C. Government Sector Impact:

The committee substitute appropriates the sum of \$10 million from the General Revenue Fund to fund the entertainment industry financial incentives program. OTTED may have additional administrative duties to enforce the penalties for fraudulent claims. OTTED and the Office of Film and Entertainment will also have administrative duties related to the review and approval of payment of incentives.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
