

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.)

Prepared By: Commerce and Consumer Services Committee

BILL: CS/SB 1372

SPONSOR: Commerce and Consumer Services and Senator Saunders

SUBJECT: Economic Development: Entertainment Industry

DATE: March 23, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barrett	Cooper	CM	Fav/CS
2.	_____	_____	GE	_____
3.	_____	_____	TA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute:

- Increases financial incentive program reimbursement caps to \$2 million, for television productions, music videos, commercials, industrial films, and educational films;
- Expands the definition of “filmed entertainment” and applies it in the context of qualified productions for the financial incentive program, thereby qualifying promotional videos and films, documentary films, and new types of television programming for financial incentives;
- Establishes two “queues” for the distribution of incentive funds;
- Broadens and clarifies several definitions; and
- Changes the due date for the Office of Film and Entertainment’s annual report.

This committee substitute substantially amends the following sections of the Florida Statutes: 288.125 and 288.1254.

II. Present Situation:

Runaway Productions

The film and entertainment industry commonly refers to a production developed in the United States, but produced in another country, as a “runaway production.” The term also entails interstate competition for productions.¹ In 1999, the Screen Actors Guild and the Directors Guild

¹ See, e.g., Martha Jones, *Motion Picture Production in California* 46 (Mar. 2002), available at <http://www.library.ca.gov/crb/02/01/02-001.pdf> (last visited March 2005) (citing that film production capacity has spread

of America commissioned a study on the economic impact of runaway production on the domestic film and entertainment industry.² The study distinguished between “creative” runaway production (a film’s setting requires production on location in another country) and “economic” runaway production (a production is filmed in another country to reduce production costs).³ According to the study, approximately 27 percent of runaway productions are economic runaways. In addition, the study reports the nation’s number of economic runaways increased by 14 percent from 1990 to 1998, causing a \$10.3 billion loss of revenues to the U.S. economy in 1998.

The study observed that most economic runaway productions moved abroad to Canada (81 percent), Australia (6 percent), or the United Kingdom (4 percent).⁴ In assessing the reasons that economic runaways left the United States, the study identified several factors that impact the decisions of producers to leave (e.g., monetary exchange rates, film and television production infrastructure, and government tax incentives).

Financial Incentives

The international trend of runaway production was observed by the United States Department of Commerce in a 2001 report.⁵ In response to runaway production, many U.S. states provide various financial incentives to attract film and entertainment productions. According to the report, six states (California, New York, Texas, Florida, Illinois, and North Carolina) account for approximately 88 percent of national revenues from the motion picture industry, with Florida representing 7 percent of the industry.⁶ Except for Illinois, each of these states provides an exemption from its sales and use tax for film productions.⁷ Nationally, at least 25 states provide this exemption from sales and use taxes. Other types of incentives commonly include a rebate or exemption of transient occupancy taxes, exemptions from fees for filming on state property, and simplified permitting procedures.⁸ Two states (Minnesota and Oklahoma) provide reimbursements for production expenditures made in the state, both of which advertise the programs as direct competition with Canada.⁹ By contrast, North Carolina provides rebates to producers for expenditures of qualified in-state goods, and California provides reimbursements for production costs when filming on public property. In addition, Illinois established an interest-rate-reduced loan program for motion picture production, industrial films, and commercials.

from California to other states, with the most significant growth occurring during the 1980s and 1990s in Florida and North Carolina).

² Monitor Co., *U.S. Runaway Film and Television Production Study Report* (July 1999), available at http://www.dga.org/thedga/leg_rp_runaway.pdf (last visited March 2005).

³ *Id.* at 2.

⁴ *Id.* at 3 & 9.

⁵ U.S. Department of Commerce, *Migration of U.S. Film and Television Production* (Jan. 1, 2001), available at <http://www.ita.doc.gov/media/migration11901.pdf> (last visited March 2005).

⁶ *Id.* at 25.

⁷ Jones, *supra* note 1, at 43.

⁸ *Id.* at 41.

⁹ *Id.* at 89-97.

Entertainment Industry Tax Incentives in Florida

Under current law, entertainment industry qualified production companies are eligible for several exemptions from the sales and use tax.¹⁰ In 2000, the Legislature authorized qualified production companies to obtain a single certificate of exemption which allows the companies to benefit from these exemptions by not having to pay tax at the point of sale, rather than by having to seek reimbursement or refund of the tax.¹¹ Qualified production companies are eligible for tax exemptions under ss. 212.031, 212.06, and 212.08, F.S.:

- ***Lease or rental of real property.***—Exempts from tax the lease or rental of real property that is used as an integral part of an activity or service performed directly in connection with the production of a qualified motion picture (e.g., photography, sound and recording, casting, location managing and scouting, shooting, creation of special and optical effects, animation, adaptation, etc.) (s. 212.031(1)(a)9., F.S.).
- ***Fabrication labor.***—Exempts fabrication labor from tax when a motion picture producer uses his or her own equipment and personnel to produce a qualified motion picture (s. 212.06(1)(b), F.S.).
- ***Production equipment.***—Exempts from tax the purchase or lease of motion picture and video equipment, and of sound recording equipment, used in Florida for motion picture or television production or for the production of master tapes or master records (s. 212.08(5)(f), F.S.).
- ***Master tapes.***—Exempts from tax the sale, lease, storage, or use in Florida of master tapes or records for sound recordings, master films, and master video tapes, but subjects to the tax payments to recording studios and motion picture or television studios for the tangible elements of the tapes, records, films, or videos (s. 212.08(12), F.S.).

The Office of Film and Entertainment, in cooperation with the Department of Revenue, developed a standardized application form for use in approving qualified production companies.¹² Under current law, a production company must apply for the certificate of exemption to the Department of Revenue (s. 288.1258(2)(a), F.S.). The department forwards the application to the Office of Film and Entertainment, which must approve or deny the application based on established approval criteria. If the Office of Film and Entertainment approves an application, the Department of Revenue issues the certificate of exemption to the qualified production company (s. 288.1258(2)(b)2., F.S.).

In addition to tax exemptions provided specifically for the entertainment industry, the Legislature has authorized other economic development incentives for which entertainment industry production companies may be eligible:

- ***Qualified Target Industry Businesses Tax Refund Program.***—Authorizes a tax refund for a business in a targeted industry of \$3,000 per new job created or \$6,000 per new job created

¹⁰ *Id.* at 25.

¹¹ Chapter 2000-182, L.O.F.; s. 288.1258, F.S.

¹² Department of Revenue, *Entertainment Industry Qualified Production Company Application for Certificate of Exemption*, Form DR-230 (Mar. 2001), available at <http://www.myflorida.com/dor/forms/2001/DR230-i.pdf> (last visited March 2005); s. 288.1258(2)(c), F.S.

in an enterprise zone or rural county. A refund may be increased if the average wage of the new jobs is higher than the average wage in the community (s. 288.106, F.S.).

- ***Urban High-Crime Area Job Tax Credit Program.***—Authorizes new and existing businesses located in a qualified high-crime area to receive a tax credit against the corporate income tax or the sales and use tax in an amount between \$500 and \$2,000 for each new employee under certain conditions (ss. 212.097 and 220.1895, F.S.).
- ***Rural Job Tax Credit Program.***—Authorizes new and existing businesses located in a qualified rural area to receive a tax credit against the corporate income tax or the sales and use tax in an amount of \$1,000 to \$1,500 for each new employee under certain conditions (ss. 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 (ss. 290.001-290.016, F.S.).

Governor's Office of Film and Entertainment

In 1999, the Legislature created an Office of Film and Entertainment within the Governor's Office of Tourism, Trade, and Economic Development (OTTED).¹³ The purpose of the Office of Film and Entertainment is to develop and promote the state's entertainment industry and to serve as a liaison between the entertainment industry and other state and local governmental agencies, local film commissions, and labor organizations (s. 288.1251(2)(a), F.S.). The office gathers statistical information related to the state's entertainment industry, provides information and services to businesses, communities, organizations, and individuals engaged in entertainment industry activities, and administers field offices outside the state and coordinates with regional offices maintained by counties and regions of the state. The Office of Film and Entertainment affirms that its mission is to build, support, and market the film and entertainment industry in Florida.¹⁴ The office has a budget of approximately \$799,000 and 4 full-time-equivalent positions, including its Los Angeles field office.

The head of the Office of Film and Entertainment is the Commissioner of Film and Entertainment. The film commissioner is hired by the director of OTTED, who must conduct a national search for a qualified person to fill the position. The film commissioner is assisted by the Florida Film and Entertainment Advisory Council, which is composed of 17 members, of which 7 members are appointed by the Governor, 5 members are appointed by the President of the Senate, and 5 members are appointed by the Speaker of the House of Representatives (s. 288.1252(3)(a), F.S.).¹⁵ In addition, the film commissioner, a representative of Enterprise Florida, Inc., a representative of Workforce Florida, Inc., and a representative of the Florida Tourism Industry Marketing Corporation (commonly cited as "VISIT FLORIDA") serve ex officio as nonvoting members of the council (s. 288.1252(3)(e), F.S.). The advisory council provides the Office of Film and Entertainment and OTTED with industry insight and expertise related to developing, marketing, promoting, and providing service to the state's entertainment industry.

¹³ Chapter 99-251, L.O.F.; s. 288.1251(1), F.S.

¹⁴ Office of Film & Entertainment, at <http://www.filminflorida.com> (last visited March 2005).

¹⁵ See Office Film & Entertainment, *Florida Film & Entertainment Advisory Council*, at <http://www.filminflorida.com>.

In consultation with the advisory council, the Office of Film and Entertainment is required to develop and implement a 5-year strategic plan to guide its activities in the areas of entertainment industry development, marketing, promotion, liaison services, field office administration, and information (s. 288.1251(2)(a), F.S.).

Entertainment Industry Financial Incentive Program

In 2003, the Legislature created the entertainment industry financial incentive program within the Governor's Office of Film and Entertainment (OFE). The purpose of the program is to encourage Florida's use as a site for filming and production of motion pictures, made-for-television movies, commercials, music videos, industrial and educational films, and television programs by the entertainment industry. The program is administered by the Office of Film and Entertainment, subject to the policies and oversight of the Governor's Office of Tourism, Trade, and Economic Development (OTTED). The Office of Film and Entertainment is required to submit an annual report to the Governor and Legislature regarding the return on investment of funds expended for the entertainment industry financial incentive program. The program allows the state to provide financial incentives to three categories of filmed entertainment producers: qualified productions, digital-media-effects companies, and qualified relocation projects.

Qualified Productions

A qualified production is a motion picture, teleproduction, commercial, music video, or digital-media-effects production that demonstrates at least \$850,000 in total qualified expenditures in this state for the total or partial production of a motion picture, made-for-television movie with a running time of 90 minutes or more, commercial, music video, industrial and educational film, television series pilot, or television episode. A qualified production is eligible to receive financial incentives from the state, in the form of reimbursements for up to 15 percent of its qualifying expenditures in the state on the production. These qualifying expenditures include:

- Salaries and employment benefits paid for services rendered in Florida;
- Rents for real or personal property used in the production;
- Payments for preproduction, production, postproduction, and digital-media-effects services rendered in Florida; and
- Cost of set construction.

The following are maximum thresholds for the amount of financial incentives which may be paid to a qualified production:

- Motion picture: \$2 million.
- Made-for-television movie or television series pilot with a running time of 90 minutes or more: \$450,000.
- Single television series pilot or television episode: \$150,000.
- Music video or commercial: \$25,000.
- Industrial film or an educational film: \$15,000.

All reimbursements in a fiscal year are subject to appropriation on a “first-come, first-served basis” until the appropriation for that fiscal year is exhausted. If a qualified production is not continued according to a reasonable schedule, the Office of Film and Entertainment can withdraw the production’s eligibility and reallocate the production’s financial incentives to other qualified productions.

Digital-Media-Effects Companies

A digital-media-effects company in this state which furnishes digital material for a qualified production may be eligible to receive financial incentives from the state, in the form of a payment of \$100,000 or 5 percent of the company’s annual gross revenues on qualified expenditures before taxes, whichever is less. To be eligible for the incentive payment, the digital-media-effects company must furnish the digital material for a qualified production that is certified by the Office of Film and Entertainment.

Qualified Relocation Projects

A qualified relocation project is eligible to receive a financial incentive from the state, in the form of a one-time payment of \$200,000 or 5 percent of the project’s annual gross revenues before taxes for the first 12 months of conducting business in its Florida domicile, whichever is less. Any corporation, limited liability company, partnership, corporate headquarters, or other corporate entity domiciled in another state which includes as one of its primary purposes digital-media-effects or motion picture and television production and which is considering relocation to this state may apply for certification as a qualified relocation project.

III. Effect of Proposed Changes:

Section 1 amends s. 288.125, F.S., to broaden the definition of “entertainment industry” by changing the term “television series” to “television programming.” (Section 2 of this committee substitute clarifies that a “television program or series” includes drama, reality, comedy, soap, telenovella, game show and miniseries) In addition, this section is amended to change the term “made for TV motion picture” to “made for television movies.”

Section 2 amends s. 288.1254, F.S., to expand the definitions of “filmed entertainment,” “production costs,” “qualified expenditure,” and “qualified production.”

The definition of “filmed entertainment,” which includes a motion picture, commercial, music video, or digital-media-effects production, is expanded to include: television pilots, presentations for television pilots, made for television movie, industrial and educational films, promotional videos or films, educational and documentary films, and television series, including but not limited to drama, reality, comedy, soap, telenovella, game show and miniseries.

The term “teleproduction” is deleted from the definition. The terms “electronic gaming industry and sporting events” are specifically excluded from the definition.

This expanded general term replaces specific types of filmed entertainment used throughout this section, thereby expanding eligibility for financial incentives, or increasing the amount of financial incentive for specific types of filmed entertainment. (See Reimbursement Eligibility below).

The following terms within the definition of “filmed entertainment” are also defined:

- “motion pictures” means motion pictures made on or by film, tape, or otherwise and produced by means of motion picture cameras, electronic cameras or devices, tape devices, any combination of the foregoing, or any other means, methods, or devices now used or which may hereafter be adopted; and
- “digital-media-effects” means visual elements created through the modification of already existing or newly created visual elements for film, video, or animated media through the use of digital 2D/3D animation or painting, motion capture, or compositing technologies.

The definition of “production costs” is expanded to provide a more detailed listing of what is considered a legitimate cost as it relates to the incentive program.

The definition of “qualified expenditures” is amended to exclude the compensation of the two highest paid employees (a specification that is transferred from sub-paragraph (4)(a)2.).

The definition of “qualified production” is amended to reference filmed entertainment, and to exclude those productions that already planned to shoot in the state.

Paragraph (3)(b) provides that a digital-media-effects company can only apply for reimbursement if the digital material is furnished to a qualified production that is certified by OFE. The section is amended to delete the certification requirement.

This section transfers provisions regarding the standardized application procedure managed by OFE from paragraphs (3)(e) and (f) to subparagraphs (3)(d) 2. and 3.

Reimbursement Eligibility

Subsection (4) is amended to clarify the eligibility criteria for reimbursement under the entertainment industry financial incentives program. A qualified production that is certified by OFE is eligible for a reimbursement of 15 percent, rather than “up to 15 percent,” of its qualifying expenditures on a “filmed entertainment” project that has a minimum of \$850,000 in qualified expenditures “throughout the entire length of the project.” The maximum reimbursement that may be made to any “filmed entertainment” project is \$2 million.

In addition, the incentive reimbursement caps for television productions, music videos, commercials, industrial films, and educational films are deleted. The inclusion of the term “filmed entertainment,” which was expanded in paragraph (2) (a), has the effect of qualifying all of these types of filmed entertainment for a reimbursement of up to \$2 million.

This subsection is amended to provide that reimbursement payments will be made according to queues. The first queue is to receive 60 percent and the second queue is to receive 40 percent of the incentive money. The eligibility for funding is changed from a first-come first-served basis for all projects to the following: during the first two weeks of an application period, the funding will be based on a project's principal start date; after that, the projects will be funded on a first-come first-served basis within their individual queue. After February 1 of each year, all remaining funds are to be combined and distributed on a first-come first-served basis. If any project loses their reimbursement funds, the funds will go to the next qualified production in the queue that have not yet received the full amount they are eligible for.

This section is also amended to specify that the eligibility of qualified productions may no longer carry over from year to year, but they can reapply for such eligibility.

Annual Report

Finally, subsection (7) is amended to require that the annual report provided by OFE to the Governor and Legislature is due on October 1 rather than January 1.

Section 3 provides an effective date of July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This committee substitute does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s.18, Art VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The expanded definition of "filmed entertainment" allows made for TV movies, music videos and commercials, and industrial and educational films to qualify for

reimbursements of up to \$2 million, rather than the current limits of \$450,000, \$25,000, and \$15,000.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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