

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**COMMERCE AND TOURISM**  
**Senator Detert, Chair**  
**Senator Thompson, Vice Chair**

**MEETING DATE:** Tuesday, March 10, 2015  
**TIME:** 10:00 a.m.—12:00 noon  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

**MEMBERS:** Senator Detert, Chair; Senator Thompson, Vice Chair; Senators Bean, Latvala, Richter, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 684</b> Grimsley (Similar H 755, Compare H 439)	Convenience Businesses; Revising the term "convenience business"; removing the requirement that a curriculum be submitted for reapproval biennially with a specified administrative fee; removing a requirement that specified curriculum be subject to reapproval 2 years from initial approval and biennially thereafter, etc.	CM 03/10/2015 ACJ FP
2	<b>SB 726</b> Ring (Identical H 793)	Consumer Protection; Requiring retail sales establishments that sell goods to the public to grant a refund within a specified period of time for goods costing more than a specified amount if returned by a consumer who has been adjudicated incapacitated or has documentation from a physician of a certain medical condition, or by a representative of the consumer, if specified requirements are satisfied; requiring restitution and providing penalties for a violation of the requirements, etc.	CM 03/10/2015 AGG FP
3	<b>SB 1046</b> Detert (Compare H 451)	Entertainment Industry; Revising the sources of moneys to be credited to the State Economic Enhancement and Development Trust Fund to include repayments to the entertainment industry quick action fund created by the act; creating the Entertainment Industry Quick Action Account within the State Economic Enhancement and Development Trust Fund; renaming the Office of Film and Entertainment within the Department of Economic Opportunity as the Division of Film and Entertainment within Enterprise Florida, Inc.; revising provisions relating to the application process, tax credit eligibility, transfer of tax credits, election and distribution of tax credits, allocation of tax credits, forfeiture of tax credits, and annual report, etc.	CM 03/10/2015 ATD AP

**COMMITTEE MEETING EXPANDED AGENDA**

Commerce and Tourism

Tuesday, March 10, 2015, 10:00 a.m.—12:00 noon

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 1214</b> Latvala	Economic Development; Requiring the Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability to provide a detailed analysis of the retention of Major League Baseball spring training baseball franchises; requiring a project that requires funding that falls into a specified range to be approved by the Legislative Budget Commission before final approval by the Governor; revising the requirements for projects eligible for receipt of funds from the Quick Action Closing Fund, etc.	
		CM 03/10/2015 ATD AP	
5	<b>SB 1246</b> Detert	Individuals with Disabilities; Requiring the Department of Economic Opportunity, in consultation with other organizations, to create the Florida Unique Abilities Partner program; requiring the department, in consultation with the disability community, to develop a logo for business entities designated as Florida Unique Abilities Program Partners; prohibiting the use of a logo if a business entity does not have a current designation; requiring the department to maintain a website with specified information; requiring the department to identify employment opportunities posted by employers that receive the Florida Unique Abilities Partner designation on the workforce information system, etc.	
		CM 03/10/2015 ATD FP	

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Other Related Meeting Documents

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SB 684

INTRODUCER: Senator Grimsley

SUBJECT: Convenience Businesses

DATE: March 9, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	McKay	CM	<b>Pre-meeting</b>
2.			ACJ	
3.			FP	

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**I. Summary:**

SB 684 revises the Convenience Business Security Act. The bill exempts certain family-owned and operated convenience businesses from the enhanced security provisions required under the law. The bill repeals administrative fees associated with the approval of a mandated safety training curriculum, and repeals the requirement that the safety-training curriculum be submitted biennially for reapproval. The bill also deletes obsolete language.

**II. Present Situation:**

**Convenience Business Security Act<sup>1</sup>**

In 1990, the Legislature passed the Convenience Business Security Act (the act) to deter violent crime and provide uniform, statewide protection for employees and patrons at late night convenience businesses.<sup>2</sup> The provisions of the act are enforced by the Department of Legal Affairs (Office of Attorney General).<sup>3</sup>

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<sup>1</sup> Sections 812.1701-812.175, F.S. A “convenience business” is defined as any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, that is open for business at any time between the hours of 11 p.m. and 5 a.m. A convenience business does not include a business that is primarily a restaurant, a business that has at least 5 employees on the premises between 11 p.m. and 5 a.m., a business that has at least 10,000 square feet of retail for space, or a business in which the owner or a member of the owner’s family work between the hours of 11 p.m. and 5 a.m.

<sup>2</sup> Section 812.172, F.S.

<sup>3</sup> Section 812.175(4), F.S., authorizes the Office of Attorney General to enter into agreements with local governments to assist in the enforcement of the act.

### ***Minimum Security Standards***

The act requires a convenience business to utilize the following minimum standards:<sup>4</sup>

- A security camera system that is capable of recording and retrieving an image to assist in offender identification and apprehension;
- A drop safe or management device for restricted access to cash receipts;
- A lighted parking lot;
- A conspicuous notice at the entrance that states that the cash register contains \$50 or less;
- Window signage that allows a clear and unobstructed view from outside the building and in a normal line of sight of the cash register and sales transaction area;
- Height markers at the entrance of the convenience business that display height measures;
- A cash management policy that limits cash on hand between 11 p.m. and 5 a.m.;
- Window tinting that allows for identification of all persons in the sales transaction area from outside the business; and
- A silent alarm.<sup>5</sup>

### ***Enhanced Security Standards<sup>6</sup>***

The act requires any convenience business at which a murder, robbery, sexual batter, aggravated assault, aggravated battery, or kidnapping or false imprisonment has occurred, to comply with additional security measures. These security measures must be provided at all times between 11 p.m. and 5 a.m., and include:

- Providing at least two employees on the premises;
- Installing a transparent security enclosure for use by the employees;
- Providing a security guard on the premises; or
- Locking the premises and transacting business through an indirect pass-through window.

After complying with these provisions for 24 months with no additional occurrence of the type of crimes indicated above, a business may file a notice of exemption from the enhanced security measures with the Office of Attorney General.

### ***Training Requirements<sup>7</sup>***

The act requires all employees to receive robbery deterrence and safety training within 60 days of employment. The convenience business must submit a proposed training curriculum to the Office of Attorney General, along with an administrative fee not to exceed \$100, for review and approval. The training curriculum must be submitted biennially, along with the appropriate administrative fee, for reapproval.

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<sup>4</sup> See Office of the Attorney General Pam Bondi, *Convenience Business Security Act – Helping to Create Safer Florida Convenience Businesses* (rev. Aug. 2010), available at [http://www.fcpti.com/fcpti.nsf/pics/01029BCED8A92DD0852578BD0062499E/\\$file/2011\\_Revised\\_Convenience\\_Store\\_Bo.pdf](http://www.fcpti.com/fcpti.nsf/pics/01029BCED8A92DD0852578BD0062499E/$file/2011_Revised_Convenience_Store_Bo.pdf) (last visited Mar. 3, 2015).

<sup>5</sup> Pursuant to s. 812.171(3), F.S., a business may apply for an exemption to the silent alarm requirement with the Office of the Attorney General. The application for exemption must be in writing and must be accompanied by a \$25 administrative fee for each store for which the exemption is requested.

<sup>6</sup> Section 812.173, F.S.

<sup>7</sup> Section 812.174, F.S.

**Enforcement<sup>8</sup>**

The Office of Attorney General enforces the provisions of the act. Upon finding a violation, the convenience business is provided with a notice and has 30 days to cure the violation. If the convenience business fails to correct the violation within 30 days, it may be subject to a civil fine of up to \$5,000. If the violation is determined to be a threat to health, safety, and public welfare, the Office of Attorney General is authorized to pursue an injunction against the convenience business.

**III. Effect of Proposed Changes:**

**Section 1** amends s. 812.171, F.S., to delete a provision which excludes a business in which the owner or a member of the owner's family work the hours between 11 p.m. and 5 a.m., from the definition of "convenience business."

**Section 2** amends s. 812.172(5), F.S., to provide that a convenience business at which the owner or a member of the owner's family work the hours between 11 p.m. and 5 a.m., does not have to comply with the enhanced security measures required under the law when certain crimes occur at the business.<sup>9</sup> The bill also deletes an obsolete provision that required the Office of Attorney General to provide notice to any business that required the additional security measures, as of the date the act became law in 1992.

**Section 3** amends s. 812.174, F.S., to delete obsolete language and repeal a requirement that a convenience business submit a safety training curriculum to the Office of Attorney General biennially. The bill also repeals an administrative fee associated with submission of approval of the safety training curriculum.

**Section 4** provides an effective date of July 1, 2015.

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

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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<sup>8</sup> Section 812.175, F.S.

<sup>9</sup> See s. 812.173(4), F.S. Under this provision, if a murder, robbery, sexual battery, aggravated assault, aggravated battery, or kidnapping occur in connection with the operation of the business, the business must employ one of the following security measures between 11 p.m. and 5 a.m.: (1) have at least two employees on the premises; (2) provide a secured, transparent, polycarbonate safety enclosure; (3) have a security officer on the premises; or (4) lock the premises and conduct business through an indirect pass-through.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill may have a positive fiscal impact for convenience businesses, as they will no longer be subject to the administrative fee required upon submission of training curriculum for initial approval and reapproval.

**C. Government Sector Impact:**

Indeterminate. To the extent that the Office of Attorney General is receiving the administrative fee at the time of submission of the training curriculum required by the act, the bill may have a negative fiscal impact. However, the bill's repeal of the requirement for submission of training curriculum biennially for reapproval may have a positive fiscal impact due to the reduction of costs incurred by the Office of Attorney General that may be attributed to that process.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 812.171, 812.173, and 812.174.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By Senator Grimsley

21-01093-15

2015684\_\_

1 A bill to be entitled  
 2 An act relating to convenience businesses; amending s.  
 3 812.171, F.S.; revising the term "convenience  
 4 business"; amending s. 812.173, F.S.; conforming a  
 5 provision to a change made by the act; amending s.  
 6 812.174, F.S.; deleting an obsolete provision;  
 7 removing the requirement that a curriculum be  
 8 submitted for reapproval biennially with a specified  
 9 administrative fee; removing a requirement that  
 10 specified curriculum be subject to reapproval 2 years  
 11 from initial approval and biennially thereafter;  
 12 making technical changes; providing an effective date.  
 13  
 14 Be It Enacted by the Legislature of the State of Florida:  
 15  
 16 Section 1. Section 812.171, Florida Statutes, is amended to  
 17 read:  
 18 812.171 Definition.—As used in this act, the term  
 19 "convenience business" means any place of business that is  
 20 primarily engaged in the retail sale of groceries, or both  
 21 groceries and gasoline, and that is open for business at any  
 22 time between the hours of 11 p.m. and 5 a.m. The term  
 23 "convenience business" does not include:  
 24 (1) A business that is solely or primarily a restaurant.  
 25 (2) A business that always has at least five employees on  
 26 the premises after 11 p.m. and before 5 a.m.  
 27 (3) A business that has at least 10,000 square feet of  
 28 retail floor space.  
 29

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

21-01093-15

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30 ~~The term "convenience business" does not include any business in~~  
 31 ~~which the owner or members of his or her family work between the~~  
 32 ~~hours of 11 p.m. and 5 a.m.~~  
 33 Section 2. Subsection (5) of section 812.173, Florida  
 34 Statutes, is amended to read:  
 35 812.173 Convenience business security.—  
 36 (5) For purposes of this section, subsection (4) does not  
 37 apply to a convenience business in which the owner or the  
 38 members of the owner's family work between the hours of 11 p.m.  
 39 and 5 a.m. A Any convenience business that was required by law  
 40 to implement ~~implemented~~ any of the security measures specified  
 41 ~~set forth~~ in paragraphs (4)(a)-(e) and has maintained those said  
 42 measures as required by the Department of Legal Affairs without  
 43 any occurrence ~~or incidence~~ of the crimes specified in  
 44 identified by subsection (4) for a period of at least no less  
 45 ~~than~~ 24 months immediately preceding the filing of a notice of  
 46 exemption, may file with the department a notice of exemption  
 47 from these enhanced security measures. ~~In no event shall~~ This  
 48 exemption may not be interpreted as precluding to preclude full  
 49 compliance with the security measures specified set forth in  
 50 subsection (4) should any occurrence ~~or incidence~~ of the crimes  
 51 specified in that subsection identified by subsection (4) cause  
 52 that subsection (4) to be statutorily applicable. ~~As of the date~~  
 53 ~~this act becomes law, the Department of Legal Affairs will~~  
 54 ~~provide notice to any convenience business to which a subsection~~  
 55 ~~(4) incident has previously occurred. In no event shall~~ The  
 56 state or the Department of Legal Affairs does not incur any  
 57 liability for the regulation and enforcement of this act.  
 58 Section 3. Section 812.174, Florida Statutes, is amended to

Page 2 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

21-01093-15

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59 read:

60 812.174 Training of employees.-

61 (1) The owner or principal operator of a convenience  
62 business ~~or convenience businesses~~ shall provide proper robbery  
63 deterrence and safety training by an approved curriculum to its  
64 retail employees within 60 days after ~~of~~ employment. ~~Existing~~  
65 ~~retail employees shall receive training within 6 months of April~~  
66 ~~8, 1992.~~

67 (2) A proposed curriculum shall be submitted in writing to  
68 the Attorney General, who ~~with an administrative fee not to~~  
69 ~~exceed \$100. The Attorney General~~ shall review and approve or  
70 disapprove the curriculum in writing within 60 days after  
71 receipt. The state does not incur liability ~~shall have no~~  
72 ~~liability~~ for approving or disapproving a training curriculum  
73 under this section. Approval shall be given to a curriculum that  
74 ~~which~~ trains and familiarizes retail employees with the security  
75 principles, devices, and measures required by s. 812.173.  
76 Disapproval of a curriculum is ~~shall be~~ subject to the  
77 ~~provisions of~~ chapter 120.

78 (3) ~~A~~ ~~No~~ person is not ~~shall be~~ liable for ordinary  
79 negligence if he or she implements ~~due to implementing~~ an  
80 approved curriculum and if the training is ~~is~~ was actually  
81 provided. ~~A curriculum shall be submitted for reapproval~~  
82 ~~biennially with an administrative fee not to exceed \$100. Any~~  
83 ~~curriculum approved by the Attorney General since September 1990~~  
84 ~~shall be subject to reapproval 2 years from the anniversary of~~  
85 ~~initial approval and biennially thereafter.~~

86 Section 4. This act shall take effect July 1, 2015.



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SB 726

INTRODUCER: Senator Ring

SUBJECT: Consumer Protection

DATE: March 9, 2015

REVISED: \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	<b>Pre-meeting</b>
2.	_____	_____	AGG	_____
3.	_____	_____	FP	_____

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**I. Summary:**

SB 726 requires retail stores to allow certain consumers to return purchases of \$1,000 or more for a full refund within 3 days of their purchase if the consumer has been adjudicated incapacitated, or has a doctor’s note that indicates that he has been diagnosed with a medical condition that causes him to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his person or property. The bill also empowers the Department of Agriculture and Consumer Services to enter an order requiring a retail store in violation of the bill to pay restitution to the consumer, and a fine of up to two times the value of the goods purchased.

**II. Present Situation:**

**Consumer Protections**

The Department of Agriculture and Consumer Services (DACS) is charged with protecting consumers from deceptive business practices. The Division of Consumer Services (division) serves as a clearinghouse for consumer complaints, and is responsible for overseeing and regulating a range of businesses, including, pursuant to s. 501.142, F.S., refunds, returns, and exchanges at retail stores. Enforcement of s. 501.142, F.S., is based on complaints made directly to the DACS.<sup>1</sup> The DACS has issued only one administrative fine for a violation of s. 501.142, F.S., because retail stores’ generally comply with the law upon the department’s request to do so.<sup>2</sup>

Currently, s. 501.142, F.S., requires retail stores to clearly post a “no refunds” sign at the point of sale in order to enforce a no refunds policy. If the retail store does not have a posted “no refunds”

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<sup>1</sup> Department of Agriculture and Consumer Services, *SB 726 Agency Analysis* (Feb. 24, 2015) (on file with the Senate Committee on Commerce and Tourism).

<sup>2</sup> *Id.*

policy, then it must present a written version of its refund policy upon a consumer's request, or adhere to the default refund policy described in s. 501.142, F.S., which requires a full refund to any customer who presents to the retail store within 7 days of the original purchase their proof of purchase and the unused and originally-packaged item. A retail store's refund policy may allow for a longer return period.

The division may impose a \$100 administrative fine per violation of s. 501.142(1), F.S., or issue a directive to cease and desist from the violation. Additionally, a local government may apply penalties as outlined in s. 501.142 (6), F.S.

These refund policy requirements do not apply to perishable or custom goods, items that are custom altered at the customer's request, or goods that may not legally be resold by the retail store.

### **Incapacity**

Older Americans are at a greater risk of victimization of financial crimes than the general population due to cognitive impairment or incapacity. It is estimated that older Americans lost at least \$2.9 billion to financial exploitation by a broad spectrum of perpetrators in 2010.<sup>3</sup> Protections exist for individuals with cognitive impairment or incapacity, and range from issue or authority-specific grants of power (powers of attorney), to a determination of partial- or total-incapacity by a court.<sup>4</sup>

A power of attorney or a durable power of attorney<sup>5</sup> is a legally binding document that delegates specific authority to an agent to act on a person's behalf.<sup>6</sup> Powers of attorney are often used by elderly persons to designate someone to handle their financial matters in anticipation of becoming incapacitated.<sup>7</sup> The authority granted by a power or attorney or durable power of attorney can be limited to specific acts, such as caring for a particular property, or may be broadly drawn to cover all legal acts that the principal could otherwise do.<sup>8</sup> While a power of attorney terminates when a person becomes incapacitated, a durable power of attorney does not.<sup>9</sup> A power of attorney is an efficient and low-cost alternative to guardianship.

Alternatively, a court may appoint a guardian, who "has the legal authority and duty to care for another's person or property, especially because of the other's infancy, incapacity, or disability."<sup>10</sup> Any adult may petition a court to initiate a petition to determine another's

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<sup>3</sup> Consumer Financial Protection Bureau, *Protecting Residents from Financial Exploitation, A Manual for Assisted Living and Nursing Facilities* (May 2014) available at [http://files.consumerfinance.gov/f/201406\\_cfpb\\_guide\\_protecting-residents-from-financial-exploitation.pdf](http://files.consumerfinance.gov/f/201406_cfpb_guide_protecting-residents-from-financial-exploitation.pdf) (last visited 3/9/2015).

<sup>4</sup> Section 744.331(6)(a), The court shall make a finding of "the exact nature and scope of the person's incapacities;... and the specific rights that the person is incapable of exercising."

<sup>5</sup> See Chapter 709, F.S.

<sup>6</sup> The Florida Bar, *Florida Power of Attorney Pamphlet*, available at <http://www.floridabar.org/tfb/TFBConsum.nsf/840090c16eedaf0085256b61000928dc/ab36277c4562e98885256b2f006c5ad6> Last accessed 3/9/2015.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Sections 709.2102(4), 709.2014, and 709.2109(1)(c) F.S.

<sup>10</sup> Black's Law Dictionary (10<sup>th</sup> ed. 2014).

incapacity.<sup>11</sup> An “incapacitated person” is a “person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person.”<sup>12</sup> In cases where incapacity has been determined by a court, the court may appoint a guardian, but must pursue lesser restrictive means if possible.<sup>13</sup> Guardians are governed exclusively by the Florida Statutes, and may exercise for their ward only the enumerated rights that the court removed from the incapacitated person.<sup>14,15</sup> A guardianship is more actively supervised by the court than a power of attorney, which results in more costs to the individual adjudicated incapacitated.<sup>16</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 501.142, F.S., to require all retail stores to grant a full refund to a consumer who purchased goods valued at \$1,000 or more and, either personally or through her representative:

- Presents to the store both proof of purchase and the purchased goods in their unused and original condition including the original carton, if any; and
- Provides documentation establishing that:
  - The consumer has been adjudicated incapacitated pursuant to ch. 744, F.S., or similar law; or
  - The consumer has been diagnosed with a medical condition that causes him or her to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his or her person or property.

The bill grants the DACS additional authority to enter an order that requires payment of restitution to the consumer who was refused a refund under the circumstances above and imposes an administrative fine of twice the value of the goods purchased.

**Section 2** corrects cross-references.

**Section 3** provides an effective date of July 1, 2015.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

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<sup>11</sup> Section 744.331, F.S.

<sup>12</sup> Section 744.102(12), F.S.

<sup>13</sup> Section 744.331(6), F.S.

<sup>14</sup> *Poling v. City Bank & Trust Co. of St. Petersburg*, 189 So. 2d 176, 182 (Fla. 2d DCA 1966).

<sup>15</sup> Section 744.361, F.S. provides the standard powers and duties of a guardian.

<sup>16</sup> Section 744.108, F.S.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private businesses will be subject to fines as penalties for violations of this bill.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services estimates that there will be no fiscal impact because enforcement will remain complaint-driven.<sup>17</sup>

The administrative authority that the division holds over retail stores is limited to the ability to assess a penalty for a violation of s. 501.142, F.S. Therefore, the division would have to seek enforcement of a restitution order in favor of a consumer aggrieved by the bill in a court of competent jurisdiction. This may result in increased litigation costs to the department.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The “lack of understanding or capacity to make or communicate reasonable decisions concerning one’s person or property” standard is highly subjective and may result in a broader application than anticipated.

An individual may be adjudicated incapacitated, but retain her right to manage her property because this right must be specifically delegated to a guardian by a court.<sup>18</sup> Therefore, proposed section 501.142(2)(c)1. may be broader than necessary.

Prior to October 1, 2011, a durable power of attorney that was contingent on the principal’s incapacity required a doctor’s certification of incapacity to become effective.<sup>19</sup> However, powers of attorney and durable powers of attorney meant to serve the same function are now generally effective once the principal signs the document, and require no doctor’s certification of

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<sup>17</sup> Department of Agriculture and Consumer Services, *SB 726 Agency Analysis* (Feb. 24, 2015) (on file with the Senate Committee on Commerce and Tourism).

<sup>18</sup> Section 744.3215, F.S.

<sup>19</sup> The Florida Bar, *Florida Power of Attorney Pamphlet*, available at

<http://www.floridabar.org/tfb/TFBConsum.nsf/840090c16eedaf0085256b61000928dc/ab36277c4562e98885256b2f006c5ad6>

. Last accessed 3/9/2015.

incapacity. As a result, individuals subject to powers of attorney or durable powers of attorney may not be afforded rights under this bill unless they obtain a diagnosis of their capacity to communicate reasonable decisions concerning their person or property.

**VIII. Statutes Affected:**

This bill substantially amends ss. 501.142 and 501.95, F.S.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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792582

LEGISLATIVE ACTION

Senate

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House

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The Committee on Commerce and Tourism (Ring) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 30 - 88

and insert:

Section 1. Section 501.142, Florida Statutes, is amended to read:

501.142 Retail sales establishments; preemption; ~~notice of~~ refund policy requirements; exceptions; penalty.—

(1) The regulation of refunds is preempted to the Department of Agriculture and Consumer Services notwithstanding



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11 any other law or local ordinance to the contrary, provided that  
12 a local government may enforce the provisions of this section as  
13 specified in subsection (8).

14 (2) Notwithstanding the Uniform Commercial Code, each every  
15 retail sales establishment offering goods for sale to the  
16 general public must grant a cash refund or credit refund to a  
17 consumer for goods returned within 3 business days after the  
18 date of purchase if all of the following conditions are met:

19 (a) The purchase exceeds \$1,000, excluding tax.

20 (b) The goods are unused and in the original carton, if a  
21 carton was furnished.

22 (c) The consumer, or a representative of the consumer,  
23 provides the retailer with proof of purchase and documentation  
24 establishing that:

25 1. The consumer has been adjudicated incapacitated pursuant  
26 to chapter 744 or under similar law in another state;

27 2. The consumer is subject to a guardianship pursuant to  
28 chapter 744 or similar law in another state, and the guardian  
29 has the authority to determine the consumer's right to manage  
30 property; or

31 3. A power of attorney or a durable power of attorney  
32 pursuant to chapter 709 or similar law in another state is  
33 currently exercisable by the consumer's agent, and the consumer  
34 has been diagnosed with a medical condition that causes him or  
35 her to lack sufficient understanding or capacity to make or  
36 communicate reasonable decisions concerning his or her person or  
37 property, which is evidenced by a written statement signed by a  
38 physician licensed pursuant to chapter 458 or chapter 459 or  
39 licensed to practice medicine under the laws of another state.



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40           (3) (a) Except as provided in subsection (2), a retail sales  
41 establishment offering goods for sale to the general public may  
42 refuse to offer a that offers no cash refund, credit refund, or  
43 exchange for the purchase if the retailer posts of merchandise  
44 must post a sign at the point of sale so stating that refunds or  
45 exchanges are not allowed at the point of sale. Failure of a  
46 retail sales establishment to exhibit a "no refund or exchange"  
47 sign at the point of sale under such circumstances at the point  
48 of sale shall mean that a refund or exchange policy exists, and  
49 the policy must shall be presented in writing to the consumer  
50 upon request.

51           (b) A Any retail sales establishment that violates this  
52 subsection must failing to comply with the provisions of this  
53 section shall grant to the consumer, upon request and proof of  
54 purchase, a refund for the purchase on the merchandise, within 7  
55 days after of the date of purchase, if provided the goods are  
56 merchandise is unused and in the original carton, if one was  
57 furnished. This section does not Nothing herein shall prohibit a  
58 retail sales establishment from having a refund policy that  
59 which exceeds 7 the number of days and specified herein.  
60 However, this subsection does not prohibit a local government  
61 from enforcing the provisions established by this section.

62           (4) (2) The provisions of This section does shall not apply  
63 to the sale of food, perishable goods, goods that which are  
64 custom made, goods that which are custom altered at the request  
65 of the customer, or goods that which cannot be resold by the  
66 merchant because of any law, rule, or regulation adopted by a  
67 governmental body.

68           (5) (3) If the department finds that a person has violated





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69 or is operating in violation of:

70 (a) Subsection (2), the department shall enter an order  
71 that

72  
73 ===== T I T L E A M E N D M E N T =====

74 And the title is amended as follows:

75 Delete lines 7 - 19

76 and insert:

77 been adjudicated incapacitated, is subject to a  
78 certain type of guardianship, or has a certain medical  
79 condition, if specified requirements are satisfied;  
80 requiring restitution and providing penalties for a  
81 violation of the requirements; making technical  
82 changes; amending s. 501.95, F.S.; conforming a cross-  
83 reference; providing an effective date.WHEREAS, the  
84 Legislature finds that persons who are incapacitated,  
85 are subject to certain types of guardianships, or have  
86 been diagnosed with a medical condition causing a lack  
87 of capacity to make reasonable decisions need  
88 additional protections in consumer transactions  
89 involving costly purchases, and

By Senator Ring

29-00440-15

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1 A bill to be entitled  
 2 An act relating to consumer protection; amending s.  
 3 501.142, F.S.; requiring retail sales establishments  
 4 that sell goods to the public to grant a refund within  
 5 a specified period of time for goods costing more than  
 6 a specified amount if returned by a consumer who has  
 7 been adjudicated incapacitated or has documentation  
 8 from a physician of a certain medical condition, or by  
 9 a representative of the consumer, if specified  
 10 requirements are satisfied; requiring restitution and  
 11 providing penalties for a violation of the  
 12 requirements; making technical changes; amending s.  
 13 501.95, F.S.; conforming a cross-reference; providing  
 14 an effective date.

15  
 16 WHEREAS, the Legislature finds that persons who are  
 17 incapacitated or unable to make reasonable decisions due to a  
 18 medical condition need additional protections in consumer  
 19 transactions involving costly purchases, and

20 WHEREAS, it is in the public interest to protect the  
 21 welfare of this state's most vulnerable residents and their  
 22 family members, and

23 WHEREAS, it is the intent of the Legislature to safeguard  
 24 such residents' financial interests by providing them with the  
 25 ability to return certain goods within a reasonable period of  
 26 time, NOW, THEREFORE,

27  
 28 Be It Enacted by the Legislature of the State of Florida:  
 29

Page 1 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 Section 1. Section 501.142, Florida Statutes, is amended to  
 31 read:

32 501.142 Retail sales establishments; preemption; ~~notice of~~  
 33 refund policy requirements; exceptions; penalty.-

34 (1) The regulation of refunds is preempted to the  
 35 Department of Agriculture and Consumer Services notwithstanding  
 36 any other law or local ordinance to the contrary.

37 (2) Notwithstanding the Uniform Commercial Code, each every  
 38 retail sales establishment offering goods for sale to the  
 39 general public must grant a cash refund or credit refund to a  
 40 consumer for goods returned within 3 days after the date of  
 41 purchase if:

42 (a) The purchase exceeds \$1,000, excluding tax.

43 (b) The goods are unused and in the original carton, if a  
 44 carton was furnished.

45 (c) The consumer, or a representative of the consumer,  
 46 provides the retailer with proof of purchase and:

47 1. Documentation establishing that the consumer has been  
 48 adjudicated incapacitated pursuant to chapter 744 or under  
 49 similar law in another state; or

50 2. A written statement signed by a physician licensed  
 51 pursuant to chapter 458 or chapter 459 or licensed to practice  
 52 medicine under the laws of another state which indicates that  
 53 the consumer has been diagnosed with a medical condition that  
 54 causes him or her to lack sufficient understanding or capacity  
 55 to make or communicate reasonable decisions concerning his or  
 56 her person or property.

57 (3) (a) Except as provided in subsection (2), a retail sales  
 58 establishment offering goods for sale to the general public may

Page 2 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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59 ~~refuse to offer a that offers no~~ cash refund, credit refund, or  
 60 exchange for the purchase if the retailer posts of merchandise  
 61 ~~must post~~ a sign at the point of sale ~~so~~ stating that refunds or  
 62 exchanges are not allowed at the point of sale. Failure of a  
 63 retail sales establishment to exhibit a "no refund or exchange"  
 64 sign at the point of sale under such circumstances ~~at the point~~  
 65 ~~of sale~~ shall mean that a refund or exchange policy exists, and  
 66 the policy must ~~shall~~ be presented in writing to the consumer  
 67 upon request.

68 (b) A Any retail sales establishment that violates this  
 69 subsection must failing to comply with the provisions of this  
 70 section shall grant to the consumer, upon request and proof of  
 71 purchase, a refund for the purchase on the merchandise, within 7  
 72 days after of the date of purchase, if provided the goods are  
 73 merchandise is unused and in the original carton, if one was  
 74 furnished. This section does not ~~Nothing herein shall~~ prohibit a  
 75 retail sales establishment from having a refund policy that  
 76 which exceeds 7 the number of days and specified herein.  
 77 ~~However, this subsection~~ does not prohibit a local government  
 78 from enforcing ~~the provisions established by~~ this section.

79 (4)(2) The provisions of This section does ~~shall~~ not apply  
 80 to the sale of food, perishable goods, goods that which are  
 81 custom made, goods that which are custom altered at the request  
 82 of the customer, or goods that which cannot be resold by the  
 83 merchant because of any law, rule, or regulation adopted by a  
 84 governmental body.

85 (5)(3) If the department finds that a person has violated  
 86 or is operating in violation of:

87 (a) Subsection (2), the department shall enter an order

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88 that requires restitution to be paid to the consumer and that  
 89 imposes an administrative fine in the amount of twice the value  
 90 of the goods, excluding tax, which the person refused to refund.

91 (b) Subsection (3) or an order issued under this section,  
 92 the department may enter an order that imposes ~~doing~~ one or more  
 93 of the following ~~if the department finds that a person has~~  
 94 ~~violated or is operating in violation of any of the provisions~~  
 95 ~~of this section or the orders issued under this section:~~

96 1.(a) Impose An administrative fine not to exceed \$100 for  
 97 each violation.

98 2.(b) A directive to Direct the person to cease and desist  
 99 specified activities.

100 (6)(4) An The administrative proceeding ~~proceedings~~ that  
 101 may could result in the entry of an order imposing any of the  
 102 penalties specified in subsection (5) is ~~(3) are~~ governed by  
 103 chapter 120.

104 (7)(5) Any Moneys recovered by the department ~~of~~  
 105 ~~Agriculture and Consumer Services~~ as a penalty under this  
 106 section shall be deposited in the General Inspection Trust Fund.

107 (8)(6) Upon the first violation of this section, a local  
 108 government may issue a written warning. Upon a second or ~~and any~~  
 109 subsequent violation, a local government may impose a fine of up  
 110 to \$50 per violation. ~~Any~~ Moneys recovered by the local  
 111 government as a penalty under this section shall be deposited in  
 112 the appropriate local account.

113 Section 2. Paragraph (c) of subsection (2) of section  
 114 501.95, Florida Statutes, is amended to read:

115 501.95 Gift certificates and credit memos.—

116 (2)

29-00440-15

2015726\_\_

117 (c) Enforcement of this section shall be as provided in s.  
118 501.142(5)(b), (6), and (7) ~~s. 501.142(3), (4), and (5)~~ for  
119 violations of this section.  
120 Section 3. This act shall take effect July 1, 2015.



The Florida Senate

## Committee Agenda Request

**To:** Senator Nancy Detert  
Committee on Commerce and Tourism

**Subject:** Committee Agenda Request

**Date:** February 15, 2015

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I respectfully request that **Senate Bill #726**, relating to Consumer Protection, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

*Jeremy Ring*

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Senator Jeremy Ring  
Florida Senate, District 29

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SB 1046

INTRODUCER: Senator Detert

SUBJECT: Entertainment Industry

DATE: March 9, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Askey	McKay	CM	<b>Pre-meeting</b>
2.			ATD	
3.			AP	

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**I. Summary:**

SB 1046 restructures Florida's approach to the entertainment industry in the state.

The bill transfers the Office of Film and Entertainment in the Department of Economic Opportunity (DEO) to Enterprise Florida, Inc., (EFI), and renames it as the Division of Film and Entertainment. The division will maintain its current responsibilities, and DEO retains the responsibility of administering the entertainment industry economic development programs. The bill also transfers the Florida Film and Entertainment Advisory Council to EFI, and reduces the number of council members from 17 to 11.

The bill renames the Entertainment Industry Incentive Program as the Entertainment Industry Program, and makes the following changes:

- Sets a program expiration date of July 1, 2021;
- Increases the percentage of Florida residents that must be employed in qualified productions;
- Creates a semi-annual application period, and limits the available tax credits to one half for each 6-month period;
- Clarifies the denial, withdrawal, and verification of application processes, and provides that all applications still in a queue at the end of an application period will be denied;
- Sets aside 20 percent of funds available in each application period for underutilized counties for 4 months;
- Creates a tax credit bonus for 5 percent of qualified expenditures for productions that make at least a \$2 million capital investment;
- Reduces the total credit allowed to 25 percent of qualified expenditures, down from the current allowance of 30 percent of qualified expenditures; and
- Repeals tax credit bonuses for underutilized regions, off-season productions, and productions that occur at certain facilities.

The bill creates the Entertainment Industry Quick Action Fund to respond to extraordinary opportunities to attract entertainment productions, subject to appropriation. Specifically, the bill:

- Requires the Division of Film and Entertainment and the DEO to evaluate applications for fund awards based on 19 criteria;
- Requires performance-based contracts;
- Limits funding to 30 percent of planned qualified expenditures by the project;
- Creates an approval process that requires Legislative approval of certain award amounts;
- Sets aside 50 percent of the fund to be awarded in the second 6 months of a fiscal year;
- Creates the Entertainment Industry Quick Action Account in the State Economic Enhancement and Development Trust Fund for awards and repayments;
- Creates a penalty for fraud; and
- Sets a program expiration date of July 1, 2025, for the quick action fund.

The bill clarifies the application and renewal process for the Sales Tax Exemption Certificate program.

The bill prohibits a production from receiving benefits from the tax credit, sales tax exemption, or quick action fund program at the same time.

## **II. Present Situation:**

### **The Office of Film and Entertainment**

The Office of Film and Entertainment (OFE) within the Department of Economic Opportunity (DEO) develops, markets, promotes, and provides services to Florida's entertainment industry, such as serving as a liaison between the industry and government entities and facilitating access to filming locations.<sup>1</sup> The OFE 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; administers field offices outside the state; and coordinates with regional offices maintained by counties and regions of the state. The OFE is also required to develop a 5-year strategic plan to guide its activities, which is updated on an annual basis and aligns with the DEO's Strategic Plan for Economic Development.<sup>2</sup> The OFE's mission is to build, support, and market the entertainment industry in Florida.

The head of the OFE is the Commissioner of Film and Entertainment. The commissioner is hired by the executive director of the DEO, after a national search by the DEO for a qualified person to fill the position. For Fiscal Year 2013-14, the OFE has an operating budget of approximately \$673,000 and five full-time-equivalent (FTE) positions. The OFE's budget supports a field office in Los Angeles.

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<sup>1</sup> Section 288.1251, F.S. See also OFE website, available at <http://www.filminflorida.com/about/vm.asp> (last visited Mar. 3, 2015).

<sup>2</sup> The OFE's Film and Entertainment Industry Strategic Plan for Economic Development is available at [http://www.filminflorida.com/about/OFE\\_Plan\\_V11.pdf](http://www.filminflorida.com/about/OFE_Plan_V11.pdf) (last visited Mar. 3, 2015).

The OFE is assisted by the Florida Film and Entertainment Advisory Council (advisory council), which is composed of 17 members, of which seven members are appointed by the Governor, and five members each are appointed by the President of the Senate and the Speaker of the House of Representatives.<sup>3</sup> In addition, Enterprise Florida, Inc., Workforce Florida, Inc., and the Florida Tourism Industry Marketing Corporation (commonly referred to as “VISIT Florida”) each have a representative that serves as an ex officio nonvoting member of the advisory council. The advisory council provides the OFE and the DEO with industry insight and assists in the creation of the 5-year strategic plan.

Additionally, there are over 60 local film offices that have been established across the state, organized predominately by county and municipal governments, local chambers of commerce, economic development councils, convention and visitors’ bureaus, and tourist development councils.<sup>4</sup>

### **Entertainment Industry Financial Incentive Program<sup>5</sup>**

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program (incentive program).<sup>6</sup> The incentive program’s dual purposes are to:

- Promote Florida as a site for filming, creating, or producing movies, television series, commercials, digital media and other types of entertainment productions; and
- Sustain and develop the state’s entertainment workforce, studios, and other related infrastructure.

The incentive program is administered by the OFE, subject to the policies and oversight of the DEO. Currently, the incentive program is a 6-year program, which began July 1, 2010, and sunsets June 30, 2016. The incentive program provides tax credits for qualified expenditures related to filming and production activities in Florida. These tax credits may be applied against the corporate income tax or sales and use taxes. Additionally these tax credits may be transferred or sold one time.<sup>7</sup>

Over the 6 year period, there are a total of \$296 million in available credits. Annual limitations for tax credits are set at:

- \$53.5 million in Fiscal Year 2010-11;
- \$74.5 million in Fiscal Year 2011-12; and
- \$42 million in each Fiscal Year 2012-13, 2013-14, 2014-15, and 2015-16.<sup>8</sup>

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<sup>3</sup> Section 288.1252, F.S.

<sup>4</sup> A list of Florida film commissions is provided at the OFE website, available at [http://www.filminflorida.com/lr/local\\_film\\_commissions.asp](http://www.filminflorida.com/lr/local_film_commissions.asp) (last visited Mar. 3, 2015).

<sup>5</sup> Information about the incentive program is also available on OFE’s website, available at <http://filminflorida.com/ifi/incentives.asp> (last visited Mar. 3, 2015).

<sup>6</sup> Section 288.1254, F.S. See ch. 2003-81, L.O.F. In 2010, the incentive program was changed from a cash reimbursement type program to the current form. See ch. 2010-147, L.O.F.

<sup>7</sup> Also, tax credits may be relinquished to the DOR for 90 percent of the amount of the relinquished tax credit.

<sup>8</sup> Section 288.1254(7), F.S. In 2012, an additional year was added to the program. See s. 15, ch. 2012-32, L.O.F.



The law provides that if the total tax credits applied for in a fiscal year is greater than the amount available for that year, then the excess credits are to be treated as if they had been applied for in the next fiscal year. All of the tax credits have already been awarded for all 6 years.

### *Eligibility and Application*

Generally, a production company that plans to engage in a production in Florida can apply to the OFE prior to beginning production for a certification of tax credits based upon estimated qualified expenditures planned for the production. A qualified production must meet the requirements in s. 288.1254, F.S., plus two additional criteria:

- Depending on the type of production and period of time in the incentive program, most of the production cast and below-the-line production crew<sup>9</sup> are Florida residents, or are students enrolled full-time in a film- and entertainment-related course of study at a Florida university or college.; and
- The production does not contain obscene content, as defined in s. 847.001(10), F.S.<sup>10</sup>

### *Queues*

Priority for tax credit certifications is made on a first-come, first-served basis within the appropriate “queue.”<sup>11</sup> There are three queues of eligible productions: general production, commercial and music video, and independent and emerging media production. The queues are funded as follows:

- 94 percent of the state incentive funding is dedicated to the general production queue;
- 3 percent is dedicated to the commercial and music video queue; and
- 3 percent is dedicated to the independent and emerging media production queue.

Further, under the general production queue, no more than 45 percent of the tax credits can be awarded to television series. First priority in the general production queue for tax credits not yet certified is given to high-impact television series and high-impact digital media projects, in alternating order, depending on the type of the first application received. OFE may certify a project out of order (ex: two high-impact television series productions in a row) if an application by the next appropriate type of production is not received within 5 business days.<sup>12</sup>

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<sup>9</sup> “Below-the-line production crew” excludes actors, directors, producers, and writers.

<sup>10</sup> Pursuant to this section, “‘obscene’ means the status of material which: (a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest; (b) Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and (c) Taken as a whole, lacks serious literary, artistic, political, or scientific value. A mother’s breastfeeding of her baby is not under any circumstance ‘obscene.’”

<sup>11</sup> Section 288.1254(4), F.S.

<sup>12</sup> This rotating schedule was created in ch. 2012-32, L.O.F.

**Characteristics of Production Queues**

	<b>General Production</b>	<b>Commercial &amp; Music Video</b>	<b>Independent and Emerging Media Production Queue</b>
<b>Minimum amount of qualified expenditures</b>	\$625,000	\$100,000 per commercial or video <u>and</u> exceeds \$500,000 combined per FY year	At least \$100,000, but not more than \$625,000
<b>Amount of basic incentive</b>	20% of qualified expenditures, up to \$8 million	20% of qualified expenditures, up to \$500,000	20% of qualified expenditures, up to \$125,000

In addition to the amount of basic incentives, there are additional tax credits available for general production queue projects (also referred to as “bonuses”):

- A 5 percent additional tax credit for feature films, independent films, or television series or pilots that are “off-season certified,” including those that are not able to complete 75 percent of their principal photography due to a hurricane or tropical storm. Off-season certified means that the production films 75 percent or more of its principal photography from June 1 to November 30.
- A 5 percent additional tax credit for a production that incurs at least 65 percent of its principal photography days in an underutilized region. An “underutilized region” is one with a regional tax credit ratio for a fiscal year that is lower than its regional population ratio that year.<sup>13</sup>
- A 15 percent additional tax credit for productions that employ students enrolled full-time in a film and entertainment-related or digital media-related course of study or recent graduates of such a course of study. The course of study must have occurred at an institution of higher education in Florida. This additional 15 percent may be applied to any qualified expenditures related to wages, salaries, or other compensation paid to such students or graduates.
- A 5 percent additional tax credit for productions which conduct at least 50 percent of their principal photography at a qualified production facility. This additional 5 percent may be applied to any qualified expenditures related to production activity at that facility.
- A 5 percent additional tax credit for qualified digital media projects or digital animation components of productions which have at least 50 percent of their qualified expenditures related to a qualified digital media production facility. This additional 5 percent may be applied to any qualified expenditures related to production activity at that facility.

Further, family-friendly certified theatrical or direct-to-video movies and video games are eligible for an additional tax credit of 5 percent of its actual qualified expenditures. The determination for “family-friendly” is made by the OFE, with the advice of the advisory council. A family friendly production is one that:

- Has cross-generational appeal;

<sup>13</sup> “Underutilized region” is defined in s. 288.1254(1)(p), F.S.

- Is considered suitable for viewing by children aged 5 years or older;
- Is appropriate in theme, content and language for a broad family audience;
- Responsibly resolves issues raised in the film; and
- Does not include any act of smoking, sex, nudity, or vulgar or profane language.

A qualified production in the general production queue is limited to a total tax credit of 30 percent of its actual qualified expenditures.<sup>14</sup>

Current law defines “qualified expenditures” as production expenditures incurred by a qualified production in Florida for:<sup>15</sup>

- Goods purchased or leased from, or services provided by, a vendor or supplier in Florida that is registered with the Department of State or the Department of Revenue (DOR) and is doing business in Florida. Eligible production goods and services include:
  - Sound stages, back lots, production editing, digital effects, sound recordings, sets, and set construction;
  - Entertainment-related rental equipment, including cameras and grip or electrical equipment;
  - Newly purchased computer software and hardware, up to \$300,000; and
  - Meals, travel, and accommodations.
- Salary, wages, or other compensation paid to Florida residents, up to a maximum of \$400,000 per resident.

Additionally, for a qualified production involving an event, such as an awards show, the term “qualified expenditures” excludes expenditures solely associated with the event itself and not directly required by the production. The term also excludes expenditures prior to certification, with the exception of those incurred for a commercial, a music video, or the pickup of additional episodes of a television series within a single season.

### ***Award of Credits***

After production ends and all certified expenditures are made in Florida, the production company must have an independent certified public accountant licensed in Florida conduct a compliance audit. The OFE is required to review the audit and report to the DEO the final verified amount of actual qualified expenditures. The DEO then must review and approve the final tax credit award, and notify the DOR. Tax credit awards are subject to the limitations discussed above.

Additionally, after production the company must make an irrevocable election to apply the tax credits to the corporate income taxes or sales and use taxes or a stated combination of both. This decision is binding on any distributee, successor, transferee, or purchaser. Tax credits that are unused in any year may be carried forward to the next for a maximum of 5 years.

The production must also include information, such as a logo at the end of the credits, which indicates that the production occurred in Florida in order to be eligible for the tax credits.

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<sup>14</sup> A qualified production in the commercial and music video queue is not eligible for any bonuses. A qualified production in the independent and emerging media production queue may be eligible for the family-friendly bonus.

<sup>15</sup> See s. 288.1254(1)(i), F.S.

Section 288.1254(9), F.S., provides audit authority to DOR related to the tax credits, and for the revocation or forfeiture of tax credits under certain circumstances. Fraudulent applications for tax credits may also result in penalties and other costs in addition to repayment of the tax credits.

### **Sales Tax Exemption Certificate for a Qualified Production Company**

Entertainment industry qualified production companies are eligible for several exemptions from taxes under ch. 212, F.S. A qualified production company can obtain a certificate to avoid paying tax at the point of sale, rather than claiming a refund after paying the tax.<sup>16</sup> Qualified production companies are exempt from paying sales tax for the following:

- *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 (the term “activity or service” includes photography, casting, location scouting, and designing sets).<sup>17</sup>
- *Fabrication labor* when a producer uses his or her own equipment and personnel to produce a qualified motion picture.<sup>18</sup>
- *Purchase or lease of motion picture and video equipment and sound recording equipment* used in Florida for motion picture or television production or for the production of master tapes or master records.<sup>19</sup>
- *Sale, lease, storage, or use of blank master tapes, records, films, and video tapes.*<sup>20</sup>

The estimated cost of these exemptions was \$36.2 million for Fiscal Year 2013-14.<sup>21</sup>

### **The OFE Annual Report for Fiscal Year 2013-14<sup>22</sup>**

The OFE is directed to submit an annual report each November 1 to the Governor, the President of the Senate, and the Speaker of the House of Representatives, that outlines the incentive program’s return on the state’s investment and economic benefits to the state; the estimate of FTEs for each production that received tax credits; and the geographic distribution of the credits in Florida. The report is also required to include a report on the OFE’s expenditures under s. 288.1253, F.S., and information describing the relationship between tax exemptions and incentives to industry growth.<sup>23</sup>

The OFE’s annual report for Fiscal Year 2013-14 reviewed the incentive program for the first 4 years of the 6-year program. As of November 1, 2014:

- 689 applications were received and processed;
- Overall, 342 projects have been certified for the 6 years; outcomes for these projects include the following estimates:

<sup>16</sup> Section 288.1258, F.S. See also DOR, Film in Florida Sales Tax Exemption, available at [http://dor.myflorida.com/dor/taxes/film\\_in\\_florida.html](http://dor.myflorida.com/dor/taxes/film_in_florida.html) (last visited Mar. 3, 2015).

<sup>17</sup> Section 212.031(1)(a)9., F.S.

<sup>18</sup> Section 212.06(1)(b), F.S. The term “qualified motion picture” is defined in the statute.

<sup>19</sup> Section 212.08(5)(f), F.S.

<sup>20</sup> Section 212.08(12), F.S.

<sup>21</sup> Florida Revenue Estimating Conference, 2013 Florida Tax Handbook.

<sup>22</sup> OFE, Fiscal Year 2013-14 Annual Report (November 1, 2014), available at <http://www.filminflorida.com/ifi/PDFs/annualReports/Entertainment%20Industry%20Financial%20Incentive%20Annual%20Report%20FY2013-2014.pdf> (last visited Mar. 3, 2015).

<sup>23</sup> Sections 288.1254(10), 288.1253, and 288.1258(5), F.S.

- Over \$1.5 billion in qualified expenditures in Florida;
- 171,922 positions with over \$926 million in wages paid;<sup>24</sup> and
- 248,660 lodging/room nights.
- Certified productions include 74 motion pictures, 59 digital media productions, 154 television productions, television series pilots, telenovelas, award shows, and 55 commercials; and
- 146 certified projects completed production in Fiscal Year 2013-14; outcomes for these projects include (includes unverified data):
  - 8,927 production days;
  - Over \$483.9 million in qualified expenditures in Florida;
  - 51,130 positions with over \$353.8 million in wages paid;
  - 77,634 lodging/room nights; and
  - Almost \$108 million in final tax credits awarded.

Projected outcomes are based on information supplied with the applications. These outcomes are subject to change as some projects may withdraw or additional projects become certified.

The OFE's annual report states that in 2012, the Florida Office of Economic and Demographic Research (EDR) conducted an analysis of the economic impact of the incentive program which found an increase in state gross domestic product of \$15 to \$1 of tax credit awarded and a return of state tax revenue of \$2 for every \$5 of tax credit awarded.

The annual report also includes a calculation by the OFE on the return on investment (ROI) for the sales tax exemptions to be "72.1 to 1"; the OFE also calculated a "combined" return on investment for both the sales tax exemptions and the incentive programs, which resulted in \$4.31 in expenditures by qualified productions for every \$1 of investment from the state from both programs.

For Fiscal Years 2010-11, 2011-12, and 2012-13, the EDR reported an ROI of:<sup>25</sup>

- 0.54 to 1 for the Sales Tax Exemption program;
- 0.43 to 1 for the Financial Incentives (tax credits) program; and
- 0.25 to 1 for the Financial Incentives (tax credits) program when there is a full accounting of all credits awarded.

The Office of Program Policy Analysis and Government Accountability reported that to administer the film and entertainment industry financial incentives:<sup>26</sup>

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<sup>24</sup> Positions are individual positions, not FTEs. Positions may be permanent or temporary. Production cast, crew, extras, and stand-ins, etc., may work for multiple productions and fill multiple positions. The OFE was directed in the 2011 Regular Session to report positions as estimates of FTEs, but according to the annual report the OFE is still developing methodology to report the data. See ch. 2011-76, L.O.F.

<sup>25</sup> Office of Economic and Demographic Research, The Florida Legislature, *Return on Investment for the Entertainment Industry Incentive Programs*, 2 (January, 2015), available at <http://edr.state.fl.us/Content/returnoninvestment/EntertainmentIndustryIncentivePrograms.pdf> (last visited Mar. 3, 2015).

<sup>26</sup> Office of Program Policy Analysis and Government Accountability, The Florida Legislature, *Florida Economic Development Program Evaluations – Year 2*, Report No. 15-01, 11 (Jan. 1, 2015), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1501rpt.pdf> (last visited Mar. 3, 2015).

- The OFE spent \$1 million for Fiscal Years 2011-12 and 2012-13 (no data was provided for Fiscal Year 2010-11) with 5 FTEs; and
- The Department of Revenue spent \$51,537 from Fiscal Years 2010-2011, 2011-12, and 2012-2013.

### III. Effect of Proposed Changes:

SB 1046 restructures Florida's approach to the entertainment industry in the state. The bill:

- Transfers and renames the Office of Film and Entertainment as the Division of Film and Entertainment of Enterprise Florida, Inc.;
- Amends the Entertainment Industry Financial Incentive Program; and
- Creates the Entertainment Industry Quick Action Fund.

#### Division of Film and Entertainment

The bill transfers and renames the Office of Film and Entertainment as the Division of Film and Entertainment (division) of Enterprise Florida, Inc. The entertainment industry economic development programs administered by the DEO will function similar to the other economic development programs administered by the DEO. Generally, Enterprise Florida, Inc., (EFI) markets the state to businesses, including working with regional offices to provide assistance and information on location decisions, workforce needs, and economic development programs. The DEO is responsible for administering the economic development programs. (**Section 3**, transferring and renumbering s. 288.1251, F.S., as s. 288.913, F.S., and amending that statute; **Section 10**, amending s. 288.92, F.S.; **Section 11**, amending s. 477.0135, F.S.).

The division will maintain the OFE's current responsibilities, except with respect to administration of the entertainment industry economic development programs. The bill clarifies that the duties of the division will include coordinating a working relationship with local and regional offices, local film commissions, and labor organizations; to identify, solicit, and recruit production opportunities; and to implement programs designed to develop and promote the state's entertainment industry. The Florida Film and Entertainment Advisory Council (council) is also transferred to EFI and will maintain an advisory role to the division. The bill reduces the council membership from 17 to 11 members, allowing all members to finish their term but prohibiting reappointments that would make or maintain the council membership over 11. The bill adds the Division of Film and Entertainment to the list of required EFI divisions (**Section 3**, transferring and renumbering s. 288.1251, F.S., as s. 288.913, F.S., and amending that statute; and **Section 4**, transferring and renumbering s. 288.1252, F.S., as s. 288.914, F.S., and amending that statute.)

**Sections 2, 5, and 9**, amend ss. 288.125, 288.1253, and 288.1258, F.S., to reflect the transfer of the OFE to Enterprise Florida, Inc. **Section 5** also transfers and renumbers s. 288.1253, F.S., as s. 288.915, F.S. (dealing with allowable travel, entertainment, and incidental expenditures and reimbursement of the division).

## **Entertainment Industry Financial Incentive Program**

The bill amends the Entertainment Industry Financial Incentive Program, renaming it as the “Entertainment Industry Program” (**Section 6**, amends s. 288.1254, F.S.).

### ***Eligibility and Application***

The bill increases the requirements for a qualified production related to the amount of state residents that make up a production’s cast and crew. For a production, the cast and crew must be at least 70 percent state residents (current law is 60 percent); for a digital media production, the cast and crew must be at least 80 percent state residents (current law is 75 percent). The bill removes an exemption to this requirement that allowed a lower percentage for the first 2 years of the program.

The bill amends the definition of “production” to include direct-to-internet productions.

The bill amends the definition of “high-impact television series” to include telenovelas that have qualified expenditures of more than \$6 million, at least 45 principal photography days in the state, cast and crews that are at least 90 percent state residents, and have at least 90 percent of production occurring in the state. The required amount of qualified expenditures per episode is increased from \$625,000 to \$1 million.

The bill requires a production to include in its application documentation related to the planned aggregate non-qualifying expenditures the production will make in the state and proof of financing for the production. Under current law, a production has 90 days from the date it submits the application to provide proof of financing. The bill requires such proof to be submitted at the same time as the application.

The bill creates two application periods. One application period runs from January 1 through June 30, and the second application periods runs from July 1 through December 31. Every fiscal year, one half of the allocated tax credits are available during each application period.

Applications can be received until 125 percent of the tax credits available in an application period have been applied for, after which all applications are denied and applicants may reapply in the next application period. Applications that are received after all of the available tax credits in a period are applied for, but before the amount of credits applied for exceeds 125 percent of available tax credits in an application period, are placed in a queue as the applications are received. Queued applications may be considered for tax credits that become available during the application period. Applications remaining in the queue at the end of a period are denied and applicants may reapply in the next period. The bill clarifies the denial process.

Any applications on file with the DEO to receive a tax credit through the entertainment industry program on July 1, 2015, are denied (**Section 7**.)

High-impact television series productions may apply and be certified for a tax credit for a future fiscal year allocation for one additional successive season of a series. The applicant must affirm that the additional season is likely to be ordered, and must notify the DEO within 10 days if the second season is not ordered or is cancelled.

Other than the exception of one additional season of a high-impact television series, applicants may not be certified for tax credits in a future fiscal year. The bill clarifies the certification process in regards to the changes made to the Division of Film and Entertainment.

Upon certification, the production is required to provide the DEO and the division with information related to the production's needs for cast, crew, contractors, and vendors. The production must also provide a single point of contact. The division will publish this information online and include relevant information such as the starting date of the production and its location. The DEO and division may adopt procedures for a production to post such information itself within a week of certification.

Current law permits the DEO to withdraw the eligibility of a production for tax credits if the production does not continue on a reasonable basis, or if the production does not provide proof of financing. The bill clarifies when the DEO may deny a certified production. The DEO may deny a certified production upon finding any circumstance that affects the reasonable schedule or timely completion of the production, including a break in production or loss of financing. The certified production must notify the DEO within 5 days after any circumstance affecting the timely completion of the production. However, a certified production that has lost financing may avoid denial by the DEO if it provides the DEO with proof of replacement financing within 10 days of the original loss.

The bill makes clarifying changes to the DEO's verification process. A certified production must submit the required documentation within 180 days of the completion of the production. All production-related information on full and part-time employment and wages paid to state residents is required in the documentation. The DEO must require a certified production to submit data substantiating aggregate nonqualified expenditures in this state, including capital investment.

The Division of Film and Entertainment is required to give the Florida Tourism Industry Marketing Corporation (VISIT Florida) contact information for each qualified production. Qualified productions are required to work with VISIT Florida to develop marketing materials that promote the state. The "VISIT Florida" logo is required to be shown in the end credits of a production, along with other currently required logos.

### ***General Production Queue***

The bill clarifies that first priority in the general production queue for uncertified tax credit awards must go to high-impact television series. The bill repeals the limitations on the total amount of tax credits that can be allocated to high-impact television series. The bill repeals the priority for "high-impact digital media" and related definitions.

The bill amends several of the additional tax credit bonuses. The bill:

- Sets aside 20 percent of the tax credits in each application period for qualified productions in an underutilized county. For a production to be eligible for these tax credits at least 70 percent of its principal photography days must occur within an underutilized county. An "underutilized county" is one in which less than \$500,000 in qualified expenditures were



made in the last 2 fiscal years. Any credits set aside for this purpose become available to be certified in the general queue after 4 months.

- Repeals the tax credit bonus for “underutilized regions” and related definitions.
- Repeals the tax credit bonus for “off-season” productions and related definitions.
- Repeals the tax credit bonus for productions that occur at certain production facilities and related definitions.
- Defines “family-friendly production” used for the eponymously named bonus. The bill defines a family-friendly production as a production that:
  - Has cross-generational appeal;
  - Is considered suitable for viewing by children age 5 or older;
  - Is appropriate in theme, content, and language for a broad family audience;
  - Embodies a responsible resolution of issues; and
  - Does not exhibit or imply any act of smoking, sex, nudity, or vulgar or profane language.
- Creates a tax credit bonus of 5 percent for productions that complete a permanent capital investment of at least \$2 million before the completion of the qualified production. The capital investment may be the basis of an application only once.
- Reduces the total tax credits a production is eligible for from 30 percent of qualified expenditures to 25 percent.

The bill makes clarifying changes to the tax credit carry forward process, at the suggestion of the Department of Revenue.<sup>27</sup>

The bill extends the program until July 1, 2021.

### ***Florida Entertainment Industry Quick Action Fund***

**Section 8** creates in s. 288.1256, F.S., the Entertainment Industry Quick Action Fund. The fund is created to empower the DEO to respond to extraordinary opportunities and to compete effectively with other states to attract and retain production companies and to provide favorable conditions for the growth of the entertainment industry in this state.

The Quick Action Fund will function similarly to other state economic development programs. A production company may apply for funds from the fund and the Division of Film and Entertainment, along with the DEO, will review and evaluate applications to determine eligibility.

In their review and evaluation of applications, the division and the DEO must consider the following 19 criteria:

- Expected contribution to the state’s economy;
- The amount of qualified and nonqualified expenditures that will be made in-state;
- The percentage of principal photography or production activity that will occur at in-state facilities or locations;
- Preproduction and postproduction planned to occur in-state;

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<sup>27</sup> Florida Department of Revenue, *2014 Legislative Bill Analysis SB 1734* (April 22, 2014) available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=4671> (last visited Mar 3, 2015).

- The amount of direct capital investment, especially fixed capital investment, to be made by the production company in this state related to the project;
- The amount of other capital investment made in-state related to the project;
- The duration of the project in this state, including any production occurring in the off-season;
- The amount and duration of principal photography or production activity that will occur in an underutilized county;
- The amount of promotion of Florida that the production company will provide for the state;
- The number of state residents that will be employed in full and part-time positions related to the project, the duration of employment, and the wages paid;
- The employment of full-time students in entertainment-related courses of study and recent graduates from in-state institutions of higher education;
- Any plans the production company has to work with entertainment-related courses of study at an in-state institution of higher education;
- Any local support and financial commitment for the project;
- The project is about this state or shows the state in a positive light;
- The length of time, number, and history of commitment the production company has made in the state;
- The project is an independent film;
- The amount of repayment the production company agrees to pay the state;
- The expected effect of the award on the viability of the project and the probability that the production would be undertaken in-state if funds are granted; and
- A review of the company's past activity in this state and others.

The production company must agree to repay at least 25 percent of the final award amount once the production generates \$20 million in gross revenue. A production company must have financing in place for a project before it applies to receive an award from the fund. The DEO must prescribe an application form with information required by similar economic development programs. Any awards funded may not be more than 30 percent of in-state qualified expenditures, and may not fund wages paid to nonresidents.

The approval process is required to be conducted as follows:

- The DEO makes a project recommendation to the Governor within one week after the review and evaluation of an application.
- The recommendation must include the performance conditions that the project must meet to obtain funds.
- The Governor may approve projects:
  - Requiring funding less than \$2 million in funding without consulting the Legislature; and
  - Requiring funding between \$2 million and \$5 million, after providing a written description and evaluation of a project recommended for approval to the Legislative Budget Commission (LBC) at least 10 days before giving final approval.
- Projects requiring funding exceeding \$5 million must be approved by the LBC.
- Production must start within 1 year after the date a project is approved.

Once a project has been approved, the DEO and the production company will enter into an agreement that specifies at minimum:

- The total funds awarded and schedule of payment;

- The performance conditions required for payment of funds awarded;
- The methodology for validating the performance conditions and the date by which a production company must submit proof of performance to the DEO;
- That the DEO may review and verify any records of the production company to determine compliance with the agreement;
- Sanctions for failure to meet performance conditions; and
- That the payment of fund awards is contingent upon an appropriation by the Legislature.

The agreement must be signed and finalized within 90 days of the Governor's approval.

The DEO may not approve awards exceeding the amount appropriated in a fiscal year. The department must set aside 50 percent of the appropriated amount each fiscal year, which becomes available to be awarded after 6 months.

All repayments are deposited into the Entertainment Industry Quick Action Account that is within the State Economic Enhancement and Development Trust Fund. **Section 1** amends s. 288.1201, F.S., to create the Entertainment Quick Action Account for repayments made and payments authorized under the Entertainment Quick Action Fund.

The bill creates a penalty for fraudulent claims. The penalty is a reimbursement for any payment amounts plus an amount double the payment amount.

The DEO may not waive any provision or provide any extension of time to meet requirements of the Entertainment Quick Action Fund.

The Entertainment Quick Action Fund expires on July 1, 2025.

### ***Sales Tax Exemption Certificates***

The bill clarifies that a production can receive a sales tax exemption certificate for purchases made after filing a complete application.

The bill clarifies a portion of the certificate application process, including that:

- A production company may annually renew the 1-year certificate for up to 5 years without submitting a new application;
- A production company may quarterly renew the 90-day certificate for up to 1 year without submitting a new application;
- Upon surrender or expiration of a tax certificate, a production company must report additional production-related information for inclusion in the DEO's annual report.

### ***Limitation***

A production company is prohibited from receiving benefits from more than one entertainment industry incentive program at a time (the tax credit, sales tax exemption, or quick action fund).

***Miscellaneous***

The bill reenacts s. 212.08, F.S., (**Section 12**) and s. 220.1899, F.S., (**Section 13**) for the purposes of incorporating the amendments made by this act.

The bill provides an effective date of July 1, 2015.

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

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet adopted a fiscal impact for this bill.

**B. Private Sector Impact:**

Indeterminate.

**C. Government Sector Impact:**

For Fiscal Year 2013-14, the OFE had an operating budget of approximately \$673,000 and five full-time-equivalent (FTE) positions.<sup>28</sup> Of the five FTE positions in the OFE, three of those positions and one OPS position are dedicated to administration of the incentive program.<sup>29</sup>

The Department of Revenue has not yet published a report on the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>28</sup> The five FTEs include the Commissioner and a position at a field office in Los Angeles.

<sup>29</sup> DEO, 2014 Legislative Bill Analysis: SB 1640 (3/12/2014).

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 288.1201, 288.125, 288.1251, 288.1252, 288.1253, 288.1254, 288.1258, 288.92, and 477.0135.

This bill creates the following sections of the Florida Statutes: 288.913, 288.914, 288.915, and 288.1256.

This bill reenacts the following sections of the Florida Statutes: 212.08 and 220.1899.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By Senator Detert

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1 A bill to be entitled  
 2 An act relating to the entertainment industry;  
 3 amending s. 288.1201, F.S.; revising the sources of  
 4 moneys to be credited to the State Economic  
 5 Enhancement and Development Trust Fund to include  
 6 repayments to the entertainment industry quick action  
 7 fund created by the act; creating the Entertainment  
 8 Industry Quick Action Account within the State  
 9 Economic Enhancement and Development Trust Fund;  
 10 authorizing the Department of Economic Opportunity to  
 11 adopt specified rules; amending s. 288.125, F.S.;  
 12 revising the applicability of the term "entertainment  
 13 industry"; transferring, renumbering, and amending s.  
 14 288.1251, F.S.; renaming the Office of Film and  
 15 Entertainment within the Department of Economic  
 16 Opportunity as the Division of Film and Entertainment  
 17 within Enterprise Florida, Inc.; requiring the  
 18 division to serve as a liaison between the  
 19 entertainment industry and other agencies,  
 20 commissions, and organizations; requiring the Governor  
 21 to appoint the film and entertainment commissioner;  
 22 revising the requirements of the division's strategic  
 23 plan; transferring, renumbering, and amending s.  
 24 288.1252, F.S.; revising the powers and duties of the  
 25 Florida Film and Entertainment Advisory Council;  
 26 revising council membership; conforming provisions to  
 27 changes made by the act; transferring, renumbering,  
 28 and amending s. 288.1253, F.S.; conforming provisions  
 29 to changes made by the act; amending s. 288.1254,

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30 F.S.; redefining terms; requiring the Department of  
 31 Economic Opportunity, rather than the Office of Film  
 32 and Entertainment, to be responsible for applications  
 33 for the entertainment industry program; revising  
 34 provisions relating to the application process, tax  
 35 credit eligibility, transfer of tax credits, election  
 36 and distribution of tax credits, allocation of tax  
 37 credits, forfeiture of tax credits, and annual report;  
 38 extending the repeal date; conforming provisions to  
 39 changes made by the act; specifying a date on which  
 40 the applications on file with the department and not  
 41 yet certified are deemed denied; creating s. 288.1256,  
 42 F.S.; creating the entertainment industry quick action  
 43 fund within the department; defining terms;  
 44 authorizing a production company to apply for funds  
 45 from the entertainment industry quick action fund in  
 46 certain circumstances; requiring the department and  
 47 the division to jointly review and evaluate  
 48 applications to determine the eligibility of each  
 49 project; requiring the department to select projects  
 50 that maximize the return to the state; requiring  
 51 certain criteria to be considered by the department  
 52 and the division; requiring a production company to  
 53 have financing for a project before it applies for  
 54 quick action funds; requiring the department to  
 55 prescribe a form for an application with specified  
 56 information; requiring that the department make a  
 57 recommendation to the Governor to approve or deny an  
 58 award within a specified timeframe after the

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59 completion of the review and evaluation; providing  
 60 that an award of funds may not constitute more than a  
 61 specified percentage of qualified expenditures in this  
 62 state and prohibiting the use of such funds to pay  
 63 wages to nonresidents; requiring a production to start  
 64 within a specified period after it is approved by the  
 65 Governor; requiring that the recommendation include  
 66 performance conditions that the project must meet to  
 67 obtain funds; requiring the department and the  
 68 production company to enter into a specified agreement  
 69 after approval by the Governor; requiring that the  
 70 agreement be finalized and signed by an authorized  
 71 officer of the production company within a specified  
 72 period after approval by the Governor; prohibiting an  
 73 approved production company from simultaneously  
 74 receiving specified benefits for the same production;  
 75 requiring that the department validate contractor  
 76 performance and report such validation in the annual  
 77 report; prohibiting the department from approving  
 78 awards in excess of the amount appropriated for a  
 79 fiscal year; requiring the department to maintain a  
 80 schedule of funds; requiring that all funds received  
 81 from the required repayment be deposited into the  
 82 Entertainment Industry Quick Action Account within the  
 83 State Economic Enhancement and Development Trust Fund;  
 84 providing that a production company that submits  
 85 fraudulent information is liable for reimbursement of  
 86 specified costs; providing a penalty; prohibiting the  
 87 department from waiving any provision or providing an

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88 extension of time to meet specified requirements;  
 89 providing an expiration date; amending s. 288.1258,  
 90 F.S.; conforming provisions to changes made by the  
 91 act; prohibiting an approved production company from  
 92 simultaneously receiving benefits under specified  
 93 provisions for the same production; requiring the  
 94 department to develop a standardized application form  
 95 in cooperation with the division and other agencies;  
 96 requiring the qualified production company to submit  
 97 aggregate data on specified topics; authorizing a  
 98 qualified production company to renew its certificate  
 99 of exemption for a specified period; amending s.  
 100 288.92, F.S.; requiring Enterprise Florida, Inc., to  
 101 have a division relating to film and entertainment;  
 102 amending s. 477.0135, F.S.; conforming a provision to  
 103 changes made by the act; reenacting s. 212.08(5)(g),  
 104 F.S., relating to sales, rental, use, consumption,  
 105 distribution, and storage tax; specified exemptions;  
 106 reenacting s. 220.1899(3), F.S., relating to  
 107 entertainment industry tax credit; providing an  
 108 effective date.  
 109  
 110 Be It Enacted by the Legislature of the State of Florida:  
 111  
 112 Section 1. Subsection (2) of section 288.1201, Florida  
 113 Statutes, is amended, present subsection (3) is redesignated as  
 114 subsection (4), and a new subsection (3) is added to that  
 115 section, to read:  
 116 288.1201 State Economic Enhancement and Development Trust

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117 Fund.-

118 (2) The trust fund is established for use as a depository  
 119 for funds to be used for the purposes specified in subsection  
 120 (1). Moneys to be credited to the trust fund ~~shall~~ consist of  
 121 documentary stamp tax proceeds as specified in law, local  
 122 financial support funds, interest earnings, repayments made  
 123 under s. 288.1256, and cash advances from other trust funds.  
 124 Funds shall be expended only pursuant to legislative  
 125 appropriation or an approved amendment to the department's  
 126 operating budget pursuant to the provisions of chapter 216.

127 (3) There is created, within the State Economic Enhancement  
 128 and Development Trust Fund, the Entertainment Industry Quick  
 129 Action Account. The Entertainment Industry Quick Action Account  
 130 shall consist of moneys appropriated to the account for purposes  
 131 of the program authorized under s. 288.1256 and repayment made  
 132 under s. 288.1256. Moneys in the Entertainment Industry Quick  
 133 Action Account are subject to s. 216.301(1)(a). Moneys in the  
 134 Entertainment Industry Quick Action Account may be used only to  
 135 make payments authorized under s. 288.1256. The department may  
 136 adopt rules necessary to provide for the use of moneys in the  
 137 Entertainment Industry Quick Action Account and for the  
 138 administration of the Entertainment Industry Quick Action  
 139 Account.

140 Section 2. Section 288.125, Florida Statutes, is amended to  
 141 read:

142 288.125 Definition of "entertainment industry."-For the  
 143 purposes of ss. 288.1254, 288.1256, 288.1258, 288.913, 288.914,  
 144 and 288.915 ~~ss. 288.1251-288.1258~~, the term "entertainment  
 145 industry" means those persons or entities engaged in the

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146 operation of motion picture or television studios or recording  
 147 studios; those persons or entities engaged in the preproduction,  
 148 production, or postproduction of motion pictures, made-for-  
 149 television movies, television programming, digital media  
 150 projects, commercial advertising, music videos, or sound  
 151 recordings; and those persons or entities providing products or  
 152 services directly related to the preproduction, production, or  
 153 postproduction of motion pictures, made-for-television movies,  
 154 television programming, digital media projects, commercial  
 155 advertising, music videos, or sound recordings, including, but  
 156 not limited to, the broadcast industry.

157 Section 3. Section 288.1251, Florida Statutes, is  
 158 transferred, renumbered as section 288.913, Florida Statutes,  
 159 and amended to read:

160 288.913 ~~288.1251~~ Promotion and development of entertainment  
 161 industry; Division Office of Film and Entertainment; creation;  
 162 purpose; powers and duties.-

163 (1) CREATION.-

164 ~~(a) The Division of Film and Entertainment is~~ There is  
 165 hereby created within Enterprise Florida, Inc., the department  
 166 ~~the Office of Film and Entertainment~~ for the purpose of  
 167 developing, recruiting, marketing, promoting, and providing  
 168 services to the state's entertainment industry. The division  
 169 shall serve as a liaison between the entertainment industry and  
 170 other state and local governmental agencies, local film  
 171 commissions, and labor organizations.

172 ~~(2)(b) COMMISSIONER.~~ The Governor shall appoint the film  
 173 and entertainment commissioner, who shall serve at the pleasure  
 174 of the Governor and is subject to confirmation by the Senate

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175 ~~department shall conduct a national search for a qualified~~  
 176 ~~person to fill the position of Commissioner of Film and~~  
 177 ~~Entertainment when the position is vacant. The executive~~  
 178 ~~director of the department has the responsibility to hire the~~  
 179 ~~film commissioner.~~ Qualifications for the film commissioner  
 180 include, but are not limited to, the following:

181 (a)1- A working knowledge of and experience with the  
 182 equipment, personnel, financial, and day-to-day production  
 183 operations of the industries to be served by the division Office  
 184 of Film and Entertainment;

185 (b)2- Marketing and promotion experience related to the  
 186 film and entertainment industries to be served;

187 (c)3- Experience working with a variety of individuals  
 188 representing large and small entertainment-related businesses,  
 189 industry associations, local community entertainment industry  
 190 liaisons, and labor organizations; and

191 (d)4- Experience working with a variety of state and local  
 192 governmental agencies.

193 (3)(2) POWERS AND DUTIES.-

194 (a) The Division Office of Film and Entertainment, in  
 195 performance of its duties, shall develop and+

196 1. In consultation with the Florida Film and Entertainment  
 197 Advisory Council, update a 5-year the strategic plan every 5  
 198 years to guide the activities of the division Office of Film and  
 199 Entertainment in the areas of entertainment industry  
 200 development, marketing, promotion, liaison services, field  
 201 office administration, and information. The plan shall+

202 a- be annual in construction and ongoing in nature.

203 1. At a minimum, the plan must address the following:

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204 a.b- ~~Include recommendations relating to~~ The organizational  
 205 structure of the division, including any field offices outside  
 206 the state office.

207 b. The coordination of the division with local or regional  
 208 offices maintained by counties and regions of the state, local  
 209 film commissions, and labor organizations, and the coordination  
 210 of such entities with each other to facilitate a working  
 211 relationship.

212 c. Strategies to identify, solicit, and recruit  
 213 entertainment production opportunities for the state, including  
 214 implementation of programs for rural and urban areas designed to  
 215 develop and promote the state's entertainment industry.

216 d.e- ~~Include~~ An annual budget projection for the division  
 217 office for each year of the plan.

218 d. Include an operational model for the office to use in  
 219 implementing programs for rural and urban areas designed to-  
 220 (I) develop and promote the state's entertainment industry.

221 (II) Have the office serve as a liaison between the  
 222 entertainment industry and other state and local governmental  
 223 agencies, local film commissions, and labor organizations.

224 (III) Gather statistical information related to the state's  
 225 entertainment industry.

226 e.(IV) Provision of Provide information and service to  
 227 businesses, communities, organizations, and individuals engaged  
 228 in entertainment industry activities.

229 (V) Administer field offices outside the state and  
 230 coordinate with regional offices maintained by counties and  
 231 regions of the state, as described in sub-sub-subparagraph (II),  
 232 as necessary.

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233 ~~f.e.~~ Include Performance standards and measurable outcomes  
234 for the programs to be implemented by the division ~~office~~.

235 2. The plan shall be annually reviewed and approved by the  
236 board of directors of Enterprise Florida, Inc.

237 ~~f. Include an assessment of, and make recommendations on,~~  
238 ~~the feasibility of creating an alternative public-private~~  
239 ~~partnership for the purpose of contracting with such a~~  
240 ~~partnership for the administration of the state's entertainment~~  
241 ~~industry promotion, development, marketing, and service~~  
242 ~~programs.~~

243 2. Develop, market, and facilitate a working relationship  
244 between state agencies and local governments in cooperation with  
245 local film commission offices for out of state and indigenous  
246 entertainment industry production entities.

247 3. Implement a structured methodology prescribed for  
248 coordinating activities of local offices with each other and the  
249 commissioner's office.

250 (b) The division shall also:

251 1.4- Represent the state's indigenous entertainment  
252 industry to key decisionmakers within the national and  
253 international entertainment industry, and to state and local  
254 officials.

255 2.5- Prepare an inventory and analysis of the state's  
256 entertainment industry, including, but not limited to,  
257 information on crew, related businesses, support services, job  
258 creation, talent, and economic impact and coordinate with local  
259 offices to develop an information tool for common use.

260 3.6- Identify, solicit, and recruit entertainment  
261 production opportunities for the state.

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262 4.7- Assist rural communities and other small communities  
263 in the state in developing the expertise and capacity necessary  
264 for such communities to develop, market, promote, and provide  
265 services to the state's entertainment industry.

266 ~~(c)(b)~~ The division ~~Office of Film and Entertainment~~, in  
267 the performance of its duties, may:

268 1. Conduct or contract for specific promotion and marketing  
269 functions, including, but not limited to, production of a  
270 statewide directory, production and maintenance of an Internet  
271 website, establishment and maintenance of a toll-free telephone  
272 number, organization of trade show participation, and  
273 appropriate cooperative marketing opportunities.

274 2. Conduct its affairs, carry on its operations, establish  
275 offices, and exercise the powers granted by this act in any  
276 state, territory, district, or possession of the United States.

277 3. Carry out any program of information, special events, or  
278 publicity designed to attract entertainment industry to Florida.

279 4. Develop relationships and leverage resources with other  
280 public and private organizations or groups in their efforts to  
281 publicize to the entertainment industry in this state, other  
282 states, and other countries the depth of Florida's entertainment  
283 industry talent, crew, production companies, production  
284 equipment resources, related businesses, and support services,  
285 including the establishment of and expenditure for a program of  
286 cooperative advertising with these public and private  
287 organizations and groups in accordance with the provisions of  
288 chapter 120.

289 5. Provide and arrange for reasonable and necessary  
290 promotional items and services for such persons as the division

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291 ~~office~~ deems proper in connection with the performance of the  
292 promotional and other duties of the division office.

293 6. Prepare an ~~annual~~ economic impact analysis on  
294 entertainment industry-related activities in the state.

295 7. Request or accept any grant, payment, or gift of funds  
296 or property made by this state, the United States, or any  
297 department or agency thereof, or by any individual, firm,  
298 corporation, municipality, county, or organization, for ~~any or~~  
299 ~~all of the purposes of the Office of Film and Entertainment's~~ 5-  
300 year strategic plan or those permitted activities enumerated in  
301 this paragraph. Such funds shall be deposited in a separate  
302 account the Grants and Donations Trust Fund of the Executive  
303 Office of the Governor for use by the division Office of Film  
304 and Entertainment in carrying out its responsibilities and  
305 duties ~~as delineated in law~~. The division office may expend such  
306 funds in accordance with the terms and conditions of any such  
307 grant, payment, or gift in the pursuit of its administration or  
308 in support of fulfilling its duties and responsibilities. The  
309 division office shall separately account for the public funds  
310 and the private funds deposited into the account trust fund.

311 Section 4. Section 288.1252, Florida Statutes, is  
312 transferred, renumbered as section 288.914, Florida Statutes,  
313 and amended to read:

314 288.914 ~~288.1252~~ Florida Film and Entertainment Advisory  
315 Council; ~~creation;~~ purpose; membership; powers and duties.—

316 ~~(1) CREATION. There is created within the department, for~~  
317 ~~administrative purposes only, the Florida Film and Entertainment~~  
318 ~~Advisory Council.~~

319 (1)(2) CREATION AND PURPOSE.—The Florida Film and

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320 Entertainment Advisory Council is created ~~purpose of the Council~~  
321 ~~is~~ to serve as an advisory body to the Division of Film and  
322 Entertainment within Enterprise Florida, Inc., ~~department and to~~  
323 ~~the Office of Film and Entertainment~~ to provide ~~these offices~~  
324 ~~with~~ industry insight and expertise related to developing,  
325 marketing, and promoting, ~~and providing service to~~ the state's  
326 entertainment industry.

327 (2)(3) MEMBERSHIP.—

328 (a) The council shall consist of 11 ~~17~~ members, 5 ~~7~~ to be  
329 appointed by the Governor, 3 ~~5~~ to be appointed by the President  
330 of the Senate, and 3 ~~5~~ to be appointed by the Speaker of the  
331 House of Representatives.

332 (b) When making appointments to the council, the Governor,  
333 the President of the Senate, and the Speaker of the House of  
334 Representatives shall appoint persons who are residents of the  
335 state and who are highly knowledgeable of, active in, and  
336 recognized leaders in Florida's motion picture, television,  
337 video, sound recording, or other entertainment industries. These  
338 persons shall include, but not be limited to, representatives of  
339 local film commissions, representatives of entertainment  
340 associations, a representative of the broadcast industry,  
341 representatives of labor organizations in the entertainment  
342 industry, and board chairs, presidents, chief executive  
343 officers, chief operating officers, or persons of comparable  
344 executive position or stature of leading or otherwise important  
345 entertainment industry businesses and offices. Council members  
346 shall be appointed in such a manner as to equitably represent  
347 the broadest spectrum of the entertainment industry and  
348 geographic areas of the state.

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349 (c) Council members shall serve for 4-year terms. A member  
 350 of the council serving as of July 1, 2015, may serve the  
 351 remainder of his or her term, but upon the conclusion of the  
 352 term or upon vacancy, such appointment may not be filled except  
 353 to meet the requirements of this section.

354 (d) Subsequent appointments shall be made by the official  
 355 who appointed the council member whose expired term is to be  
 356 filled.

357 (e) A representative of Enterprise Florida, Inc., a  
 358 representative of Workforce Florida, Inc., and a representative  
 359 of VISIT Florida shall serve as ex officio, nonvoting members of  
 360 the council, ~~and shall be~~ in addition to the 11 ~~17~~ appointed  
 361 members ~~of the council.~~

362 (f) Absence from three consecutive meetings shall result in  
 363 automatic removal from the council.

364 (g) A vacancy on the council shall be filled for the  
 365 remainder of the unexpired term by the official who appointed  
 366 the vacating member.

367 (h) No more than one member of the council may be an  
 368 employee of any one company, organization, or association.

369 (i) Any member shall be eligible for reappointment but may  
 370 not serve more than two consecutive terms.

371 ~~(3)-(4)~~ MEETINGS; ORGANIZATION.—

372 (a) The council shall meet at least no less frequently than  
 373 once each quarter of the calendar year, and but may meet more  
 374 often as determined necessary ~~set~~ by the council.

375 (b) The council shall annually elect from its appointed  
 376 membership one member to serve as chair ~~of the council~~ and one  
 377 member to serve as vice chair. The Division Office of Film and

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378 Entertainment shall provide staff assistance to the council,  
 379 which ~~must shall~~ include, but need not be limited to, keeping  
 380 records of the proceedings of the council, and serving as  
 381 custodian of all books, documents, and papers filed with the  
 382 council.

383 (c) A majority of the members of the council constitutes  
 384 ~~shall constitute~~ a quorum.

385 (d) Members of the council shall serve without  
 386 compensation, but are shall be entitled to reimbursement for per  
 387 diem and travel expenses in accordance with s. 112.061 while in  
 388 performance of their duties.

389 ~~(4)-(5)~~ POWERS AND DUTIES.—The Florida Film and  
 390 Entertainment Advisory Council shall have all the power powers  
 391 ~~necessary or convenient~~ to carry out ~~and effectuate the purposes~~  
 392 ~~and provisions of~~ this act, including, but not limited to, the  
 393 power to:

394 (a) Adopt bylaws for the governance of its affairs and the  
 395 conduct of its business.

396 (b) Advise the Division of Film and Entertainment ~~and~~  
 397 ~~consult with the Office of Film and Entertainment~~ on the  
 398 content, development, and implementation of the division's 5-  
 399 year strategic plan ~~to guide the activities of the office.~~

400 (c) ~~Review the Commissioner of Film and Entertainment's~~  
 401 ~~administration of the programs related to the strategic plan,~~  
 402 ~~and Advise the Division of Film and Entertainment~~ ~~commissioner~~  
 403 on the division's programs and any changes that might be made to  
 404 better meet the strategic plan.

405 (d) Consider and study the needs of the entertainment  
 406 industry for the purpose of advising the Division of Film and

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407 ~~Entertainment film commissioner and the department.~~

408 (e) Identify ~~and make recommendations on state agency and~~  
 409 local government actions that may have an impact on the  
 410 entertainment industry or that may appear to industry  
 411 representatives as ~~an~~ official state or local ~~actions~~ action  
 412 affecting production in the state, and advise the Division of  
 413 Film and Entertainment of such actions.

414 (f) Consider all matters submitted to it by the Division of  
 415 Film and Entertainment ~~film commissioner and the department.~~

416 (g) ~~Advise and consult with the film commissioner and the~~  
 417 ~~department, at their request or upon its own initiative,~~  
 418 ~~regarding the promulgation, administration, and enforcement of~~  
 419 ~~all laws and rules relating to the entertainment industry.~~

420 (g)(h) ~~Suggest policies and practices for the conduct of~~  
 421 ~~business by the Office of Film and Entertainment or by the~~  
 422 ~~department that will improve interaction with internal~~  
 423 ~~operations affecting the entertainment industry and will enhance~~  
 424 ~~related state the economic development initiatives of the state~~  
 425 ~~for the industry.~~

426 (i) ~~Appear on its own behalf before boards, commissions,~~  
 427 ~~departments, or other agencies of municipal, county, or state~~  
 428 ~~government, or the Federal Government.~~

429 Section 5. Section 288.1253, Florida Statutes, is  
 430 transferred, renumbered as section 288.915, Florida Statutes,  
 431 and amended to read:

432 288.915 ~~288.1253~~ Travel and entertainment expenses.—

433 (1) As used in this section, the term "travel expenses"  
 434 means the actual, necessary, and reasonable costs of  
 435 transportation, meals, lodging, and incidental expenses normally

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436 incurred by an employee of the Division Office of Film and  
 437 Entertainment within Enterprise Florida, Inc., as which costs  
 438 ~~are~~ defined and prescribed by ~~rules adopted by the~~ department  
 439 rule, subject to approval by the Chief Financial Officer.

440 (2) Notwithstanding ~~the provisions of~~ s. 112.061, the  
 441 department shall adopt rules by which the Division of Film and  
 442 Entertainment ~~it~~ may make expenditures by reimbursement to+ the  
 443 Governor, the Lieutenant Governor, security staff of the  
 444 Governor or Lieutenant Governor, the Commissioner of Film and  
 445 Entertainment, or staff of the Division Office of Film and  
 446 Entertainment for travel expenses or entertainment expenses  
 447 incurred by such individuals solely and exclusively in  
 448 connection with the performance of the statutory duties of the  
 449 division Office of Film and Entertainment. The rules are subject  
 450 to approval by the Chief Financial Officer before adoption. The  
 451 rules shall require the submission of paid receipts, or other  
 452 proof of expenditure prescribed by the Chief Financial Officer,  
 453 with any claim for reimbursement.

454 (3) The Division Office of Film and Entertainment shall  
 455 include in the annual report for the entertainment industry  
 456 ~~financial incentive~~ program required under s. 288.1254(10) a  
 457 report of the division's office's expenditures for the previous  
 458 fiscal year. The report must consist of a summary of all travel,  
 459 entertainment, and incidental expenses incurred within the  
 460 United States and all travel, entertainment, and incidental  
 461 expenses incurred outside the United States, as well as a  
 462 summary of all successful projects that developed from such  
 463 travel.

464 (4) The Division Office of Film and Entertainment and its

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465 employees and representatives, when authorized, may accept and  
 466 use complimentary travel, accommodations, meeting space, meals,  
 467 equipment, transportation, and any other goods or services  
 468 necessary for or beneficial to the performance of the division's  
 469 ~~office's~~ duties and purposes, so long as such acceptance or use  
 470 is not in conflict with part III of chapter 112. The department  
 471 shall, by rule, develop internal controls to ensure that such  
 472 goods or services accepted or used pursuant to this subsection  
 473 are limited to those that will assist solely and exclusively in  
 474 the furtherance of the division's ~~office's~~ goals and are in  
 475 compliance with part III of chapter 112.

476 (5) Any claim submitted under this section is not required  
 477 to be sworn to before a notary public or other officer  
 478 authorized to administer oaths, but any claim authorized or  
 479 required to be made under any provision of this section shall  
 480 contain a statement that the expenses were actually incurred as  
 481 necessary travel or entertainment expenses in the performance of  
 482 official duties of the Division Office of Film and Entertainment  
 483 and shall be verified by written declaration that it is true and  
 484 correct as to every material matter. Any person who willfully  
 485 makes and subscribes to any claim that ~~which~~ he or she does not  
 486 believe to be true and correct as to every material matter or  
 487 who willfully aids or assists in, procures, or counsels or  
 488 advises with respect to, the preparation or presentation of a  
 489 claim pursuant to this section which ~~that~~ is fraudulent or false  
 490 as to any material matter, whether such falsity or fraud is with  
 491 the knowledge or consent of the person authorized or required to  
 492 present the claim, commits a misdemeanor of the second degree,  
 493 punishable as provided in s. 775.082 or s. 775.083. Whoever

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494 receives a reimbursement by means of a false claim is civilly  
 495 liable, in the amount of the overpayment, for the reimbursement  
 496 of the public fund from which the claim was paid.

497 Section 6. Section 288.1254, Florida Statutes, is amended  
 498 to read:

499 288.1254 Entertainment industry ~~financial incentive~~  
 500 program.—

501 (1) DEFINITIONS.—As used in this section, the term:

502 (a) "Certified production" means a qualified production  
 503 that has tax credits allocated to it by the department based on  
 504 the production's estimated qualified expenditures, up to the  
 505 production's maximum certified amount of tax credits, by the  
 506 department. The term does not include a production if its first  
 507 day of principal photography or project start date in this state  
 508 occurs before the production is certified by the department,  
 509 unless the production spans more than 1 fiscal year, was a  
 510 certified production on its first day of principal photography  
 511 or project start date in this state, and submits an application  
 512 for continuing the same production for the subsequent fiscal  
 513 year.

514 (b) "Digital media project" means a production of  
 515 interactive entertainment that is produced for distribution in  
 516 commercial or educational markets. The term includes a video  
 517 game or production intended for Internet or wireless  
 518 distribution, an interactive website, digital animation, and  
 519 visual effects, including, but not limited to, three-dimensional  
 520 movie productions and movie conversions. The term does not  
 521 include a production that contains content that is obscene as  
 522 defined in s. 847.001.

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523 (c) "Family-friendly production" means a production that  
 524 has cross-generational appeal; is considered suitable for  
 525 viewing by children age 5 or older; is appropriate in theme,  
 526 content, and language for a broad family audience; embodies a  
 527 responsible resolution of issues; and does not exhibit or imply  
 528 any act of smoking, sex, nudity, or vulgar or profane language  
 529 ~~"High-impact digital media project" means a digital media~~  
 530 ~~project that has qualified expenditures greater than \$4.5~~  
 531 ~~million.~~

532 (d) "High-impact television series" means:

533 1. A production created to run multiple production seasons  
 534 which has and having an estimated order of at least seven  
 535 episodes per season and qualified expenditures of at least \$1  
 536 million ~~\$625,000~~ per episode; or

537 2. A telenovela that has qualified expenditures of more  
 538 than \$6 million; a minimum of 45 principal photography days  
 539 filmed in this state; a production cast, including background  
 540 actors, and a crew of which at least 90 percent are legal  
 541 residents of this state; and at least 90 percent of its  
 542 production occurring in this state.

543 (e) ~~"Off-season certified production" means a feature film,~~  
 544 ~~independent film, or television series or pilot that films 75~~  
 545 ~~percent or more of its principal photography days from June 1~~  
 546 ~~through November 30.~~

547 ~~(f)~~ "Principal photography" means the filming of major or  
 548 significant components of the qualified production which involve  
 549 lead actors.

550 ~~(f)~~ ~~(g)~~ "Production" means a theatrical, ~~or~~ direct-to-video,  
 551 or direct-to-Internet motion picture; a made-for-television

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552 motion picture; visual effects or digital animation sequences  
 553 produced in conjunction with a motion picture; a commercial; a  
 554 music video; an industrial or educational film; an infomercial;  
 555 a documentary film; a television pilot program; a presentation  
 556 for a television pilot program; a television series, including,  
 557 but not limited to, a drama, a reality show, a comedy, a soap  
 558 opera, a telenovela, a game show, an awards show, or a  
 559 miniseries production; a direct-to-Internet television series;  
 560 or a digital media project by the entertainment industry. One  
 561 season of a television series is considered one production. The  
 562 term does not include a weather or market program; a sporting  
 563 event or a sporting event broadcast; a gala; a production that  
 564 solicits funds; a home shopping program; a political program; a  
 565 political documentary; political advertising; a gambling-related  
 566 project or production; a concert production; a local, regional,  
 567 or Internet-distributed-only news show or current-events show; a  
 568 sports news or sports recap show; a pornographic production; or  
 569 any production deemed obscene under chapter 847. A production  
 570 may be produced on or by film, tape, or otherwise by means of a  
 571 motion picture camera; electronic camera or device; tape device;  
 572 computer; any combination of the foregoing; or any other means,  
 573 method, or device.

574 ~~(g)~~ ~~(h)~~ "Production expenditures" means the costs of  
 575 tangible and intangible property used for, and services  
 576 performed primarily and customarily in, production, including  
 577 preproduction and postproduction, but excluding costs for  
 578 development, marketing, and distribution. The term includes, but  
 579 is not limited to:

580 1. Wages, salaries, or other compensation paid to legal

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581 residents of this state, including amounts paid through payroll  
582 service companies, for technical and production crews,  
583 directors, producers, and performers.

584 2. Net expenditures for sound stages, backlots, production  
585 editing, digital effects, sound recordings, sets, and set  
586 construction.

587 3. Net expenditures for rental equipment, including, but  
588 not limited to, cameras and grip or electrical equipment.

589 4. Up to \$300,000 of the costs of newly purchased computer  
590 software and hardware unique to the project, including servers,  
591 data processing, and visualization technologies, which are  
592 located in and used exclusively in this ~~the~~ state for the  
593 production of digital media.

594 5. Expenditures for meals, travel, and accommodations. For  
595 purposes of this paragraph, the term "net expenditures" means  
596 the actual amount of money a qualified production spent for  
597 equipment or other tangible personal property, after subtracting  
598 any consideration received for reselling or transferring the  
599 item after the qualified production ends, if applicable.

600 (h) (i) "Qualified expenditures" means production  
601 expenditures incurred in this state by a qualified production  
602 for:

603 1. Goods purchased or leased from, or services, including,  
604 but not limited to, insurance costs and bonding, payroll  
605 services, and legal fees, which are provided by, a vendor or  
606 supplier in this state that is registered with the Department of  
607 State or the Department of Revenue, has a physical location in  
608 this state, and employs one or more legal residents of this  
609 state. This does not include rebilled goods or services provided

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610 by an in-state company from out-of-state vendors or suppliers.  
611 When services provided by the vendor or supplier include  
612 personal services or labor, only personal services or labor  
613 provided by residents of this state, evidenced by the required  
614 documentation of residency in this state, qualify.

615 2. Payments to legal residents of this state in the form of  
616 salary, wages, or other compensation up to a maximum of \$400,000  
617 per resident unless otherwise specified in subsection (4). A  
618 completed declaration of residency in this state must accompany  
619 the documentation submitted to the department office for  
620 reimbursement.

621  
622 For a qualified production involving an event, such as an awards  
623 show, the term does not include expenditures solely associated  
624 with the event itself and not directly required by the  
625 production. The term does not include expenditures incurred  
626 before certification, with the exception of those incurred for a  
627 commercial, a music video, or the pickup of additional episodes  
628 of a high-impact television series within a single season. ~~Under~~  
629 ~~no circumstances may~~ The qualified production may not include in  
630 the calculation for qualified expenditures the original purchase  
631 price for equipment or other tangible property that is later  
632 sold or transferred by the qualified production for  
633 consideration. In such cases, the qualified expenditure is the  
634 net of the original purchase price minus the consideration  
635 received upon sale or transfer.

636 (i) (j) "Qualified production" means a production in this  
637 state meeting the requirements of this section. The term does  
638 not include a production:



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639 1. In which, for the first 2 years of the incentive  
 640 program, less than 50 percent, and thereafter, less than 70 60  
 641 percent, of the positions that make up its production cast and  
 642 below-the-line production crew, or, in the case of digital media  
 643 projects, less than 80 75 percent of such positions, are filled  
 644 by legal residents of this state, whose residency is  
 645 demonstrated by a valid Florida driver license or other state-  
 646 issued identification confirming residency, or students enrolled  
 647 full-time in an entertainment-related a film and entertainment-  
 648 related course of study at an institution of higher education in  
 649 this state; or

650 2. That contains obscene content as defined in s.  
 651 847.001(10).

652 (j)(k) "Qualified production company" means a corporation,  
 653 limited liability company, partnership, or other legal entity  
 654 engaged in one or more productions in this state.

655 ~~(l) "Qualified digital media production facility" means a~~  
 656 ~~building or series of buildings and their improvements in which~~  
 657 ~~data processing, visualization, and sound synchronization~~  
 658 ~~technologies are regularly applied for the production of~~  
 659 ~~qualified digital media projects or the digital animation~~  
 660 ~~components of qualified productions.~~

661 ~~(m) "Qualified production facility" means a building or~~  
 662 ~~complex of buildings and their improvements and associated~~  
 663 ~~backlot facilities in which regular filming activity for film or~~  
 664 ~~television has occurred for a period of no less than 1 year and~~  
 665 ~~which contain at least one sound stage of at least 7,800 square~~  
 666 ~~feet.~~

667 ~~(n) "Regional population ratio" means the ratio of the~~

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668 population of a region to the population of this state. The  
 669 regional population ratio applicable to a given fiscal year is  
 670 the regional population ratio calculated by the Office of Film  
 671 and Entertainment using the latest official estimates of  
 672 population certified under s. 186.901, available on the first  
 673 day of that fiscal year.

674 ~~(e) "Regional tax credit ratio" means a ratio the numerator~~  
 675 ~~of which is the sum of tax credits awarded to productions in a~~  
 676 ~~region to date plus the tax credits certified, but not yet~~  
 677 ~~awarded, to productions currently in that region and the~~  
 678 ~~denominator of which is the sum of all tax credits awarded in~~  
 679 ~~the state to date plus all tax credits certified, but not yet~~  
 680 ~~awarded, to productions currently in the state. The regional tax~~  
 681 ~~credit ratio applicable to a given year is the regional tax~~  
 682 ~~credit ratio calculated by the Office of Film and Entertainment~~  
 683 ~~using credit award and certification information available on~~  
 684 ~~the first day of that fiscal year.~~

685 ~~(p) "Underutilized region" for a given state fiscal year~~  
 686 ~~means a region with a regional tax credit ratio applicable to~~  
 687 ~~that fiscal year that is lower than its regional population~~  
 688 ~~ratio applicable to that fiscal year. The following regions are~~  
 689 ~~established for purposes of making this determination:~~

690 1. North Region, consisting of Alachua, Baker, Bay,  
 691 Bradford, Calhoun, Clay, Columbia, Dixie, Duval, Escambia,  
 692 Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson,  
 693 Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau,  
 694 Okaloosa, Putnam, Santa Rosa, St. Johns, Suwannee, Taylor,  
 695 Union, Wakulla, Walton, and Washington Counties.

696 2. Central East Region, consisting of Brevard, Flagler,

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697 ~~Indian River, Lake, Okeechobee, Orange, Oseecola, Seminole, St.~~  
698 ~~Lucie, and Volusia Counties.~~

699 ~~3. Central West Region, consisting of Citrus, Hernando,~~  
700 ~~Hillsborough, Manatee, Marion, Polk, Pasco, Pinellas, Sarasota,~~  
701 ~~and Sumter Counties.~~

702 ~~4. Southwest Region, consisting of Charlotte, Collier,~~  
703 ~~DeSoto, Glades, Hardee, Hendry, Highlands, and Lee Counties.~~

704 ~~5. Southeast Region, consisting of Broward, Martin, Miami-~~  
705 ~~Dade, Monroe, and Palm Beach Counties.~~

706 ~~(k)(g)~~ "Interactive website" means a website or group of  
707 websites that includes interactive and downloadable content, and  
708 creates 25 new Florida full-time equivalent positions operating  
709 from a principal place of business located within Florida. An  
710 interactive website or group of websites must provide  
711 documentation that those jobs were created to the department  
712 before Office of Film and Entertainment prior to the award of  
713 tax credits. Each subsequent program application must provide  
714 proof that 25 Florida full-time equivalent positions are  
715 maintained.

716 (2) CREATION AND PURPOSE OF PROGRAM.—The entertainment  
717 industry ~~financial incentive~~ program is created within the  
718 department Office of Film and Entertainment. The purpose of this  
719 ~~program is~~ to encourage the use of this state as a site for  
720 entertainment production, for filming, and for the digital  
721 production of entertainment films, and to develop and sustain  
722 the workforce and infrastructure for film, digital media, and  
723 entertainment production.

724 (3) APPLICATION PROCEDURE; APPROVAL PROCESS.—

725 (a) *Program application.*—A qualified production company

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726 producing a qualified production in this state may submit a  
727 program application to the department Office of Film and  
728 ~~Entertainment~~ for the purpose of determining qualification for  
729 an award of tax credits authorized by this section no earlier  
730 than 180 days before the first day of principal photography or  
731 project start date in this state. The applicant shall provide  
732 the department Office of Film and Entertainment with information  
733 required to determine whether the production is a qualified  
734 production and to determine the qualified expenditures and other  
735 information necessary for the department office to determine  
736 eligibility for the tax credit.

737 (b) *Required documentation.*—The department Office of Film  
738 ~~and Entertainment~~ shall develop an application form for  
739 qualifying an applicant as a qualified production. The form must  
740 include, but need not be limited to, production-related  
741 information concerning employment of residents in this state;  
742 detailed budget of planned qualified expenditures and aggregate  
743 nonqualified expenditures, including capital investment, in this  
744 state; proof of financing for the production; and the  
745 applicant's signed affirmation that the information on the form  
746 has been verified and is correct. The Division Office of Film  
747 and Entertainment and local film commissions shall distribute  
748 the form.

749 (c) *Application process.*—The department Office of Film and  
750 ~~Entertainment~~ shall establish a process by which an application  
751 is accepted and reviewed and by which tax credit eligibility and  
752 award amount are determined. The department may consult with the  
753 Division Office of Film and Entertainment or may request  
754 ~~assistance from~~ a duly appointed local film commission in

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755 determining compliance with this section.

756 1. Each year, there shall be two periods during which  
 757 applications may be accepted. The application periods shall run  
 758 from January 1 through June 30 and July 1 through December 31.  
 759 One-half of the tax credits allocated for the fiscal year under  
 760 paragraph (7) (a) shall be available during each application  
 761 period. Applications remaining in the queue on June 30 and  
 762 December 31 of each year are deemed denied. For each application  
 763 period, applications by qualified production companies which are  
 764 received after one-half of the tax credits allocated for the  
 765 fiscal year have been certified, but before the total applied  
 766 for exceeds 125 percent of the one-half of the tax credits  
 767 allocated for the fiscal year, shall be assigned a queue number  
 768 that is determined by the date and time the application was  
 769 received by the department. These queued applications may be  
 770 considered for tax credit allocations that become available for  
 771 certification during the application period. For each  
 772 application period, the department shall deny any application  
 773 received after the total amount of tax credits applied for  
 774 exceeds 125 percent of the one-half of the tax credits allocated  
 775 for the fiscal year.

776 2. A certified high-impact television series may submit an  
 777 initial application for no more than two successive seasons,  
 778 notwithstanding the fact that the second season has successive  
 779 seasons have not been ordered. The successive season's qualified  
 780 expenditure amounts for the second season shall be based on the  
 781 current season's estimated qualified expenditures. Upon the  
 782 completion of production of each season, a high-impact  
 783 television series may submit an application for no more than one

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784 additional season. To be certified for a tax credit, the  
 785 applicant must affirm that the additional season is likely to be  
 786 ordered as part of the application for the additional season and  
 787 must agree to notify the department within 10 days if the  
 788 additional season is not ordered or is cancelled.

789 (d) Certification.—

790 1. The department Office of Film and Entertainment shall  
 791 review the application within 15 business days after receipt.  
 792 The department, in consultation with the Division of Film and  
 793 Entertainment, shall determine if ~~Upon its determination that~~  
 794 the application contains all the information required by this  
 795 subsection and meets the criteria set out in this section, and  
 796 the Office of Film and Entertainment shall deny qualify the  
 797 applicant and recommend to the department that the applicant be  
 798 certified for the maximum tax credit award amount. Within 5  
 799 business days after receipt of the recommendation, the  
 800 department shall reject the application, place the application  
 801 in the queue pursuant to paragraph (c), ~~recommendation~~ or  
 802 certify the maximum recommended tax credit award, if any funds  
 803 are available, to the applicant and to the executive director of  
 804 the Department of Revenue.

805 2. The department may not certify tax credits in an amount  
 806 greater than the allocation for a specified fiscal year, as  
 807 determined under subsection (7). However, pursuant to  
 808 subparagraph (c)2., the department may certify a tax credit for  
 809 a future fiscal-year allocation for one additional season of a  
 810 high-impact television series.

811 (e) Employment.—Upon certification by the department, the  
 812 production must provide the department and the Division of Film

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 813 and Entertainment with a single point of contact and information  
 814 related to the production's needs for cast, crew, contractors,  
 815 and vendors. The division shall publish this information online,  
 816 including the type of production, the projected start date of  
 817 the production, the locations in this state for such production,  
 818 and the e-mail or other contact information for the production's  
 819 point of contact. The department, in consultation with the  
 820 division, may adopt procedures for a production to post such  
 821 information itself within 7 days after certification.

822 (f)(e) Grounds for denial.—The department Office of Film  
 823 and Entertainment shall deny an application if it determines  
 824 that the application is not complete, or the production or  
 825 application does not meet the requirements of this section, or  
 826 the application is received after the total tax credits applied  
 827 for in that application period have reached 125 percent of the  
 828 one-half of the tax credits allocated for the fiscal year as  
 829 provided under paragraph (c). Within 90 days after submitting a  
 830 program application, except with respect to applications in the  
 831 independent and emerging media queue, a production must provide  
 832 proof of project financing to the Office of Film and  
 833 Entertainment, otherwise the project is deemed denied and  
 834 withdrawn. A project that has been denied withdrawn may submit a  
 835 new application upon providing the Office of Film and  
 836 Entertainment proof of financing.

837 (g)(f) Verification of actual qualified expenditures.—  
 838 1. The department, in consultation with the Division Office  
 839 of Film and Entertainment, shall develop a process to verify the  
 840 actual qualified expenditures of a certified production. The  
 841 process must require:

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 842 a. A certified production to submit, within 180 days in a  
 843 ~~timely manner~~ after production ends in this state and after  
 844 making all of its qualified expenditures in this state, data  
 845 substantiating each qualified expenditure, including  
 846 documentation of ~~on~~ the net expenditure on equipment and other  
 847 tangible personal property by the qualified production and all  
 848 production-related information on full- and part-time employment  
 849 and wages paid to residents of this state, to an independent  
 850 certified public accountant licensed in this state;  
 851 b. Such accountant to conduct a compliance audit, at the  
 852 certified production's expense, to substantiate each qualified  
 853 expenditure and submit the results as a report, along with the  
 854 required substantiating data, to the department Office of Film  
 855 and Entertainment; and  
 856 c. The department Office of Film and Entertainment to  
 857 review the accountant's submittal and verify report to the  
 858 department the final verified amount of actual qualified  
 859 expenditures made by the certified production.  
 860 2. The department shall also require a certified production  
 861 to submit data substantiating aggregate nonqualified  
 862 expenditures, including capital investment, in this state.  
 863 ~~3.2~~ The department shall determine and approve the final  
 864 tax credit award amount to each certified applicant based on the  
 865 final verified amount of actual qualified expenditures and  
 866 evidence that the qualified production met the requirements of  
 867 this section. The department shall notify the executive director  
 868 of the Department of Revenue in writing that the certified  
 869 production has met the requirements of the ~~incentive~~ program and  
 870 of the final amount of the tax credit award. The final tax

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871 credit award amount may not exceed the maximum tax credit award  
 872 amount certified under paragraph (d).

873 ~~(h)(g) Promoting Florida.~~—The ~~department Office of Film and~~  
 874 ~~Entertainment~~ shall ensure that, as a condition of receiving a  
 875 tax credit under this section, marketing materials promoting  
 876 this state as a tourist destination or film and entertainment  
 877 production destination are included, when appropriate, at no  
 878 cost to the state, in the qualified production or as otherwise  
 879 required by the department and the Division of Film and  
 880 Entertainment. The Division of Film and Entertainment shall  
 881 provide the Florida Tourism Industry Marketing Corporation with  
 882 the contact information for each qualified production in order  
 883 for the corporation to work with the qualified production to  
 884 develop the marketing materials promoting this state. The  
 885 marketing materials which must, at a minimum, include placement  
 886 of the “Visit Florida” logo and a “Filmed in Florida” or  
 887 “Produced in Florida” logo in the end credits. The placement of  
 888 the “Visit Florida” logo and a “Filmed in Florida” or “Produced  
 889 in Florida” logo on all packaging material and hard media is  
 890 also required, unless such placement is prohibited by licensing  
 891 or other contractual obligations. The sizes size and placements  
 892 placement of such logos logo shall be commensurate to other  
 893 logos used. If no logos are used, the statement “Filmed in  
 894 Florida using Florida’s Entertainment Industry ~~Program Financial~~  
 895 ~~Incentive,~~” or a similar statement approved by the Division  
 896 Office of Film and Entertainment, shall be used. The Division  
 897 Office of Film and Entertainment shall provide a logo and supply  
 898 it for the purposes specified in this paragraph. A 30-second  
 899 “Visit Florida” promotional video must also be included on all

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900 optical disc formats of a film, unless such placement is  
 901 prohibited by licensing or other contractual obligations. The  
 902 30-second promotional video shall be approved and provided by  
 903 the Florida Tourism Industry Marketing Corporation in  
 904 consultation with the Division ~~Commissioner~~ of Film and  
 905 Entertainment.

906 (4) TAX CREDIT ELIGIBILITY; TAX CREDIT AWARDS; QUEUES;  
 907 ELECTION AND DISTRIBUTION; CARRYFORWARD; CONSOLIDATED RETURNS;  
 908 PARTNERSHIP AND NONCORPORATE DISTRIBUTIONS; MERGERS AND  
 909 ACQUISITIONS.—

910 (a) *Priority for tax credit award.*—The priority of a  
 911 qualified production for tax credit awards must be determined on  
 912 a first-come, first-served basis within its appropriate queue.  
 913 Each qualified production must be placed into the appropriate  
 914 queue and is subject to the requirements of that queue.

915 (b) *Tax credit eligibility.*—

916 1. General production queue.—Ninety-four percent of tax  
 917 credits authorized pursuant to subsection (7) ~~(6)~~ in any state  
 918 fiscal year must be dedicated to the general production queue.  
 919 The general production queue consists of all qualified  
 920 productions other than those eligible for the commercial and  
 921 music video queue or the independent and emerging media  
 922 production queue. A qualified production that demonstrates a  
 923 minimum of \$625,000 in qualified expenditures is eligible for  
 924 tax credits equal to 20 percent of its actual qualified  
 925 expenditures, up to a maximum of \$8 million. A qualified  
 926 production that incurs qualified expenditures during multiple  
 927 state fiscal years may combine those expenditures to satisfy the  
 928 \$625,000 minimum threshold.

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929 a. For the first 4 months of each application period under  
 930 paragraph (3) (c), 20 percent of the tax credits dedicated to the  
 931 general production queue shall be set aside for qualified  
 932 productions in underutilized counties. A qualified production  
 933 eligible for these tax credits is a production for which at  
 934 least 70 percent of its principal photography days occur within  
 935 an underutilized county. The underutilized county must be  
 936 designated as an underutilized county at the time that the  
 937 production is certified. As used in this subparagraph, the term  
 938 "underutilized county" means a county in which less than  
 939 \$500,000 in qualified expenditures were made in the last 2  
 940 fiscal years. Any tax credit not certified from this set-aside  
 941 at the end of each 4-month period may be certified to qualified  
 942 productions pursuant to this section An off-season certified  
 943 production that is a feature film, independent film, or  
 944 television series or pilot is eligible for an additional 5  
 945 percent tax credit on actual qualified expenditures. An off-  
 946 season certified production that does not complete 75 percent of  
 947 principal photography due to a disruption caused by a hurricane  
 948 or tropical storm may not be disqualified from eligibility for  
 949 the additional 5 percent credit as a result of the disruption.  
 950 b. ~~If more than 45 percent of the sum of total tax credits~~  
 951 ~~initially certified and awarded after April 1, 2012, total tax~~  
 952 ~~credits initially certified after April 1, 2012, but not yet~~  
 953 ~~awarded, and total tax credits available for certification after~~  
 954 ~~April 1, 2012, but not yet certified has been awarded for high-~~  
 955 ~~impact television series, then no high impact television series~~  
 956 ~~is eligible for tax credits under this subparagraph. Tax credits~~  
 957 ~~initially certified for a high-impact television series after~~

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958 ~~April 1, 2012, may not be awarded if the award will cause the~~  
 959 ~~percentage threshold in this sub-subparagraph to be exceeded.~~  
 960 ~~This sub-subparagraph does not prohibit the award of tax credits~~  
 961 ~~certified before April 1, 2012, for high-impact television~~  
 962 ~~series.~~  
 963 ~~b.e.~~ Subject to ~~sub-subparagraph b.,~~ First priority in the  
 964 queue for tax credit awards not yet certified shall be given to  
 965 high-impact television series and ~~high-impact digital media~~  
 966 ~~projects. For the purposes of determining priority between a~~  
 967 ~~high-impact television series and a high-impact digital media~~  
 968 ~~project, the first position must go to the first application~~  
 969 ~~received. Thereafter, priority shall be determined by~~  
 970 ~~alternating between a high impact television series and a high-~~  
 971 ~~impact digital media project on a first-come, first-served~~  
 972 ~~basis. However, if the Office of Film and Entertainment receives~~  
 973 ~~an application for a high-impact television series or high-~~  
 974 ~~impact digital media project that would be certified but for the~~  
 975 ~~alternating priority, the office may certify the project as~~  
 976 ~~being in the priority position if an application that would~~  
 977 ~~normally be the priority position is not received within 5~~  
 978 ~~business days.~~  
 979 ~~d.~~ A qualified production for which at least ~~67~~ percent of  
 980 ~~its principal photography days occur within a region designated~~  
 981 ~~as an underutilized region at the time that the production is~~  
 982 ~~certified is eligible for an additional 5 percent tax credit.~~  
 983 ~~c.e.~~ A qualified production that employs students enrolled  
 984 full-time in a film and entertainment-related or digital media-  
 985 related course of study at an institution of higher education in  
 986 this state is eligible for an additional 15 percent tax credit

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987 on qualified expenditures that are wages, salaries, or other  
 988 compensation paid to such students. The additional 15 percent  
 989 tax credit is also applicable to persons hired within 12 months  
 990 after graduating from a film and entertainment-related or  
 991 digital media-related course of study at an institution of  
 992 higher education in this state. The additional 15 percent tax  
 993 credit applies to qualified expenditures that are wages,  
 994 salaries, or other compensation paid to such recent graduates  
 995 for 1 year after the date of hiring.

996 ~~f. A qualified production for which 50 percent or more of~~  
 997 ~~its principal photography occurs at a qualified production~~  
 998 ~~facility, or a qualified digital media project or the digital~~  
 999 ~~animation component of a qualified production for which 50~~  
 1000 ~~percent or more of the project's or component's qualified~~  
 1001 ~~expenditures are related to a qualified digital media production~~  
 1002 ~~facility, is eligible for an additional 5 percent tax credit on~~  
 1003 ~~actual qualified expenditures for production activity at that~~  
 1004 ~~facility.~~

1005 d. A qualified production that completes a capital  
 1006 investment in this state of at least \$2 million for property  
 1007 improvements before the completion of the qualified production  
 1008 is eligible for an additional 5 percent tax credit. The capital  
 1009 investment must be permanent and must be made after July 1,  
 1010 2015, and the property must remain in this state after the  
 1011 production ends. A capital investment may be the basis of an  
 1012 application only once, unless the qualified production makes an  
 1013 additional \$2 million of substantial changes to the property.

1014 e. A qualified production determined by the department to  
 1015 be a family-friendly production, based on review of the script

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1016 and review of the final release version, is eligible for an  
 1017 additional 5 percent tax credit. The department must consult  
 1018 with the Division of Film and Entertainment in making this  
 1019 determination.

1020 ~~f.g.~~ A qualified production is not eligible for tax credits  
 1021 provided under this paragraph totaling more than 25 ~~30~~ percent  
 1022 of its actual qualified expenses.

1023 2. Commercial and music video queue.—Three percent of tax  
 1024 credits authorized pursuant to subsection (7) ~~(6)~~ in any state  
 1025 fiscal year must be dedicated to the commercial and music video  
 1026 queue. A qualified production company that produces national or  
 1027 regional commercials or music videos may be eligible for a tax  
 1028 credit award if it demonstrates a minimum of \$100,000 in  
 1029 qualified expenditures per national or regional commercial or  
 1030 music video and exceeds a combined threshold of \$500,000 after  
 1031 combining actual qualified expenditures from qualified  
 1032 commercials and music videos during a single state fiscal year.  
 1033 After a qualified production company that produces commercials,  
 1034 music videos, or both reaches the threshold of \$500,000, it is  
 1035 eligible to apply for certification for a tax credit award. The  
 1036 maximum credit award shall be equal to 20 percent of its actual  
 1037 qualified expenditures up to a maximum of \$500,000. If there is  
 1038 a surplus at the end of a fiscal year after the department  
 1039 ~~Office of Film and Entertainment~~ certifies and determines the  
 1040 tax credits for all qualified commercial and video projects,  
 1041 such surplus tax credits shall be carried forward to the  
 1042 following fiscal year and are available to any eligible  
 1043 qualified productions under the general production queue.

1044 3. Independent and emerging media production queue.—Three

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 1045 percent of tax credits authorized pursuant to subsection (7) ~~(6)~~  
 1046 in any state fiscal year must be dedicated to the independent  
 1047 and emerging media production queue. This queue is intended to  
 1048 encourage independent film and emerging media production in this  
 1049 state. Any qualified production, excluding commercials,  
 1050 infomercials, or music videos, which demonstrates at least  
 1051 \$100,000, but not more than \$625,000, in total qualified  
 1052 expenditures is eligible for tax credits equal to 20 percent of  
 1053 its actual qualified expenditures. If a surplus exists at the  
 1054 end of a fiscal year after the department Office of Film and  
 1055 ~~Entertainment~~ certifies and determines the tax credits for all  
 1056 qualified independent and emerging media production projects,  
 1057 such surplus tax credits shall be carried forward to the  
 1058 following fiscal year and are available to any eligible  
 1059 qualified productions under the general production queue.

1060 ~~4. Family-friendly productions. A certified theatrical or~~  
 1061 ~~direct-to-video motion picture production or video game~~  
 1062 ~~determined by the Commissioner of Film and Entertainment, with~~  
 1063 ~~the advice of the Florida Film and Entertainment Advisory~~  
 1064 ~~Council, to be family-friendly, based on review of the script~~  
 1065 ~~and review of the final release version, is eligible for an~~  
 1066 ~~additional tax credit equal to 5 percent of its actual qualified~~  
 1067 ~~expenditures. Family-friendly productions are those that have~~  
 1068 ~~cross-generational appeal; would be considered suitable for~~  
 1069 ~~viewing by children age 5 or older; are appropriate in theme,~~  
 1070 ~~content, and language for a broad family audience; embody a~~  
 1071 ~~responsible resolution of issues; and do not exhibit or imply~~  
 1072 ~~any act of smoking, sex, nudity, or vulgar or profane language.~~

1073 (c) Withdrawal of certification tax credit eligibility. ~~The~~

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 1074 department shall withdraw the certification of a ~~qualified or~~  
 1075 certified production ~~if the must continue on a reasonable~~  
 1076 schedule ~~or timely completion of the certified production is~~  
 1077 delayed, including a break in production, a change in the  
 1078 production schedule, or the loss of financing for the  
 1079 production. A certified production must notify the department  
 1080 within 5 days after any circumstance that delays the reasonable  
 1081 schedule or timely completion. The certification of a certified  
 1082 production may not be withdrawn if the production provides the  
 1083 department with proof of replacement financing within 10 days  
 1084 after the loss of financing for the production. To keep a  
 1085 reasonable schedule, the certified production must begin which  
 1086 includes beginning principal photography or the production  
 1087 project in this state ~~within no more than~~ 45 calendar days  
 1088 before or after the principal photography or project start date  
 1089 provided in the production's program application. The ~~department~~  
 1090 shall withdraw the eligibility of a ~~qualified or certified~~  
 1091 production that does not continue on a reasonable schedule.

1092 (d) *Election and distribution of tax credits.*—

1093 1. A certified production company receiving a tax credit  
 1094 award under this section shall, at the time the credit is  
 1095 awarded by the department after production is completed and all  
 1096 requirements to receive a credit award have been met, make an  
 1097 irrevocable election to apply the credit against taxes due under  
 1098 chapter 220, against state taxes collected or accrued under  
 1099 chapter 212, or against a stated combination of the two taxes.  
 1100 The election is binding upon any distributee, successor,  
 1101 transferee, or purchaser. The department shall notify the  
 1102 Department of Revenue of any election made pursuant to this



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1103 paragraph.

1104 2. A qualified production company is eligible for tax  
1105 credits against its sales and use tax liabilities and corporate  
1106 income tax liabilities as provided in this section. However, tax  
1107 credits awarded under this section may not be claimed against  
1108 sales and use tax liabilities or corporate income tax  
1109 liabilities for any tax period beginning before July 1, 2011,  
1110 regardless of when the credits are applied for or awarded.

1111 (e) *Tax credit carryforward.*—If the certified production  
1112 company cannot use the entire tax credit in the taxable year or  
1113 reporting period in which the credit is awarded, any excess  
1114 amount may be carried forward to a succeeding taxable year or  
1115 reporting period. A tax credit applied against taxes imposed  
1116 under chapter 212 may be carried forward for a maximum of 5  
1117 years after the date the credit is awarded. A tax credit applied  
1118 against taxes imposed under chapter 220 may be carried forward  
1119 for a maximum of 5 taxable years after the taxable year in which  
1120 date the credit is awarded. An unused remaining tax credit  
1121 expires after this period, after which the credit expires and  
1122 may not be used.

1123 (f) *Consolidated returns.*—A certified production company  
1124 that files a Florida consolidated return as a member of an  
1125 affiliated group under s. 220.131(1) may be allowed the credit  
1126 on a consolidated return basis up to the amount of the tax  
1127 imposed upon the consolidated group under chapter 220.

1128 (g) *Partnership and noncorporate distributions.*—A qualified  
1129 production company that is not a corporation as defined in s.  
1130 220.03 may elect to distribute tax credits awarded under this  
1131 section to its partners or members in proportion to their

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1132 respective distributive income or loss in the taxable year in  
1133 which the tax credits were awarded.

1134 (h) *Mergers or acquisitions.*—Tax credits available under  
1135 this section to a certified production company may succeed to a  
1136 surviving or acquiring entity subject to the same conditions and  
1137 limitations as described in this section; however, they may not  
1138 be transferred again by the surviving or acquiring entity.

1139 (5) TRANSFER OF TAX CREDITS.—

1140 (a) *Authorization.*—Upon application to ~~the Office of Film~~  
1141 ~~and Entertainment~~ and approval by the department, a certified  
1142 production company, or a partner or member that has received a  
1143 distribution under paragraph (4)(g), may elect to transfer, in  
1144 whole or in part, any unused credit amount granted under this  
1145 section. An election to transfer any unused tax credit amount  
1146 under chapter 212 or chapter 220 must be made no later than 5  
1147 years after the date the credit is awarded, after which period  
1148 the credit expires and may not be used. The department shall  
1149 notify the Department of Revenue of the election and transfer.

1150 (b) *Number of transfers permitted.*—A certified production  
1151 company that elects to apply a credit amount against taxes  
1152 remitted under chapter 212 is permitted a one-time transfer of  
1153 unused credits to one transferee. A certified production company  
1154 that elects to apply a credit amount against taxes due under  
1155 chapter 220 is permitted a one-time transfer of unused credits  
1156 to no more than four transferees, and such transfers must occur  
1157 in the same taxable year.

1158 (c) *Transferee rights and limitations.*—The transferee is  
1159 subject to the same rights and limitations as the certified  
1160 production company awarded the tax credit, except that the

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1161 initial transferee shall be permitted a one-time transfer of  
 1162 unused credits to no more than two subsequent transferees, and  
 1163 such transfers must occur in the same taxable year as the  
 1164 credits were received by the initial transferee, after which the  
 1165 subsequent transferees may not sell or otherwise transfer the  
 1166 tax credit.

1167 (6) RELINQUISHMENT OF TAX CREDITS.—

1168 (a) Beginning July 1, 2011, a certified production company,  
 1169 or any person who has acquired a tax credit from a certified  
 1170 production company pursuant to subsections (4) and (5), may  
 1171 elect to relinquish the tax credit to the Department of Revenue  
 1172 in exchange for 90 percent of the amount of the relinquished tax  
 1173 credit.

1174 (b) The Department of Revenue may approve payments to  
 1175 persons relinquishing tax credits pursuant to this subsection.

1176 (c) Subject to legislative appropriation, the Department of  
 1177 Revenue shall request the Chief Financial Officer to issue  
 1178 warrants to persons relinquishing tax credits. Payments under  
 1179 this subsection shall be made from the funds from which the  
 1180 proceeds from the taxes against which the tax credits could have  
 1181 been applied pursuant to the irrevocable election made by the  
 1182 certified production company under subsection (4) are deposited.

1183 (7) ANNUAL ALLOCATION OF TAX CREDITS.—

1184 (a) The aggregate amount of the tax credits that may be  
 1185 certified pursuant to paragraph (3) (d) may not exceed:

- 1186 1. For fiscal year 2010-2011, \$53.5 million.
- 1187 2. For fiscal year 2011-2012, \$74.5 million.
- 1188 3. For fiscal years 2012-2013, 2013-2014, 2014-2015, and  
 1189 2015-2016, \$42 million per fiscal year.

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1190 (b) Any portion of the maximum amount of tax credits  
 1191 established per fiscal year in paragraph (a) that is not  
 1192 certified as of the end of a fiscal year shall be carried  
 1193 forward and made available for certification during the  
 1194 following 2 fiscal years in addition to the amounts available  
 1195 for certification under paragraph (a) for those fiscal years.

1196 (c) Upon approval of the final tax credit award amount  
 1197 pursuant to subparagraph (3) (g) 3. ~~(3) (f) 2.~~, an amount equal to  
 1198 the difference between the maximum tax credit award amount  
 1199 previously certified under paragraph (3) (d) and the approved  
 1200 final tax credit award amount shall immediately be available for  
 1201 recertification during the current and following fiscal years in  
 1202 addition to the amounts available for certification under  
 1203 paragraph (a) for those fiscal years.

1204 (d) Amounts available for certification on and after July  
 1205 1, 2015, may not be certified before the fiscal year in which  
 1206 they will become available as specified in paragraph (a), except  
 1207 as provided in subparagraph (3) (d) 2. Additionally, for amounts  
 1208 available for certification on and after July 1, 2015, one-half  
 1209 of the amount available in the fiscal year shall be available  
 1210 for certification on July 1, and one-half of the amount  
 1211 available in the fiscal year shall be available for  
 1212 certification on January 1 ~~If, during a fiscal year, the total~~  
 1213 ~~amount of credits applied for, pursuant to paragraph (3) (a),~~  
 1214 ~~exceeds the amount of credits available for certification in~~  
 1215 ~~that fiscal year, such excess shall be treated as having been~~  
 1216 ~~applied for on the first day of the next fiscal year in which~~  
 1217 ~~credits remain available for certification.~~

1218 (8) LIMITATION WITH OTHER PROGRAMS.—A qualified production

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1219 that is certified for tax credits under this section may not  
 1220 simultaneously receive benefits under ss. 288.1256 and 288.1258  
 1221 for the same production.

1222 (9)(8) RULES, POLICIES, AND PROCEDURES.—

1223 (a) The department may adopt rules pursuant to ss.  
 1224 120.536(1) and 120.54 and develop policies and procedures to  
 1225 implement and administer this section, including, but not  
 1226 limited to, rules specifying requirements for the application  
 1227 and approval process, records required for substantiation for  
 1228 tax credits, procedures for making the election in paragraph  
 1229 (4)(d), the manner and form of documentation required to claim  
 1230 tax credits awarded or transferred under this section, and  
 1231 marketing requirements for tax credit recipients.

1232 (b) The Department of Revenue may adopt rules pursuant to  
 1233 ss. 120.536(1) and 120.54 to administer this section, including  
 1234 rules governing the examination and audit procedures required to  
 1235 administer this section and the manner and form of documentation  
 1236 required to claim tax credits awarded, transferred, or  
 1237 relinquished under this section.

1238 (10)(9) AUDIT AUTHORITY; REVOCATION AND FORFEITURE OF TAX  
 1239 CREDITS; FRAUDULENT CLAIMS.—

1240 (a) *Audit authority.*—The Department of Revenue may conduct  
 1241 examinations and audits as provided in s. 213.34 to verify that  
 1242 tax credits under this section are received, transferred, and  
 1243 applied according to the requirements of this section. If the  
 1244 Department of Revenue determines that tax credits are not  
 1245 received, transferred, or applied as required by this section,  
 1246 it may, in addition to the remedies provided in this subsection,  
 1247 pursue recovery of such funds pursuant to the laws and rules

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1248 governing the assessment of taxes.

1249 (b) *Revocation of tax credits.*—The department may revoke or  
 1250 modify any written decision qualifying, certifying, or otherwise  
 1251 granting eligibility for tax credits under this section if it is  
 1252 discovered that the tax credit applicant submitted any false  
 1253 statement, representation, or certification in any application,  
 1254 record, report, plan, or other document filed in an attempt to  
 1255 receive tax credits under this section. The department shall  
 1256 immediately notify the Department of Revenue of any revoked or  
 1257 modified orders affecting previously granted tax credits.  
 1258 Additionally, the applicant must notify the Department of  
 1259 Revenue of any change in its tax credit claimed.

1260 (c) *Forfeiture of tax credits.*—A determination by the  
 1261 Department of Revenue, as a result of an audit pursuant to  
 1262 paragraph (a) or from information received from the department  
 1263 or the Division Office of Film and Entertainment, that an  
 1264 applicant received tax credits pursuant to this section to which  
 1265 the applicant was not entitled is grounds for forfeiture of  
 1266 previously claimed and received tax credits. The applicant is  
 1267 responsible for returning forfeited tax credits to the  
 1268 Department of Revenue, and such funds shall be paid into the  
 1269 General Revenue Fund of the state. Tax credits purchased in good  
 1270 faith are not subject to forfeiture unless the transferee  
 1271 submitted fraudulent information in the purchase or failed to  
 1272 meet the requirements in subsection (5).

1273 (d) *Fraudulent claims.*—Any applicant that submits  
 1274 fraudulent information under this section is liable for  
 1275 reimbursement of the reasonable costs and fees associated with  
 1276 the review, processing, investigation, and prosecution of the

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1277 fraudulent claim. An applicant that obtains a credit payment  
 1278 under this section through a claim that is fraudulent is liable  
 1279 for reimbursement of the credit amount plus a penalty in an  
 1280 amount double the credit amount. The penalty is in addition to  
 1281 any criminal penalty to which the applicant is liable for the  
 1282 same acts. The applicant is also liable for costs and fees  
 1283 incurred by the state in investigating and prosecuting the  
 1284 fraudulent claim.

1285 ~~(11)(10)~~ ANNUAL REPORT.—Each November 1, the department  
 1286 ~~Office of Film and Entertainment~~ shall submit an annual report  
 1287 for the previous fiscal year to the Governor, the President of  
 1288 the Senate, and the Speaker of the House of Representatives  
 1289 which outlines the ~~incentive~~ program's return on investment and  
 1290 economic benefits to the state. The report must also include an  
 1291 estimate of the full-time equivalent positions created by each  
 1292 production that received tax credits under this section and  
 1293 information relating to the distribution of productions  
 1294 receiving credits by geographic region and type of production.  
 1295 The report must also include the expenditures report required  
 1296 under s. 288.915, ~~s. 288.1253(3)~~ and the information describing  
 1297 the relationship between tax exemptions and incentives to  
 1298 industry growth required under s. 288.1258(5), and program  
 1299 performance information under s. 288.1256. The department may  
 1300 work with the Division of Film and Entertainment to develop the  
 1301 annual report.

1302 ~~(12)(11)~~ REPEAL.—This section is repealed July 1, 2021  
 1303 ~~2016~~, except that:

1304 (a) Tax credits certified under paragraph (3)(d) before  
 1305 July 1, 2021 ~~2016~~, may be awarded under paragraph (3)(g) ~~(3)(f)~~

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1306 on or after July 1, 2021 ~~2016~~, if the other requirements of this  
 1307 section are met.

1308 (b) Tax credits carried forward under paragraph (4)(e)  
 1309 remain valid for the period specified.

1310 (c) Subsections (5), (9), ~~(8)~~ and (10) ~~(9)~~ shall remain in  
 1311 effect until July 1, 2026 ~~July 1, 2021~~.

1312 Section 7. Beginning July 1, 2015, if an application is on  
 1313 file with the Department of Economic Opportunity to receive a  
 1314 tax credit through the entertainment industry program under s.  
 1315 288.1254, Florida Statutes, and has not been certified, it is  
 1316 deemed denied.

1317 Section 8. Section 288.1256, Florida Statutes, is created  
 1318 to read:

1319 288.1256 Entertainment industry quick action fund.—

1320 (1) The entertainment industry quick action fund is created  
 1321 within the department in order to respond to extraordinary  
 1322 opportunities and to compete effectively with other states to  
 1323 attract and retain production companies and to provide favorable  
 1324 conditions for the growth of the entertainment industry in this  
 1325 state.

1326 (2) As used in this section, the term:

1327 (a) "Division" means the Division of Film and Entertainment  
 1328 within Enterprise Florida, Inc.

1329 (b) "Off-season" means June 1 through November 30.

1330 (c) "Principal photography" means the filming of major or  
 1331 significant components of the project which involve lead actors.

1332 (d) "Production" means a theatrical, direct-to-video, or  
 1333 direct-to-Internet motion picture; a made-for-television motion  
 1334 picture; visual effects or digital animation sequences produced

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1335 in conjunction with a motion picture; a commercial; a music  
 1336 video; an industrial or educational film; an infomercial; a  
 1337 documentary film; a television pilot program; a presentation for  
 1338 a television pilot program; a television series, including, but  
 1339 not limited to, a drama, a reality show, a comedy, a soap opera,  
 1340 a telenovela, a game show, an awards show, or a miniseries  
 1341 production; a direct-to-Internet television series; or a digital  
 1342 media project by the entertainment industry. One season of a  
 1343 television series is considered one production. The term does  
 1344 not include a weather or market program; a sporting event or a  
 1345 sporting event broadcast; a gala; a production that solicits  
 1346 funds; a home shopping program; a political program; a political  
 1347 documentary; political advertising; a gambling-related project  
 1348 or production; a concert production; a local, regional, or  
 1349 Internet-distributed-only news show or current-events show; a  
 1350 sports news or sports recap show; a pornographic production; or  
 1351 any production deemed obscene under chapter 847. A production  
 1352 may be produced on or by film, tape, or otherwise by means of a  
 1353 motion picture camera; electronic camera or device; tape device;  
 1354 computer; any combination of the foregoing; or any other means,  
 1355 method, or device.

1356 (e) "Production company" means a corporation, limited  
 1357 liability company, partnership, or other legal entity engaged in  
 1358 one or more productions in this state.

1359 (f) "Production expenditures" means the costs of tangible  
 1360 and intangible property used for, and services performed  
 1361 primarily and customarily in, production, including  
 1362 preproduction and postproduction, but excluding costs for  
 1363 development, marketing, and distribution. The term includes, but

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1364 is not limited to:

1365 1. Wages, salaries, or other compensation paid to legal  
 1366 residents of this state, including amounts paid through payroll  
 1367 service companies, for technical and production crews,  
 1368 directors, producers, and performers.

1369 2. Net expenditures for sound stages, backlots, production  
 1370 editing, digital effects, sound recordings, sets, and set  
 1371 construction.

1372 3. Net expenditures for rental equipment, including, but  
 1373 not limited to, cameras and grip or electrical equipment.

1374 4. Up to \$300,000 of the costs of newly purchased computer  
 1375 software and hardware unique to the project, including servers,  
 1376 data processing, and visualization technologies, which are  
 1377 located in and used exclusively in this state for the production  
 1378 of digital media.

1379 5. Expenditures for meals, travel, and accommodations. As  
 1380 used in this paragraph, the term "net expenditures" means the  
 1381 actual amount of money a project spent for equipment or other  
 1382 tangible personal property, after subtracting any consideration  
 1383 received for reselling or transferring the item after the  
 1384 production ends, if applicable.

1385 (g) "Project" means a production in this state meeting the  
 1386 requirements of this section. The term does not include a  
 1387 production:

1388 1. In which less than 70 percent of the positions that make  
 1389 up its production cast and below-the-line production crew are  
 1390 filled by legal residents of this state, whose residency is  
 1391 demonstrated by a valid Florida driver license or other state-  
 1392 issued identification confirming residency, or students enrolled

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1393 full-time in an entertainment-related course of study at an  
 1394 institution of higher education in this state; or  
 1395 2. That contains obscene content as defined in s.  
 1396 847.001(10).  
 1397 (h) "Qualified expenditures" means production expenditures  
 1398 incurred in this state by a production company for:  
 1399 1. Goods purchased or leased from, or services, including,  
 1400 but not limited to, insurance costs and bonding, payroll  
 1401 services, and legal fees, which are provided by a vendor or  
 1402 supplier in this state that is registered with the Department of  
 1403 State or the Department of Revenue, has a physical location in  
 1404 this state, and employs one or more legal residents of this  
 1405 state. This does not include rebilled goods or services provided  
 1406 by an in-state company from out-of-state vendors or suppliers.  
 1407 When services provided by the vendor or supplier include  
 1408 personal services or labor, only personal services or labor  
 1409 provided by residents of this state, evidenced by the required  
 1410 documentation of residency in this state, qualify.  
 1411 2. Payments to legal residents of this state in the form of  
 1412 salary, wages, or other compensation up to a maximum of \$400,000  
 1413 per resident unless otherwise specified in subsection (4). A  
 1414 completed declaration of residency in this state must accompany  
 1415 the documentation submitted to the department for reimbursement.  
 1416  
 1417 For a project involving an event, such as an awards show, the  
 1418 term does not include expenditures solely associated with the  
 1419 event itself and not directly required by the production. The  
 1420 term does not include expenditures incurred before the agreement  
 1421 is signed. The production company may not include in the

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1422 calculation for qualified expenditures the original purchase  
 1423 price for equipment or other tangible property that is later  
 1424 sold or transferred by the production company for consideration.  
 1425 In such cases, the qualified expenditure is the net of the  
 1426 original purchase price minus the consideration received upon  
 1427 sale or transfer.  
 1428 (i) "Underutilized county" means a county in which less  
 1429 than \$500,000 in qualified expenditures were made in the last 2  
 1430 fiscal years.  
 1431 (3) A production company may apply for funds from the  
 1432 entertainment industry quick action fund for a production or  
 1433 successive seasons of a production. The department and the  
 1434 division shall jointly review and evaluate applications to  
 1435 determine the eligibility of each project consistent with the  
 1436 requirements of this section. The department shall select  
 1437 projects that maximize the return to the state.  
 1438 (4) The department and the division, in their review and  
 1439 evaluation of applications, must consider the following  
 1440 criteria:  
 1441 (a) Expected contributions to the state's economy,  
 1442 consistent with the state strategic economic development plan  
 1443 prepared by the department.  
 1444 (b) The amount of qualified and nonqualified expenditures  
 1445 that will be made in this state, including spending or  
 1446 contracting with Florida-based businesses and small and minority  
 1447 businesses in this state.  
 1448 (c) Planned or executed contracts with production  
 1449 facilities or soundstages in this state and the percentage of  
 1450 principal photography or production activity that will occur at

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1451 each location.

1452 (d) Planned preproduction and postproduction to occur in

1453 this state.

1454 (e) The amount of capital investment, especially fixed

1455 capital investment, to be made directly by the production

1456 company in this state related to the project.

1457 (f) The amount of any other capital investment to be made

1458 in this state related to the project.

1459 (g) The duration of the project in this state, including

1460 whether production will occur in the off-season.

1461 (h) The amount and duration of principal photography or

1462 production activity that will occur in an underutilized county.

1463 (i) The amount of promotion of Florida that the production

1464 company will provide for the state. This includes marketing

1465 materials promoting this state as a tourist destination or a

1466 film and entertainment production destination; placement of

1467 state agency logos in the production and credits; permitted use

1468 of production assets, characters, and themes by this state;

1469 promotional videos for this state included on optical disc

1470 formats; and other marketing integration.

1471 (j) The number of state residents that will be employed in

1472 full-time equivalent and part-time positions related to the

1473 project and the duration of such employment and the wages paid

1474 to such persons.

1475 (k) The employment of students enrolled full-time in an

1476 entertainment-related course of study at an institution of

1477 higher education in this state or of graduates from such an

1478 institution within 12 months after graduation.

1479 (l) Plans to work with entertainment industry-related

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1480 courses of study at an institution of higher education in this

1481 state.

1482 (m) The local support and any financial commitment for the

1483 project.

1484 (n) The project is about this state or shows this state in

1485 a positive light.

1486 (o) The length of time the production company has made

1487 productions in this state, the number of productions the

1488 production company has made in this state, and the production

1489 company's overall commitment to this state. This includes a

1490 production company that is based in this state.

1491 (p) The project is an independent film.

1492 (q) The amount of repayment the production company agrees

1493 to pay the state. At a minimum, the production company must

1494 agree to repay 25 percent of its final award amount when the

1495 production generates \$20 million in gross revenues.

1496 (r) The expected effect of the award on the viability of

1497 the project and the probability that the project would be

1498 undertaken in this state if funds are granted to the production

1499 company.

1500 (s) A review of the production company's past activities in

1501 this state or other states.

1502 (5) A production company must have financing in place for a

1503 project before it applies for funds under this section.

1504 (6) The department shall prescribe a form upon which an

1505 application must be made. At a minimum, the application must

1506 include:

1507 (a) The applicant's federal employer identification number,

1508 reemployment assistance account number, and state sales tax

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1509 registration number, as applicable. If such numbers are not  
 1510 available at the time of application, they must be submitted to  
 1511 the department in writing before the disbursement of any  
 1512 payments.

1513 (b) The signature of the applicant.

1514 (c) A detailed budget of planned qualified and nonqualified  
 1515 expenditures in this state.

1516 (d) The type and amount of capital investment that will be  
 1517 made in this state.

1518 (e) The locations in this state at which the project will  
 1519 occur.

1520 (f) The anticipated commencement date and duration of the  
 1521 project.

1522 (g) The proposed number of state residents and nonstate  
 1523 residents that will be employed in full-time equivalent and  
 1524 part-time positions related to the project and wages paid to  
 1525 such persons.

1526 (h) The total number of full-time equivalent employees  
 1527 employed by the production company in this state, if applicable.

1528 (i) Proof of financing for the project.

1529 (j) The amount of repayment the production company agrees  
 1530 to pay the state.

1531 (k) The amount of promotion of Florida that the production  
 1532 company will provide for the state.

1533 (l) An attestation verifying that information provided on  
 1534 the application is true and accurate.

1535 (m) Any additional information requested by the department  
 1536 or division.

1537 (7) The department must make a recommendation to the

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1538 Governor to approve or deny an award within 7 days after  
 1539 completion of the review and evaluation. An award of funds may  
 1540 not constitute more than 30 percent of qualified expenditures in  
 1541 this state and may not fund wages paid to nonresidents. A  
 1542 production must start within 1 year after the date the project  
 1543 is approved by the Governor. The recommendation must include the  
 1544 performance conditions that the project must meet to obtain  
 1545 funds.

1546 (a) The Governor may approve projects without consulting  
 1547 the Legislature for projects requiring less than \$2 million in  
 1548 funding.

1549 (b) For projects requiring funding in the amount of \$2  
 1550 million to \$5 million, the Governor shall provide a written  
 1551 description and evaluation of a project recommended for approval  
 1552 to the chair and vice chair of the Legislative Budget Commission  
 1553 at least 10 days before giving final approval for a project. The  
 1554 recommendation must include the performance conditions that the  
 1555 project must meet in order to obtain funds.

1556 (c) If the chair or vice chair of the Legislative Budget  
 1557 Commission or the President of the Senate or the Speaker of the  
 1558 House of Representatives timely advises the Executive Office of  
 1559 the Governor, in writing, that such action or proposed action  
 1560 exceeds the delegated authority of the Executive Office of the  
 1561 Governor or is contrary to legislative policy or intent, the  
 1562 Executive Office of the Governor shall void the release of funds  
 1563 and instruct the department to immediately change such action or  
 1564 proposed action until the Legislative Budget Commission or the  
 1565 Legislature addresses the issue.

1566 (d) Any project exceeding \$5 million must be approved by



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1567 the Legislative Budget Commission before the funding is  
1568 released.

1569 (8) Upon the approval of the Governor, the department and  
1570 the production company shall enter into an agreement that  
1571 specifies, at a minimum:

1572 (a) The total amount of funds awarded and the schedule of  
1573 payment.

1574 (b) The performance conditions for payment of moneys from  
1575 the fund, including full- and part-time employment in this  
1576 state; wages paid in this state; capital investment in this  
1577 state, including fixed capital investment; marketing and  
1578 promotion in this state; the date by which production must start  
1579 and the duration of production; the amount of qualified  
1580 expenditures in this state; and the amount and timing of  
1581 repayment.

1582 (c) The methodology for validating performance and the date  
1583 by which the production company must submit proof of performance  
1584 to the department.

1585 (d) That the department may review and verify any records  
1586 of the production company to ascertain whether that company is  
1587 in compliance with this section and the agreement.

1588 (e) Sanctions for failure to meet performance conditions.

1589 (f) That payment of moneys from the fund is contingent upon  
1590 sufficient appropriation of funds by the Legislature.

1591 (9) The agreement must be finalized and signed by an  
1592 authorized officer of the production company within 90 days  
1593 after the Governor's approval. A production company that is  
1594 approved under this section may not simultaneously receive  
1595 benefits under ss. 288.1254 and 288.1258 for the same

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1596 production.

1597 (10) The department shall validate contractor performance  
1598 and report such validation in the annual report required under  
1599 s. 288.1254.

1600 (11) Contingent upon an annual appropriation by the  
1601 Legislature, the department may not approve awards in excess of  
1602 the amount appropriated for a fiscal year. The department must  
1603 maintain a schedule of funds to be paid from the appropriation  
1604 for the fiscal year that begins on July 1. For the first 6  
1605 months of each fiscal year, the department shall set aside 50  
1606 percent of the amount appropriated for the fund by the  
1607 Legislature. At the end of the 6-month period, these funds may  
1608 be used to provide funding for any project that qualifies under  
1609 this section.

1610 (12) All funds received from the required repayment must be  
1611 deposited into the Entertainment Industry Quick Action Account  
1612 within the State Economic Enhancement and Development Trust Fund  
1613 for use in this program.

1614 (13) Any production company that submits fraudulent  
1615 information under this section is liable for reimbursement of  
1616 the reasonable costs and fees associated with the review,  
1617 processing, investigation, and prosecution of the fraudulent  
1618 claim. A production company that receives a payment under this  
1619 section through a claim that is fraudulent is liable for  
1620 reimbursement of the payment amount plus a penalty in an amount  
1621 double the payment amount. The penalty is in addition to any  
1622 criminal penalty for which the production company is liable for  
1623 the same acts. The production company is also liable for costs  
1624 and fees incurred by the state in investigating and prosecuting

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1625 the fraudulent claim.

1626 (14) The department may not waive any provision or provide  
 1627 an extension of time to meet any requirement of this section.

1628 (15) This section expires on July 1, 2025. An agreement in  
 1629 existence on that date shall continue in effect in accordance  
 1630 with its terms.

1631 Section 9. Section 288.1258, Florida Statutes, is amended  
 1632 to read:

1633 288.1258 Entertainment industry qualified production  
 1634 companies; application procedure; categories; duties of the  
 1635 Department of Revenue; records and reports.—

1636 (1) PRODUCTION COMPANIES AUTHORIZED TO APPLY.—

1637 (a) Any production company engaged in this state in the  
 1638 production of motion pictures, made-for-TV motion pictures,  
 1639 television series, commercial advertising, music videos, or  
 1640 sound recordings may submit an application to the Department of  
 1641 Revenue to be approved by the Department of Economic Opportunity  
 1642 Office of Film and Entertainment as a qualified production  
 1643 company for the purpose of receiving a sales and use tax  
 1644 certificate of exemption from the Department of Revenue to  
 1645 exempt purchases on or after the date a complete application is  
 1646 filed with the Department of Revenue for exemptions under ss.  
 1647 212.031, 212.06, and 212.08.

1648 (b) ~~As used in For the purposes of~~ this section, the term  
 1649 "qualified production company" means any production company that  
 1650 has submitted a properly completed application to the Department  
 1651 of Revenue and that is subsequently qualified by the Department  
 1652 of Economic Opportunity Office of Film and Entertainment.

1653 (2) APPLICATION PROCEDURE.—

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1654 (a) The Department of Revenue ~~shall will~~ review all  
 1655 submitted applications for the required information. Within 10  
 1656 working days after the receipt of a properly completed  
 1657 application, the Department of Revenue ~~shall will~~ forward the  
 1658 completed application to the Department of Economic Opportunity  
 1659 Office of Film and Entertainment for approval.

1660 (b)1. The Department of Economic Opportunity Office of Film  
 1661 ~~and Entertainment~~ shall establish a process by which an  
 1662 entertainment industry production company may be approved by the  
 1663 department office as a qualified production company and may  
 1664 receive a certificate of exemption from the Department of  
 1665 Revenue for the sales and use tax exemptions under ss. 212.031,  
 1666 212.06, and 212.08. A production company that is approved under  
 1667 this section may not simultaneously receive benefits under ss.  
 1668 288.1254 and 288.1256 for the same production.

1669 2. Upon determination by the department Office of Film and  
 1670 ~~Entertainment~~ that a production company meets the established  
 1671 approval criteria and qualifies for exemption, the department  
 1672 ~~Office of Film and Entertainment~~ shall return the approved  
 1673 application or application renewal or extension to the  
 1674 Department of Revenue, which shall issue a certificate of  
 1675 exemption.

1676 3. The department Office of Film and Entertainment shall  
 1677 deny an application or application for renewal or extension from  
 1678 a production company if it determines that the production  
 1679 company does not meet the established approval criteria.

1680 (c) The department Office of Film and Entertainment shall  
 1681 develop, with the cooperation of the Department of Revenue, the  
 1682 Division of Film and Entertainment within Enterprise Florida,

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1683 Inc., and local government entertainment industry promotion  
1684 agencies, a standardized application form for use in approving  
1685 qualified production companies.

1686 1. The application form shall include, but not be limited  
1687 to, production-related information on employment, proposed  
1688 budgets, planned purchases of items exempted from sales and use  
1689 taxes under ss. 212.031, 212.06, and 212.08, a signed  
1690 affirmation from the applicant that any items purchased for  
1691 which the applicant is seeking a tax exemption are intended for  
1692 use exclusively as an integral part of entertainment industry  
1693 preproduction, production, or postproduction activities engaged  
1694 in primarily in this state, and a signed affirmation from the  
1695 department Office of Film and Entertainment that the information  
1696 on the application form has been verified and is correct. In  
1697 lieu of information on projected employment, proposed budgets,  
1698 or planned purchases of exempted items, a production company  
1699 seeking a 1-year certificate of exemption may submit summary  
1700 historical data on employment, production budgets, and purchases  
1701 of exempted items related to production activities in this  
1702 state. Any information gathered from production companies for  
1703 the purposes of this section shall be considered confidential  
1704 taxpayer information and shall be disclosed only as provided in  
1705 s. 213.053.

1706 2. The application form may be distributed to applicants by  
1707 the department, the Division Office of Film and Entertainment,  
1708 or local film commissions.

1709 (d) All applications, renewals, and extensions for  
1710 designation as a qualified production company shall be processed  
1711 by the department Office of Film and Entertainment.

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1712 (e) ~~If In the event that~~ the Department of Revenue  
1713 determines that a production company no longer qualifies for a  
1714 certificate of exemption, or has used a certificate of exemption  
1715 for purposes other than those authorized by this section and  
1716 chapter 212, the Department of Revenue shall revoke the  
1717 certificate of exemption of that production company, and any  
1718 sales or use taxes exempted on items purchased or leased by the  
1719 production company during the time such company did not qualify  
1720 for a certificate of exemption or improperly used a certificate  
1721 of exemption shall become immediately due to the Department of  
1722 Revenue, along with interest and penalty as provided by s.  
1723 212.12. In addition to the other penalties imposed by law, any  
1724 person who knowingly and willfully falsifies an application, or  
1725 uses a certificate of exemption for purposes other than those  
1726 authorized by this section and chapter 212, commits a felony of  
1727 the third degree, punishable as provided in ss. 775.082,  
1728 775.083, and 775.084.

1729 (3) CATEGORIES.—

1730 (a)1. A production company may be qualified for designation  
1731 as a qualified production company for a period of 1 year if the  
1732 company has operated a business in Florida at a permanent  
1733 address for a period of 12 consecutive months. Such a qualified  
1734 production company shall receive a single 1-year certificate of  
1735 exemption from the Department of Revenue for the sales and use  
1736 tax exemptions under ss. 212.031, 212.06, and 212.08, which  
1737 certificate shall expire 1 year after issuance or upon the  
1738 cessation of business operations in the state, at which time the  
1739 certificate shall be surrendered to the Department of Revenue.

1740 2. ~~The Office of Film and Entertainment shall develop a~~

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 1741 ~~method by which~~ A qualified production company may submit a new  
 1742 application for annually renew a 1-year certificate of exemption  
 1743 upon the expiration of that company's certificate of exemption;  
 1744 however, upon approval of the department, such qualified  
 1745 production company may annually renew the 1-year certificate of  
 1746 exemption for a period of up to 5 years without submitting  
 1747 ~~requiring the production company to resubmit~~ a new application  
 1748 during that 5-year period.

1749 3. Each year, or upon surrender of the certificate of  
 1750 exemption to the Department of Revenue, the Any qualified  
 1751 production company shall may submit to the department aggregate  
 1752 data for production-related information on employment,  
 1753 expenditures in this state, capital investment, and purchases of  
 1754 items exempted from sales and use taxes under ss. 212.031,  
 1755 212.06, and 212.08 for inclusion in the annual report required  
 1756 under subsection (5) a new application for a 1-year certificate  
 1757 of exemption upon the expiration of that company's certificate  
 1758 of exemption.

1759 (b)1. A production company may be qualified for designation  
 1760 as a qualified production company for a period of 90 days. Such  
 1761 production company shall receive a single 90-day certificate of  
 1762 exemption from the Department of Revenue for the sales and use  
 1763 tax exemptions under ss. 212.031, 212.06, and 212.08, which  
 1764 certificate shall expire 90 days after issuance or upon the  
 1765 cessation of business operations in the state at which time,  
 1766 ~~with extensions contingent upon approval of the Office of Film~~  
 1767 ~~and Entertainment.~~ the certificate shall be surrendered to the  
 1768 Department of Revenue ~~upon its expiration.~~

1769 2. A qualified production company may submit a new

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 1770 application for a 90-day certificate of exemption each quarter  
 1771 upon the expiration of that company's certificate of exemption;  
 1772 however, upon approval of the department, such qualified  
 1773 production company may renew the 90-day certificate of exemption  
 1774 for a period of up to 1 year without submitting a new  
 1775 application during that 1-year period.

1776 ~~3.2-~~ Each 90 days, or upon surrender of the certificate of  
 1777 exemption to the Department of Revenue, the qualified Any  
 1778 production company shall may submit to the department aggregate  
 1779 data for production-related information on employment,  
 1780 expenditures in this state, capital investment, and purchases of  
 1781 items exempted from sales and use taxes under ss. 212.031,  
 1782 212.06, and 212.08 for inclusion in the annual report required  
 1783 under subsection (5) a new application for a 90-day certificate  
 1784 of exemption upon the expiration of that company's certificate  
 1785 of exemption.

1786 (4) DUTIES OF THE DEPARTMENT OF REVENUE.—

1787 (a) The Department of Revenue shall review the initial  
 1788 application and notify the applicant of any omissions and  
 1789 request additional information if needed. An application shall  
 1790 be complete upon receipt of all requested information. The  
 1791 Department of Revenue shall forward all complete applications to  
 1792 the ~~department Office of Film and Entertainment~~ within 10  
 1793 working days.

1794 (b) The Department of Revenue shall issue a numbered  
 1795 certificate of exemption to a qualified production company  
 1796 within 5 working days of the receipt of an approved application,  
 1797 application renewal, or application extension from the  
 1798 ~~department Office of Film and Entertainment.~~

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1799 (c) The Department of Revenue may ~~adopt promulgate~~ such  
 1800 rules and shall prescribe and publish such forms as may be  
 1801 necessary to effectuate the purposes of this section or any of  
 1802 the sales tax exemptions which are reasonably related to the  
 1803 provisions of this section.

1804 (d) The Department of Revenue is authorized to establish  
 1805 audit procedures in accordance with the provisions of ss.  
 1806 212.12, 212.13, and 213.34 which relate to the sales tax  
 1807 exemption provisions of this section.

1808 (5) RELATIONSHIP OF TAX EXEMPTIONS AND INCENTIVES TO  
 1809 INDUSTRY GROWTH; REPORT TO THE LEGISLATURE.—The department  
 1810 ~~Office of Film and Entertainment~~ shall keep annual records from  
 1811 the information provided on taxpayer applications for tax  
 1812 exemption certificates and regularly reported as required in  
 1813 this section beginning January 1, 2001. These records also must  
 1814 reflect a ratio of the annual amount of sales and use tax  
 1815 exemptions under this section, ~~plus the tax credits incentives~~  
 1816 awarded pursuant to s. 288.1254 to the estimated amount of funds  
 1817 expended by certified productions. In addition, the department  
 1818 ~~office~~ shall maintain data showing annual growth in Florida-  
 1819 based entertainment industry companies and entertainment  
 1820 industry employment and wages. The employment information must  
 1821 include ~~an estimate of~~ the full-time equivalent positions  
 1822 created by each production that received tax credits pursuant to  
 1823 s. 288.1254. The ~~department Office of Film and Entertainment~~  
 1824 shall include this information in the annual report for the  
 1825 entertainment industry ~~financial incentive~~ program required  
 1826 under s. 288.1254(10).

1827 Section 10. Subsection (1) of section 288.92, Florida

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1828 Statutes, is amended to read:

1829 288.92 Divisions of Enterprise Florida, Inc.—

1830 (1) Enterprise Florida, Inc., may create and dissolve  
 1831 divisions as necessary to carry out its mission. Each division  
 1832 shall have distinct responsibilities and complementary missions.  
 1833 At a minimum, Enterprise Florida, Inc., shall have divisions  
 1834 related to the following areas:

- 1835 (a) International Trade and Business Development;
- 1836 (b) Business Retention and Recruitment;
- 1837 (c) Tourism Marketing;
- 1838 (d) Minority Business Development; ~~and~~
- 1839 (e) Sports Industry Development; and
- 1840 (f) Film and Entertainment.

1841 Section 11. Subsection (5) of section 477.0135, Florida  
 1842 Statutes, is amended to read:

1843 477.0135 Exemptions.—

1844 (5) A license is not required of any individual providing  
 1845 makeup, special effects, or cosmetology services to an actor,  
 1846 stunt person, musician, extra, or other talent during a  
 1847 production recognized by the Department of Economic Opportunity  
 1848 ~~Office of Film and Entertainment~~ as a qualified production as  
 1849 defined in s. 288.1254(1). Such services are not required to be  
 1850 performed in a licensed salon. Individuals exempt under this  
 1851 subsection may not provide such services to the general public.

1852 Section 12. For the purpose of incorporating the amendment  
 1853 made by this act to section 288.1254, Florida Statutes, in a  
 1854 reference thereto, paragraph (q) of subsection (5) of section  
 1855 212.08, Florida Statutes, is reenacted to read:

1856 212.08 Sales, rental, use, consumption, distribution, and

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1857 storage tax; specified exemptions.—The sale at retail, the  
 1858 rental, the use, the consumption, the distribution, and the  
 1859 storage to be used or consumed in this state of the following  
 1860 are hereby specifically exempt from the tax imposed by this  
 1861 chapter.

1862 (5) EXEMPTIONS; ACCOUNT OF USE.—

1863 (q) *Entertainment industry tax credit; authorization;*  
 1864 *eligibility for credits.*—The credits against the state sales tax  
 1865 authorized pursuant to s. 288.1254 shall be deducted from any  
 1866 sales and use tax remitted by the dealer to the department by  
 1867 electronic funds transfer and may only be deducted on a sales  
 1868 and use tax return initiated through electronic data  
 1869 interchange. The dealer shall separately state the credit on the  
 1870 electronic return. The net amount of tax due and payable must be  
 1871 remitted by electronic funds transfer. If the credit for the  
 1872 qualified expenditures is larger than the amount owed on the  
 1873 sales and use tax return that is eligible for the credit, the  
 1874 unused amount of the credit may be carried forward to a  
 1875 succeeding reporting period as provided in s. 288.1254(4)(e). A  
 1876 dealer may only obtain a credit using the method described in  
 1877 this subparagraph. A dealer is not authorized to obtain a credit  
 1878 by applying for a refund.

1879 Section 13. For the purpose of incorporating the amendment  
 1880 made by this act to section 288.1254, Florida Statutes, in a  
 1881 reference thereto, subsection (3) of section 220.1899, Florida  
 1882 Statutes, is reenacted to read:

1883 220.1899 Entertainment industry tax credit.—

1884 (3) To the extent that the amount of a tax credit exceeds  
 1885 the amount due on a return, the balance of the credit may be

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1886 carried forward to a succeeding taxable year pursuant to s.  
 1887 288.1254(4)(e).

1888 Section 14. This act shall take effect July 1, 2015.

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SB 1214

INTRODUCER: Senator Latvala

SUBJECT: Economic Development

DATE: March 9, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Askey	McKay	CM	<b>Pre-meeting</b>
2.			ATD	
3.			AP	

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**I. Summary:**

SB 1214 makes a number of changes to the state's economic development programs, by providing more flexibility in some programs, and increasing transparency and accountability across the economic development programs. Specifically, the bill:

- Standardizes the economic development application and evaluation processes.
- Specifies incentive project approval by the amount of required funding, as follows:
  - The Governor may approve projects requiring less than \$2 million without legislative approval.
  - The Governor must give 10 days' notice to the Legislative Budget Commission (LBC) for projects between \$2 million and \$7.5 million.
  - The Governor must wait on LBC approval before taking action on any projects requiring \$7.5 million or more.
  - Projects of \$5 million or greater with any waivers of program requirements require LBC approval.
  - This application approval process applies to:
    - The Quick Action Closing (QAC) Fund;
    - The Qualified Target Industry Business (QTI) Tax Refund;
    - The High-Impact Business Performance Grants;
    - The Qualified Defense Contractor and Space Flight Business Tax Refund Program (QDSC);
    - The Innovation Incentive Program;
    - The Brownfield Redevelopment Bonus Refund; and
    - The Local Government Distressed Area Matching Grant Program.
- Mandates that contracts requiring capital investment in the state must obligate that the investment remain in the state for the duration of the contract.
- Limits the contract term to 10 years, except for projects receiving \$20 million or more in total state incentives.

- Requires that contracts with job creation performance conditions require applicants to use the workforce information systems implemented by Career Source Florida.
- Requires advance notice of any proposed amendment to a contract, with a 3-day notice to the Legislature, except for a proposed amendment that would reduce the projected ROI by 0.50 or more, which requires a 10-day legislative consultation period. Amendments that reduce the project's ROI must include a proportionate reduction in the award amount.
- Requires that the average private sector wage requirement reflects the wages in the local area where the business is located.
- Extends the date applicants can be certified under the QDSC Program until June 30, 2020.
- Makes the following changes to the QAC Fund:
  - The economic benefit ratio required for a project to qualify has been lowered from 5 to 1, to 4 to 1;
  - The number of qualifying project criteria allowed to be waived is limited to two;
  - The criteria that the incentive be an inducement to the project's location or expansion in this state may not be waived;
  - That no payments may be made to a qualifying project until required performance goals have been achieved; and
  - Provides that a waiver of the annual wage requirement may not be below 100 percent of the average private sector wage in the area, and that a ROI waiver cannot be below 2 to 1.
- Makes the following changes to the QTI Program:
  - Permits businesses in brownfield or rural areas to receive 100 percent of the total tax refunds allowed, if local financial support is waived;
  - Permits businesses to receive a prorated award if at least 90 percent of agreed-to higher wage requirements are met; and
  - Permits the DEO to grant 60 day extensions for applicants to claim tax refunds.
- Requires that the appointment of the President of Enterprise Florida, Inc., (EFI) is subject to Senate confirmation, and prohibits the EFI President from engaging in lobbying efforts in Florida, in a manner similar to other state agency heads. The bill applies these changes to presidents appointed or reappointed after July 1, 2015.
- Amends the terms "cumulative capital investment" and "fixed capital investment" to exclude any state or local funds from being counted toward the total investment, in certain programs, and clarifies that the state's investment for purposes of determining "economic benefits" includes all state funds spent or forgone to benefit the business.
- Requires the Office of Economic Development and Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review the baseball spring training program. The bill also gives new duties to the OPPAGA to evaluate the Microfinance programs.

The bill provides an effective date of July 1, 2015.



## II. Present Situation:

### **Florida Economic Development Incentives**

Florida has a number of incentive programs intended to foster economic development in the state. These programs address a variety of specific economic roles that a business looking to expand or locate in the state might need. These programs are collectively seen as a “toolkit” and come in a variety of forms including tax credits, tax refunds, tax exemptions, and cash grants. The toolkit is used to incentivize highly competitive projects to locate or expand in the state. The primary goal of the state economic development platform is to have Enterprise Florida, Inc. (EFI), a public-private partnership between businesses in the state and government leaders, act as the principal economic development organization for Florida, and the state being responsible for oversight and administration of tax refund claims and performance reviews, processing incentive payments, and local financial support. After EFI has made the initial steps in the economic development incentive process, the Department of Economic Opportunity (DEO) begins its own processes. The DEO is responsible for the evaluation of project applications and has a role in the approval process. Following final approval by the DEO, the Governor, and in some cases the Legislative Budget Commission, the business enters into an agreement or contract with the DEO concerning the incentives. Most contracts require certain performance measures to be met before any incentive funds are paid out. Two notable exceptions are the Quick Action Closing Fund and the Innovation Incentive Program. Incentive programs that pay out before performance requirements are met have contractual recapture of funds and sanctions if needed for not meeting performance measures as scheduled. The Office of Economic Development and Research (EDR) and the Office of Public Policy Analysis and Government Accountability (OPPAGA) are required to review and report on the toolkit programs as well as some other programs related to economic development in ch. 288, F.S.

### **Economic Development Programs with Tax Refunds**

#### ***Qualified Target Industry Business Tax Refund***

The Qualified Target Industry Business Tax Refund (QTI) was established in 1995, in s. 288.106, F.S., with the purpose of attracting high wage jobs to the state. The tax refunds are made to qualified, pre-approved businesses creating jobs in target industries. The target industries are identified by the DEO for criteria including future growth, stability, high wages, market and resource independence, industrial base diversification, and positive economic impact. Approved QTI projects have contractual performance measures with specific milestones to be verified prior to payment of any tax refunds. This incentive requires 20 percent of the award to come from the local government. The program is funded through a specific annual appropriation to the Economic Development Trust Fund.<sup>1</sup> The program shares a \$35 million cap, per fiscal year, with the Qualified Defense and Space Contractor Tax Refund. The DEO reported that \$55.3 million in maximum awards was approved in Fiscal Year 2013-14.<sup>2</sup> Additionally the

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<sup>1</sup> Section. 288.095, F.S.

<sup>2</sup> The amount approved in any fiscal year may exceed the statutory cap, but payments in any fiscal year will not exceed the cap.

department reported that of the 1,110 contracts executed from the beginning of the program to June 30, 2014, 322 contracts are active and 122 contracts were successfully completed.<sup>3</sup>

### ***Qualified Defense Contractor and Space Flight Business Tax Refund***

Also known as the Qualified Defense and Space Contractor (QDSC) Tax Refund, the program was established in 1996, in s. 288.1045, F.S., and is designed to attract high wage jobs in the space and defense industries. The QDSC tax refunds are made to qualified and approved businesses bidding on new or securing existing defense or space contracts. As with the QTI refund, 20 percent of the award comes from the local government. As with other programs, the QDSC tax refunds are awarded after contractual performance-based milestones are met and verified by the state. Since June 30, 2014, no new applicants may be certified as eligible under statute. The program is funded through a specific annual appropriation to the Economic Development Trust Fund. The program shares a \$35 million cap, per fiscal year with the QTI Tax Refund. The DEO reported that \$3.2 million in maximum rewards was approved in Fiscal Year 2013-2014. Additionally, the DEO reported that of the 28 contracts executed from the beginning of the program to June 30, 2014, five contracts are active and five contracts were successfully completed.<sup>4</sup>

### ***Brownfield Redevelopment Bonus Refund***

The Brownfield Redevelopment Bonus Refund was established in 1997, in s. 288.107, F.S., to improve economic activity in designated Brownfield areas. These areas are designated by the respective community for the presence or perceived presence of economic blight or environmental contamination. As with the QTI and QDSC programs, the Brownfield program requires 20 percent of the award to come from the local government. As with other programs, the Brownfield program requires performance-based contracts and specific milestones to be met in order for a project to receive awards. The Brownfield program offers a bonus for any tax refund awarded to a QTI qualified business for job creation, if that job creation occurred in a Brownfield area. The program is funded through a specific annual appropriation to the Economic Development Trust Fund. The DEO reported that \$2.6 million in maximum rewards was approved in Fiscal Year 2013-2014, with an additional \$875,000 in maximum awards for the Brownfield Bonus with QTI. Additionally, the department reported that of the 59 contracts executed from the beginning of the program to June 30, 2014, 33 contracts are active and 9 contracts were successfully completed. For the Brownfield Bonus with QTI, there are 103 contracts executed in the same timeframe with 40 active contracts and 6 completed.<sup>5</sup>

## **Economic Development Programs with Tax Credits**

### ***Capital Investment Tax Credit***

The Capital Investment Tax Credit (CITC) became effective in 1998, in s. 220.191, F.S., and its purpose is to attract and grow capital-intensive industries in Florida. Eligible projects must be in designated high-impact portions of certain sectors, determined by the DEO, including clean

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<sup>3</sup> Florida Department of Economic Opportunity, *2014 Annual Incentives Report*, 11, 15 (Dec. 30, 2014) available at <http://sitefinity.floridajobs.org/docs/default-source/sbd-sports/2014-annual-incentives-report.pdf?status=Temp&sfvrsn=0.028032216409722532> (last visited March 3, 2015).

<sup>4</sup> *Id.*

<sup>5</sup> See *supra* note 3.

energy, biomedical technology, financial services, information or silicon technology, or transportation equipment manufacturing. The project could also be a corporate headquarters facility. The DEO reports that the value of credits claimed is often lower than the value of credits approved because the company's tax liability may be lower than the value of the credits, and most often, because the credits can only be used to offset a portion of the incremental new tax liability attributable to a project. There is no cap for this program. The DEO reported that \$7.2 million in tax credits were claimed in 2013. The DEO also reported that there have been 37 approvals or certifications for CITC projects through June 30, 2013 (numbers from 2014 were not reported), with 32 being active and five having been terminated.<sup>6</sup>

### ***Entertainment Industry Financial Incentive Program***

The Entertainment Industry Financial Incentive Program was established in 2003, in s. 288.1245, F.S., to develop and sustain the workforce and infrastructure for film, digital media, and entertainment production. This program offers transferable tax credits for expenditures related to qualified productions on a first-come, first-served basis. Currently the Office of Film and Entertainment has committed all of the state's tax credits (under this program), certifying 351 projects to receive \$296 million.<sup>7</sup> The Entertainment Industry Sales Tax Exemption Program, in s. 288.1258, F.S., is a related program.

### **Economic Development Programs with Cash Grants**

#### ***High-Impact Business Performance Grants***

Also known as the High-Impact Performance Incentive (HIPI), the program was established in 1997, in s. 288.108, F.S. HIPI is a grant reserved for projects operating in the same high-impact sectors as in the CITC program. The cash grant is performance based and paid in two installments. First, upon operational commencement, and the second upon full operational commencement as determined in contract. The program has an annual cap of \$30 million. The DEO reports that \$10.6 million in grant incentives was approved in Fiscal Year 2013-14. The DEO also reports that of the 14 contracts executed from the beginning of the program to June 30, 2014, seven contracts are active and three contracts were successfully completed.<sup>8</sup> This program authorizes the recapture of funds if a business fails in meeting its performance measures.

#### ***Quick Action Closing Fund***

The Quick Action Closing (QAC) Fund was established in 1999, in s. 288.1088, F.S. The program is designed to be a competitive "deal closing" tool for negotiations where the state's other incentives are not enough to incentivize a business to locate or expand in the state. All QAC Fund projects have a performance based contract requiring specific scheduled milestones and annual compliance requirements. The program authorizes sanction and penalties for failed performance. The program is funded by a specific annual appropriation, and has no cap. The DEO reports that \$44.7 million in grant incentives was approved in Fiscal Year 2013-14.

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<sup>6</sup> See *supra* note 3, at 12-13, 22.

<sup>7</sup> Office of Program Policy Analysis and Government Accountability, Florida Legislature, *Florida Economic Development Program Evaluations – Year 2*, Report No. 15-01, 10 (Jan. 1, 2015), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1501rpt.pdf> (last visited Feb. 26, 2015).

<sup>8</sup> See *supra* note 3, at 12 and 17.

Additionally, the report stated that 144 contracts have been executed through June 30, 2014, with 106 active contracts and ten successfully completed contracts.<sup>9</sup>

### ***Innovation Incentive Program***

The Innovation Incentive Program (IIP) was created in 2006, in s. 288.1089, F.S. The program is designed to empower the state to compete effectively for research and development, innovation business, or alternative and renewable energy projects. The program creates long-term investments, made by the state, in industry clusters critical to the state's future economic diversification. The projects have contractual performance measures and milestones that must be achieved before grant payment. The contracts also include a reinvestment portion, requiring recipients to reinvest a portion of royalty revenues earned back to the state for investment in existing state trust funds. The DEO reports that as of 2013, nine companies have been awarded funds of \$455.7 million, not including the Scripps Florida Grant (\$310 million).<sup>10</sup>

### ***Local Government Distressed Area Matching Grant Program***

The Local Government Distressed Area Matching Grant (LGDAMG) Program was established in 2010, in s. 288.0659, F.S. The program goal is to improve economic activity and enhance job creation in distressed communities. The grant is administered as a contract between the state and the local government. The state's funds, a \$50,000 maximum, are passed through to the business. This program has not been funded since 2012 (the only year it was funded) with a total amount of approved grant incentives of \$150,000.<sup>11</sup>

## **Other Economic Development Programs**

### ***Professional Sports Facilities***

The State of Florida offers state funding to pay for a facility for a professional sports franchise, under certain circumstances. Local governments, non-profit and for-profit entities may apply to the program. The program is reviewed by the EDR and the OPPAGA on a schedule required by s. 288.001, F.S. The state extends the program for the retention of Major League Baseball spring training baseball franchises in s. 288.11631, F.S.

### ***Microfinance Programs***

The state has two separate microfinance programs, the Microfinance Loan Program<sup>12</sup> and the Microfinance Guarantee Program.<sup>13</sup> The loan program is designed to make short-term, fixed-rate microloans for business management training, business development training, and technical assistance to entrepreneurs and newly established or growing small businesses for startup costs, working capital, and the acquisition of materials, supplies, furniture, fixtures, and equipment. The intent of the program is to enable entrepreneurs and small businesses to access private financing upon completion of the program. The guarantee program is intended to stimulate

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<sup>9</sup> See *supra* note 3, at 12 and 17.

<sup>10</sup> See *supra* note 3, at 19.

<sup>11</sup> See *supra* note 3, at 12.

<sup>12</sup> Section 288.9934, F.S.

<sup>13</sup> Section 288.9935, F.S.

access to credit for entrepreneurs and small businesses by providing targeted guarantees to their loans. Appropriated funds in the program are reinvested in the program.

### III. Effect of Proposed Changes:

#### Definition Changes

**Section 1** of the bill amends the definition for “cumulative capital investment” for purposes of the state’s capital investment tax credit.<sup>14</sup> The definition is amended to prohibit the inclusion of any state or local funds used for capital investment, including funds appropriated to public or private entities, when calculating the total capital investment made in connection with a qualifying project.

Under current law, a qualifying project’s “cumulative capital investment” is used to determine the maximum percentage of the annual corporate income tax liability or premium tax liability generated by the project against which the capital investment tax credit may be imposed. This term is also used in the Innovation Incentive Program (program)<sup>15</sup> when determining if a business is qualified to receive incentives under the program.

**Section 3** amends the definition of “economic benefits” as used in ch. 288, F.S., which currently means the direct, indirect and induced gains in the state revenues as a percentage of the state’s investment. The current definition includes state grants, tax exemptions, tax refunds, tax grants, and other state incentives when calculating the state’s investment, to be used as a measure of economic gain in state revenue as a percentage of the state’s investment. The amended definition includes “all state funds spent or forgone to benefit the business, including state funds appropriated to public and private entities.”

The amended definition will change the calculation of “economic benefits” when used as a metric for the following programs and reports:

- the state’s economic development programs evaluation;
- the economic development incentive application process;
- the return on investment reporting for economic development programs;
- the Qualified Target Industry Tax Refund Program;
- the High-Impact Business (program);
- the Quick Action Closing Fund;
- the Entertainment Industry Financial Incentive Program;
- the annual incentives report required of Enterprise Florida, Inc., (EFI) for all of the economic development incentive programs marketed by EFI; and
- the evaluation of the Microfinance Loan Program and the Microfinance Guarantee Program.

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<sup>14</sup> Section 220.191, F.S.

<sup>15</sup> Section 288.1089, F.S.

## **Economic Development Incentive Application and Evaluation**

**Section 4** amends the Economic Development Incentive Application process under s. 288.061, F.S. The bill directs the DEO to create a uniform application form for incentive applications beginning January 1, 2016. The bill requires the form to include at minimum:

- The applicant's federal employee identification number, reemployment assistance account number, and state sales tax registration number (if these are unavailable at the time of application, they must be submitted before disbursement or granting of any incentive payments, tax credits, or refunds);
- The applicant's signature;
- The location in the state where the project will be located;
- The anticipated commencement date of the project;
- A description of the business activity, product, or research and development undertaken by the applicant, and the 6-digit North American Industry Classification System (NAICS) code for all activities included in the project; and
- An attestation verifying that the information in the application is true and accurate.

The bill creates a uniform evaluation process, by which the DEO will review and evaluate each incentive application for the economic benefits of the potential award of state incentives proposed for the project. The bill directs the EDR to include guidelines for the application of the model established to calculate the economic benefits. Current law allows the EDR to use an amended version of the term "economic benefits" for the purposes of this requirement. The bill requires that the amended definition must reflect the changes made by the bill in s. 288.005, F.S., namely that the calculation for the state's investment include all state funds spent or forgone to benefit the business, including state funds appropriated to public and private entities.

The bill requires that the department's evaluation of an application must also include the following:

- A financial analysis of the company including information on liens, pending or ongoing litigation, credit ratings, and regulatory filings;
- A review of any independent evaluations of the company;
- A review of the historical market performance of the company;
- A review of the latest audit of the company's financial statement and related auditor management letter;
- A review of any other audits related to the internal controls or management of the company;
- A review of performance in connection with past incentives; and
- Any other review deemed necessary by the department.

The bill creates a uniform approval process for economic incentive applications for potential projects that apply to receive funds under any of the following programs:

- The Local Government Distressed Area Matching Grant Program;
- The Qualified Defense Contractor and Space Flight Business Tax Refund Program;
- The Qualified Target Industry Business Tax Refund;
- The Brownfield Redevelopment Bonus Refund;
- The High-Impact Business Performance Grants;
- The Quick Action Closing Fund; and

- The Innovation Incentive Program.

The bill requires that the application process for projects that are applying under these sections follow a specific process. Within 10 days of receiving a complete application the DEO gives project recommendations for approval or disapproval to the Governor. Recommendations must include a justification for that recommendation and the proposed performance conditions the project must meet to receive incentive funds. The Governor may approve any project that requires less than \$2 million without consulting the Legislature. For projects that require funding of at least \$2 million and up to \$7.5 million, the Governor must provide a written description and evaluation to the Legislative Budget Commission (LBC) at least 10 days before final approval of the project. If the LBC, the President of the Senate, or the Speaker of the House of Representatives advises the Governor in writing that the action exceeds executive authority or is contrary to legislative intent, the Governor and the DEO shall suspend all actions until the LBC or the Legislature make a determination on the project. Any project requiring funding of \$7.5 million or more must be approved by the LBC before final approval by the Governor.

Current law provides that potential projects businesses submit applications for under these programs only require approval from the executive director of the DEO, except for the Innovation Incentive Program (IIP) and the Quick Action Closing Fund (QAC). The IIP requires that projects must be approved by the LBC. The QAC Fund allows projects receiving under \$2 million in funding to be approved by the Governor. Projects receiving between \$2 million and \$5 million in QAC funds require legislative consultation and projects exceeding \$5 million in funding is subject to approval by the LBC.

The bill clarifies that, upon certification, an applicant and the DEO will enter into contract. The bill requires that any contract, that requires capital investment to be made by the applicant, must also require that capital investment to remain in this state for the duration of the contract. The bill requires that the contract term is not to exceed 10 years. Under current law, project terms are written into each contract but are not predetermined by statute. The department may enter into successive agreements for a project after the first 10 year term, providing that each successive contract is contingent upon the successful completion of the previous contract. The bill does not impose the term restriction on contracts that have a total of \$20 million or more of combined state incentives. The bill requires that if the contract has any performance conditions related to job creation, the contract must require the applicant to use the workforce information systems implemented by Career Source Florida, Inc., (formerly Workforce Florida, Inc.) required by s. 445.011, F.S.

The bill requires that any proposed changes to the contract by the DEO must be provided to the Legislature in writing. This notice will be given 3-business days before the changes, and 10 days for changes that result in reducing the projected economic benefits by 0.50 or more or below any statutorily required level for receipt of funds. Any such changes must also include a proportionate reduction in the award amount. As with the original contract approval process, the LBC, the Senate President, or the Speaker of the House of Representatives may object to the changes in writing. If there is an objection, the Governor and the DEO will suspend all actions until the LBC or the Legislature make a determination on the project.

## **The Qualified Defense Contractor and Space Flight Business Tax Refund**

**Section 5** amends the Qualified Defense Contractor and Space Flight Business Tax Refund Program.<sup>16</sup> The bill amends the term “average wage in the area” to be the “average private sector wage in the area” and amends the definition to be an average of all private sector wages and salaries in the county or standard metropolitan area where the business is located. Current law defines the term as the average of all wages and salaries in the state, county, or metropolitan area where the business is located.

Additionally, the bill also amends the extension granted by the DEO for applicants applying for the QDSC tax refund to submit performance information. The bill sets these extensions to 60 days, up from 30 days in current law.

The bill allows applicants to be certified as qualified for this program until June 30, 2020. Under current law, no applicants may be certified as qualified after June 30, 2014, but tax refund agreements in existence on that date may continue in accordance with their terms.

## **The Qualified Target Industry Tax Refund**

**Section 6** makes changes to the Tax Refund Program for Qualified Target Industry Businesses (QTI). The bill amends the definition for “average annual private sector wage in the area” to exclude the statewide private sector wage, it must be the average private sector wages and salaries in the county or standard metropolitan area where the business is located. The bill allows an applicant exercising the local financial support option to be eligible for 100 percent of the total funds allowed under the program. Under current law, an applicant exercising the local financial support exemption option is not eligible for more than 80 percent of the total tax refunds allowed under the program. The bill clarifies the application and approval process for the program<sup>17</sup> including that in order to qualify, the created jobs must have an average annual wage at least 115 percent of the average private sector wage in the area where the business is located. Current law allows the statewide private sector wage to be used in place of the average private sector wage in the area where the business is located.

The bill also makes changes to the annual claim of the tax refund.<sup>18</sup> Under current law, additional tax refund payments are available to applicants for each job created with a higher annual average wage than the minimum requirement of 115 percent. These “bonuses” are awarded at 150 percent of the average private sector wage (an additional \$1,000 tax refund per job) and at 200 percent of the average private sector wage (an additional \$2,000 tax refund per job). A prorated tax refund, with a 5 percent penalty, can be awarded if the business achieves 80 percent of its projected employment in the tax refund agreement and at least 90 percent of the average wage paid by the business specified in the tax agreement as long as it is not less than 115 percent of the average private sector wage in the area at the time of certification. The law requires that in order to claim the bonus, businesses must still meet the 90 percent mark for the prorated tax refund. The bill creates an additional requirement that the businesses must still meet 90 percent of the annual average wage, but that the annual average wage cannot be lower than 135 percent of the

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<sup>16</sup> Section 288.1045, F.S.

<sup>17</sup> Section 288.106(4), F.S.

<sup>18</sup> Section 288.106(6), F.S.



annual private sector wage for the 150 percent of the average private sector wage bonus, and it cannot be lower than 180 percent of the average private sector wage for the 200 percent of the average private sector wage bonus.

The bill also amends the extension granted by the DEO for applicants applying for the QTI tax refund to submit performance information. The bill sets these extensions to 60 days, up from 30 days in current law.

### **The Brownfield Redevelopment Bonus Refunds**

**Section 7** of the bill amends the Brownfield Redevelopment Bonus Refunds.<sup>19</sup> The bill clarifies the term “eligible business” and the term “fixed capital investment” when used as a criteria for participation in the refund. The bill prohibits an eligible business from including state funds used for capital investment as part of the \$2 million minimum fixed capital investment the business must make in order to receive bonus refunds.

### **The Quick Action Closing Fund**

**Section 8** amends the Quick Action Closing (QAC) Fund.<sup>20</sup> The bill lowers the required economic benefit ratio for a project to qualify to 4 to 1, down from 5 to 1 under current law. The bill amends the term “area wide or statewide private sector average wage” to be “average private sector wage” and defines it as the average of all private sector wages in the county or standard metropolitan area in which the project is located.

The bill amends the process and requirements of any waivers of criteria granted to projects. Under current law, in order to be eligible for QAC funds a project must:

- Be in an industry as referenced in s. 288.106, F.S., (the QTI Tax Refund program);
- Have a positive economic benefit ratio of at least 5 to 1;
- Be an inducement to the project’s location or expansion in the state;
- Pay an average annual wage of at least 125 percent of the area-wide or statewide private sector average wage; and
- Be supported by the local community in which the project is to be located.

If the local government and EFI request a waiver, it must be submitted to the DEO in writing with an explanation of why the request is justified. The DEO, if approving the request, must state it in writing with an explanation for the approval. The bill prohibits the department from waiving more than any two of the criteria. The bill clarifies that when considering a waiver, the DEO determines the existence of extraordinary circumstances. The bill prohibits criteria from being waived if the project’s economic benefit ratio would be below 2 to 1, or the average annual wage would be below 100 percent of the average private sector wage in the area. Additionally, the bill prohibits waiver of the criteria that the incentive be an inducement to the project’s location or expansion in this state.

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<sup>19</sup> Section 288.107, F.S.

<sup>20</sup> Section 288.1088, F.S.

The bill clarifies that when the DEO is evaluating proposals for high-impact business facilities, the number of full-time equivalent jobs created by the facility used for evaluation purposes, should be a range of the minimum and maximum number of full-time equivalent jobs created.

The bill strikes requirements related to the Governor and legislative approval process. This reflects the changes made by the bill in s. 288.061, F.S., (see bill section 4 above).

The bill specifies additional conditions for payments from the QAC Fund. No payments may be made to the business until the scheduled goals have been achieved. The bill requires additional items to be in the contract, including the minimum and maximum amount of funds that may be awarded and the minimum and maximum number of jobs that will be created.

### **The Innovation Incentive Program**

**Section 9** amends the Innovation Incentive Program.<sup>21</sup> The term “average private sector wage” is amended to be “average private sector wage in the area” and now restricts the definition to the average of all private sector wages in the county or standard metropolitan area where the project is located. Under current law the definition could be the statewide average wage in the private sector.

Currently, the Governor must consult with the Legislature before approving an award, and may not release funds until approval by the LBC. The bill requires the Governor to approve or deny the award consistent with the new thresholds established in s. 288.061, F.S., by section 4 of the bill.

### **The President of Enterprise Florida, Inc.**

**Section 10** amends s. 288.905, F.S., concerning the President of Enterprise Florida, Inc., (EFI). The bill requires that the president, appointed by the Board of Directors of EFI, will be subject to confirmation by the Senate. The bill prohibits a former president of EFI, for a period of 2 years after vacating the office, from receiving compensation for representing an entity before the legislative or executive branch of the state’s government. This prohibition applies only if the entity applied for, received, or negotiated with EFI for the receipt of state funds, regardless of whether or not any state funds were received.

**Section 11** provides that the changes made in s. 288.905, F.S., by section 10 the bill, only apply to EFI presidents appointed, or reappointed, on or after July 1, 2015.

### **Reporting and Miscellaneous Changes**

**Section 2** requires the EDR and the OPPAGA to include in their evaluations of economic development programs required in s. 288.0001, F.S., an analysis of the state’s retention of Major League Baseball spring training franchises with the analysis of the Sports Development program.<sup>22</sup> These evaluations will be done by January 1, 2018, and every 3 years thereafter.

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<sup>21</sup> Section 288.1089, F.S.

<sup>22</sup> This program provides state funding for the acquisition, construction, reconstruction, or renovation of a facility for a new or retained professional sports franchise. See ss. 288.1162 and 288.11625, F.S.

**Section 12** changes the evaluation of the Microfinance Loan Program and Microfinance Guarantee Program in s. 288.9937, F.S., to give new duties to the OPPAGA. The bill also divides the analytical duties between the OPPAGA and the EDR, with the OPPAGA responsible for identifying inefficiencies in the programs and making recommendations for changes, and the EDR responsible for evaluating economic benefits, job creation, changes in personal income, and any impact on the state's gross domestic product from direct, indirect, or induced effects of the state's investment.

The bill changes the submission date of these reports from January 1, 2018 to January 15, 2018.

**Section 13** provides an effective date of July 1, 2015.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The DEO has indicated that implementing the provisions of the bill can be absorbed into current costs.<sup>23</sup>

#### **VI. Technical Deficiencies:**

None.

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<sup>23</sup> Conversation with Bill Wilson, Legislative and Cabinet Affairs, Department of Economic Opportunity (DEO) (Mar. 2, 2015).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 220.191, 288.0001, 288.005, 288.061, 288.1045, 288.106, 288.107, 288.1088, 288.1089, 288.905, and 288.9937

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Latvala

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1 A bill to be entitled  
 2 An act relating to economic development; amending s.  
 3 220.191, F.S.; revising the term "cumulative capital  
 4 investment"; amending s. 288.0001, F.S.; requiring the  
 5 Office of Economic and Demographic Research and the  
 6 Office of Program Policy Analysis and Government  
 7 Accountability to provide a detailed analysis of the  
 8 retention of Major League Baseball spring training  
 9 baseball franchises; amending s. 288.005, F.S.;  
 10 revising the term "economic benefits"; amending s.  
 11 288.061, F.S.; requiring the Department of Economic  
 12 Opportunity to prescribe a specified application form;  
 13 requiring the incentive application to include  
 14 specified information; requiring the Office of  
 15 Economic and Demographic Research to include  
 16 guidelines for the appropriate application of the  
 17 department's internal model in the establishment of  
 18 the methodology and model it will use to calculate  
 19 economic benefits; requiring that if the Office of  
 20 Economic and Demographic Research develops an amended  
 21 definition of the term "economic benefits," it must  
 22 reflect a specified requirement; prohibiting the  
 23 department from attributing to the business any  
 24 capital investment made by a business using state  
 25 funds; requiring the department's evaluation of the  
 26 application to include specified information;  
 27 requiring the department to recommend to the Governor  
 28 approval or disapproval of a project that will receive  
 29 funds from specified programs; requiring the

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30 department, in recommending a project, to include  
 31 justification for the project and proposed performance  
 32 conditions that the project must meet to obtain  
 33 incentive funds; authorizing the Governor to approve a  
 34 project without consulting the Legislature if the  
 35 requested funding is less than a specified amount;  
 36 requiring the Governor to provide a written  
 37 description and evaluation of the project to specified  
 38 persons during a specified timeframe; requiring the  
 39 recommendation to include proposed payment and  
 40 performance conditions that the project must meet in  
 41 order to obtain incentive funds and to avoid  
 42 sanctions; requiring the Governor to instruct the  
 43 department to immediately suspend an action or  
 44 proposed action until the Legislative Budget  
 45 Commission or the Legislature makes a determination on  
 46 the project in certain circumstances; requiring a  
 47 project that requires funding that falls into a  
 48 specified range to be approved by the Legislative  
 49 Budget Commission before final approval by the  
 50 Governor; requiring a project that requires at least a  
 51 specified amount of funds and that provides a waiver  
 52 of program requirements to be approved by the  
 53 Legislative Budget Commission before final approval by  
 54 the Governor; requiring the department to issue a  
 55 letter certifying the applicant as qualified for an  
 56 award upon approval; specifying the funding sources  
 57 authorized within the definition of the term  
 58 "project"; requiring the department and the applicant

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59 to enter into an agreement or contract upon  
 60 certification; requiring any agreement or contract  
 61 that requires capital investment to be made by the  
 62 business to also require that such investment remain  
 63 in the state for the duration of the agreement or  
 64 contract; prohibiting an agreement or contract from  
 65 having a term of longer than 10 years; authorizing the  
 66 department to enter into a successive agreement or  
 67 contract for a specified project under certain  
 68 circumstances; providing that the restriction on  
 69 duration of the agreement or contract does not apply  
 70 in certain circumstances; requiring the agreement or  
 71 contract to require that the applicant use the  
 72 workforce information systems in certain  
 73 circumstances; requiring the department to provide  
 74 notice, with a written description and evaluation, to  
 75 the Legislature of any proposed amendment to an  
 76 agreement or contract; requiring the department to  
 77 provide notice of the proposed change to specified  
 78 persons in order to provide an opportunity for review;  
 79 providing that a proposed amendment to an agreement or  
 80 contract which reduces projected economic benefits  
 81 calculated at the time the agreement or contract was  
 82 executed by a specified amount or more or that results  
 83 in an economic benefit ratio below a specified level  
 84 is subject to specified notice and objection  
 85 procedures; requiring the Governor to instruct the  
 86 department to immediately suspend an action or  
 87 proposed action until the Legislative Budget

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88 Commission or Legislature makes a determination on the  
 89 project in certain circumstances; amending s.  
 90 288.1045, F.S.; revising the term "average wage in the  
 91 area"; conforming a provision to a change made by the  
 92 act; increasing the number of days the department may  
 93 extend the filing date; extending the future  
 94 expiration of an applicant for a tax refund; amending  
 95 s. 288.106, F.S.; conforming provisions to changes  
 96 made by the act; revising the definition of the term  
 97 "local financial support exemption option" to remove a  
 98 limit on the allowable percentage of total tax  
 99 refunds; increasing the number of days the department  
 100 may extend the filing date; revising the limitations  
 101 on the average private sector wage paid by the  
 102 business; amending s. 288.107, F.S.; revising the term  
 103 "eligible business"; defining the term "fixed capital  
 104 investment"; amending s. 288.1088, F.S.; revising the  
 105 requirements for projects eligible for receipt of  
 106 funds from the Quick Action Closing Fund; conforming a  
 107 provision to a change made by the act; requiring a  
 108 specified request to be transmitted in writing to the  
 109 department with an explanation of the specific  
 110 justification for the request; requiring a decision to  
 111 be stated in writing with an explanation of the reason  
 112 for approving the request if the department approves  
 113 the request; prohibiting the department from waiving  
 114 more than a specified amount of criteria; revising the  
 115 information that the department must include in an  
 116 evaluation of an individual proposal for high-impact

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117 business facilities; prohibiting the payment of moneys  
 118 from the fund to a business until the scheduled goals  
 119 have been achieved; revising the information that must  
 120 be included in a contract that sets forth the  
 121 conditions for payments of moneys from the fund;  
 122 amending s. 288.1089, F.S.; conforming provisions to  
 123 changes made by the act; amending s. 288.905, F.S.;  
 124 providing that the president appointed by the board of  
 125 directors of Enterprise Florida, Inc., is subject to  
 126 confirmation by the Senate; prohibiting a former  
 127 president from receiving compensation for personally  
 128 representing a specified entity before the legislative  
 129 or executive branch of state government; providing  
 130 applicability; amending s. 288.9937, F.S.; requiring  
 131 the Office of Program Policy Analysis and Government  
 132 Accountability to analyze and evaluate certain  
 133 programs for a specified period; requiring the Office  
 134 of Economic and Demographic Research to determine the  
 135 economic benefits of certain programs; requiring the  
 136 Office of Program Policy Analysis and Government  
 137 Accountability to identify inefficiencies in certain  
 138 programs and to recommend changes to such programs;  
 139 revising the date by which each office must submit a  
 140 report to certain persons; providing an effective  
 141 date.

143 Be It Enacted by the Legislature of the State of Florida:

144  
 145 Section 1. Paragraph (b) of subsection (1) of section

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146 220.191, Florida Statutes, is amended to read:

147 220.191 Capital investment tax credit.—

148 (1) DEFINITIONS.—For purposes of this section:

149 (b) "Cumulative capital investment" means the total capital  
 150 investment in land, buildings, and equipment made in connection  
 151 with a qualifying project during the period from the beginning  
 152 of construction of the project to the commencement of  
 153 operations. The term does not include any state or local funds,  
 154 including funds appropriated to public or private entities, used  
 155 for capital investment.

156 Section 2. Paragraph (e) of subsection (2) of section  
 157 288.0001, Florida Statutes, is amended to read:

158 288.0001 Economic Development Programs Evaluation.—The  
 159 Office of Economic and Demographic Research and the Office of  
 160 Program Policy Analysis and Government Accountability (OPPAGA)  
 161 shall develop and present to the Governor, the President of the  
 162 Senate, the Speaker of the House of Representatives, and the  
 163 chairs of the legislative appropriations committees the Economic  
 164 Development Programs Evaluation.

165 (2) The Office of Economic and Demographic Research and  
 166 OPPAGA shall provide a detailed analysis of economic development  
 167 programs as provided in the following schedule:

168 (e) Beginning January 1, 2018, and every 3 years  
 169 thereafter, an analysis of the Sports Development Program  
 170 established under s. 288.11625 and the retention of Major League  
 171 Baseball spring training baseball franchises under s. 288.11631.

172 Section 3. Subsection (1) of section 288.005, Florida  
 173 Statutes, is amended to read:

174 288.005 Definitions.—As used in this chapter, the term:

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175 (1) "Economic benefits" means the direct, indirect, and  
 176 induced gains in state revenues as a percentage of the state's  
 177 investment. The state's investment includes all state funds  
 178 spent or forgone to benefit the business, including state funds  
 179 appropriated to public and private entities, state grants, tax  
 180 exemptions, tax refunds, tax credits, and other state  
 181 incentives.

182 Section 4. Section 288.061, Florida Statutes, is amended to  
 183 read:

184 288.061 Economic development incentive application  
 185 process.—

186 (1) Beginning January 1, 2016, the department shall  
 187 prescribe a form upon which an application for an incentive must  
 188 be made. At a minimum, the incentive application must include  
 189 all of the following:

190 (a) The applicant's federal employer identification number,  
 191 reemployment assistance account number, and state sales tax  
 192 registration number. If such numbers are not available at the  
 193 time of application, they must be submitted to the department in  
 194 writing before the disbursement of any economic incentive  
 195 payments or the grant of any tax credits or refunds.

196 (b) The applicant's signature.

197 (c) The location in this state at which the project is or  
 198 will be located.

199 (d) The anticipated commencement date of the project.

200 (e) A description of the type of business activity,  
 201 product, or research and development undertaken by the  
 202 applicant, including the six-digit North American Industry  
 203 Classification System code for all activities included in the

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204 project.

205 (f) An attestation verifying that the information provided  
 206 on the application is true and accurate.

207 ~~(2)(1)~~ Upon receiving a submitted economic development  
 208 incentive application, the Division of Strategic Business  
 209 Development of the department ~~of Economic Opportunity~~ and  
 210 designated staff of Enterprise Florida, Inc., shall review the  
 211 application to ensure that the application is complete, whether  
 212 and what type of state and local permits may be necessary for  
 213 the applicant's project, whether it is possible to waive such  
 214 permits, and what state incentives and amounts of such  
 215 incentives may be available to the applicant. The department  
 216 shall recommend to the executive director to approve or  
 217 disapprove an applicant business. If review of the application  
 218 demonstrates that the application is incomplete, the executive  
 219 director shall notify the applicant business within the first 5  
 220 business days after receiving the application.

221 ~~(3)(2) Beginning July 1, 2013,~~ The department shall review  
 222 and evaluate each economic development incentive application for  
 223 the economic benefits of the proposed award of state incentives  
 224 proposed for the project. The term "economic benefits" has the  
 225 same meaning as in s. 288.005. The Office of Economic and  
 226 Demographic Research shall establish the methodology and model  
 227 used to calculate the economic benefits, including guidelines  
 228 for the appropriate application of the department's internal  
 229 model. For purposes of this requirement, an amended definition  
 230 of the term "economic benefits" may be developed by the Office  
 231 of Economic and Demographic Research. However, the amended  
 232 definition must reflect the requirement of s. 288.005 that the



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233 state's investment include all state funds spent or forgone to  
 234 benefit the business, including state funds appropriated to  
 235 public and private entities, to the extent that those funds  
 236 should reasonably be known to the department at the time of  
 237 approval. In the department's evaluation of an economic  
 238 development incentive application, the department may not  
 239 attribute to the business any capital investment made by the  
 240 business using state funds.

241 (4) The department's evaluation of the application must  
 242 include all of the following:

243 (a) A financial analysis of the company, including  
 244 information regarding liens and pending or ongoing litigation,  
 245 credit ratings, and regulatory filings.

246 (b) A review of any independent evaluations of the company.

247 (c) A review of the historical market performance of the  
 248 company.

249 (d) A review of the latest audit of the company's financial  
 250 statement and the related auditor management letter.

251 (e) A review of any other audits that are related to the  
 252 internal controls or management of the company.

253 (f) A review of performance in connection with past  
 254 incentives.

255 (g) Any other review deemed necessary by the department.

256 (5) (a) ~~(3)~~ Except as provided in paragraph (b), within 10  
 257 business days after the department receives a complete ~~the~~  
 258 ~~submitted~~ economic development incentive application, the  
 259 executive director shall approve or disapprove the application  
 260 and issue a letter of certification to the applicant which  
 261 includes a justification of that decision, unless the business

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262 requests an extension of ~~that~~ time.

263 (b) Within 10 business days after the department receives a  
 264 complete economic development incentive application for a  
 265 project identified in paragraph (d), the executive director  
 266 shall recommend to the Governor approval or disapproval of the  
 267 application. The recommendation must include a justification for  
 268 the recommendation and the proposed performance conditions that  
 269 the project must meet to obtain incentive funds.

270 1. The Governor may approve a project without consulting  
 271 the Legislature for a project that requires less than \$2 million  
 272 in funding.

273 2. Except as provided in subparagraph 4., for any project  
 274 that requires funding in the amount of at least \$2 million and  
 275 up to \$7.5 million, the Governor shall provide a written  
 276 description and evaluation of the project to the chair and vice  
 277 chair of the Legislative Budget Commission at least 10 days  
 278 before giving final approval for the project. The recommendation  
 279 must include proposed payment and performance conditions that  
 280 the project must meet in order to obtain incentive funds and to  
 281 avoid sanctions. If the chair or vice chair of the Legislative  
 282 Budget Commission, the President of the Senate, or the Speaker  
 283 of the House of Representatives advises the Governor, in  
 284 writing, that his or her planned or proposed action exceeds the  
 285 delegated authority of the Governor or is contrary to  
 286 legislative policy or intent, the Governor shall instruct the  
 287 department to immediately suspend any action planned or proposed  
 288 until the Legislative Budget Commission or the Legislature makes  
 289 a determination on the project.

290 3. Any project that requires funding in the amount of \$7.5

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291 million or greater must be approved by the Legislative Budget  
 292 Commission before final approval by the Governor.

293 4. Any project that requires funding in the amount of \$5  
 294 million or greater and that provides a waiver of program  
 295 requirements must be approved by the Legislative Budget  
 296 Commission prior to final approval by the Governor.

297 (c) Upon approval of a project under paragraph (b), the  
 298 department shall issue a letter certifying the applicant as  
 299 qualified for an award.

300 (d) For purposes of paragraphs (b) and (c), the term  
 301 "project" means a project that will receive funds under any one  
 302 of the following programs:

303 1. The Local Government Distressed Area Matching Grant  
 304 Program established by s. 288.0659.

305 2. The qualified defense contractor and space flight  
 306 business tax refund program established under s. 288.1045.

307 3. The qualified target industry business tax refund  
 308 authorized under s. 288.106.

309 4. The brownfield redevelopment bonus refund established  
 310 under s. 288.107.

311 5. High-impact business performance grants established  
 312 under s. 288.108.

313 6. The Quick Action Closing Fund established under s.  
 314 288.1088.

315 7. The Innovation Incentive Program created by s. 288.1089.

316 (6) (a) Upon certification, the department and the applicant  
 317 shall enter into an agreement or contract. The ~~contract or~~  
 318 agreement or contract with the applicant must specify the total  
 319 amount of the award, the performance conditions that must be met

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320 to obtain the award, the schedule for payment, and sanctions  
 321 that would apply for failure to meet performance conditions. Any  
 322 agreement or contract that requires capital investment to be  
 323 made by the business must also require that such investment  
 324 remain in this state for the duration of the agreement or  
 325 contract. The department may enter into one agreement or  
 326 contract covering all of the state incentives that are being  
 327 provided to the applicant. The duration of an agreement or  
 328 contract may not exceed 10 years. However, the department may  
 329 enter into a successive agreement or contract for a specific  
 330 project to extend the initial 10-year term, provided that each  
 331 successive agreement or contract is contingent upon the  
 332 successful completion of the previous agreement or contract. If  
 333 all of the state incentives for one agreement or contract total  
 334 \$20 million or greater, the restriction on the term of the  
 335 agreement or contract does not apply. The agreement or contract  
 336 must provide that release of funds is contingent upon sufficient  
 337 appropriation of funds by the Legislature.

338 (b) The release of funds for the incentive or incentives  
 339 awarded to the applicant depends upon the statutory requirements  
 340 of the particular incentive program. For any performance  
 341 conditions that relate to job creation, the agreement or  
 342 contract must require that the applicant use the workforce  
 343 information systems implemented under s. 445.011.

344 (7)(4) The department shall validate contractor performance  
 345 and report such validation in the annual incentives report  
 346 required under s. 288.907.

347 (8)(5)(a) The executive director may not approve an  
 348 economic development incentive application unless the

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349 application includes a signed written declaration by the  
 350 applicant which states that the applicant has read the  
 351 information in the application and that the information is true,  
 352 correct, and complete to the best of the applicant's knowledge  
 353 and belief.

354 (b) After an economic development incentive application is  
 355 approved, the awardee shall provide, in each year that the  
 356 department is required to validate contractor performance, a  
 357 signed written declaration. The written declaration must state  
 358 that the awardee has reviewed the information and that the  
 359 information is true, correct, and complete to the best of the  
 360 awardee's knowledge and belief.

361 (9) The department shall provide notice, including a  
 362 written description and evaluation, to the Legislature of any  
 363 proposed amendment to an agreement or contract. In order to  
 364 provide an opportunity for review, at least 3 business days  
 365 before signing an amendment to an agreement or contract, the  
 366 department shall provide notice of the proposed change to the  
 367 chair and vice chair of the Legislative Budget Commission, the  
 368 President of the Senate, and the Speaker of the House of  
 369 Representatives. However, a proposed amendment to an agreement  
 370 or contract that reduces the projected economic benefits  
 371 calculated at the time the agreement or contract was executed by  
 372 0.50 or more or that results in an economic benefit ratio below  
 373 a statutorily required level for receipt of funds is subject to  
 374 the 10-day notice and objection procedures set forth in this  
 375 section. Any such amended agreement or contract must also  
 376 provide for a proportionate reduction in the award amount. If  
 377 the chair or vice chair of the Legislative Budget Commission,

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378 the President of the Senate, or the Speaker of the House of  
 379 Representatives timely advises the Governor, in writing, that  
 380 such action or proposed action exceeds the delegated authority  
 381 of the Governor or is contrary to legislative policy or intent,  
 382 the Governor shall instruct the department to immediately  
 383 suspend any action proposed or taken until the Legislative  
 384 Budget Commission or the Legislature makes a determination on  
 385 the project.

386 (10)(6) The department is authorized to adopt rules to  
 387 implement this section.

388 Section 5. Paragraph (b) of subsection (1), paragraph (e)  
 389 of subsection (3), paragraphs (a) and (d) of subsection (5), and  
 390 subsection (7) of section 288.1045, Florida Statutes, are  
 391 amended to read:

392 288.1045 Qualified defense contractor and space flight  
 393 business tax refund program.—

394 (1) DEFINITIONS.—As used in this section:

395 (b) "Average private sector wage in the area" means the  
 396 average of all private sector wages and salaries in ~~the state,~~  
 397 the county, or in the standard metropolitan area in which the  
 398 business unit is located.

399 (3) APPLICATION PROCESS; REQUIREMENTS; AGENCY  
 400 DETERMINATION.—

401 (e) To qualify for review by the department, the  
 402 application of an applicant must, at a minimum, establish the  
 403 following to the satisfaction of the department:

404 1. The jobs proposed to be provided under the application,  
 405 pursuant to subparagraph (b)6., subparagraph (c)6., or  
 406 subparagraph (j)6., must pay an estimated annual average wage

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407 equaling at least 115 percent of the average private sector wage  
408 in the area where the project is to be located.

409 2. The consolidation of a Department of Defense contract  
410 must result in a net increase of at least 25 percent in the  
411 number of jobs at the applicant's facilities in this state or  
412 the addition of at least 80 jobs at the applicant's facilities  
413 in this state.

414 3. The conversion of defense production jobs to nondefense  
415 production jobs must result in net increases in nondefense  
416 employment at the applicant's facilities in this state.

417 4. The Department of Defense contract or the space flight  
418 business contract cannot allow the business to include the costs  
419 of relocation or retooling in its base as allowable costs under  
420 a cost-plus, or similar, contract.

421 5. A business unit of the applicant must have derived not  
422 less than 60 percent of its gross receipts in this state from  
423 Department of Defense contracts or space flight business  
424 contracts over the applicant's last fiscal year, and must have  
425 derived not less than an average of 60 percent of its gross  
426 receipts in this state from Department of Defense contracts or  
427 space flight business contracts over the 5 years preceding the  
428 date an application is submitted pursuant to this section. This  
429 subparagraph does not apply to any application for certification  
430 based on a contract for reuse of a defense-related facility.

431 6. The reuse of a defense-related facility must result in  
432 the creation of at least 100 jobs at such facility.

433 7. A new space flight business contract or the  
434 consolidation of a space flight business contract must result in  
435 net increases in space flight business employment at the

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436 applicant's facilities in this state.

437 (5) ANNUAL CLAIM FOR REFUND.—

438 (a) To be eligible to claim any scheduled tax refund,  
439 qualified applicants who have entered into a written agreement  
440 with the department pursuant to subsection (4) and who have  
441 entered into a valid new Department of Defense contract, entered  
442 into a valid new space flight business contract, commenced the  
443 consolidation of a space flight business contract, commenced the  
444 consolidation of a Department of Defense contract, commenced the  
445 conversion of defense production jobs to nondefense production  
446 jobs, or entered into a valid contract for reuse of a defense-  
447 related facility must apply by January 31 of each fiscal year to  
448 the department for tax refunds scheduled to be paid from the  
449 appropriation for the fiscal year that begins on July 1  
450 following the January 31 claims-submission date. The department  
451 may, upon written request, grant up to a 60-day ~~30-day~~ extension  
452 of the filing date. The application must include a notarized  
453 signature of an officer of the applicant.

454 (d) The department, with assistance from the Department of  
455 Revenue, shall, by June 30 following the scheduled date for  
456 submitting the tax refund claim, specify by written order the  
457 approval or disapproval of the tax refund claim and, if  
458 approved, the amount of the tax refund that is authorized to be  
459 paid to the qualified applicant for the annual tax refund. The  
460 department may grant up to a 60-day ~~an~~ extension of this date  
461 upon the request of the qualified applicant for the purpose of  
462 filing additional information in support of the claim.

463 (7) EXPIRATION.—An applicant may not be certified as  
464 qualified under this section after June 30, 2020 ~~2014~~. A tax

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465 refund agreement existing on that date shall continue in effect  
466 in accordance with its terms.

467 Section 6. Paragraphs (c) and (k) of subsection (2),  
468 paragraph (b) of subsection (4), and paragraphs (a), (e), and  
469 (f) of subsection (6) of section 288.106, Florida Statutes, are  
470 amended to read:

471 288.106 Tax refund program for qualified target industry  
472 businesses.—

473 (2) DEFINITIONS.—As used in this section:

474 (c) "Average private sector wage in the area" means ~~the~~  
475 ~~statewide private sector average wage or~~ the average of all  
476 private sector wages and salaries in the county or in the  
477 standard metropolitan area in which the business is located.

478 (k) "Local financial support exemption option" means the  
479 option to exercise an exemption from the local financial support  
480 requirement available to an ~~any~~ applicant whose project is  
481 located in a brownfield area, a rural city, or a rural  
482 community. ~~Any applicant that exercises this option is not~~  
483 ~~eligible for more than 80 percent of the total tax refunds~~  
484 ~~allowed such applicant under this section.~~

485 (4) APPLICATION AND APPROVAL PROCESS.—

486 (b) To qualify for review by the department, the  
487 application of a target industry business must, at a minimum,  
488 establish the following to the satisfaction of the department:

489 1.a. The jobs proposed to be created under the application,  
490 pursuant to subparagraph (a)4., must pay an estimated annual  
491 average wage equaling at least 115 percent of the average  
492 private sector wage in the area where the business is to be  
493 located ~~or the statewide private sector average wage~~. The

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494 governing board of the local governmental entity providing the  
495 local financial support of the jurisdiction where the qualified  
496 target industry business is to be located shall notify the  
497 department and Enterprise Florida, Inc., which calculation of  
498 the average private sector wage in the area must be used as the  
499 basis for the business's wage commitment. In determining the  
500 average annual wage, the department shall include only new  
501 proposed jobs, and wages for existing jobs shall be excluded  
502 from this calculation.

503 b. The department may waive the average wage requirement at  
504 the request of the local governing body recommending the project  
505 and Enterprise Florida, Inc. The department may waive the wage  
506 requirement for a project located in a brownfield area  
507 designated under s. 376.80, in a rural city, in a rural  
508 community, in an enterprise zone, or for a manufacturing project  
509 at any location in the state if the jobs proposed to be created  
510 pay an estimated annual average wage equaling at least 100  
511 percent of the average private sector wage in the area where the  
512 business is to be located, only if the merits of the individual  
513 project or the specific circumstances in the community in  
514 relationship to the project warrant such action. If the local  
515 governing body and Enterprise Florida, Inc., make such a  
516 recommendation, it must be transmitted in writing with, ~~and~~ the  
517 specific justification for the waiver recommendation ~~must be~~  
518 explained. If the department elects to waive the wage  
519 requirement, the waiver must be stated in writing with, ~~and~~ the  
520 reasons for granting the waiver ~~must be~~ explained.

521 2. The target industry business's project must result in  
522 the creation of at least 10 jobs at the project and, in the case

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523 of an expansion of an existing business, must result in a net  
 524 increase in employment of at least 10 percent at the business.  
 525 At the request of the local governing body recommending the  
 526 project and Enterprise Florida, Inc., the department may waive  
 527 this requirement for a business in a rural community or  
 528 enterprise zone if the merits of the individual project or the  
 529 specific circumstances in the community in relationship to the  
 530 project warrant such action. If the local governing body and  
 531 Enterprise Florida, Inc., make such a request, the request must  
 532 be transmitted in writing with an explanation of, ~~and~~ the  
 533 specific justification for the request ~~must be explained~~. If the  
 534 department elects to grant the request, the grant must be stated  
 535 in writing and explain, ~~and~~ the reason for granting the request  
 536 ~~must be explained~~.

537 3. The business activity or product for the applicant's  
 538 project must be within an industry identified by the department  
 539 as a target industry business that contributes to the economic  
 540 growth of the state and the area in which the business is  
 541 located, that produces a higher standard of living for residents  
 542 of this state in the new global economy, or that can be shown to  
 543 make an equivalent contribution to the area's and state's  
 544 economic progress.

545 (6) ANNUAL CLAIM FOR REFUND.—

546 (a) To be eligible to claim any scheduled tax refund, a  
 547 qualified target industry business that has entered into a tax  
 548 refund agreement with the department under subsection (5) must  
 549 apply by January 31 of each fiscal year to the department for  
 550 the tax refund scheduled to be paid from the appropriation for  
 551 the fiscal year that begins on July 1 following the January 31

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552 claims-submission date. The department may, upon written  
 553 request, grant up to a 60-day ~~30-day~~ extension of the filing  
 554 date.

555 (e) A prorated tax refund, less a 5 percent penalty, shall  
 556 be approved for a qualified target industry business if all  
 557 other applicable requirements have been satisfied and the  
 558 business proves to the satisfaction of the department that:

559 1. It has achieved at least 80 percent of its projected  
 560 employment; and

561 2. The average wage paid by the business is at least 90  
 562 percent of that the average wage specified in the tax refund  
 563 agreement. However, the average wage may not be, but in no case  
 564 less than 115 percent of the average private sector wage in the  
 565 area available at the time of certification; or, if the business  
 566 requested the additional per-job tax refund authorized in  
 567 paragraph (3) (b) for wages of at least 150 percent of the  
 568 average private sector wage in the area available at the time of  
 569 certification, less than 135 percent of the average private  
 570 sector wage in the area available at the time of certification;  
 571 or if the business requested the additional per-job tax refund  
 572 authorized in paragraph (3) (b) for wages of at least 150 percent  
 573 or 200 percent of the average private sector wage in the area  
 574 available at the time of certification, less than 180 percent of  
 575 the average private sector wage in the area available at the  
 576 time of certification if the business requested the additional  
 577 per-job tax refund authorized in paragraph (3) (b) for wages  
 578 above those levels. The prorated tax refund shall be calculated  
 579 by multiplying the tax refund amount for which the qualified  
 580 target industry business would have been eligible, if all

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581 applicable requirements had been satisfied, by the percentage of  
582 the average employment specified in the tax refund agreement  
583 which was achieved, and by the percentage of the average wages  
584 specified in the tax refund agreement which was achieved.

585 (f) The department, with such assistance as may be required  
586 from the Department of Revenue, shall, by June 30 following the  
587 scheduled date for submission of the tax refund claim, specify  
588 by written order the approval or disapproval of the tax refund  
589 claim and, if approved, the amount of the tax refund that is  
590 authorized to be paid to the qualified target industry business  
591 for the annual tax refund. The department may grant up to a 60-  
592 day ~~an~~ extension of this date on the request of the qualified  
593 target industry business for the purpose of filing additional  
594 information in support of the claim.

595 Section 7. Paragraph (d) of subsection (1) and paragraph  
596 (b) of subsection (3) of section 288.107, Florida Statutes, and  
597 amended to read:

598 288.107 Brownfield redevelopment bonus refunds.—

599 (1) DEFINITIONS.—As used in this section:

600 (d) "Eligible business" means:

601 1. A qualified target industry business as defined in s.

602 288.106(2); or

603 2. A business that can demonstrate that it has made a fixed  
604 capital investment of at least \$2 million in mixed-use business  
605 activities, including multiunit housing, commercial, retail, and  
606 industrial in brownfield areas eligible for bonus refunds, and  
607 that provides benefits to its employees.

608 (3) CRITERIA.—The minimum criteria for participation in the  
609 brownfield redevelopment bonus refund are:

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610 (b) The completion of a fixed capital investment of at  
611 least \$2 million in mixed-use business activities, including  
612 multiunit housing, commercial, retail, and industrial in  
613 brownfield areas eligible for bonus refunds, by an eligible  
614 business applying for a refund under paragraph (2) (b) which  
615 provides benefits to its employees. As used in this paragraph,  
616 the term "fixed capital investment" does not include state funds  
617 used for the capital investment, including state funds  
618 appropriated to public and private entities.

619 Section 8. Subsections (2), (3), and (4) of section  
620 288.1088, Florida Statutes, are amended to read:

621 288.1088 Quick Action Closing Fund.—

622 (2) There is created within the department the Quick Action  
623 Closing Fund. Except as provided in subsection (3), projects  
624 eligible for receipt of funds from the Quick Action Closing Fund  
625 must ~~shall~~:

626 (a) Be in an industry as referenced in s. 288.106.

627 (b) Have a positive economic benefit ratio of at least 4 to  
628 1 ~~5 to 1~~.

629 (c) Be an inducement to the project's location or expansion  
630 in the state.

631 (d) Pay an average annual wage of at least 125 percent of  
632 the ~~average areawide or statewide~~ private sector average wage in  
633 the area. As used in this section, the term "average private  
634 sector wage in the area" means the average of all private sector  
635 wages in the county or in the standard metropolitan area in  
636 which the project is located as determined by the department.

637 (e) Be supported by the local community in which the  
638 project is to be located.

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639 (3) (a) The department and Enterprise Florida, Inc., shall  
 640 jointly review applications pursuant to s. 288.061 and determine  
 641 the eligibility of each project consistent with the criteria in  
 642 subsection (2).

643 (b) If the local governing body and Enterprise Florida,  
 644 Inc., decide to request a waiver of the criteria in subsection  
 645 (2), such request must be transmitted in writing to the  
 646 department with an explanation of the specific justification for  
 647 the request. If the department approves the request, the  
 648 decision must be stated in writing with an explanation of the  
 649 reason for approving the request.

650 (c) The department may not waive more than two of the  
 651 criteria in subsection (2), and a waiver may  
 652 Waiver of these criteria may be considered only under the  
 653 following criteria:

- 654 1. If the department determines the existence of ~~Based on~~  
 655 extraordinary circumstances;  
 656 2. In order to mitigate the impact of the conclusion of the  
 657 space shuttle program; or  
 658 3. In rural areas of opportunity if the project would  
 659 significantly benefit the local or regional economy.

660 (d) The criteria in subsection (2) may not be waived if:  
 661 a. The economic benefit ratio would be below 2 to 1; or  
 662 b. The average annual wage would be below 100 percent of  
 663 the average private sector wage in the area.

664 (e) The criteria that the incentive be an inducement to the  
 665 project's location or expansion in this state may not be waived.

666 (4) ~~(b)~~ The department shall evaluate individual proposals  
 667 for high-impact business facilities. Such evaluation must

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668 include, but need not be limited to:

669 (a) ~~1-~~ A description of the type of facility or  
 670 infrastructure, its operations, and the associated product or  
 671 service associated with the facility.

672 (b) ~~2-~~ The minimum and maximum number of full-time-  
 673 equivalent jobs that will be created by the facility and the  
 674 total estimated average annual wages of those jobs or, in the  
 675 case of privately developed rural infrastructure, the types of  
 676 business activities and jobs stimulated by the investment.

677 (c) ~~3-~~ The cumulative amount of investment to be dedicated  
 678 to the facility within a specified period.

679 (d) ~~4-~~ A statement of any special impacts the facility is  
 680 expected to stimulate in a particular business sector in the  
 681 state or regional economy or in the state's universities and  
 682 community colleges.

683 (e) ~~5-~~ A statement of the role the incentive is expected to  
 684 play in the decision of the applicant business to locate or  
 685 expand in this state or for the private investor to provide  
 686 critical rural infrastructure.

687 (f) ~~6-~~ A report evaluating the quality and value of the  
 688 company submitting a proposal. The report must include:

689 1. ~~a-~~ A financial analysis of the company, including an  
 690 evaluation of the company's short-term liquidity ratio as  
 691 measured by its assets to liability, the company's profitability  
 692 ratio, and the company's long-term solvency as measured by its  
 693 debt-to-equity ratio;

694 2. ~~b-~~ The historical market performance of the company;

695 3. ~~c-~~ A review of any independent evaluations of the  
 696 company;



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697 ~~4.d.~~ A review of the latest audit of the company's  
698 financial statement and the related auditor's management letter;  
699 and

700 ~~5.e.~~ A review of any other types of audits that are related  
701 to the internal and management controls of the company.

702 ~~(e)1. Within 7 business days after evaluating a project,~~  
703 ~~the department shall recommend to the Governor approval or~~  
704 ~~disapproval of a project for receipt of funds from the Quick~~  
705 ~~Action Closing Fund. In recommending a project, the department~~  
706 ~~shall include proposed performance conditions that the project~~  
707 ~~must meet to obtain incentive funds.~~

708 ~~2. The Governor may approve projects without consulting the~~  
709 ~~Legislature for projects requiring less than \$2 million in~~  
710 ~~funding.~~

711 ~~3. For projects requiring funding in the amount of \$2~~  
712 ~~million to \$5 million, the Governor shall provide a written~~  
713 ~~description and evaluation of a project recommended for approval~~  
714 ~~to the chair and vice chair of the Legislative Budget Commission~~  
715 ~~at least 10 days prior to giving final approval for a project.~~  
716 ~~The recommendation must include proposed performance conditions~~  
717 ~~that the project must meet in order to obtain funds.~~

718 ~~4. If the chair or vice chair of the Legislative Budget~~  
719 ~~Commission or the President of the Senate or the Speaker of the~~  
720 ~~House of Representatives timely advises the Executive Office of~~  
721 ~~the Governor, in writing, that such action or proposed action~~  
722 ~~exceeds the delegated authority of the Executive Office of the~~  
723 ~~Governor or is contrary to legislative policy or intent, the~~  
724 ~~Executive Office of the Governor shall void the release of funds~~  
725 ~~and instruct the department to immediately change such action or~~

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726 ~~proposed action until the Legislative Budget Commission or the~~  
727 ~~Legislature addresses the issue. Notwithstanding such~~  
728 ~~requirement, any project exceeding \$5 million must be approved~~  
729 ~~by the Legislative Budget Commission prior to the funds being~~  
730 ~~released.~~

731 ~~(5)(d)~~ Upon the approval of the Governor, the department  
732 and the business shall enter into a contract that sets forth the  
733 conditions for payment of moneys from the fund. Such payment may  
734 not be made to the business until the scheduled goals have been  
735 achieved. The contract must include the total amount of funds  
736 awarded; the minimum and maximum amount of funds that may be  
737 awarded, if applicable; the performance conditions that must be  
738 met to obtain the award, including, but not limited to, net new  
739 employment in the state, average salary, ~~and~~ total capital  
740 investment incurred by the business, and the minimum and maximum  
741 number of jobs that will be created, if applicable; demonstrate  
742 a baseline of current service and a measure of enhanced  
743 capability; the methodology for validating performance; the  
744 schedule of payments from the fund; and sanctions for failure to  
745 meet performance conditions. The contract must provide that  
746 payment of moneys from the fund is contingent upon sufficient  
747 appropriation of funds by the Legislature.

748 Section 9. Paragraph (b) of subsection (2), paragraphs (a)  
749 and (d) of subsection (4), subsection (7), and paragraph (b) of  
750 subsection (8) of section 288.1089, Florida Statutes, are  
751 amended to read:

752 288.1089 Innovation Incentive Program.—

753 (2) As used in this section, the term:

754 (b) "Average private sector wage in the area" means the

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755 ~~statewide average wage in the private sector or~~ the average of  
 756 all private sector wages in the county or in the standard  
 757 metropolitan area in which the project is located as determined  
 758 by the department.

759 (4) To qualify for review by the department, the applicant  
 760 must, at a minimum, establish the following to the satisfaction  
 761 of the department:

762 (a) The jobs created by the project must pay an estimated  
 763 annual average wage equaling at least 130 percent of the average  
 764 private sector wage in the area. The department may waive this  
 765 average wage requirement at the request of Enterprise Florida,  
 766 Inc., for a project located in a rural area, a brownfield area,  
 767 or an enterprise zone, when the merits of the individual project  
 768 or the specific circumstances in the community in relationship  
 769 to the project warrant such action. A recommendation for waiver  
 770 by Enterprise Florida, Inc., must include a specific  
 771 justification for the waiver and be transmitted to the  
 772 department in writing. If the department elects to waive the  
 773 wage requirement, the waiver must be stated in writing and  
 774 explain ~~and~~ the reasons for granting the waiver ~~must be~~  
 775 ~~explained~~.

776 (d) For an alternative and renewable energy project in this  
 777 state, the project must:

778 1. Demonstrate a plan for significant collaboration with an  
 779 institution of higher education;

780 2. Provide the state, at a minimum, a cumulative break-even  
 781 economic benefit within a 20-year period;

782 3. Include matching funds provided by the applicant or  
 783 other available sources. The match requirement may be reduced or

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784 waived in rural areas of opportunity or reduced in rural areas,  
 785 brownfield areas, and enterprise zones;

786 4. Be located in this state; and

787 5. Provide at least 35 direct, new jobs that pay an  
 788 estimated annual average wage that equals at least 130 percent  
 789 of the average private sector wage in the area.

790 (7) Upon receipt of the evaluation and recommendation from  
 791 the department, the Governor shall approve or deny an award  
 792 pursuant to s. 288.061. In recommending approval of an award,  
 793 the department shall include proposed performance conditions  
 794 that the applicant must meet in order to obtain incentive funds  
 795 and any other conditions that must be met before the receipt of  
 796 any incentive funds. ~~The Governor shall consult with the~~  
 797 ~~President of the Senate and the Speaker of the House of~~  
 798 ~~Representatives before giving approval for an award. Upon review~~  
 799 ~~and approval of an award by the Legislative Budget Commission,~~  
 800 ~~the Executive Office of the Governor shall release the funds.~~

801 (8)

802 (b) Additionally, agreements ~~signed on or after July 1,~~  
 803 ~~2009,~~ must include the following provisions:

804 1. Notwithstanding subsection (4), a requirement that the  
 805 jobs created by the recipient of the incentive funds pay an  
 806 annual average wage at least equal to the relevant industry's  
 807 annual average wage or at least 130 percent of the average  
 808 private sector wage in the area, whichever is greater.

809 2. A reinvestment requirement. Each recipient of an award  
 810 shall reinvest up to 15 percent of net royalty revenues,  
 811 including revenues from spin-off companies and the revenues from  
 812 the sale of stock it receives from the licensing or transfer of

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813 inventions, methods, processes, and other patentable discoveries  
 814 conceived or reduced to practice using its facilities in Florida  
 815 or its Florida-based employees, in whole or in part, and to  
 816 which the recipient of the grant becomes entitled during the 20  
 817 years following the effective date of its agreement with the  
 818 department. Each recipient of an award also shall reinvest up to  
 819 15 percent of the gross revenues it receives from naming  
 820 opportunities associated with any facility it builds in this  
 821 state. Reinvestment payments shall commence no later than 6  
 822 months after the recipient of the grant has received the final  
 823 disbursement under the contract and shall continue until the  
 824 maximum reinvestment, as specified in the contract, has been  
 825 paid. Reinvestment payments shall be remitted to the department  
 826 for deposit in the Biomedical Research Trust Fund for companies  
 827 specializing in biomedicine or life sciences, or in the Economic  
 828 Development Trust Fund for companies specializing in fields  
 829 other than biomedicine or the life sciences. If these trust  
 830 funds no longer exist at the time of the reinvestment, the  
 831 state's share of reinvestment shall be deposited in their  
 832 successor trust funds as determined by law. Each recipient of an  
 833 award shall annually submit a schedule of the shares of stock  
 834 held by it as payment of the royalty required by this paragraph  
 835 and report on any trades or activity concerning such stock. Each  
 836 recipient's reinvestment obligations survive the expiration or  
 837 termination of its agreement with the state.

838 3. Requirements for the establishment of internship  
 839 programs or other learning opportunities for educators and  
 840 secondary, postsecondary, graduate, and doctoral students.

841 4. A requirement that the recipient submit quarterly

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842 reports and annual reports related to activities and performance  
 843 to the department, according to standardized reporting periods.

844 5. A requirement for an annual accounting to the department  
 845 of the expenditure of funds disbursed under this section.

846 6. A process for amending the agreement.

847 Section 10. Subsection (1) is amended and subsection (5) is  
 848 added to section 288.905, Florida Statutes, to read:

849 288.905 President and employees of Enterprise Florida,  
 850 Inc.—

851 (1) The board of directors of Enterprise Florida, Inc.,  
 852 shall appoint a president, subject to confirmation by the  
 853 Senate, who shall serve at the pleasure of the Governor. The  
 854 president shall also be known as the "secretary of commerce" and  
 855 shall serve as the Governor's chief negotiator for business  
 856 recruitment and business expansion.

857 (5) For a period of 2 years following vacation of office, a  
 858 former president may not receive compensation for personally  
 859 representing before the legislative or executive branch of state  
 860 government an entity that applied for funding, received state  
 861 funds, or negotiated with Enterprise Florida, Inc., for the  
 862 receipt of state funds, regardless of whether the entity  
 863 actually received any state funds.

864 Section 11. The changes made to s. 288.905, Florida  
 865 Statutes, apply only to presidents who are appointed or  
 866 reappointed on or after July 1, 2015.

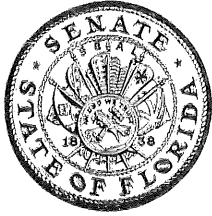
867 Section 12. Section 288.9937, Florida Statutes, is amended  
 868 to read:

869 288.9937 Evaluation of programs.—The Office of Economic and  
 870 Demographic Research and the Office of Program Policy Analysis

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871 and Government Accountability shall analyze and ~~r~~ evaluate, ~~and~~  
872 ~~determine the economic benefits, as defined in s. 288.005, of~~  
873 the first 3 years of the Microfinance Loan Program and the  
874 Microfinance Guarantee Program. The analysis by the Office of  
875 Economic and Demographic Research must ~~also~~ determine the  
876 economic benefits, as defined in s. 288.005, evaluate the number  
877 of jobs created, the increase or decrease in personal income,  
878 and the impact on state gross domestic product from the direct,  
879 indirect, and induced effects of the state's investment. The  
880 analysis by the Office of Program Policy Analysis and Government  
881 Accountability must ~~also~~ identify any inefficiencies in the  
882 programs and provide recommendations for changes to the  
883 programs. Each ~~The~~ office shall submit a report to the President  
884 of the Senate and the Speaker of the House of Representatives by  
885 January 15 ~~1~~, 2018. This section expires January 31, 2018.  
886 Section 13. This act shall take effect July 1, 2015.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Appropriations Subcommittee on  
Transportation, Tourism, and Economic  
Development, *Chair*  
Appropriations  
Commerce and Tourism  
Governmental Oversight and Accountability  
Regulated Industries  
Rules

SENATOR JACK LATVALA

20th District

March 2, 2015

RECEIVED

MAR 03 2015

COMMERCE

The Honorable Nancy Detert, Chair  
Senate Committee on Commerce and Tourism  
310 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Detert:

I respectfully request consideration of Senate Bill 1214/Economic Development by the Senate Commerce and Tourism Committee at your earliest convenience.

This bill relates to Florida's economic development incentives, investments and evaluations. It also provides for necessary technical cleanup and includes some of the DEO 2015 legislative proposals.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack".

Jack Latvala  
State Senator  
District 20

Cc: Todd McKay, Staff Director; Patty Blackburn, Administrative Assistant

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

ANDY GARDINER  
President of the Senate

GARRETT RICHTER  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SB 1246

INTRODUCER: Senator Detert

SUBJECT: Individuals with Disabilities

DATE: March 9, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	McKay	CM	<b>Pre-meeting</b>
2.			ATD	
3.			FP	

---

**I. Summary:**

SB 1246 creates the Florida Unique Abilities Partner program to recognize business entities that employ individuals who have a disability, contribute to organizations that support the independence of individuals who have a disability, or establish a program that contributes to the independence of individuals who have a disability. The bill directs the Department of Economic Opportunity (DEO) to work with state agencies and CareerSource Florida in creating the program. Businesses who receive the designation must annually re-certify that they continue to meet the criteria for the designation. The DEO must work with disability organizations to develop a logo for the program and with VISIT Florida to market the program. The bill requires the DEO to maintain a website that provides the public with a list of businesses that have been designated as a Florida Unique Abilities Partner, and businesses with the designation must be identified on the EmployFlorida Marketplace system. The DEO must report to the Legislature on its progress in implementing the program by January 1, 2016.

**II. Present Situation:**

According to the United States Census Bureau, individuals who have a disability make up approximately 13.4 percent of the population of Florida, and 10.3 percent of individuals between the ages of 18 to 64 have a disability.<sup>1</sup> Individuals who have a disability participate in the labor force at a lower rate than those who do not have a disability. Approximately 18.2 percent of individuals who have a disability in Florida are employed, while 60.5 percent of those in Florida who do not have a disability are engaged in employment.<sup>2</sup>

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<sup>1</sup> U.S. Department of Commerce, United States Census Bureau, American Fact Finder, "Disability Characteristics, 2013 American Community Survey 1-year Estimates." Report S1810, (information may be obtained by using guided search criteria of people, disability, employment status, and Florida), available at: [http://factfinder.census.gov/faces/nav/jsf/pages/guided\\_search.xhtml](http://factfinder.census.gov/faces/nav/jsf/pages/guided_search.xhtml) (last visited Mar. 4, 2015).

<sup>2</sup> U.S. Department of Commerce, United States Census Bureau, American Fact Finder "Selected Economic Characteristics for the Civilian Noninstitutionalized Population by Disability Status, 2013 American Community Survey 1-year Estimates."

## Corporate Social Responsibility and Consumer Response

Corporate social responsibility is now a standard practice in the business world.<sup>3</sup> Corporate social responsibility is defined as a company's sense of responsibility toward the community and environment,<sup>4</sup> which may be expressed through support of issues, such ethical supply sourcing, or a contribution to, or support for, social issues and programs. In 2013, it was estimated that corporations in the United States gave approximately \$18.7 billion, consisting of both cash and non-cash donations, such as product donations and employee volunteer hours.<sup>5</sup> Corporate philanthropy is considered advantageous to a business because it provides the company with a bolstered public image, improved community relations, and increased employee morale.<sup>6</sup>

Studies suggest that people care about businesses that support causes that are important to them. This is reflected in their spending habits, and may also be reflected in their employment decisions. A recent Nielsen survey found that 55 percent of global respondents indicated a willingness to pay extra for goods and services from business that are committed to making a positive social and environmental impact.<sup>7</sup> Consumers are becoming "more deliberate and purposeful" in their shopping decisions by patronizing businesses that espouse values that are similar to their own.<sup>8</sup> Consumers are also more likely to be loyal to those brands that share their values or are engaged in the support of those causes that are important to them.<sup>9</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill creates the Florida Unique Abilities Partner program to be administered by the Department of Economic Opportunity (DEO or department). The purpose of the program is to recognize businesses that demonstrate a commitment to the independence of individuals who have a disability.<sup>10</sup>

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Report S1811, (information may be obtained by using guided search criteria of people, disability, employment status, and Florida), available at: [http://factfinder.census.gov/faces/nav/jsf/pages/guided\\_search.xhtml](http://factfinder.census.gov/faces/nav/jsf/pages/guided_search.xhtml) (last visited Mar. 4, 2015).

<sup>3</sup> Illia, Laura et al., *Communicating Corporate Social Responsibility to a Cynical Public*, MIT SLOAN MANAGEMENT REVIEW, Spring 2013, available at [http://sloanreview.mit.edu/article/communicating-corporate-social-responsibility-to-a-cynical-public/?use\\_credit=db34fbf0a135038c9c9102e028c614be](http://sloanreview.mit.edu/article/communicating-corporate-social-responsibility-to-a-cynical-public/?use_credit=db34fbf0a135038c9c9102e028c614be) (last visited Mar. 4, 2015).

<sup>4</sup> See <http://www.businessdictionary.com/definition/corporate-social-responsibility.html> (last visited Mar. 4, 2015).

<sup>5</sup> Adams, Susan, *America's Most Generous Companies*, FORBES, July 15, 2014, available at <http://www.forbes.com/sites/susanadams/2014/07/15/americas-most-generous-companies/> (last visited Mar. 3, 2015).

<sup>6</sup> Montini, Laura, *Corporate Altruism Is on the Rise (Infographic)*, INC., Aug. 17, 2014, available at <http://www.inc.com/laura-montini/infographic/the-benefits-of-community-service.html> (last visited Mar. 4, 2015).

<sup>7</sup> The Nielsen Company, "Doing Well by Doing Good," (June 2014), available at <http://www.nielsen.com/content/dam/corporate/us/en/reports-downloads/2014%20Reports/global-corporate-social-responsibility-report-june-2014.pdf> (last visited Feb. 27, 2015).

<sup>8</sup> Solomon, Micah, *Six Customer Trends That Will Build or Break Your Business As We Enter 2015*, FORBES, Dec. 24, 2014, available at <http://www.forbes.com/sites/micahsolomon/2014/12/25/six-deep-customer-trends-that-will-build-or-break-your-business-as-we-enter-2015/> (last visited Mar. 4, 2015).

<sup>9</sup> Irwin, Julie, *Ethical Consumerism Isn't Dead, It Just Needs Better Marketing*, HARVARD BUSINESS REVIEW, Jan. 12, 2015, available at <https://hbr.org/2015/01/ethical-consumerism-isnt-dead-it-just-needs-better-marketing> (last visited Mar. 4, 2015).

<sup>10</sup> The bill defines "individuals who have a disability" as persons who have a physical or intellectual impairment that substantially limits one or more major life activities; persons who have a history or record of such an impairment; or persons who are perceived by others as having such an impairment.

In order to be designated a Florida Unique Abilities Partner, a business must submit an application to the DEO, indicating that the business would qualify for the designation due to its employment of individuals who have a disability, contributions to disability organizations, or establishment of a program that contributes to the independence of individuals who have a disability. At a minimum, to qualify for the designation, a business must:

- Employ, in this state, at least one individual who has a disability for at least 9 months before applying for the designation;
- Make a financial or in-kind contribution to a local or national disability organization of at least \$1,000, if the entity has 100 or fewer employees or at least \$5,000, if the entity has more than 100 employees;<sup>11</sup> or
- Establish a program that contributes to the independence of individuals who have a disability.

The DEO may also consider any recommendations from members in the disability community regarding a local business entity's application for designation as a Florida Unique Abilities Partner. The bill specifies that the DEO's designation under this program does not constitute final agency action, and therefore is not subject to the Florida Administrative Procedures Act in ch. 120, F.S.

A business must annually certify that it continues to meet the requirements to be designated a Florida Unique Abilities Partner. Failure to submit the annual certification will result in the removal of the business' designation. A business may elect to discontinue its use of the designation by notifying the DEO of such decision.

The bill directs the DEO, in partnership with the disability community, to develop a logo that may be used to identify a business that has been designated as a Florida Unique Abilities Partner. The DEO is responsible for developing guidelines for the use and display of the Florida Unique Abilities Partner Program logo. A business that has not received the designation or has elected to discontinue its designation, may not display the logo.

The DEO must maintain a website available to the public that provides a list of businesses that have been designated as Florida Unique Abilities Partners, and provides information on the eligibility requirements for the designation. The website must also provide information to businesses on best practices to facilitate the inclusion of individuals who have a disability. The Agency for Persons with Disabilities and VISIT Florida<sup>12</sup> must also provide a link from their respective websites to the DEO website on which the Florida Unique Abilities Partners are listed. The DEO must indicate, on Employ Florida Marketplace, those employers that have been designated as a Florida Unique Partner.

The bill requires the DEO to collaborate with VISIT Florida to develop a marketing campaign to inform the public about the Florida Unique Abilities Partner program and to encourage public support of those businesses with the designation.

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<sup>11</sup> The contribution may also include the value of employee volunteer hours. Contributions must be documented by receipts or letters of acknowledgement from recipients or donees.

<sup>12</sup> The Florida Tourism Industry Marketing Corporation.



The DEO must report its progress in implementing the Florida Unique Abilities Program to the Legislature by January 1, 2016.

**Section 2** provides an effective date of July 1, 2015.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

With the designation as a Florida Unique Abilities Partner, a business may experience greater patronage by those individuals for whom the support of issues related to individuals who have a disability is important.

C. Government Sector Impact:

There may be a negative fiscal impact to the DEO related to the administration of the program. Costs may include personnel, equipment, supplies, computer programming, among other possible costs. The impact is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill directs the DEO to adopt rules to administer the program.

Under the Americans with Disabilities Act (ADA), employers are prohibited from inquiring about whether a person has a disability or the nature of a disability prior to employment.<sup>13</sup> However, an employer may inquire about the applicant's ability to perform job-related functions. Upon employment, an employer may require a medical examination it is required of all employees, is job-related, and consistent with business necessity. Any medical information obtained from the medical examination must be maintained in a separate file. If an employee requests a reasonable accommodation, an employer is permitted to request documentation sufficient to substantiate the need for the reasonable accommodation.<sup>14</sup>

#### **VIII. Statutes Affected:**

This bill creates an unnumbered section of the Florida Statutes.

#### **IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>13</sup> See 42 U.S.C. s. 12112.

<sup>14</sup> EEOC, No. 915.002, *EEOC Enforcement Guidance of Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA)*, July 27, 2000, available at <http://www.eeoc.gov/policy/docs/guidance-inquiries.html> (last visited Mar. 5, 2015).



821782

LEGISLATIVE ACTION

Senate

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. .  
. .  
. .  
. .

House

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The Committee on Commerce and Tourism (Detert) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 65 - 138

and insert:

(3) As an alternative to application by a business entity, the Department of Economic Opportunity must consider nominations from members of the community in which the business entity is located. The nomination must identify the business entity's achievements in one or both of the categories as provided in paragraph (2) of this section.



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11           (4) The Department of Economic Opportunity shall adopt  
12 procedures for the application and designation processes for the  
13 Florida Unique Abilities Partner program. Designation as a  
14 Florida Unique Abilities Partner does not establish or involve  
15 licensure, does not affect the substantial interests of a party,  
16 and does not constitute a final agency action. The Florida  
17 Unique Abilities Partner program and designation are not subject  
18 to chapter 120, Florida Statutes.

19           (5) In determining the eligibility for the designation of a  
20 business entity as a Florida Unique Abilities Partner, the  
21 Department of Economic Opportunity must consider, at a minimum,  
22 the following criteria:

23           (a) For a designation based on an application by a  
24 business:

25           1. A business entity must certify that it employs at least  
26 one individual who has a disability. Such employees must be  
27 residents of this state and must have been employed by the  
28 business entity for at least 9 months before the business  
29 entity's application for the designation. The department may not  
30 require the employer to provide personally identifiable  
31 information about its employees;

32           2. A business entity must certify that it has made  
33 contributions to local and national disability organizations or  
34 contributions in support of individuals who have a disability.  
35 Contributions may be accomplished through financial or in-kind  
36 contributions, including employee volunteer hours, or  
37 accomplished through the establishment of a program that  
38 contributes to the independence of individuals who have a  
39 disability. Contributions must be documented by providing copies



821782

40 of written receipts or letters of acknowledgment from recipients  
41 or donees. A business entity with 100 or fewer employees must  
42 make a financial or in-kind contribution of at least \$1,000, and  
43 a business entity with more than 100 employees must make a  
44 financial or in-kind contribution of at least \$5,000; or

45 (b) For a designation based upon receipt of a nomination of  
46 a business entity, the Department of Economic Opportunity shall  
47 determine whether the nominee, based on the information provided  
48 by the nominating person or entity, meets the requirements of  
49 subsection (5) (a). If the designee appears to meet the  
50 requirements, the Department of Economic Opportunity shall  
51 provide notice to the nominee, including the qualification  
52 criteria asserted in the nomination. The nominee shall be  
53 provided 30 days from the receipt of the notice to decline the  
54 nomination. After 30 days, if the nomination has not been  
55 declined, the business must be awarded the designation.

56 (6) After an initial designation as a Florida Unique  
57 Abilities Partner, a business entity must certify each year that  
58 it continues to meet the criteria for the designation. If a  
59 business entity does not submit yearly certification of  
60 continued eligibility, the Department of Economic Opportunity  
61 shall remove the designation. A business entity may elect to  
62 discontinue its use of the designation at any time by notifying  
63 the department of such decision.

64 (7) The Department of Economic Opportunity, in consultation  
65 with members of the disability community, must develop a logo  
66 that identifies a business entity that is designated as a  
67 Florida Unique Abilities Partner.

68 (8) The Department of Economic Opportunity must adopt



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69 guidelines and requirements for use of the logo, including how  
70 the logo may be used in advertising. The department may allow a  
71 business entity to display a Florida Unique Abilities Partner  
72 logo upon designation. A business entity that has not been  
73 designated as a Florida Unique Abilities Partner or has elected  
74 to discontinue its designated status may not display the logo.

75 (9) The Department of Economic Opportunity must maintain a  
76 website that provides the public with a list of business  
77 entities, by county, that currently have the Florida Unique  
78 Abilities Partner designation and that provides information  
79 regarding the eligibilities for the designation. At least once a  
80 year, the department must publish on its website the best ways  
81 for business entities to facilitate the inclusion of individuals  
82 who have a disability. The Agency for Persons with Disabilities  
83 must provide a link on their websites to the department's  
84 website that makes available the information on the Florida  
85 Unique Abilities Partner program and designation.

86 (10) On a quarterly basis, the Department of Economic  
87 Opportunity must provide the Florida Tourism Industry Marketing  
88 Corporation with a current list of all businesses that are  
89 designated as a Florida Unique Abilities Partner. The Florida  
90 Tourism Industry Marketing Corporation must consider the Florida  
91 Unique Abilities Partner program in the development of marketing  
92 campaigns, and specifically in any targeted marketing campaign  
93 for individuals who have a disability, or their families.

94  
95 ===== T I T L E A M E N D M E N T =====

96 And the title is amended as follows:

97 Delete lines 25 - 31



821782

98 and insert:

99 Agency for Persons with Disabilities to provide a link  
100 on its website to the department's website for the  
101 Florida Unique Abilities Partner program; requiring  
102 the department to provide the Florida Tourism Industry  
103 Marketing Corporation with certain information;  
104 requiring the

By Senator Detert

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1 A bill to be entitled  
 2 An act relating to individuals with disabilities;  
 3 requiring the Department of Economic Opportunity, in  
 4 consultation with other organizations, to create the  
 5 Florida Unique Abilities Partner program; defining the  
 6 term "individuals who have a disability"; establishing  
 7 criteria for a business entity to be designated as a  
 8 Florida Unique Abilities Partner; requiring a business  
 9 entity to certify that it continues to meet the  
 10 established criteria for designation each year;  
 11 requiring the department to remove the designation if  
 12 a business entity does not submit yearly certification  
 13 of continued eligibility; authorizing a business  
 14 entity to discontinue its use of the designation;  
 15 requiring the department, in consultation with the  
 16 disability community, to develop a logo for business  
 17 entities designated as Florida Unique Abilities  
 18 Program Partners; requiring the department to adopt  
 19 guidelines and requirements for use of the logo;  
 20 authorizing the department to allow a designated  
 21 business entity to display a logo; prohibiting the use  
 22 of a logo if a business entity does not have a current  
 23 designation; requiring the department to maintain a  
 24 website with specified information; requiring the  
 25 Agency for Persons with Disabilities and the Florida  
 26 Tourism Industry Marketing Corporation to provide a  
 27 link on their websites to the department's website for  
 28 the Florida Unique Abilities Partner program;  
 29 requiring the department to partner with the Florida

Page 1 of 6

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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30 Tourism Industry Marketing Corporation to create a  
 31 marketing campaign with specified goals; requiring the  
 32 department to identify employment opportunities posted  
 33 by employers that receive the Florida Unique Abilities  
 34 Partner designation on the workforce information  
 35 system; requiring the department to provide a  
 36 specified report to the Legislature by a specified  
 37 date; requiring the department to adopt rules;  
 38 providing an effective date.

40 Be It Enacted by the Legislature of the State of Florida:

41  
 42 Section 1. (1) The Department of Economic Opportunity shall  
 43 establish the Florida Unique Abilities Partner program to  
 44 designate a business entity as a Florida Unique Abilities  
 45 Partner if the business entity demonstrates commitment, through  
 46 employment and support, to the independence of individuals who  
 47 have a disability. The department shall consult with the Agency  
 48 for Persons with Disabilities, the Division of Vocational  
 49 Rehabilitation of the Department of Education, the Division of  
 50 Blind Services of the Department of Education, and CareerSource  
 51 Florida in creating the program. As used in this section, the  
 52 term "individuals who have a disability" means persons who have  
 53 a physical or intellectual impairment that substantially limits  
 54 one or more major life activities; persons who have a history or  
 55 record of such an impairment; or persons who are perceived by  
 56 others as having such an impairment.

57 (2) A business entity may apply to the Department of  
 58 Economic Opportunity to be designated as a Florida Unique

Page 2 of 6

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



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59 Abilities Partner, based on the business entity's achievements  
 60 in at least one of the following categories:  
 61 (a) Employment of individuals who have a disability.  
 62 (b) Contributions to local or national disability  
 63 organizations or the establishment of a program that contributes  
 64 to the independence of individuals who have a disability.  
 65 (3) The Department of Economic Opportunity shall adopt  
 66 procedures for the application and designation processes for the  
 67 Florida Unique Abilities Partner program. Designation as a  
 68 Florida Unique Abilities Partner does not establish or involve  
 69 licensure, does not affect the substantial interests of a party,  
 70 and does not constitute a final agency action. The Florida  
 71 Unique Abilities Partner program and designation are not subject  
 72 to chapter 120, Florida Statutes.  
 73 (4) In determining the eligibility for the designation of a  
 74 business entity as a Florida Unique Abilities Partner, the  
 75 Department of Economic Opportunity must consider, at a minimum,  
 76 the following criteria:  
 77 (a) A business entity must certify that it employs at least  
 78 one individual who has a disability. Such employees must be  
 79 residents of this state and must have been employed by the  
 80 business entity for at least 9 months before the business  
 81 entity's application for the designation; or  
 82 (b) A business entity must certify that it has made  
 83 contributions to local and national disability organizations or  
 84 contributions in support of individuals who have a disability.  
 85 Contributions may be accomplished through financial or in-kind  
 86 contributions, including employee volunteer hours, or  
 87 accomplished through the establishment of a program that

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88 contributes to the independence of individuals who have a  
 89 disability. Contributions must be documented by providing copies  
 90 of written receipts or letters of acknowledgment from recipients  
 91 or donees. A business entity with 100 or fewer employees must  
 92 make a financial or in-kind contribution of at least \$1,000, and  
 93 a business entity with more than 100 employees must make a  
 94 financial or in-kind contribution of at least \$5,000.  
 95 (5) The Department of Economic Opportunity may consider  
 96 recommendations from members of the disability community in  
 97 which the business entity is located as part of the business  
 98 entity's application for designation as a Florida Unique  
 99 Abilities Partner.  
 100 (6) After an initial designation as a Florida Unique  
 101 Abilities Partner, a business entity must certify each year that  
 102 it continues to meet the criteria for the designation. If a  
 103 business entity does not submit yearly certification of  
 104 continued eligibility, the Department of Economic Opportunity  
 105 shall remove the designation. A business entity may elect to  
 106 discontinue its use of the designation at any time by notifying  
 107 the department of such decision.  
 108 (7) The Department of Economic Opportunity, in consultation  
 109 with members of the disability community, must develop a logo  
 110 that identifies a business entity that is designated as a  
 111 Florida Unique Abilities Partner.  
 112 (8) The Department of Economic Opportunity must adopt  
 113 guidelines and requirements for use of the logo, including how  
 114 the logo may be used in advertising. The department may allow a  
 115 business entity to display a Florida Unique Abilities Partner  
 116 logo upon designation. A business entity that has not been

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117 designated as a Florida Unique Abilities Partner or has elected  
 118 to discontinue its designated status may not display the logo.

119 (9) The Department of Economic Opportunity must maintain a  
 120 website that provides the public with a list of business  
 121 entities that currently have the Florida Unique Abilities  
 122 Partner designation and that provides information regarding the  
 123 eligibilities for the designation. At least once a year, the  
 124 department must publish on its website the best ways for  
 125 business entities to facilitate the inclusion of individuals who  
 126 have a disability. The Agency for Persons with Disabilities and  
 127 the Florida Tourism Industry Marketing Corporation must provide  
 128 a link on their websites to the department's website that makes  
 129 available the information on the Florida Unique Abilities  
 130 Partner program and designation.

131 (10) The Department of Economic Opportunity shall partner  
 132 with the Florida Tourism Industry Marketing Corporation to  
 133 create a marketing campaign that includes periodic public  
 134 service announcements on radio and television stations, that  
 135 promotes the awareness of the Florida Unique Abilities Partner  
 136 program, and that encourages public support for business  
 137 entities that currently have the Florida Unique Abilities  
 138 Partner designation.

139 (11) The Department of Economic Opportunity shall identify  
 140 employment opportunities posted by business entities that  
 141 currently have the Florida Unique Abilities Partner designation  
 142 on the workforce information system under s. 445.011, Florida  
 143 Statutes.

144 (12) By January 1, 2016, the Department of Economic  
 145 Opportunity must provide a report to the President of the Senate

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146 and the Speaker of the House of Representatives on the status of  
 147 the implementation of this section, including the adoption of  
 148 rules, development of the logo, and development of application  
 149 procedures.

150 (13) The Department of Economic Opportunity shall adopt  
 151 rules to administer this section.

152 Section 2. This act shall take effect July 1, 2015.