

Tab 1	SB 842 by Brodeur ; (Identical to H 01449) Invalid Restrictive Covenants in Health Care
Tab 2	SB 418 by Pizzo (CO-INTRODUCERS) Jones, Gruters, Perry ; (Identical to H 00055) Assistive Technology Advisory Council
Tab 3	SB 546 by Gruters ; (Similar to CS/H 00123) Consumer Finance Loans
Tab 4	SB 946 by Gruters (CO-INTRODUCERS) Wright, Hooper, Stewart, Berman, Jones, Harrell, Taddeo, Gibson, Torres, Polsky, Ausley, Rouson ; (Similar to H 00217) Entertainment Industry

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Hooper, Chair
Senator Wright, Vice Chair

MEETING DATE: Monday, January 10, 2022
TIME: 4:00—6:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Building

MEMBERS: Senator Hooper, Chair; Senator Wright, Vice Chair; Senators Diaz, Garcia, Gruters, Hutson, Pizzo, Powell, Taddeo, and Torres

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 842 Brodeur (Identical H 1449)	Invalid Restrictive Covenants in Health Care; Defining the terms "hospital" and "physician"; specifying that certain restrictive covenants in employment agreements between physicians and hospitals do not support a legitimate business interest; authorizing a party to an employment agreement to elect to have a mutually agreed upon arbitrator make a specified binding determination, etc. CM 01/10/2022 Favorable HP RC	Favorable Yeas 10 Nays 0
2	SB 418 Pizzo (Identical H 55)	Assistive Technology Advisory Council; Revising provisions relating to the membership of and appointments and reappointments to the Assistive Technology Advisory Council; requiring council members to select a chair from among the council membership; revising provisions relating to committees appointed to perform the council's functions; expanding the council's functions to include fundraising activities, etc. ED 11/30/2021 Favorable CM 01/10/2022 Favorable RC	Favorable Yeas 10 Nays 0
3	SB 546 Gruters (Similar CS/H 123)	Consumer Finance Loans; Authorizing an applicant for a license to make and collect loans under the Florida Consumer Finance Act to provide certain documents in lieu of evidence of liquid assets; prohibiting a person licensed to make and collect consumer finance loans from charging prepayment penalties for loans; authorizing a licensee or an applicant for a license to make and collect consumer finance loans to provide a surety bond, certificate of deposit, or letter of credit in lieu of evidence of liquid assets; modifying grounds for denial of license or disciplinary action for certain violations of the Florida Consumer Finance Act, etc. BI 12/01/2021 Favorable CM 01/10/2022 Favorable RC	Favorable Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, January 10, 2022, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 946 Gruters (Similar H 217)	Entertainment Industry; Creating the Targeted High Wage Production Program within the Department of Economic Opportunity under the supervision of the Commissioner of Film and Entertainment; requiring that film, television, and digital media projects being produced in this state meet specified criteria to be eligible for tax credit awards; requiring a certified project to make a good faith effort to use existing providers of infrastructure or equipment in this state and to employ residents of this state; requiring the Florida Film and Entertainment Advisory Council to determine a score for each qualified project using specified criteria; requiring the department to disqualify a project under certain circumstances, etc.	Favorable Yeas 9 Nays 1
		CM 01/10/2022 Favorable FT AP	

Other Related Meeting Documents

The Florida Senate

APPEARANCE RECORD

SB 842

1/10/22

Meeting Date

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

Commerce

Committee

Amendment Barcode (if applicable)

Name **Amanda Prater**

Phone **850-766-0579**

Address **75 N Woodward Ave #80038**

Email **amanda@fga.com**

Street

Tallahassee

FL

32313

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

FGA Action

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

01.10.2022

Meeting Date

Commerce & Tourism

Committee

The Florida Senate

APPEARANCE RECORD

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SB 842

Bill Number or Topic

Amendment Barcode (if applicable)

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Street

Tallahassee

FL

32312

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Hospital Association

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

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.)

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

BILL: SB 842

INTRODUCER: Senator Brodeur

SUBJECT: Invalid Restrictive Covenants in Health Care

DATE: January 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Favorable
2.			HP	
3.			RC	

I. Summary:

SB 842 amends Florida’s non-compete statute, which allows for the enforcement of contracts that restrict or prohibit competition as long as such contracts are reasonable in time, area, and line of business. Under current law, a person seeking enforcement of a non-compete agreement must prove the existence of one or more “legitimate business interests,” which include trade secrets; valuable confidential business or professional information; substantial relationships with specific prospective or existing customers, patients, or clients; customer goodwill associated with an ongoing business by way of trade name, specific geographic location, or specific marketing or trade area; or extraordinary or specialized training.

The bill provides that a restrictive covenant in an employment agreement between a physician and a hospital is not supported by a legitimate business interest if it does not include an option for the physician to buy out of the restrictive covenant at a reasonable price. If such an option is not provided, the restrictive covenant is void and unenforceable. This provision applies to restrictive covenants entered into on or after July 1, 2022. The bill also provides that any party to an employment agreement which believes that the price to buy out of the restrictive covenant in the agreement is unreasonable may elect to have a mutually agreed upon arbitrator determine a reasonable price.

The bill takes effect July 1, 2022.

II. Present Situation:

Federal Antitrust Laws

In 1890, Congress passed the first antitrust law, the Sherman Act, as a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. Congress subsequently passed two additional antitrust laws in 1914: the Federal Trade Commission Act, which created the Federal Trade Commission (FTC), and the Clayton Act. Currently, these are the three core federal antitrust laws.¹

The Sherman Act

The Sherman Act outlaws every contract, combination, or conspiracy in restraint of trade, and any monopolization, attempted monopolization, or conspiracy or combination to monopolize. The Sherman Act does not prohibit every restraint of trade, only those that are unreasonable. For example, an agreement between two individuals to form a partnership may restrain trade, but may not do so unreasonably, and thus may be lawful under the antitrust laws. In contrast, certain acts are considered “per se” violations of the Sherman Act because they are so harmful to competition. These include plain arrangements among competing individuals or businesses to fix prices, divide markets, or rig bids.²

The penalties for violating the Sherman Act can be severe. Although most enforcement actions are civil, the Sherman Act is also a criminal law, and individuals and businesses that violate it may be prosecuted by the U.S. Department of Justice (DOJ). Criminal prosecutions are typically limited to intentional and clear violations, such as when competitors fix prices or rig bids. The Sherman Act imposes criminal penalties of up to \$100 million for a corporation and \$1 million for an individual, along with up to 10 years in prison.³ Under some circumstances, the maximum fines can reach twice the gain or loss involved.⁴

The Federal Trade Commission Act

The Federal Trade Commission Act prohibits unfair methods of competition and unfair or deceptive acts or practices. The Supreme Court has said that all violations of the Sherman Act also violate the FTC Act. Therefore, the FTC can bring cases under the FTC Act against the same kinds of activities that violate the Sherman Act. The FTC Act also reaches other practices that harm competition but that may not fit neatly into categories of conduct formally prohibited by the Sherman Act. Only the FTC brings cases under the FTC Act.⁵

¹ See *The Antitrust Laws*, Federal Trade Commission, available at <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws> (last visited Jan. 7, 2022).

² *Id.*

³ See *Antitrust Enforcement and the Consumer*, U.S. Department of Justice, available at <https://www.justice.gov/atr/file/800691/download> (last visited Jan. 7, 2022).

⁴ *Id.*

⁵ See *The Antitrust Laws*, Federal Trade Commission, available at <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws> (last visited Jan. 7, 2022).

The Clayton Act

The Clayton Act addresses specific practices that the Sherman Act does not clearly prohibit, such as mergers and interlocking directorates.⁶ It also bans mergers and acquisitions where the effect may substantially lessen competition or create a monopoly. As amended by the Robinson-Patman Act of 1936, the Clayton Act also prohibits certain discriminatory prices, services, and allowances in dealings between merchants. The Clayton Act was amended again in 1976 by the Hart-Scott-Rodino Antitrust Improvements Act to require companies planning large mergers or acquisitions to notify the government of their plans in advance. Additionally, private parties are authorized to sue for triple damages when they have been harmed by conduct that violates either the Sherman or Clayton Act and to obtain a court order prohibiting the anticompetitive practice in the future.⁷

Florida Antitrust Laws

Florida law also provides protections against anticompetitive practices. Chapter 542, F.S., the Florida Antitrust Act of 1980, has a stated purpose to complement the body of federal law prohibiting restraints of trade or commerce in order to foster effective competition.⁸ It outlaws every contract, combination, or conspiracy in restraint of trade or commerce in Florida⁹ and any person from monopolizing or attempting or conspiring to monopolize any part of trade.¹⁰

Contracts in Restraint of Trade or Commerce

Generally, a contract in restraint of trade or commerce in Florida is unlawful.¹¹ However, non-competition restrictive covenants¹² contained in employment agreements that are reasonable in time, area, and line of business are not prohibited.¹³ In any action concerning enforcement of a restrictive covenant, a court may not enforce a restrictive covenant unless it is set forth in a writing signed by the person against whom enforcement is sought, and the person seeking enforcement of a restrictive covenant must prove the existence of one or more legitimate business interests justifying the restrictive covenant.¹⁴ The term “legitimate business interest” includes, but is not limited to:

- Trade secrets;¹⁵
- Valuable confidential business or professional information that otherwise does not qualify as trade secrets;

⁶ “Interlocking directorates” means the same person making business decisions for competing companies. *See also Id.*

⁷ *Id.*

⁸ Section 542.16, F.S.

⁹ Section 542.18, F.S.

¹⁰ Section 542.19, F.S.

¹¹ Section 542.18, F.S.

¹² Section 542.335, F.S. employs the term “restrictive covenants” and includes all contractual restrictions such as noncompetition/nonsolicitation agreements, confidentiality agreements, exclusive dealing agreements, and all other contractual restraints of trade. *See Henao v. Prof'l Shoe Repair, Inc.*, 929 So.2d 723, 726 (Fla. 5th DCA 2006).

¹³ Section 542.335(1), F.S.

¹⁴ *Id.*

¹⁵ Section 688.002(4), F.S., defines a trade secret as information, including a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

- Substantial relationships with specific prospective or existing customers, patients, or clients;
- Customer, patient, or client goodwill associated with:
 - An ongoing business or professional practice, by way of trade name, trademark, service mark, or “trade dress”;
 - A specific geographic location; or
 - A specific marketing or trade area; or
- Extraordinary or specialized training.¹⁶

Any restrictive covenant not supported by a legitimate business interest is unlawful and is void and unenforceable.¹⁷ A person seeking enforcement of a restrictive covenant must prove that the contractually specified restraint is reasonably necessary to protect the legitimate business interest or interests justifying the restriction.¹⁸

Restrictive Covenants in Healthcare

Currently in Florida, a restrictive covenant entered into with a physician who practices a medical specialty in a county where one entity employs or contracts with all physicians who practice that specialty in that county is not supported by a legitimate business interest, and is void and unenforceable.¹⁹ The restrictive covenant remains void and unenforceable until 3 years after the date on which a second entity that employs or contracts with one or more physicians who practice that specialty begins serving patients in that county.²⁰

III. Effect of Proposed Changes:

The bill amends s. 542.336, F.S., to provide that a restrictive covenant in an employment agreement between a physician and a hospital is not supported by a legitimate business interest if it does not include an option for the physician to buy out of the restrictive covenant at a reasonable price.²¹ If such an option is not provided, the restrictive covenant is void and unenforceable. This provision applies to restrictive covenants entered into on or after July 1, 2022. The bill also provides that any party to an employment agreement which believes that the price to buy out of the restrictive covenant in the agreement is unreasonable may elect to have a mutually agreed upon arbitrator determine a reasonable price.

The bill establishes the following definitions:

- “Hospital” means a hospital as defined in s. 395.002(13), F.S.,²² which is licensed under Chapter 395 of the Florida Statutes and part II of Chapter 408 of the Florida Statutes; and

¹⁶ Section 542.335(1)(b), F.S.

¹⁷ *Id.*

¹⁸ Section 542.335(1)(c), F.S.

¹⁹ Section 542.336, F.S.

²⁰ *Id.*

²¹ The bill does not define the term “reasonable price,” which may lead to differing interpretations of the meaning of the term.

²² Section 395.002(13), F.S. defines “hospital” as any establishment that offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy, and regularly makes available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent, except that a critical access hospital, as defined in s. 408.07, F.S., must not be required to make available treatment facilities for surgery, obstetrical care, or similar

- “Physician” means a person licensed to practice medicine under Chapter 458 of the Florida Statutes or osteopathic medicine under Chapter 459 of the Florida Statutes.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The ability for physicians to buy out of a restrictive covenant in an employment agreement with a hospital may provide patients with more access to physicians and decrease healthcare costs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

services as long as it maintains its critical access hospital designation and must be required to make such facilities available only if it ceases to be designated as a critical access hospital.

VII. Related Issues:

If parties to an employment agreement mutually agree that arbitration is necessary, the Florida Arbitration Code applies.²³

VIII. Statutes Affected:

This bill substantially amends section 542.336 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.

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

²³ See s. 682.013, F.S.

By Senator Brodeur

9-00540-22

2022842__

1 A bill to be entitled
 2 An act relating to invalid restrictive covenants in
 3 health care; amending s. 542.336, F.S.; defining the
 4 terms "hospital" and "physician"; specifying that
 5 certain restrictive covenants in employment agreements
 6 between physicians and hospitals do not support a
 7 legitimate business interest; authorizing a party to
 8 an employment agreement to elect to have a mutually
 9 agreed upon arbitrator make a specified binding
 10 determination; providing a legislative finding;
 11 providing applicability; providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Section 542.336, Florida Statutes, is amended to
 16 read:
 17 542.336 Invalid restrictive covenants.—
 18 (1) As used in this section, the term:
 19 (a) "Hospital" means a hospital as defined in s.
 20 395.002(13) which is licensed under chapter 395 and part II of
 21 chapter 408.
 22 (b) "Physician" means a person licensed to practice
 23 medicine under chapter 458 or osteopathic medicine under chapter
 24 459.
 25 (2) A restrictive covenant entered into with a physician
 26 ~~who is licensed under chapter 458 or chapter 459 and who~~
 27 practices a medical specialty in a county wherein one entity
 28 employs or contracts with, either directly or through related or
 29 affiliated entities, all physicians who practice such specialty

Page 1 of 2

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

9-00540-22

2022842__

30 in that county is not supported by a legitimate business
 31 interest. The Legislature finds that such covenants restrict
 32 patient access to physicians, increase costs, and are void and
 33 unenforceable under current law. Such restrictive covenants
 34 ~~shall~~ remain void and unenforceable for 3 years after the date
 35 on which a second entity that employs or contracts with, either
 36 directly or through related or affiliated entities, one or more
 37 physicians who practice such specialty begins offering such
 38 specialty services in that county.
 39 (3) A restrictive covenant in an employment agreement
 40 between a physician and a hospital is not supported by a
 41 legitimate business interest if it does not include an option
 42 for the physician to buy out of the restrictive covenant at a
 43 reasonable price. Any party to an employment agreement which
 44 believes that the price to buy out of the restrictive covenant
 45 in the agreement is unreasonable may elect to have a mutually
 46 agreed upon arbitrator determine a reasonable price, and such
 47 arbitrator's decision is binding on the parties. The Legislature
 48 finds that a restrictive covenant without this option limits
 49 patient access to physicians and increases costs and is void and
 50 unenforceable. This subsection applies to restrictive covenants
 51 entered into on or after July 1, 2022.
 52 Section 2. This act shall take effect July 1, 2022.

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

January 10, 2022

Meeting Date

Commerce and Tourism

Committee

Name Whitney Doyle

Name

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 418

Bill Number or Topic

Amendment Barcode (if applicable)

Phone (850) 487-3278 x107

Address 820 E Park Avenue, Suite D200

Address

Email wdoyle@faast.org

Email

Street

Tallahassee

City

FL

State

32301

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

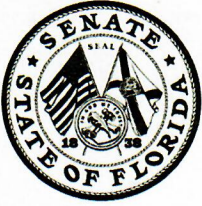
Florida Alliance for Assistive Services and Technology, Inc.

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)



The Florida Senate

Committee Agenda Request

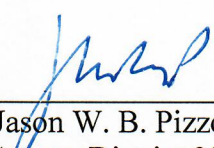
To: Senator Ed Hooper, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: November 30, 2021

I respectfully request that **SB 418**, relating to Assistive Technology Advisory Council, be placed on the:

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



Senator Jason W. B. Pizzo
Florida Senate, District 38

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.)

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

BILL: SB 418

INTRODUCER: Senator Pizzo and others

SUBJECT: Assistive Technology Advisory Council

DATE: January 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Palazesi</u>	<u>Bouck</u>	<u>ED</u>	Favorable
2.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 418 modifies the composition of the Florida Assistive Technology Advisory Council (Council), which is responsible for the comprehensive statewide program of technology related assistance for individuals with disabilities. The bill also:

- Removes the maximum limit on Council membership and modifies requirements specifying representation on the Council;
- Requires the appointment of a single chair of the Council;
- Modifies requirements for reappointments to the Council;
- Removes the designation of specific committees; and
- Expands the Council’s functions to include fundraising activities.

The bill takes effect on July 1, 2022.

II. Present Situation:

Assistive technology helps people with disabilities live, work, learn, and play as independently as possible. It is any device, item, gadget, tool, hardware, or software used to increase, maintain, or improve the functional capabilities of both individuals of all ages who have disabilities and older adults who may find a need for assistance. Assistive technology provides people who have disabilities the option to access education and the workplace, to live within their communities, and enjoy recreational activities.¹

¹ Florida Alliance for Assistive Services & Technology, *What is Assistive Technology (A.T.)?* <https://faast.org/> (last visited Jan. 7, 2022).

Federal Law

In 2004, the Assistive Technology Act of 1998 was amended by the Assistive Technology Act of 2004 (Act), to recognize the substantial progress that had been made in the development of assistive technology devices that benefit individuals with disabilities.² The Act requires the Secretary of Education to support state grant programs that assist states in undertaking activities for maximizing the ability of individuals with disabilities across the human lifespan and across the wide array of disabilities.³ In addition, the Act requires states to establish advisory councils for the purpose of consumer-response and consumer-driven advice to the state for planning, implementation, and evaluation of activities carried out through the grants made available by the Act.⁴

The state implemented advisory council must be comprised of the following members:⁵

- Individuals with disabilities that use assistive technology or the family members or guardians of the individuals;
- A representative of the designated State agency;
- A representative of a state center for independent living;
- A representative of the state workforce development board established under section 101 of the Workforce Innovation and Opportunity Act;
- A representative of the State educational agency; and
- Representatives of other state agencies, public agencies, or private organizations, as determined by the state.

Further, states are required to ensure a majority of the members of the advisory council are members appointed as individuals with disabilities, or family members or guardians of individuals with disabilities that use assistive technology.⁶ The council must also be geographically representative of the state and reflect the diversity of the state with respect to race, ethnicity, types of disabilities across the age span, and users of types of services that an individual with a disability may receive.⁷

Florida Law

The Assistive Technology Advisory Council (Council) is responsible for ensuring consumer involvement in the creation, application, and distribution of technology-related assistance to and for persons who have disabilities.⁸ The Council acts as the board of directors and provides direction, through a not-for-profit corporation created by the Division of Vocational

² 29 U.S.C. s. 3001, et. seq.

³ 29 U.S.C. s. 3003(a).

⁴ 29 U.S.C. s. 3003(c)(2)(A).

⁵ 29 U.S.C. s. 3003(c)(2)(B)(i).

⁶ 29 U.S.C. s. 3003(c)(2)(B)(ii)(I).

⁷ 29 U.S.C. s. 3003(c)(2)(B)(iii).

⁸ Section 413.407, F.S.

Rehabilitation (DVR) of the Department of Education, to Florida's Alliance for Assistive Services and Technology.⁹

The Council may not exceed 27 members at any one time. The Council must be composed of the following members:¹⁰

- Individuals who have disabilities¹¹ and who are assistive technology consumers or family members or guardians of those individuals;¹²
- Representatives of consumer organizations concerned with assistive technology;
- Representatives of business and industry, including the insurance industry, concerned with assistive technology;
- A representative of the Division of Vocational Rehabilitation;
- A representative of the Division of Blind Services;
- A representative of the Florida Independent Living Council;
- A representative of CareerSource Florida, Inc.;
- A representative of the Department of Education; and
- Representatives of other state agencies that provide or coordinate services for persons with disabilities.

The Council is appointed by the Commissioner of Education from a list of candidates proposed by the director of the DVR.¹³ The Council is required to appoint two co-chairs among the membership of the Council.¹⁴ Members of the Council serve for a term of 3 years and cannot serve more than two consecutive terms, and a member that has served two consecutive terms must be retired from the council for at least 1 year prior to reappointment.¹⁵

Members of the Council are required to appoint committees made up of members of the council to focus on specific issues within the council's mandates.¹⁶ The Council's committees must include, but are not limited to:¹⁷

- An interagency committee composed of those members representing state agencies;¹⁸

⁹ Section 413.407(2)(a) F.S. Florida's Alliance for Assistive Services and Technology is a project sponsored by the Department of Education for the coordination and delivery of appropriate, cost-effective, state-of-the-art assistive technology services and devices. *See Id.*

¹⁰ Section 413.407(1)(a), F.S.

¹¹ A "disability" means a physical or mental impairment that constitutes or results in a substantial impediment to employment. *See s. 413.20(7), F.S.*

¹² These individuals must make up a majority of the membership.

¹³ Section 413.407(1)(b), F.S.

¹⁴ Section 413.407(1)(d), F.S.

¹⁵ Section 413.407(1)(e), F.S.

¹⁶ Committees may request and accept in-kind contributions of personnel from public or private entities to supply such staffing as the committees deem necessary to carry out their individual mandates. *See s. 413.407(2)(b), F.S.*

¹⁷ Section 413.407(2)(b), F.S.

¹⁸ The interagency committee must work towards the development of cooperative agreements among government agencies and perform other duties as the council deems appropriate. The interagency committee's members must assign staff from their respective agencies to the alliance, as an in-kind contribution for a specified period of time, to review federal and state legislation and agency policies and practices and to identify both facilitators of, and barriers to, accessibility and utilization of assistive technology services, devices, and funding sources. *See s. 413.407(2)(b)1., F.S.*

- A technology-awareness committee to guide the Council's public awareness, coordination, and collaboration activities; and
- A public policy and advocacy committee to review federal and state legislation and agency policies and practices and to identify facilitators of and barriers to access and utilization of assistive technology services, devices, and funding sources.

III. Effect of Proposed Changes:

The bill modifies s. 413.407, F.S., to revise the composition of the Florida Assistive Technology Council (Council) to allow only one representative of a consumer organization and one representative of business and industry. The bill authorizes a representative from a center for independent living, rather than from the Florida Independent Living Council. The bill also provides that a representative from another state agency that provides or coordinates services for persons with disabilities can be added to the Council if requested by a majority vote of the Council members, and that representative must be appointed by the head of the corresponding state agency. Additionally, the bill removes the requirement that Council membership may not exceed 27 members.

The bill aligns the Council membership with federal requirements that members of the Council be geographically representative of the state, reflective of the diversity of the state's population with respect to race, ethnicity, age, gender, type of disability, and type of disability-related services and devices received. The bill directs the Council to elect a single chair of the council. The bill maintains the limit of two consecutive terms for members, but revises the number of years a council member must be retired from the Council after two consecutive terms to be reappointed, from 1 year to 3 years.

The bill deletes the requirement that Council members form a technology awareness committee and a public policy and advocacy committee. The bill removes the interagency committee, and assigns the duties of that committee to the members representing state agencies. The bill also allows Council members to participate in fundraising activities on behalf of the Council, which could lead to additional funding for the Council.

The bill takes effect on July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill allows the Council to do fundraising activities. Section 20.03, F.S., provides that a “council” or “advisory council” means an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

VIII. Statutes Affected:

This bill substantially amends section 413.407 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.

By Senator Pizzo

38-00542-22

2022418__

1 A bill to be entitled
 2 An act relating to the Assistive Technology Advisory
 3 Council; amending s. 413.407, F.S.; revising
 4 provisions relating to the membership of and
 5 appointments and reappointments to the Assistive
 6 Technology Advisory Council; requiring council members
 7 to select a chair from among the council membership;
 8 revising provisions relating to committees appointed
 9 to perform the council's functions; expanding the
 10 council's functions to include fundraising activities;
 11 providing an effective date.

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

15 Section 1. Section 413.407, Florida Statutes, is amended to
 16 read:

17 413.407 Assistive Technology Advisory Council.—There is
 18 created the Assistive Technology Advisory Council, responsible
 19 for ensuring consumer involvement in the creation, application,
 20 and distribution of technology-related assistance to and for
 21 persons who have disabilities. The council shall fulfill its
 22 responsibilities through statewide policy development, ~~both~~
 23 state and federal legislative initiatives, advocacy at ~~both~~ the
 24 state and federal levels level, planning of statewide resource
 25 allocations, policy-level management, and reviews of ~~both~~
 26 consumer responsiveness and the adequacy of program service
 27 delivery, and by performing the functions listed in this
 28 section.

29 (1) (a) The council shall be composed of:

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30 1. Persons ~~Individuals~~ who have disabilities and who are
 31 assistive technology consumers or family members or guardians of
 32 those ~~persons individuals~~.

33 2. A representative ~~Representatives of a~~ consumer
 34 organization ~~organizations~~ concerned with assistive technology.

35 3. A representative ~~Representatives of~~ business and
 36 industry, including the insurance industry, concerned with
 37 assistive technology.

38 4. A representative of the Division of Vocational
 39 Rehabilitation.

40 5. A representative of the Division of Blind Services.

41 6. A representative of a center for independent living the
 42 Florida Independent Living Council.

43 7. A representative of CareerSource Florida, Inc.

44 8. A representative of the Department of Education.

45 9. A representative ~~Representatives of any other state~~
 46 agency agencies that provides or coordinates provide or
 47 coordinate services for persons with disabilities, if requested
 48 by a majority vote of the council members.

49
 50 ~~Total membership on the council may not exceed 27 at any one~~
 51 ~~time. A majority of the members shall be appointed in accordance~~
 52 ~~with subparagraph 1.~~

53 (b) Members of the council shall be appointed by the
 54 Commissioner of Education from a list of candidates proposed by
 55 the division director. However, a member who is a representative
 56 of a state agency shall be appointed by the head of that state
 57 agency.

58 (c) A majority of council members must ~~shall~~ be persons who

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59 have disabilities as defined in s. 413.20 and ~~s. 413.20(7)~~ who
60 are ~~also~~ consumers of assistive technology or family members or
61 guardians of such persons.

62 (d) Members of the council must be geographically
63 representative of the state and reflect the diversity of the
64 state's population with respect to race, ethnicity, gender, age,
65 type of disability, and type of disability-related services and
66 devices received.

67 ~~(e)(d)~~ The members of the council shall select a chair ~~two~~
68 ~~co-chairs~~ from among the membership of the council.

69 ~~1. One co-chair may be selected from the group described in~~
70 ~~paragraph (c) and one co-chair shall be selected from the other~~
71 ~~council members.~~

72 ~~2. The chair~~ ~~No co-chair~~ may not be an elected member or an
73 employee of a state agency or of any political subdivision of
74 the state.

75 ~~(f)1.(e)1.~~ Each member of the council shall serve for a
76 term of not more than 3 years, except that a member appointed to
77 fill a vacancy occurring before ~~prior to~~ the expiration of the
78 term for which a predecessor was appointed shall be appointed
79 for the remainder of such term.

80 ~~2. A~~ ~~No~~ member of the council may not serve more than two
81 consecutive terms; however, any appointment under subparagraph
82 1., if for less than 18 months, is ~~shall~~ ~~not~~ be considered a
83 term for the purposes of this section.

84 3. A member who has served two consecutive terms and has
85 been retired from the council for at least 3 years ~~1 year~~ may be
86 reappointed to the council on the same basis as a new member.

87 ~~(g)(f)~~ Any vacancy occurring in the membership of the

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88 council shall be filled in the same manner as the original
89 appointment. A vacancy does not affect the power of the
90 remaining members to execute the duties of the council.

91 (2) In addition to the other functions specified in this
92 section, the council shall:

93 (a) Act as the board of directors of a not-for-profit
94 corporation created by the division. Through the corporation,
95 the council shall provide direction to ~~the Florida~~ Florida's
96 Alliance for Assistive Services and Technology, a project
97 sponsored by the department for the coordination and delivery of
98 appropriate, cost-effective, state-of-the-art assistive
99 technology services and devices.

100 (b) Appoint committees made up of members of the council to
101 focus on specific issues within the council's mandate.
102 Committees may request and accept in-kind contributions of
103 personnel from public or private entities to supply such
104 staffing as the committees deem necessary to carry out their
105 individual mandates. ~~These committees shall include, but are not~~
106 ~~limited to:~~

107 1. Members who are representatives of state agencies
108 serving on the committees ~~An interagency committee composed of~~
109 ~~those members representing state agencies. The interagency~~
110 ~~committee shall work towards the development of cooperative~~
111 ~~agreements among government agencies and perform such other~~
112 ~~duties as the council deems appropriate.~~

113 2. Members who are representatives of state agencies
114 serving on the committees ~~The interagency committee's members~~
115 ~~shall assign staff from their respective agencies to the~~
116 ~~alliance, as an in-kind contribution for a specified period of~~

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117 time, to review federal and state legislation and agency
 118 policies and practices and to identify both facilitators of, and
 119 barriers to, accessibility and utilization of assistive
 120 technology services, devices, and funding sources.

121 ~~2. A technology awareness committee to guide the council's~~
 122 ~~public awareness, coordination, and collaboration activities.~~

123 ~~3. A public policy and advocacy committee to review federal~~
 124 ~~and state legislation and agency policies and practices and to~~
 125 ~~identify facilitators of and barriers to access and utilization~~
 126 ~~of assistive technology services, devices, and funding sources.~~

127 (c) Review and approve all reports, recommendations, and
 128 proposed actions of committee staff.

129 (d) Appoint the executive director of the alliance who is-
 130 The executive director shall be responsible for the overall
 131 administration and day-to-day direction of the alliance,
 132 including the as well as supervision of all staff.

133 (e) Annually review and approve the strategic or business
 134 plan of the alliance, as submitted by the executive director.

135 (f) Submit an annual comprehensive report of the activities
 136 of the council, the corporation, and the alliance to the
 137 division director.

138 (g) Perform ~~such~~ other functions, including fundraising
 139 activities, as the council determines to be appropriate which
 140 are comparable to functions performed by the council.

141 (h) Convene at least four meetings each year in locations
 142 that such places as it determines to be necessary to conduct
 143 council business and may conduct such forums or hearings as it
 144 ~~the council~~ considers appropriate. The council shall make a
 145 report of each meeting which must contain ~~shall include~~ a record

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146 of its discussions and recommendations and must, ~~all of which~~
 147 ~~reports shall~~ be made available to the public.

148 (3) In accordance with Pub. L. No. 108-364, the council
 149 shall:

150 (a) Investigate financing options that will increase access
 151 to and funding for assistive technology devices and assistive
 152 technology services.

153 (b) Develop assistive technology demonstrations,
 154 reutilization programs, and loan programs.

155 (c) Provide training and technical assistance in order to
 156 increase knowledge and awareness of the uses and benefits of
 157 assistive technology devices and assistive technology services.

158 (d) Promote public awareness activities designed to provide
 159 information relating to the benefits of assistive technology
 160 devices and assistive technology services.

161 (e) Promote coordination and collaboration among public and
 162 private entities that are responsible for policies, procedures,
 163 or funding for the provision of assistive technology devices and
 164 assistive technology services.

165 Section 2. This act shall take effect July 1, 2022.

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The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

01/10/22

Meeting Date

SB 0546

Bill Number or Topic

Commerce & Tourism

Committee

Amendment Barcode (if applicable)

Name Ivonne Fernandez

Phone 954-850-7262

Address 3750 NW 7th Aven

Email ifernandez@cap.gov

Street

Doral

FL

33178

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing: AARP

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. 511.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

546

1/10/2022

Meeting Date

S. Commerce & Tourism

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

Amendment Barcode (if applicable)

Name Scott Jenkins

Phone 8506610829

Address 201 East Park Avenue

Email scott@dacfl.com

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FL Financial Services Assoc.

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)



2021 AGENCY LEGISLATIVE BILL ANALYSIS Florida Office of Financial Regulation

<u>BILL INFORMATION</u>	
BILL NUMBER:	HB 895
BILL TITLE:	Consumer Finance Loans
BILL SPONSOR:	Representative Stevenson
EFFECTIVE DATE:	July 1, 2021

<u>COMMITTEES OF REFERENCE</u>
1)
2)
3)
4)
5)

<u>CURRENT COMMITTEE</u>

<u>SIMILAR BILLS</u>	
BILL NUMBER:	
SPONSOR:	

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	February 17, 2021
LEAD AGENCY ANALYST:	Alexander J. Anderson, Director of Legislative Affairs (850) 410-9601
ADDITIONAL ANALYST(S):	Gregory C. Oaks, Director, Division of Consumer Finance (850) 410-9601
LEGAL ANALYST:	Tony Cammarata, General Counsel (850) 410-9601
FISCAL ANALYST:	Buckley Vernon, Financial Administrator (850) 410-9673

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The legislation would amend s. 516.031, F.S., by explicitly prohibiting a consumer finance company licensee from charging a prepayment penalty to a borrower paying all or part of loan principal before the due date.

The legislation would amend s. 516.36, F.S., by requiring a consumer finance loan to have a loan term of at least 90 days for loans with a principal balance of no more than \$4,000 at the time of origination, or a term of at least 12 months for loans with a principal balance exceeding \$4,000 at the time of origination.

The legislation would also apply to a financial technology sandbox licensee licensed pursuant to chapter 559, F.S., offering consumer finance loans under chapter 516, F.S.

The provisions of the bill would take effect July 1, 2021.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Office of Financial Regulation has regulatory oversight over consumer finance companies licensed pursuant to chapter 516, F.S., money services businesses licensed pursuant to chapter 560, F.S., and financial technology sandbox business entities licensed pursuant to chapter, F.S., and other financial services entities. As of February 16, 2021, the office records reflect 170 consumer finance companies who hold a total of 382 licenses.

Under the current provisions of chapter 516, F.S., in order to lend any amount up to \$25,000 and charge an interest greater than 18% per annum, a person must be licensed as a consumer finance company. The maximum interest rates on a consumer finance loan are incremental: 30% per annum, computed on the first \$3,000 of the principal amount; 24% per annum computed on the part of the principal amount exceeding \$3,000 and up to \$4,000; and 18% per annum on the part of the principal exceeding \$4,000 and up to \$25,000.

In addition to interest charges, current law only allows the following charges: an amount up to \$25 for costs related to investigating the character and credit of the borrower; an annual fee of \$25 on each line-of-credit account; charges paid for the brokerage fee on a loan or line of credit of more than \$10,000; a delinquency charge of up to \$15 for each payment in default for at least 10 days if the charge is agreed upon, in writing, between the parties before imposing the charge; and certain other allowable ancillary fees and charges related to the loan. See s. 516.031(3), F.S.

If all or part of the consideration for a new loan contract is the unpaid principal balance of a prior loan, the principal amount payable under the new loan contract may include not more than 60 days' unpaid interest accrued on the prior loan.

Every loan made pursuant to chapter 516, F.S., except for lines of credit, are to be repaid in periodic installments as nearly equal as mathematically practicable, except that the final payment may be less than the amount of the prior installments. Installments may be due every 2 weeks, semimonthly, or monthly.

Section 516.15(3), F.S., requires a licensee to permit payment of a loan, in whole or in part, prior to its maturity, with interest owed up until the date of such payment.

Section 516.031, F.S., sets forth the only charges permissible under chapter 516, F.S. As a pre-payment penalty is not an allowable charge under section 516.031, F.S., a licensee is implicitly prohibited from charging a prepayment penalty.

Current law does not set a minimum or maximum loan term. The loan term is negotiated between the licensee and borrower.

Certain financial technology sandbox business entities licensed pursuant to s. 559.952, F.S., may operate as consumer finance companies pursuant to limited provisions of chapter 516, F.S. Such licensees **are** subject to the provisions of section 516.031, F.S., which sets forth the only allowable charges. Additionally, such licensees **are**

subject to the provisions of section 516.36, F.S., meaning such licensees must act in accordance with installment loan requirements found in section 516.36, F.S.

Persons licensed pursuant to part IV, of chapter 560, F.S., as deferred presentment providers are authorized to enter into deferred presentment installment transactions with consumers. Such transactions allow a consumer to borrow up to \$1,000 for a period of at least 60-days, but not beyond 90-days, repayable in substantially equal and consecutive installments according to a payment schedule agreed upon by the parties with no less than 13 days and not more than 1 calendar month between payments, except that the first payment may be longer than 13 days and may be greater than the rest of the payments.

2. EFFECT OF THE BILL:

Section 1 explicitly provides that a licensee may not require a borrower to pay a prepayment penalty for paying all or part of a loan principal before the payment due date. Section 516.15, F.S., requires a licensee to allow payment of a loan, in part or whole, prior to its maturity with interest owed up until the date of such payment. As such, the proposed law and the current law allow for the pre-payment of a loan before it reaches maturity. The proposed law prohibits a pre-payment penalty, while the current law in section 516.15, F.S., prohibits the assessment of interest after the payment.

Section 516.031, F.S., limits a licensee's ability to assess certain charges. Consequently, only those charges explicitly set forth in section 516.031, F.S., may be charged. A pre-payment penalty is not one of the charges prescribed in s. 516.031, F.S., hence, a licensee is prohibited from charging a borrower a pre-payment penalty. Much like the proposed language, section 516.031, F.S., prohibits a licensee from charging a pre-payment penalty, except that once the proposed language becomes law, such behavior would be an explicit prohibition rather than an implied prohibition.

Additionally, the bill would require other entities licensed by the Office to comply with its provisions. Certain financial technology sandbox business entities licensed pursuant to section 559.952, F.S., may operate as consumer finance companies pursuant to limited provisions of chapter 516, F.S. Such licensees **are** subject to the provisions of section 516.031, F.S., and would therefore need to comply with the bill's provisions.

Section 2 requires loan terms of at least 90 days for loans with a principal balance of no more than \$4,000 at the time of origination, while requiring a loan term of at least 12 months for loans with a principal balance exceeding \$4,000 at the time of origination. Current law does not set forth a minimum or maximum loan term. As such, the new provisions would now require licensees to set minimum and maximum loan terms in accordance with statutory provisions.

Once in effect, the new provisions would create a loan product substantially similar to a deferred presentment installment product offered under part IV of chapter, 560, F.S. Under chapter 560, a customer may enter into a deferred presentment installment transaction that allows a customer to borrow up to \$1,000 for a period of at least 60-days, but not beyond 90-days.

This new provision would not only include consumer finance companies licensed under chapter 516, F.S., but would also include financial technology sandbox licensees licensed pursuant to chapter 559, F.S., offering consumer finance loans. Once in effect, the new provisions would require such licensees to set minimum and maximum loan terms.

Section 3 provides an effective date of July 1, 2021, meaning the Office would begin enforcing the provisions of Section 1 and Section 2, on or after July 1, 2021.

3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y N

If yes, explain:	
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input checked="" type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	None

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

Y N

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?

Y N

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. FISCAL IMPACT TO LOCAL GOVERNMENT

Y N

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. FISCAL IMPACT TO STATE GOVERNMENT

Y N

Revenues:	
Expenditures:	

Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	

3. FISCAL IMPACT TO THE PRIVATE SECTOR

Y N

Revenues:	Unknown
Expenditures:	Unknown
Other:	Unknown

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Y N

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?

Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	
--	--

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?

Y N

If yes, describe the anticipated impact including any fiscal impact.	
--	--

ADDITIONAL COMMENTS

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:

OGC has reviewed the agency's bill analysis concerning HB 895, and the analysis sufficiently details the effect of the bill and the areas of impact. OGC has no issues, concerns or further comments regarding the bill.

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.)

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

BILL: SB 546

INTRODUCER: Senator Gruters

SUBJECT: Consumer Finance Loans

DATE: January 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 546 amends the Florida Consumer Finance Act, ch. 516, F.S., to:

- Expressly prohibit prepayment penalties for consumer finance loans;
- Authorize an applicant for licensure as a consumer finance lender or a licensee to provide a surety bond, certificate of deposit, or letter of credit in the amount of \$25,000, in lieu of the application requirement to prove that they have at least \$25,000 in liquid assets;
- Require a company with at least one currently licensed location to provide a rider or surety bond of at least \$5,000 for each additional license; however, the maximum aggregate requirement for such a company is \$100,000; and
- Make conforming changes.

The bill takes effect October 1, 2022.

II. Present Situation:

The Office of Financial Regulation's (OFR) Division of Consumer Finance (Division) licenses and regulates non-depository financial service entities and individuals, and conducts investigations of licensed entities to determine their compliance with Florida law.¹ One such product regulated by the OFR is consumer finance loans. A consumer finance loan is a loan of money, credit, goods, or interests valued at \$25,000 or less with permitted interest rates of between 18 and 30 percent per year.² This is not a traditional loan made by a bank, credit union,

¹ Fla. Office of Fin. Reg, *Division of Consumer Finance: What We Do*, <https://flofr.gov/sitePages/DivisionOfConsumerFinance.htm> (last visited Jan. 7, 2022).

² Sections 516.01(2) and 516.031(1), F.S. *See also*, Fla. Office of Fin. Reg, *Consumer Finance Companies*, <https://flofr.gov/sitePages/ConsumerFinanceCompanies.htm> (last visited Jan. 7, 2022).

or similar institution. The consumer finance lenders do not accept deposits, and earn their revenue from the fees charged on the loans they make.³

Licensure

Entities that engage in the business of making consumer finance loans must be licensed by the Office pursuant to the Florida Consumer Finance Act, ch. 516, F.S. (“the Act”). Each location of a consumer finance lender must be separately licensed, even if the separate locations are operated by the same business entity.⁴

As of February 16, 2021, there are 170 licensed consumer finance loan companies operating in Florida across a total of 382 locations. The yearly data for licensure under ch. 516, F.S., is contained in the charts below.⁵

Chapter 516, F.S., Licenses by Year										
	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20
Applications Received	175	41	82	116	66	102	55	96	109	100
Applications Approved	137	37	53	113	37	81	36	83	104	98
Active Licenses	347	303	293	349	331	349	338	373	348	390
Renewals & Reactivations	226	0	258	0	312	0	326	0	342	0

A consumer finance lender applicant must submit an application fee of \$625 and an investigation fee of \$200 with its application for licensure.⁶ At the time of application, the applicant must provide evidence that it has liquid assets of at least \$25,000 on deposit with an insured institution.⁷ An applicant’s failure to maintain liquid assets of at least \$25,000 constitutes grounds for denial of an application for licensure, and grounds for revocation or suspension of an active license.⁸ Consumer finance lender licenses granted under the Act must be renewed every two years, at which time the licensee must pay a \$625 biennial license fee.⁹

The Act does not apply to persons doing business under state or federal laws governing banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies.¹⁰

³ Naveen Reddy, *What are the Primary Functions of Finance Companies?* (Nov. 9, 2020), <https://smallbusiness.chron.com/primary-functions-finance-companies-40480.html> (last visited January 7, 2022). Also note, payday lenders are separately regulated pursuant to ch. 560, F.S.

⁴ Sections 516.01(6) and 516.05(3), F.S.

⁵ Office of Financial Regulation, *Active Licenses*, <https://www.flofr.com/sitePages/documents/finregstats.pdf> (last visited January 7, 2022).

⁶ Section 516.03(1), F.S. *See also*, Fla. Office of Fin. Reg., *Application for Consumer Finance Company License*, <https://flofr.gov/sitePages/documents/OFR-516-01.pdf> (last visited January 7, 2022).

⁷ Section 516.03(1), F.S. Fla. Admin. Code R. 69V-160.030(1)(d).

⁸ Section 516.07(1), F.S.

⁹ Sections 516.03(1) and 516.05(1) & (2), F.S.

¹⁰ Section 516.02(4), F.S.

Permissible Interest Rates and Fees

Florida's prohibition on usury generally prohibits¹¹ interest rates in excess of 18 percent per annum simple interest on any loan, advance of money, line of credit, or forbearance.¹² Licensed consumer finance lenders, however, may offer interest rates greater than 18 percent per annum simple interest, up to the following limits, which are based on the amount of the loan's principal:¹³

- 30 percent on the first \$3,000.
- 24 percent on principal above \$3,000 and up to \$4,000.
- 18 percent on principal above \$4,000 and up to \$25,000.

The Act prohibits lenders from directly or indirectly charging borrowers additional fees as a condition to the grant of a loan, except for the following:¹⁴

- Up to \$25 for investigating the credit and character of the borrower;
- A \$25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans, title insurance, and appraisals of real property offered as security;
- Intangible personal property tax on the loan note or obligation, if secured by a lien on real property;
- Documentary excise tax and lawful fees for filing, recording, or releasing an instrument securing the loan;
- The premium for any insurance in lieu of perfecting a security interest otherwise required by the licensee in connection with the loan;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security;
- A delinquency charge of up to \$15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A bad check charge of up to \$20.

A consumer finance lender may offer optional credit property, credit life, and disability insurance at the borrower's expense via a deduction from the principal amount of the loan.¹⁵

A prepayment penalty is not included in the above permissible fees, then impliedly a licensee cannot charge a borrower a prepayment penalty.¹⁶

¹¹ Various lenders and credits licensed or chartered under the laws of the United States or specified chapters of the Florida Statutes may charge interest at the maximum rate of interest permitted by law for similar loans or extensions of credit. *See s. 687.12(1), F.S.*

¹² Sections 687.02 and 687.12, F.S.

¹³ Section 516.031(1), F.S.

¹⁴ Section 516.031(3), F.S.

¹⁵ Section 516.35(2), F.S.

¹⁶ Section 516.031(3), F.S. Fla. Office of Fin. Reg., *Agency Analysis of 2021 House Bill 895*, p. 2 (Feb. 17, 2021) (on file with the Senate Committee on Commerce and Tourism).

III. Effect of Proposed Changes:

Prepayment Penalties

Section 2 amends s. 516.031, F.S., to expressly prohibit prepayment penalties on consumer finance loans. Florida law allows consumer finance lenders to charge certain expressly stated fees. Because the list of statutorily-permissible fees does not include a prepayment penalty, by implication, a consumer finance lender cannot charge a prepayment penalty. The bill makes this prohibition on prepayment penalties explicit.

Asset Requirements in Lender Application

Section 3 creates s. 516.05(10), F.S., to allow a consumer finance lender applicant or licensee to file proof of one of the following with the OFR in lieu of the current \$25,000 liquid asset application requirement:

- A surety bond in the amount of at least \$25,000 that is issued by a bonding company or an insurance company that is authorized to do business in Florida;
- A certificate of deposit in the amount of at least \$25,000 deposited in a financial institution as defined in s. 655.005(1)(i), F.S; or
- An irrevocable letter of credit in the amount of at least \$25,000.

The bill requires lenders with multiple locations to provide a surety bond or rider in the amount of at least \$5,000 for each additional license. The total aggregate amount of a surety bond required for a lender with multiple locations may not exceed \$100,000.

If the licensee's surety bond, certificate of deposit, or letter of credit is reduced below the required amount at any point during the licensee's activity, the licensee must furnish additional instruments to restore its capacity to a sum equal that required by the bill. In the alternative, the licensee may provide an endorsement from the company that issued the original instrument that reinstates the required principal amount.

The applicant must file the surety bond, certificate of deposit, or letter of credit with the OFR, name the OFR as a beneficiary, and ensure that the instrument is payable on a pro rata basis. Although the OFR serves as the named beneficiary, the bill grants both the OFR and any claimant the right to bring an action on the bond, certificate of deposit, or letter of credit in the case of injury to a borrower who was injured by the licensee's wrongful acts. If any such claim is paid, the bonding company, insurance company, or financial institution that held the instrument must notify the OFR within 10 days of the claim.

A licensee cannot cancel its surety bond, certificate of deposit, or letter of credit without providing the OFR with 30 calendar days' notice by certified mail. Following the licensee's cessation of operation in the state, its surety bond, certificate of deposit, or letter of credit must remain in place for a period of 2 years, although the OFR may allow for a reduction in its amount to the extent that the licensee's outstanding loans are reduced.

The bill authorizes the Financial Services Commission to initiate rulemaking to adopt forms and procedures to implement the alternatives to the liquid asset requirement.

Conforming Changes

Sections 1, 4, and 5 amend ss. 516.03, 516.07, 559.952, F.S., respectively, to make conforming changes to reflect the consumer finance loans licensing requirements added by section three of this bill.

Effective Date

Section 6 provides an effective date of October 1, 2022.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

This may allow companies with less liquid assets to become licensed as a consumer finance lender.

C. Government Sector Impact:

The OFR may be required to update Rule 69V-160 of the Florida Administrative Code to reflect changes made by the bill. Additionally, the OFR may need to amend their applications for consumer finance loan company licenses to allow applicants to assert

what amount of liquid assets, surety bond, letter of credit, or certificate of deposit is required of them since their business relation to a previously-licensed entity may reduce their surety bond, letter of credit, or certificate of deposit requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 516.03, 516.031, 516.05, 516.07, and 559.952.

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 Gruters

23-00431-22

2022546__

1 A bill to be entitled
 2 An act relating to consumer finance loans; amending s.
 3 516.03, F.S.; authorizing an applicant for a license
 4 to make and collect loans under the Florida Consumer
 5 Finance Act to provide certain documents in lieu of
 6 evidence of liquid assets; amending s. 516.031, F.S.;
 7 prohibiting a person licensed to make and collect
 8 consumer finance loans from charging prepayment
 9 penalties for loans; amending s. 516.05, F.S.;
 10 authorizing a licensee or an applicant for a license
 11 to make and collect consumer finance loans to provide
 12 a surety bond, certificate of deposit, or letter of
 13 credit in lieu of evidence of liquid assets; providing
 14 requirements for such bonds, certificates of deposit,
 15 and letters of credit; providing rulemaking authority
 16 to the Financial Services Commission; amending s.
 17 516.07, F.S.; modifying grounds for denial of license
 18 or disciplinary action for certain violations of the
 19 Florida Consumer Finance Act; amending s. 559.952,
 20 F.S.; revising exceptions for a licensee during the
 21 Financial Technology Sandbox period; providing an
 22 effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. Subsection (1) of section 516.03, Florida
 27 Statutes, is amended to read:
 28 516.03 Application for license; fees; etc.—
 29 (1) APPLICATION.—Application for a license to make loans

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

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30 under this chapter shall be in the form prescribed by rule of
 31 the commission. The commission may require each applicant to
 32 provide any information reasonably necessary to determine the
 33 applicant's eligibility for licensure. The applicant shall also
 34 provide information that the office requires concerning any
 35 officer, director, control person, member, partner, or joint
 36 venturer of the applicant or any person having the same or
 37 substantially similar status or performing substantially similar
 38 functions or concerning any individual who is the ultimate
 39 equitable owner of a 10-percent or greater interest in the
 40 applicant. The office may require information concerning any
 41 such applicant or person, including, but not limited to, his or
 42 her full name and any other names by which he or she may have
 43 been known, age, social security number, residential history,
 44 qualifications, educational and business history, and
 45 disciplinary and criminal history. The applicant must provide
 46 evidence of liquid assets of at least \$25,000 or documents
 47 satisfying the requirements of s. 516.05(10). At the time of
 48 making such application the applicant shall pay to the office a
 49 nonrefundable biennial license fee of \$625. Applications, except
 50 for applications to renew or reactivate a license, must also be
 51 accompanied by a nonrefundable investigation fee of \$200. An
 52 application is considered received for purposes of s. 120.60
 53 upon receipt of a completed application form as prescribed by
 54 commission rule, a nonrefundable application fee of \$625, and
 55 any other fee prescribed by law. The commission may adopt rules
 56 requiring electronic submission of any form, document, or fee
 57 required by this act if such rules reasonably accommodate
 58 technological or financial hardship. The commission may

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59 prescribe by rule requirements and procedures for obtaining an
60 exemption due to a technological or financial hardship.

61 Section 2. Subsection (6) is added to section 516.031,
62 Florida Statutes, to read:

63 516.031 Finance charge; maximum rates.—

64 (6) PREPAYMENT PENALTIES PROHIBITED.—A licensee may not
65 require a borrower to pay a prepayment penalty for paying all or
66 part of the loan principal before the date on which the payment
67 is due.

68 Section 3. Subsection (10) is added to section 516.05,
69 Florida Statutes, to read:

70 516.05 License.—

71 (10) (a) In lieu of the \$25,000 liquid asset requirement in
72 s. 516.03(1), a licensee or an applicant may provide to the
73 office:

74 1.a. A surety bond in the amount of at least \$25,000,
75 issued by a bonding company or an insurance company authorized
76 to do business in this state.

77 b. A company with at least one currently licensed location
78 must provide to the office a rider or surety bond in the amount
79 of at least \$5,000 for each additional license, issued by a
80 bonding company or an insurance company authorized to do
81 business in this state. However, the aggregate amount of the
82 surety bond required for a company with multiple licenses may
83 not exceed \$100,000.

84 2. Evidence of a certificate of deposit in the amount of at
85 least \$25,000. The certificate of deposit must be deposited in a
86 financial institution as defined in s. 655.005(1) (i).

87 3. An irrevocable letter of credit in the amount of at

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88 least \$25,000.

89 (b) The original surety bond, certificate of deposit, or
90 letter of credit must be filed with the office, and the office
91 must be named as beneficiary. The surety bond, certificate of
92 deposit, or letter of credit must be for the use and benefit of
93 any borrower who is injured by acts of a licensee involving
94 fraud, misrepresentation, or deceit, including willful
95 imposition of illegal or excessive charges, or
96 misrepresentation, circumvention, or concealment of any matter
97 required to be stated or furnished to a borrower, where such
98 acts are in connection with a loan made under this chapter. The
99 office, or any claimant, may bring an action in a court of
100 competent jurisdiction on the surety bond, certificate of
101 deposit, or letter of credit. The surety bond, certificate of
102 deposit, or letter of credit must be payable on a pro rata
103 basis, but the aggregate amount may not exceed the amount of the
104 surety bond, certificate of deposit, or letter of credit.

105 (c) The surety bond, certificate of deposit, or letter of
106 credit may not be canceled by the licensee, bonding or insurance
107 company, or financial institution except upon notice to the
108 office by certified mail. A cancellation may not take effect
109 until 30 calendar days after receipt by the office of the
110 written notice.

111 (d) The bonding or insurance company or financial
112 institution must, within 10 calendar days after it pays a claim,
113 give written notice to the office by certified mail of such
114 payment, with details sufficient to identify the claimant and
115 the claim or judgment paid.

116 (e) If the principal sum of the surety bond, certificate of

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117 deposit, or letter of credit is reduced by one or more
 118 recoveries or payments, the licensee must furnish to the office
 119 a new or additional surety bond, certificate of deposit, or
 120 letter of credit so that the total or aggregate principal sum
 121 equals the amount required under this subsection. Alternatively,
 122 a licensee may furnish an endorsement executed by the bonding or
 123 insurance company or financial institution reinstating the
 124 required principal amount.

125 (f) The required surety bond, certificate of deposit, or
 126 letter of credit must remain in place for 2 years after the
 127 licensee ceases licensed operations in this state. During the 2-
 128 year period, the office may allow for a reduction or elimination
 129 of the surety bond, certificate of deposit, or letter of credit
 130 to the extent the licensee's outstanding consumer finance loans
 131 in this state are reduced.

132 (g) The commission may prescribe by rule forms and
 133 procedures to implement this subsection.

134 Section 4. Paragraph (b) of subsection (1) of section
 135 516.07, Florida Statutes, is amended to read:

136 516.07 Grounds for denial of license or for disciplinary
 137 action.—

138 (1) The following acts are violations of this chapter and
 139 constitute grounds for denial of an application for a license to
 140 make consumer finance loans and grounds for any of the
 141 disciplinary actions specified in subsection (2):

142 (b) Failure to maintain liquid assets of at least \$25,000
 143 or a surety bond, certificate of deposit, or letter of credit in
 144 the amount required by s. 516.05(10) at all times for the
 145 operation of business at a licensed location or proposed

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146 location.

147 Section 5. Paragraph (a) of subsection (4) of section
 148 559.952, Florida Statutes, is amended to read:

149 559.952 Financial Technology Sandbox.—

150 (4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE
 151 REQUIREMENTS.—

152 (a) Notwithstanding any other law, upon approval of a
 153 Financial Technology Sandbox application, the following
 154 provisions and corresponding rule requirements are not
 155 applicable to the licensee during the sandbox period:

156 1. Section 516.03(1), except for the application fee, the
 157 investigation fee, the requirement to provide the social
 158 security numbers of control persons, evidence of liquid assets
 159 of at least \$25,000 or documents satisfying the requirements of
 160 s. 516.05(10), and the office's authority to investigate the
 161 applicant's background. The office may prorate the license
 162 renewal fee for an extension granted under subsection (7).

163 2. Section 516.05(1) and (2), except that the office shall
 164 investigate the applicant's background.

165 3. Section 560.109, only to the extent that the section
 166 requires the office to examine a licensee at least once every 5
 167 years.

168 4. Section 560.118(2).

169 5. Section 560.125(1), only to the extent that the
 170 subsection would prohibit a licensee from engaging in the
 171 business of a money transmitter or payment instrument seller
 172 during the sandbox period.

173 6. Section 560.125(2), only to the extent that the
 174 subsection would prohibit a licensee from appointing an

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175 authorized vendor during the sandbox period. Any authorized
176 vendor of such a licensee during the sandbox period remains
177 liable to the holder or remitter.

178 7. Section 560.128.

179 8. Section 560.141, except for s. 560.141(1)(a)1., 3., 7.-
180 10. and (b), (c), and (d).

181 9. Section 560.142(1) and (2), except that the office may
182 prorate, but may not entirely eliminate, the license renewal
183 fees in s. 560.143 for an extension granted under subsection
184 (7).

185 10. Section 560.143(2), only to the extent necessary for
186 proration of the renewal fee under subparagraph 9.

187 11. Section 560.204(1), only to the extent that the
188 subsection would prohibit a licensee from engaging in, or
189 advertising that it engages in, the selling or issuing of
190 payment instruments or in the activity of a money transmitter
191 during the sandbox period.

192 12. Section 560.205(2).

193 13. Section 560.208(2).

194 14. Section 560.209, only to the extent that the office may
195 modify, but may not entirely eliminate, the net worth, corporate
196 surety bond, and collateral deposit amounts required under that
197 section. The modified amounts must be in such lower amounts that
198 the office determines to be commensurate with the factors under
199 paragraph (5)(c) and the maximum number of consumers authorized
200 to receive the financial product or service under this section.

201 Section 6. This act shall take effect October 1, 2022.

1/10/22

APPEARANCE RECORD

946

Meeting Date

Bill Number or Topic

Commerce & Tourism

Deliver both copies of this form to
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Committee

Amendment Barcode (if applicable)

Name **BD Jogerst**

Phone **850-224-7173**

Address **516 N Adams**

Email **bjogerst@aif.com**

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Associated Industries of Florida

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11,045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flisenate.gov\)](#)

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S-001 (08/10/2021)

1/10/2022

The Florida Senate
APPEARANCE RECORD

SB 946

Meeting Date

Commerce and Tourism

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Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name **Bob McKee**

Phone **(850) 922-4300**

Address **100 S Monroe**

Email **bmckee@fl-counties.com**

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Association of Counties

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1, [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

1/10/22

Meeting Date

946

Bill Number or Topic

Commerce & Tourism

Committee

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Amendment Barcode (if applicable)

Name Phillip Suderman Phone

Address Street Email

City State Zip

Speaking: [] For [x] Against [] Information OR Waive Speaking: [] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[x] I am a registered lobbyist, representing:

Americans for Prosperity

[] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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The Florida Senate

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SB 946
Bill Number or Topic

1/10/2022
Meeting Date

Commerce + Tourism
Committee

Amendment Barcode (if applicable)

Name Lauren Storch

Phone 813-245-2675

Address 601 E. Kennedy Blvd.
Street

Email storchla@hcfi.gov.net

Tampa FL 33601
City State Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:
Hillsborough County Board of County Commissioners

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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Meeting Date

SB 946

Bill Number or Topic

Commerce & Tourism

Committee

Amendment Barcode (if applicable)

Name Senator Steve Geller

Phone 954-357-7575

Address 100 S. Andrews Ave

Street

Email sgeller@broward.org

Ft. Lauderdale FL 33301

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Broward County Board of County Commissioners.

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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Meeting Date

Commerce and Tourism

Committee

946

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Edward Briggs**

Phone **850-933-5994**

Address **235 W. Brandon Blvd. Ste. 640**

Email **edward@rsaconsultingllc.com**

Street

Brandon

FL

33511

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Tampa Hillsborough Film and Digital Media Commission

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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1/10/22

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Commerce & Tourism

Committee

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Bill Number or Topic

Amendment Barcode (if applicable)

Name Carolyn Johnson

Phone 521-1200

Address 136 S Bronough Street

Email cjohnson@flchamber.com

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Chamber of Commerce

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. 511.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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SB 946
Bill Number or Topic

Amendment Barcode (if applicable)

1/10/2022
Meeting Date
Commerced Tourism
Committee

Name John Lux

Phone 407-494-6195

Address 2675 Hilliard Ct.
Street

Email jlux@FilmFlorida.org

Kissimmee FL 34744
City State Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

1-10-22

The Florida Senate
APPEARANCE RECORD

946

Meeting Date

Bill Number or Topic

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Committee

Amendment Barcode (if applicable)

Name Jess M. McCarty, Executive Assistant County Attorney Phone 305-979-7110

Address 111 NW 1st Street, Suite 2800 Email jmm2@miamidade.gov
Street

Miami FL 33128
City State Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Miami-Dade County

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

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.)

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

BILL: SB 946

INTRODUCER: Senator Gruters and others

SUBJECT: Entertainment Industry

DATE: January 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Renner	McKay	CM	Favorable
2.			FT	
3.			AP	

I. Summary:

SB 946 creates the Targeted High Wage Production Program (program) within the Department of Economic Opportunity (DEO) in order to broaden the entertainment industry’s impact, enhance tourism, and encourage more family-friendly productions to be produced in Florida.

The program gives tax credit awards on qualified expenditures to film, television, and digital media production projects that, among other requirements, employ a crew of which at least 60 percent are Florida residents and spend at least 70 percent of their production days in Florida. A project may only receive a tax credit award after it has completed production and its expenditures have been verified by the DEO.

The Revenue Estimating Conference has not yet reviewed the economic impact of this bill.

The bill takes effect upon becoming law.

II. Present Situation:

The Florida Office of Film and Entertainment (OFE) within the DEO develops, markets, promotes, and provides services to the state’s entertainment industry.¹ The Florida Film and Entertainment Advisory Council (council) serves as an advisory body to the DEO and OFE to provide industry insight and expertise related to the state’s entertainment industry.²

Entertainment Industry Sales Tax Exemption

The Entertainment Industry Sales Tax Exemption (tax exemption program), administered by the OFE, offers a sales and use tax certificate of exemption to production companies that create

¹ Section 288.1251, F.S.

² Section 288.1252, F.S.

qualified productions in Florida.³ The tax exemption program offers exemptions from taxes levied under ch. 212, F.S., for the following:

- Lease or rental of real property used as an integral part of the performance of qualified production services, including photography, casting, location scouting, stage support, and wardrobe;⁴
- Fabrication labor when a producer is using his or her own equipment and personnel to produce a qualified motion picture;⁵
- Purchase or lease of motion picture or video equipment and sound recording equipment used in Florida for motion picture or television production or for the production of master tapes and master records;⁶ and
- Purchase, lease, storage, or use of blank master tapes, records, films, or video tapes.⁷

To qualify for these tax exemptions, production companies must submit an application to the Department of Revenue (DOR) which must then be approved by the OFE.⁸ If a company has operated a business in Florida at a permanent address for at least 12 consecutive months, it is eligible for a one-year certificate of exemption. Companies that do not qualify for a one-year certificate are eligible for a 90-day certificate of exemption.

The OFE has estimated that qualified production companies have received \$46.3 million in exemptions between Fiscal Years 2016-2017 and 2018-2019.⁹

Entertainment Industry Financial Incentive Program

The Entertainment Industry Financial Incentive Program (incentive program) was created to encourage the use of Florida as a site for filming, for the digital production of films, and to develop and sustain the workforce and infrastructure for film, digital media, and entertainment production.¹⁰ The incentive program offered transferrable tax credits for qualified expenditures relating to filming and media production activities in Florida, including wages, equipment, rentals, and other expenditures made to Florida vendors for qualified entertainment industry productions. Qualified productions that completed their projects and had their expenses verified by the OFE could receive 20 percent of their qualified expenditures in tax credits, capped at \$8 million in tax credits awarded per project.¹¹ Recipients were permitted to apply their tax credits to their corporate income taxes, sales taxes, or both; alternately, recipients could sell their tax credits on the market or back to the state at a reduced rate.¹²

³ Section 288.1258, F.S.

⁴ Section 212.031(1)(a)9, F.S.

⁵ Section 212.06(1)(b), F.S.

⁶ Section 212.08(5)(f), F.S.

⁷ Section 212.08(12)(a), F.S.

⁸ *Supra* note 3

⁹ Office of Economic and Demographic Research, *Return on Investment for the Entertainment Industry Incentive Programs*, 7 (2021), available at <http://edr.state.fl.us/Content/returnoninvestment/EntertainmentIndustryIncentivePrograms2021.pdf> (last visited Jan. 7, 2022).

¹⁰ Section 288.1254(2), F.S.

¹¹ Section 288.1254(4)(b), F.S.

¹² *Supra* note 9, at 5 and 6.

The incentive program began on July 1, 2010, and sunset on June 30, 2016.¹³

Local Incentive Programs

Several local governments in Florida offer their own film and entertainment production incentives, including:¹⁴

- Miami-Dade County's TV, Film, and Entertainment Production Incentive, a performance-based program that grants up to \$100,000 to productions that spend at least \$1 million in the county if at least 70 percent of the hired vendors are county registered businesses;
- Hillsborough County's rebate program, which offers a rebate of up to 10 percent on expenditures within the county in excess of \$100,000; and
- Duval County's Jacksonville Film and Television Job and Business Creation Program, a performance-based program that offers a 10 percent rebate upon spending at least \$50,000 on qualified expenditures and hiring Duval County residents.

Other States' Incentives

The popularity of entertainment industry incentives has decreased among state legislatures. In 2009, 44 states offered some form of incentive, compared to only 31 states that offered an incentive in 2018.¹⁵ Of states considered competitive to Florida, Georgia offers one of the most generous incentive programs; the state continues to fund its tax credit program at the level of demand by placing no cap on tax credits that can be earned.¹⁶

III. Effect of Proposed Changes:

The bill creates the Targeted High Wage Production Program (program) within the DEO, to be supervised by the Commissioner of Film and Entertainment (commissioner). The program gives tax credit awards to film, television, and digital media production projects that provide high returns on investment and economic benefit to the state in order to broaden the entertainment industry's impact, enhance tourism, and encourage more family-friendly productions to be produced in Florida.

Upon completion, a project is eligible to receive a tax credit award of up to 23 percent of its qualified expenditures, or \$2 million, whichever is less. A project's qualified expenditures must be verified before the project may receive a tax credit award, and awards are subject to repayment if a project submits fraudulent information.

General Requirements

A project is eligible for a tax credit award under the program if it:

¹³ *Id.*

¹⁴ Film Florida, *Local Incentive Programs*, available at <https://filmflorida.org/state-resources/> (last visited Jan. 7, 2022).

¹⁵ National Conference of State Legislatures, *State Film Production Incentives and Programs* (February 2018), available at <https://www.ncsl.org/research/fiscal-policy/state-film-production-incentives-and-programs.aspx> (last visited Jan. 7, 2022).

¹⁶ Georgia Department of Economic Development, *Film, Television, and Digital Entertainment Tax Credit*, available at <https://www.georgia.org/industries/film-entertainment/georgia-film-tv-production/production-incentives> (last visited Jan. 7, 2022).

- Is a film, television, or digital media project that is not obscene, as defined in s. 847.001, F.S.;
- Has projected qualified expenditures of at least \$1.5 million if the project is a film or digital media project, or at least \$500,000 per episode if the project is a television show;
- Employs a crew of which at least 60 percent are Florida residents and at least one is a military veteran;
- Is projected to spend at least 70 percent of its total production days in the state;
- Will not receive a sales tax exemption through the Florida entertainment sales tax exemption established under s. 288.1258, F.S.;
- Makes a good faith effort to use existing Florida providers of infrastructure or equipment and to employ cast and crew who are Florida residents;
- Agrees to include marketing that promotes Florida tourism or Florida's film and entertainment industry on its project, including, at minimum, placing a "Filmed in Florida" or "Produced in Florida" logo in its end credits;
- Permits the commissioner or an affiliate and at least two guests to visit the project's production site; and
- Provides at least five photos of the production to the commissioner for use in promoting Florida as a film, television, or digital media production location or tourist destination.

Application Process

To become a qualified project that is eligible to receive a tax credit award, an applicant must submit an application to the commissioner. There are two application windows for the tax credit award program per fiscal year, the start date of which will be determined by the commissioner. The first window may begin before, and must end no later than 5 business days after, July 1. The second window must end no later than 5 business days after December 1.

An applicant may submit an application for no more than five projects in any one fiscal year. Except in the case of a television pilot and the television series the pilot is based on being certified in the same fiscal year, however, only one project per applicant may be certified within a fiscal year. A proposed project must begin production within 6 months of July 1 if applying in the first application window, or within 6 months of January 1, if applying in the second window.

Application

In addition to an affidavit signed by the applicant that the information on the application is correct and the applicant's Florida tax identification number, applications must include a film, television, or digital media project's:

- Proof of funding;
- Employment information, including employment numbers for Florida residents;
- Line-item budget and detailed qualified expenditures budget;
- Distribution plan to assist in determining the project's potential economic impact in the state;
- Expected total qualified expenditures for wages paid to Florida residents;
- Expected total qualified and nonqualified expenditures in the state;
- Latest script, a production schedule, a Day Out of Days report, and a list of the expected shooting locations, if the project is a film or a pilot episode of a television project;

- Latest scripts for at least two episodes, a production schedule, a Day Out of Days report, and a list of the expected shooting locations, if the project is a television project; and
- Game design document, including a production schedule, if the project is a digital media project.

Scoring Criteria

The commissioner and the council must devise, before the first application window opens, a priority order and scoring system that qualified projects will be evaluated based on. In addition to other criteria the council may deem necessary, the scoring system must include consideration of a project's:

- Overall qualified expenditures;
- Full-time equivalent jobs created;
- Length of employment and wages paid to Florida residents, in addition to pension, health, and welfare benefits;
- Estimated direct and indirect tourism benefit;
- Production in an underutilized area;
- Status as a family-friendly production;
- Employment of a Florida resident as a writer, producer, director, or star;
- Use of a Florida film, television, or digital media school's assistance;
- Leadership team's track record;
- Employment of veterans who are residents of Florida; and
- Employment of graduates of Florida film schools.

Review

Within a reasonable period of time after an application window's last day, the commissioner must complete a review of the applications. The commissioner must then submit to the council a package detailing each applicant's:

- Eligibility for the tax credit award program;
- Expected qualified expenditures;
- Maximum award amount;
- Status as a family friendly project;¹⁷
- Percent of production proposed to occur in an underutilized area,¹⁸ if any; and
- Registration as a corporation in the state.

The commissioner may contact each applicant with questions and gather any additional information as necessary and must notify the council of the date and time the council must convene to score each qualified project.¹⁹ The council may meet in person or by conference call.

¹⁷ The bill defines "family friendly" as having cross-generational appeal; being appropriate in theme, content, and language for a broad family audience; embodying a responsible resolution of issues; not containing any act of drunkenness, illicit drug use, sex, nudity, gratuitous violence, or vulgar or profane language; and not portraying smoking any substance in a positive manner.

¹⁸ The bill defines "underutilized area" as any county within the state other than Broward, Hillsborough, Miami-Dade, Orange, Pinellas, or Seminole County.

¹⁹ A film, television, or media project for which a complete application has been submitted to the commissioner and accepted for consideration and scoring is considered a "qualified project".

Using its scoring system, the council will determine a score for each qualified project; the highest scores must be applied to projects determined to provide the best economic impact and return on investment to the state. The commissioner makes the final decision on certifying or rejecting each qualified project.

Award of Tax Credit Awards and Verification of Expenditures

After the council scores a project, the commissioner must make a determination on whether to certify or reject each project and send a notice of the decision to each applicant. The commissioner must include in a certified project's notice the specific percentage of qualified expenditures for which it is eligible and the maximum award it may receive.

The commissioner must also give the DEO a list of certified projects²⁰ and each project's maximum allowance in order for the DEO to set aside enough money to fund the total maximum tax credit awards that may be awarded. However, when setting aside funds for applications submitted and certified during the first application window, the DEO may not use more than 60 percent of the tax credit awards available for any fiscal year. Any tax credit award funds not set aside for the first application window roll over for use in the next application window. If all awards are set aside for certified projects, additional applications cannot be accepted until more funds become available. If only a partial amount of tax credit awards are available during the application period, the applicant must notify the commissioner in writing of its decision to either accept the partial award as the maximum certified tax credit award it would be eligible for or reject it and drop out of the program. The applicant is not eligible for any additional tax credit awards that may become available after the application period. Funds appropriated to the credit award program are not subject to reversion.

Tax Credit Award Allowances

Under the bill, certified projects may receive a tax credit award of up to 20 percent of its verified qualified expenditures. A project may receive an additional 3 percentage points if 60 percent of the project's production takes place in an underutilized area or if its content is deemed family friendly. A project may not receive more than one bonus, and tax credit awards may not exceed \$2 million.

The bill defines "qualified expenditures" to mean expenditures made in the state made solely for preproduction, production, or postproduction of a qualified project, including:

- Rented or leased goods or services provided by a vendor that is registered with the Department of State or the Department of Revenue, has a physical address in the state other than a post office box, and employs one or more Florida residents on a full-time basis;
- Salaries and wages of up to \$200,000 for Florida residents;
- Rented or leased cars, trucks, and trailers;
- Catered meals and on-set craft service supplies; and
- Rented hotel rooms or other accommodations.

²⁰ A qualified project is considered to be a "certified project" after it has been scored, has been determined to meet or exceed the desired criteria, and has funds allocated to it based on its estimated qualified expenditures.

Qualified expenditures exclude expenditures made before a qualification for the program; expenditures made via Internet transaction; expenditures for airfare; or any costs related to development, marketing, or distribution.

Verification

The commissioner must develop a process to verify a certified project's actual qualified expenditures and bonus eligibility after a certified project has completed its work in the state. The process must require the submission by a project within 120 days after making its last qualified expenditure, but no later than 1 year after its production start date, of:

- Data substantiating each qualified expenditure, as verified by an independent certified public accountant (CPA) licensed by the state;
- Documents verifying the Florida residency of persons represented as such, including an affidavit signed by each resident;
- The project's final script;
- The project's most recent production board and shooting schedule;
- The project's most recent credit list, which shows where the required marketing logo will appear;
- The project's cast list and final crew list with contact information;
- Verification that at least one person employed by the project is a military veteran; and
- An affidavit or written declaration signed under the penalty of perjury that states that all salaries, wages, and other compensation submitted as qualified expenditures are in compliance with the program's requirements.

The verification process must also require a compliance audit, conducted by an independent CPA at the project's expense, to substantiate a project's qualified expenditures. The audit and a report of the audit's findings must be submitted to the commissioner within a reasonable period of time after the commissioner's initial receipt of records from the project.

The commissioner must report to the DEO the final verified amount of actual qualified expenditures a project made and the amount of the total tax credit award owed to a project. The DEO must then determine and approve the final tax credit award amount based on the final verified amount of actual qualified expenditures; notify the DOR that the certified production has met the requirements and of the final amount of the tax credit award; and issue the award within a reasonable period of time.

Disqualification

A certified project may be disqualified and may not receive a tax credit award if it:

- Does not begin principal photography within 30 days before or 90 days after the project's start date;
- Does not abide by the policies, procedures, deadlines, or requirements of the program's verification process;
- Changes the project's start date without notifying the commissioner;
- Submits fraudulent information; or
- Uses the entertainment industry sales tax exemption established under s. 288.1258, F.S.

Applicants that submit fraudulent information are liable for reimbursement of the costs associated with the review, processing, investigation, and prosecution of the fraudulent submission, in addition to a penalty double the tax credit award amount and any criminal penalty assessed.

Election and Transfer of Tax Credits

A certified production company receiving a tax credit award must, at the time the credit is awarded by the DEO, make an irrevocable election to apply the credit against income taxes due, against state sales taxes collected or accrued, or against a combination of the two taxes. The election is binding on any distributee, successor, transferee, or purchaser. The DEO must notify the DOR of any election made.

Tax credits awarded may not be claimed against sales and use tax liabilities or corporate income tax liabilities before July 1, 2022, regardless of when the credits are applied for or awarded.

A certified production company that files a consolidated return as a member of an affiliated group under s. 220.131(1), F.S., may use the credit on a consolidated return basis up to the amount of the tax imposed upon the consolidated group under ch. 220, F.S. Additionally, a certified production company that is not a corporation under s. 220.03(1)(e), F.S., can elect to distribute tax credits to its partners or members in proportion to their distributive income or loss in the taxable year in which the tax credits were awarded.

Tax credits may succeed to a surviving or acquiring entity; however, the tax credits cannot be transferred by the surviving or acquiring entity.

If a certified production company cannot use the entire tax credit in the taxable year or reporting period in which the credit is awarded, any excess amount may be carried forward to a succeeding taxable year or reporting period for a maximum of five years after the date the credit is awarded, after which the credit expires and may not be used again.

A certified production company, or a partner or member of a certified production company that has received a distribution may elect to transfer, in whole or in part, any unused credit amount it was granted. An election to transfer any unused income tax or state sales tax credit amount must be made no later than 5 years after the date the credit is awarded, after which period the credit expires and may not be used. The DEO must notify the DOR of the election and transfer.

The original transferee and any subsequent transferee must be either the certified company's parent company, a subsidiary company, or certain businesses with a certain North American Industry Classification System code.

A certified production company that elects to apply a credit amount against state sales taxes is allowed a one-time transfer of unused credits to one transferee. A certified production company that elects to apply a credit amount against income taxes is allowed a one-time transfer of unused credits to no more than four transferees, and the transfers must occur on the same taxable year.

A transferee receiving the tax credit has the same rights and is subject to the same limitations as the certified production company that was awarded the tax credit, except that a transferee receiving the tax credit is prohibited from subsequently transferring the tax credit.

Relinquishment of Tax Credits

Starting July 1, 2022, a certified production company, or a person who has acquired a tax credit from a production company, can elect to relinquish the tax credit to the DOR in exchange for payment of 85 percent of the amount of the relinquished tax credit. The DOR is authorized to approve the payments.

The DOR is authorized to approve payments to entities relinquishing tax credits. Additionally, the DOR, subject to legislative appropriation, must request the Chief Financial Officer to issue warrants to entities relinquishing tax credits. Payments must be made from the funds from which the proceeds from the taxes against which the tax credits could have been applied according to the irrevocable election made by the certified production company.

Annual Allocation of Tax Credits

The aggregate amount of tax credits allocated to the program must equal, but not exceed, \$20 million each fiscal year beginning in fiscal year 2022-2023 through fiscal year 2025-2026. Any portion of the maximum amount that is not certified by the end of that fiscal year must be carried forward and made available for certification during the following two fiscal years in addition to the amounts available for those fiscal years.

After approval of the final tax credit award amount, an amount equal to the difference between the maximum tax credit award amount previously certified and the approved final tax credit award amount will immediately be available for recertification during the current and following fiscal years, in addition to the amounts available for those fiscal years.

If the total amount of credits applied for during a fiscal year exceeds the amount of credits available for certification in that fiscal year, the excess will be treated as having been applied for on the first day of the next fiscal year in which credits remain available for certification.

Other Provisions

The DEO is granted rulemaking authority to administer the tax credit award program.

The DOR is authorized to conduct audits to verify that tax credits are received, transferred, and applied accordingly to the requirements under the program. If the DOR determines that tax credits are not received, transferred or applied as required, the DOR may pursue recovery of the funds. The DOR is granted rulemaking to administer this provision. Additionally, the DEO is authorized to revoke or modify any written decision qualifying, certifying, or otherwise granting eligibility for tax credits if an applicant submits false statements, records, reports, plans, or other documents. The DEO must immediately notify the DOR in such cases. Forfeited funds must be paid into the General Revenue Fund.

The commissioner must provide an annual report on the program each November 1 identifying the return on investment and economic benefits attributable to the program for the previous fiscal year.

The Targeted High Wage Production Program expires on June 30, 2026, at which point any funds appropriated to the program not earmarked and set aside for certified projects will revert back to the General Revenue Fund. All other remaining funds must revert back to the General Revenue Fund no later than October 31, 2027.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet determined a fiscal impact of the bill.

B. Private Sector Impact:

Qualified film, television, or digital media projects that make qualified expenditures under the program may have their expenses offset by a tax credit award at the culmination of the project. Because qualified expenditures are required, to a certain extent, to be made to Florida vendors, businesses, and residents, these parties may see a positive financial impact.

C. Government Sector Impact:

According to the DOR, the bill will have a non-recurring negative fiscal impact in the amount of \$39,662 for fiscal year 2021-2022 in order to make modifications to the DOR's software system.²¹

Additionally, the DOR may be required to undergo rulemaking to update Rule 12-29 of the Florida Administrative Code.

VI. Technical Deficiencies:

Line 568 of the bill refers to paragraph (4)(g), which does not exist. It is unclear if (4)(g) should be (12)(e).

VII. Related Issues:

The DOR has the following concerns with the bill:²²

- The bill only provides rulemaking authority to the department for the audit verification in paragraph (17)(a); however the department needs broader rulemaking authority to administer other provisions in the bill, particularly the revoked or forfeited tax credits and the amendment of tax returns. Furthermore, the bill does not grant the department emergency rulemaking authority, which it would need since the bill takes effect upon becoming law.
- On lines 532-538, the bill provides that a credit may not be claimed for any tax period beginning before July 1, 2022. However, credits against corporate income/franchise tax do not usually start in the middle of a calendar year, as most corporate taxpayers operate on a calendar year basis. The department suggests changing the date from July 1, 2022 to January 1, 2023.

VIII. Statutes Affected:

This bill creates an undesignated 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.

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

²¹ Florida Department of Revenue, SB 946 analysis (2022). On file with Senate Commerce & Tourism Committee.

²² *Id.*

By Senator Gruters

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1 A bill to be entitled
 2 An act relating to the entertainment industry;
 3 creating the Targeted High Wage Production Program
 4 within the Department of Economic Opportunity under
 5 the supervision of the Commissioner of Film and
 6 Entertainment; providing a purpose for the program;
 7 defining terms; requiring that film, television, and
 8 digital media projects being produced in this state
 9 meet specified criteria to be eligible for tax credit
 10 awards; authorizing applicants to receive awards up to
 11 a specified amount, including bonuses; requiring a
 12 certified project to make a good faith effort to use
 13 existing providers of infrastructure or equipment in
 14 this state and to employ residents of this state;
 15 requiring the commissioner to set application windows;
 16 providing requirements for the department relating to
 17 earmarking and setting aside tax credit awards;
 18 requiring applicants to either accept a partial tax
 19 credit award or reject the partial award and drop out
 20 of the program under certain circumstances; providing
 21 procedures and requirements for applicants; requiring
 22 the commissioner to take specified actions within a
 23 reasonable period of time; requiring the Florida Film
 24 and Entertainment Advisory Council to determine a
 25 score for each qualified project using specified
 26 criteria; requiring the commissioner to determine the
 27 priority order and scoring system of the specified
 28 criteria with assistance from the council and certain
 29 other persons; requiring the council to use specified

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30 criteria; requiring the commissioner to take specified
 31 actions in a timely manner relating to the
 32 certification or rejection of qualified projects;
 33 requiring the department to certify projects and
 34 maximum tax credit awards to qualified applicants and
 35 the executive director of the Department of Revenue;
 36 requiring the commissioner to develop a process to
 37 verify the actual qualified expenditures and bonus
 38 eligibility of a certified project after the project's
 39 work in this state is complete; providing requirements
 40 for the verification process; requiring that the award
 41 be issued within a reasonable period of time upon
 42 approval of the final award amount; requiring that
 43 certain marketing be included with a project;
 44 requiring certified projects to allow certain persons
 45 to visit the production site upon request of the
 46 commissioner and after providing the commissioner with
 47 reasonable notice; specifying that the commissioner or
 48 his or her affiliate is not required to visit the
 49 production site; requiring the department to
 50 disqualify a project under certain circumstances;
 51 providing for liability and imposing civil and
 52 criminal penalties for an applicant that submits
 53 fraudulent information; requiring certified production
 54 companies to make elections relating to tax credit
 55 awards; providing requirements and prohibitions
 56 relating to tax credits; authorizing certain entities
 57 to transfer tax credits under certain circumstances;
 58 providing requirements and prohibitions relating to

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59 transferring tax credits; authorizing certain entities
 60 to relinquish tax credits for payments; providing
 61 requirements and prohibitions relating to
 62 relinquishing tax credits; providing for the annual
 63 allocation of tax credits for the program; authorizing
 64 the department to adopt rules; authorizing the
 65 Department of Revenue to conduct certain examinations
 66 and audits and pursue recovery of tax credits;
 67 authorizing the Department of Revenue to adopt rules;
 68 authorizing the Department of Economic Opportunity to
 69 revoke or modify certain decisions relating to tax
 70 credit eligibility under certain circumstances;
 71 requiring the department to notify the Department of
 72 Revenue of any such revocation or modification;
 73 requiring applicants to notify the Department of
 74 Revenue of any change in tax credit claimed; providing
 75 for forfeiture of tax credits; requiring the
 76 commissioner to provide an annual report to the
 77 Governor and the Legislature on a specified date;
 78 providing that certain appropriated funds are not
 79 subject to reversion; providing for the expiration of
 80 the program; providing an effective date.

81
 82 Be It Enacted by the Legislature of the State of Florida:

83
 84 Section 1. The Targeted High Wage Production Program.-

85 (1) CREATION AND PURPOSE OF PROGRAM.-The Targeted High Wage
 86 Production Program is created within the Department of Economic
 87 Opportunity under the supervision of the Commissioner of Film

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88 and Entertainment.

89 (a) The purpose of the performance-based program is to
 90 boost this state's economic prosperity by:

91 1. Creating high-paying jobs in an industry with an average
 92 salary 60 percent higher than the state average;

93 2. Enhancing tourism by choosing projects that encourage
 94 tourists to visit this state;

95 3. Broadening the film, television, and digital media
 96 industry's impact on the state by offering a modest bonus for
 97 projects that take place in underutilized areas; and

98 4. Encouraging more family-friendly productions to be
 99 produced in this state.

100 (b) This purpose shall be accomplished by providing a
 101 limited tax credit award to projects that provide the highest
 102 return on investment and economic benefit to the state which is
 103 not awardable until after a project has made its expenditures in
 104 this state and the expenditures have been verified by the
 105 department.

106 (2) DEFINITIONS.-As used in this act, unless the context
 107 otherwise requires, the term:

108 (a) "Certified project" means a qualified project that has
 109 been scored by the council, has been determined by the
 110 commissioner to meet or exceed the desired economic impact and
 111 other criteria of the program, and has tax credits allocated to
 112 it based on the project's estimated qualified expenditures. The
 113 term does not include a project that may be considered obscene
 114 as defined in s. 847.001, Florida Statutes.

115 (b) "Commissioner" means the Commissioner of Film and
 116 Entertainment as described in s. 288.1251(1)(b), Florida

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117 Statutes.

118 (c) "Council" means the Florida Film and Entertainment
 119 Advisory Council.

120 (d) "Department" means the Department of Economic
 121 Opportunity.

122 (e) "Digital media project" means a commercial video game,
 123 including an educational video game, which includes at least 30
 124 minutes of game play time.

125 (f) "Family friendly" means having cross-generational
 126 appeal; being appropriate in theme, content, and language for a
 127 broad family audience; embodying a responsible resolution of
 128 issues; not containing any act of drunkenness, illicit drug use,
 129 sex, nudity, gratuitous violence, or vulgar or profane language;
 130 and not portraying smoking any substance in a positive manner.

131 (g) "Film project" means a theatrical, direct-to-video,
 132 television, cable, Internet, streaming service, or animated
 133 narrative motion picture at least 75 minutes in length. The term
 134 does not include a project deemed by the office to have content
 135 that is obscene, as defined in s. 847.001, Florida Statutes.

136 (h) "Florida resident" means a person who has a valid
 137 Florida driver license or Florida identification card issued
 138 under s. 322.051, Florida Statutes, and has signed an affidavit
 139 confirming residency.

140 (i) "Office" means the Office of Film and Entertainment
 141 within the department.

142 (j) "Principal photography" means, for a film project or
 143 television project, the filming of major or significant
 144 components of the project which involve lead actors, or, for a
 145 digital media project, the period of time during which the work

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146 of the majority of the crew is dedicated solely to the project.

147 (k) "Production start date" means:

148 1. For film and television projects, the start date of
 149 principal photography, as listed in the project's application.

150 2. For digital media projects, the start date of final
 151 storyboards or a later date as specified in the project's
 152 application.

153 (l) "Qualified expenditures" means:

154 1. Expenditures made in this state and paid to residents of
 155 this state or to businesses registered in this state and made
 156 solely for preproduction, production, or postproduction of the
 157 qualified project, including the following:

158 a. Rented or leased goods or services provided by a vendor
 159 or supplier in this state which is registered with the
 160 Department of State or the Department of Revenue; which has a
 161 physical address in this state other than a post office box; and
 162 which employs one or more Florida residents on a full-time
 163 basis. The term does not include rebilled goods or services
 164 provided by an in-state company from out-of-state vendors or
 165 suppliers. When services provided by the vendor or supplier
 166 include personal services or labor, only personal services or
 167 labor provided by Florida residents qualify.

168 b. Payments to Florida residents in the form of salary or
 169 wages up to a maximum of \$200,000 per resident, including
 170 amounts paid per diem to a worker who is a Florida resident and
 171 amounts paid through payroll service companies, and benefits
 172 such as pension, health, and welfare payments for technical and
 173 production crews, directors, producers, and performers. For
 174 purposes of this sub-subparagraph, payments do not include wages

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175 for executives, legal staff, or other corporate staff who are
 176 not employed to work solely on the project.

177 c. Rented or leased cars, trucks, and trailers, if the
 178 vehicles or trailers are registered with the Florida Department
 179 of Highway Safety and Motor Vehicles.

180 d. Purchases of catered meals and on-set craft service
 181 supplies.

182 e. Rented hotel rooms or other accommodations for cast or
 183 crew.

184 2. The term does not include expenditures not expressly
 185 identified in subparagraph 1., expenditures made before
 186 qualification for the program, expenditures made via Internet
 187 transactions, expenditures for airfare, or any costs associated
 188 with development, marketing, or distribution.

189 3. For the purposes of a digital media project, the term
 190 includes only those qualified expenditures made within 9 months
 191 after the project's first qualified expenditure.

192 (m) "Qualified project" means a film project, television
 193 project, or digital media project that meets the application
 194 requirements and for which a complete application for the
 195 program has been submitted to the commissioner and accepted for
 196 consideration by the office. The term does not apply to any
 197 company doing subsidiary work on a certified production,
 198 including, but not limited to, postproduction, visual effects,
 199 and music. The term does not include a weather or market
 200 program; a sporting event or a sporting event broadcast; a gala;
 201 an awards show; a production that solicits funds; a home
 202 shopping program; a political program; a gambling-related
 203 project or production; a concert production; a news or current

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204 events show; a sports or sports recap show; a pornographic
 205 production; or any production deemed obscene under chapter 847,
 206 Florida Statutes.

207 (n) "Television project" means a television pilot program
 208 or a television series that:

209 1. Is a scripted drama, comedy, animation, or reality show;
 210 2. Has a runtime to fit, at a minimum, a 30-minute program
 211 slot, but no longer than required to fit a 60-minute program
 212 slot; and

213 3. If the television project is a television series, has a
 214 minimum of 7 episodes, or, if the television project is a
 215 reality program or series, has at least 10 episodes.

216 4. Does not include content that is deemed by the office to
 217 be obscene, as defined in s. 847.001, Florida Statutes.

218 (o) "Underutilized area" means any county in this state
 219 other than Broward County, Hillsborough County, Miami-Dade
 220 County, Orange County, Pinellas County, or Seminole County.

221 (3) TAX CREDIT AWARD ELIGIBILITY.—

222 (a) To be eligible for a tax credit award, an applicant
 223 must be registered to do business in this state and must be
 224 producing a project that:

225 1. Has projected qualified expenditures of:

226 a. For a film project, at least \$1.5 million;
 227 b. For a television project, at least \$500,000 per episode;

228 or

229 c. For a digital media project, at least \$1.5 million;

230 2. Is projected to employ a crew, including cast and stand-
 231 ins, but not including extras, also known as background
 232 performers, of which at least 60 percent will be residents of

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233 this state and at least one member will be a military veteran;

234 3. Is projected to spend at least 70 percent of its total
 235 production days in this state; and

236 4. Will not receive a sales tax certificate of exemption
 237 pursuant to s. 288.1258, Florida Statutes, for the project.

238 (b) A certified project may receive a tax credit award in
 239 the amount of up to 20 percent of its verified qualified
 240 expenditures. A bonus may be earned in the amount of an
 241 additional 3 percentage points if 60 percent of the project's
 242 production in this state will take place in an underutilized
 243 area or if its content is deemed family friendly. A certified
 244 project may not receive more than one bonus, and the total that
 245 may be awarded under any tax credit award may not exceed 23
 246 percent of its verified qualified expenditures or \$2 million,
 247 whichever is less.

248 (c) A certified project must make a good faith effort to
 249 use existing providers of infrastructure or equipment in this
 250 state, when available, including providers of camera gear, grip
 251 and lighting equipment, vehicles, and postproduction services,
 252 and to employ residents of this state as cast and crew.

253 (4) APPLICATION WINDOWS.—Applications must be accepted for
 254 the program during two application windows each fiscal year. The
 255 commissioner shall set a start date for both application
 256 windows. However, the first application window may begin before
 257 the start of the fiscal year and must end no later than 5
 258 business days after July 1, and the second application window
 259 must end no later than 5 business days after December 1.

260 (a) The department may not earmark or set aside more than
 261 60 percent of any tax credit awards available for any given

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262 fiscal year for applications submitted during each fiscal year's
 263 first application window. Tax credit award funds not earmarked
 264 or set aside for applicants applying during one application
 265 window roll over for use in the next application window.

266 (b) If all tax credit awards are earmarked and set aside
 267 for certified projects, additional applications may not be
 268 accepted until more funds become available for the program.

269 (c) If during any application period only a partial amount
 270 of tax credit awards are available to certify to a project
 271 compared to the full amount for which it would be eligible, the
 272 applicant must elect to either accept the partial tax credit
 273 award as the maximum certified tax credit award it would be
 274 eligible for or reject it and drop out of the program. The
 275 applicant must notify the commissioner in writing of its
 276 decision before the application period ends. If additional tax
 277 credit awards become available after the application period, the
 278 project of an applicant that accepted a partial tax credit award
 279 is not eligible for any such awards.

280 (5) APPLICATION PROCESS.—

281 (a) A company that plans to produce a film, television, or
 282 digital project in this state may submit an application to the
 283 commissioner during one of the two application windows. Each
 284 fiscal year, a project must have a production start date that is
 285 within 6 months after July 1 if applying in the first window or
 286 within 6 months after January 1 if applying in the second
 287 window.

288 (b) An applicant or its parent company may submit an
 289 application for no more than five projects in any single fiscal
 290 year. However, except in the case of a television pilot and the

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291 television series the pilot is based on being certified within
 292 the same fiscal year, only one project per applicant may be
 293 certified within a fiscal year.

294 (c) The application must include:

295 1. Proof of funding;

296 2. Project-related employment information, including
 297 employment numbers for residents of this state;

298 3. A full line-item budget and a detailed qualified
 299 expenditures budget;

300 4. A detailed distribution plan to assist with determining
 301 the potential economic impact of the project in this state;

302 5. The applicant's expected total qualified expenditures
 303 for wages paid to residents of this state;

304 6. The applicant's expected total qualified expenditures
 305 and nonqualified expenditures in this state;

306 7. For a film project, the latest script, a production
 307 schedule, a Day Out of Days report, and a list of the expected
 308 shooting locations;

309 8. For a digital media project, a detailed game design
 310 document, including a production schedule;

311 9. For a television project that is a pilot, a final
 312 script, a production schedule, a Day Out of Days report, and a
 313 list of the expected shooting locations;

314 10. For a television project that is a series, the latest
 315 scripts for at least two episodes and a production schedule, a
 316 Day Out of Days report, and a list of the expected shooting
 317 locations for the first episode;

318 11. An affirmation signed by the applicant that the
 319 information on the application is correct; and

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320 12. The applicant's Florida tax identification number.

321 (d) Within a reasonable period of time after the last
 322 business day of each application window, the commissioner shall:

323 1. Review all applications submitted during the application
 324 window and determine the eligibility of each applicant;

325 2. Determine each applicant's expected qualified
 326 expenditures;

327 3. Determine the maximum tax credit each qualified
 328 applicant may be awarded;

329 4. Determine whether a qualified applicant's project is
 330 deemed family friendly;

331 5. Determine the percentage of the applicant's production,
 332 if any, which is proposed to occur in an underutilized area;

333 6. Determine whether each qualified applicant is a
 334 corporation registered in this state;

335 7. Contact each applicant with any questions, as necessary;

336 8. Gather any additional information needed to address the
 337 criteria specified under subsection (6);

338 9. Assemble a package containing the details of each
 339 qualified applicant's project and deliver it to each council
 340 member; and

341 10. Give notice to the council of the date and time when
 342 the council must convene to assess each qualified project. The
 343 council may meet in person or by conference call.

344 (e) The council shall determine a score for each qualified
 345 project using the criteria specified under subsection (6), with
 346 the highest scores going to projects determined to provide the
 347 best economic impact and return on investment to this state.

348 (6) CRITERIA FOR DETERMINING PROJECT SCORES.-

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349 (a) The priority order and scoring system of the criteria
 350 specified in paragraph (b) must be determined by the
 351 commissioner, with assistance from the council and other
 352 persons, as determined by the commissioner, before the first
 353 application window.

354 (b) The council shall use, at a minimum, the following
 355 criteria in determining a qualified project's score:

- 356 1. The amount of the project's overall qualified
 357 expenditures.
- 358 2. The amount of the project's Florida-resident wages.
- 359 3. The number of full-time equivalent jobs created by the
 360 project.
- 361 4. Whether the project provides pension, health, and
 362 welfare benefits to its workforce in this state.
- 363 5. The estimated direct and indirect tourism benefit of the
 364 project, based on the submitted distribution plan.
- 365 6. The duration of Florida-resident employment for the
 366 project.
- 367 7. What percentage of the project, if any, is being made in
 368 an underutilized area.
- 369 8. Whether the project is family friendly.
- 370 9. Whether the project has a Florida-resident writer,
 371 producer, director, or star.
- 372 10. Whether a Florida film, television, or digital media
 373 school will assist with the production of the project.
- 374 11. Whether the project leadership team has a successful
 375 track record.
- 376 12. The number of Florida-resident veterans the project
 377 will hire.

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378 13. The number of Florida film school graduates the project
 379 will hire as cast or crew.

380 (7) NOTIFICATION OF DECISION.—

381 (a) After the council determines a project's score, the
 382 commissioner shall, in a timely manner:

383 1. Make a final determination on certifying or rejecting
 384 each qualified project, giving consideration to the council's
 385 scoring.

386 2. Provide a list of certified projects to the department
 387 which includes the associated maximum tax credit that each
 388 respective applicant may be awarded.

389 3. Notify each certified project of the specified
 390 percentage of qualified expenditures for which it is eligible
 391 and the maximum tax credit it may be awarded.

392 4. Provide a notice of rejection to each rejected
 393 applicant; however, the failure to notify an applicant of its
 394 rejection does not deem the applicant's project a certified
 395 project.

396 (b) Based on the final determination of the commissioner,
 397 the department shall certify the project and its maximum tax
 398 credit award, if any, to the applicant and to the executive
 399 director of the Department of Revenue.

400 (8) VERIFICATION PROCESS.—

401 (a) The commissioner shall develop a process to verify the
 402 actual qualified expenditures and bonus eligibility of a
 403 certified project after the project's work in this state is
 404 complete. The process must require all of the following:

405 1. Submission to the commissioner of at least all of the
 406 following information, electronically or in hard copy, or both,

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407 by each certified project:
 408 a. Data substantiating each qualified expenditure which has
 409 been audited by an independent certified public accountant
 410 licensed in this state, as required under subparagraph 4.;
 411 b. Copies of documents verifying residency of persons
 412 represented as being residents of this state, including an
 413 affidavit signed by each resident;
 414 c. The final script;
 415 d. The most recent production board and shooting schedule;
 416 e. The most recent credit list showing where the credits
 417 required under subsection (9) will appear;
 418 f. A cast list and a final crew list with contact
 419 information;
 420 g. For any veterans employed by the project, a copy of at
 421 least one DD Form 214, as issued by the United States Department
 422 of Defense, or another acceptable form of identification as
 423 specified by the Department of Veterans' Affairs; and
 424 h. Any other information determined necessary by the
 425 commissioner.
 426 2. Signing, and submission to the commissioner, by the lead
 427 producer or studio executive in charge of the certified project,
 428 of an affidavit or a written declaration signed under the
 429 penalty of perjury as specified in s. 92.525, Florida Statutes,
 430 stating that all salaries, wages, and other compensation
 431 submitted as qualified expenditures are in compliance with this
 432 section.
 433 3. The information and affidavit required by subparagraphs
 434 1. and 2. must be received by the commissioner within 120 days
 435 after the certified project has made its last qualified

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436 expenditure but no later than 1 year after its production start
 437 date. Pursuant to the rules adopted by the department, the
 438 commissioner may, upon a showing of good cause, grant a one-time
 439 extension of this deadline.
 440 4. A compliance audit conducted at the certified project's
 441 expense by an independent certified public accountant who is a
 442 resident of this state to substantiate the qualified
 443 expenditures, and submission of a report of the audit findings,
 444 including substantiating data, to the commissioner within a
 445 reasonable period of time after the initial receipt of records
 446 from the certified project.
 447 (b) The commissioner shall review the report and data
 448 required under paragraph (a) within a reasonable period of time
 449 after receipt of the report and data and shall report to the
 450 department the final verified amount of actual qualified
 451 expenditures the certified project made and the amount of the
 452 total tax credit award due the project.
 453 (c) The department shall determine and approve the final
 454 tax credit award amount to each certified applicant based on the
 455 final verified amount of actual qualified expenditures and shall
 456 notify the executive director of the Department of Revenue in
 457 writing that the certified production has met the requirements
 458 of the incentive program and of the final amount of the tax
 459 credit award. The final tax credit award amount may not exceed
 460 the maximum tax credit award amount certified under subparagraph
 461 (7) (b). The tax credit must be issued within a reasonable period
 462 of time.
 463 (9) MARKETING AND TOURISM REQUIREMENT.—
 464 (a) The commissioner shall ensure, as a condition of

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465 receiving a tax credit under this section, that a certified
 466 project includes marketing promoting this state as a tourist
 467 destination or film and entertainment production destination. At
 468 a minimum, the marketing must include placement in the end
 469 credits of a "Filmed in Florida" or "Produced in Florida" logo,
 470 with size and placement commensurate to other logos included in
 471 the end credits, or, if no logos are used, the statement "Filmed
 472 in Florida" or "Produced in Florida" or a similar statement
 473 approved by the commissioner and the logo of the local film
 474 office, if applicable. A digital media project must also supply
 475 a 5-second or longer animated logo with "Produced in Florida" or
 476 other text, including the logo of the local digital media
 477 office, if applicable, as preapproved by the commissioner, in a
 478 manner easily seen by a consumer of the digital media project.
 479 The commissioner shall provide the logos for the purposes
 480 specified in this paragraph, not including the logo for a local
 481 office, which must be provided by the applicable office.

482 (b) A certified project must allow the commissioner, or an
 483 affiliate, and a minimum of two guests to visit the production
 484 site upon the request of the commissioner. Upon such request,
 485 the certified project must give the commissioner reasonable
 486 notice of a visit date and time that is acceptable to the
 487 production. The commissioner or an affiliate is not required to
 488 make a visit to the set.

489 (c) A certified project must provide at least five
 490 preapproved photos of the production to the commissioner and
 491 grant the commissioner free use of the photos in promoting this
 492 state as a film, television, or digital media production
 493 location or tourist destination.

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494 (10) DISQUALIFICATION.—The department shall disqualify a
 495 certified project and may not issue a tax credit award to the
 496 project if the project:

497 (a) Does not begin principal photography in this state
 498 within the period beginning 30 days before and ending 90 days
 499 after the project's listed production start date. Pursuant to
 500 department rule, the commissioner may, upon a showing of good
 501 cause, grant a one-time extension of this deadline;

502 (b) Does not abide by the policies, procedures, deadlines,
 503 or requirements of the application verification process;

504 (c) Does not notify the commissioner of any change in the
 505 production start date before commencing production;

506 (d) Submits fraudulent information; or

507 (e) Uses the state sales tax exemption established under s.
 508 288.1258, Florida Statutes.

509 (11) FRAUD.—An applicant that submits fraudulent
 510 information under this section is liable for reimbursement of
 511 the reasonable costs and fees associated with the review,
 512 processing, investigation, and prosecution of the fraudulent
 513 submission. An applicant that obtains a tax credit award under
 514 this section through a claim that is fraudulent shall reimburse
 515 the program for the tax credit awarded and reasonable costs and
 516 fees associated with the review, processing, investigation, and
 517 prosecution of the fraudulent claim and shall pay a civil
 518 penalty in an amount equal to double the tax credit amount and
 519 any criminal penalty assessed against the applicant.

520 (12) ELECTION AND DISTRIBUTION OF TAX CREDITS.—

521 (a) A certified production company receiving a tax credit
 522 award under this section shall, at the time the credit is

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523 awarded by the department after production is completed and all
 524 requirements to receive a credit award have been met, make an
 525 irrevocable election to apply the credit against taxes due under
 526 chapter 220, Florida Statutes; against state taxes collected or
 527 accrued under chapter 212, Florida Statutes; or against a stated
 528 combination of the two taxes. The election is binding upon any
 529 distributee, successor, transferee, or purchaser. The department
 530 shall notify the Department of Revenue of any election made
 531 pursuant to this paragraph.

532 (b) A qualified production company is eligible for tax
 533 credits against its sales and use tax liabilities and corporate
 534 income tax liabilities as provided in this section. However, tax
 535 credits awarded under this section may not be claimed against
 536 sales and use tax liabilities or corporate income tax
 537 liabilities for any tax period beginning before July 1, 2022,
 538 regardless of when the credits are applied for or awarded.

539 (c) If the certified production company cannot use the
 540 entire tax credit in the taxable year or reporting period in
 541 which the credit is awarded, any excess amount may be carried
 542 forward to a succeeding taxable year or reporting period. A tax
 543 credit applied against taxes imposed under chapter 212, Florida
 544 Statutes, or chapter 220, Florida Statutes, may be carried
 545 forward for a maximum of 5 years after the date the credit is
 546 awarded, after which the credit expires and may not be used.

547 (d) A certified production company that files a
 548 consolidated return as a member of an affiliated group under s.
 549 220.131(1), Florida Statutes, may use the credit on a
 550 consolidated return basis up to the amount of the tax imposed
 551 upon the consolidated group under chapter 220, Florida Statutes.

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552 (e) A certified production company that is not a
 553 corporation as defined in s. 220.03(1)(e), Florida Statutes, may
 554 elect to distribute tax credits awarded under this section to
 555 its partners or members in proportion to their respective
 556 distributive income or loss in the taxable year in which the tax
 557 credits were awarded.

558 (f) Tax credits available under this section to a certified
 559 production company may succeed to a surviving or acquiring
 560 entity subject to the same conditions and limitations as
 561 described in this section; however, the credits may not be
 562 transferred by the surviving or acquiring entity.

563 (13) TRANSFER OF TAX CREDITS.—

564 (a) Upon application to the Office of Film and
 565 Entertainment and approval by the department, a certified
 566 production company, or a partner or member of a certified
 567 production company, that has received a distribution under
 568 paragraph (4)(g) may elect to transfer, in whole or in part, any
 569 unused credit amount granted under this section. An election to
 570 transfer any unused tax credit amount under chapter 212, Florida
 571 Statutes, or chapter 220, Florida Statutes, must be made no
 572 later than 5 years after the date the credit is awarded, after
 573 which period the credit expires and may not be used. The
 574 department shall notify the Department of Revenue of the
 575 election and transfer. The original transferee and any
 576 subsequent transferees must be either the certified company's
 577 parent company or a subsidiary company or a business with NAICS
 578 code 512110, 512120, 512191, 512199, 512240, 512250, 512290,
 579 515120, 515210, 517410, 541922, 711130, 711410, or 711510.

580 (b) A certified production company that elects to apply a

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581 credit amount against taxes remitted under chapter 212, Florida
 582 Statutes, is allowed a one-time transfer of unused credits to
 583 one transferee. A certified production company that elects to
 584 apply a credit amount against taxes due under chapter 220,
 585 Florida Statutes, is allowed a one-time transfer of unused
 586 credits to no more than four transferees, and such transfers
 587 must occur in the same taxable year.

588 (c) A transferee receiving a tax credit has the same rights
 589 and is subject to the same limitations as the certified
 590 production company awarded the tax credit except that a
 591 transferee receiving a tax credit may not subsequently transfer
 592 the tax credit.

593 (14) RELINQUISHMENT OF TAX CREDITS.—

594 (a) Beginning July 1, 2022, a certified production company,
 595 or any person who has acquired a tax credit from a certified
 596 production company, may elect to relinquish the tax credit to
 597 the Department of Revenue in exchange for payment of 85 percent
 598 of the amount of the relinquished tax credit.

599 (b) The Department of Revenue may approve payments to
 600 entities relinquishing tax credits pursuant to this subsection.

601 (c) Subject to legislative appropriation, the Department of
 602 Revenue shall request the Chief Financial Officer to issue
 603 warrants to entities relinquishing tax credits. Payments under
 604 this subsection shall be made from the funds from which the
 605 proceeds from the taxes against which the tax credits could have
 606 been applied pursuant to the irrevocable election made by the
 607 certified production company under subsection (4) are deposited.

608 (15) ANNUAL ALLOCATION OF TAX CREDITS.—

609 (a) The aggregate amount of tax credits allocated to the

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610 program shall equal, but not exceed:

611 1. For fiscal year 2022-2023, \$20 million.

612 2. For fiscal year 2023-2024, \$20 million.

613 3. For fiscal year 2024-2025, \$20 million.

614 4. For fiscal year 2025-2026, \$20 million.

615 (b) Any portion of the maximum amount of tax credits
 616 established per fiscal year in paragraph (a) which is not
 617 certified by the end of that fiscal year shall be carried
 618 forward and made available for certification during the
 619 following 2 fiscal years in addition to the amounts available
 620 under paragraph (a) for those fiscal years.

621 (c) Upon approval of the final tax credit award amount
 622 pursuant to paragraph (8)(c), an amount equal to the difference
 623 between the maximum tax credit award amount previously certified
 624 under subsection (7) and the approved final tax credit award
 625 amount shall immediately be available for recertification during
 626 the current and following fiscal years in addition to the
 627 amounts available under paragraph (a) for those fiscal years.

628 (d) If the total amount of credits applied for during a
 629 fiscal year pursuant to subsection (5) exceeds the amount of
 630 credits available for certification in that fiscal year, such
 631 excess shall be treated as having been applied for on the first
 632 day of the next fiscal year in which credits remain available
 633 for certification.

634 (16) RULES, POLICIES, AND PROCEDURES.—The department may
 635 adopt rules and develop policies and procedures to implement and
 636 administer this section, including, but not limited to, rules
 637 specifying requirements for the application and approval
 638 process, records required for substantiation for tax credits,

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639 the manner and form of documentation required to claim tax
 640 credits awarded, transferred, or relinquished under this
 641 section, marketing requirements for tax credit recipients, and
 642 the examination and audit procedures required to administer this
 643 section.

644 (17) AUDIT AUTHORITY; REVOCATION AND FORFEITURE OF TAX
 645 CREDITS; FRAUDULENT CLAIMS.—

646 (a) The Department of Revenue may conduct examinations and
 647 audits as provided in s. 213.34 to verify that tax credits under
 648 this section are received, transferred, and applied according to
 649 the requirements of this section. If the Department of Revenue
 650 determines that tax credits are not received, transferred, or
 651 applied as required by this section, it may, in addition to the
 652 remedies provided in this subsection, pursue recovery of such
 653 funds pursuant to the laws and rules governing the assessment of
 654 taxes. The Department of Revenue may adopt rules to administer
 655 this paragraph.

656 (b) The department may revoke or modify any written
 657 decision qualifying, certifying, or otherwise granting
 658 eligibility for tax credits under this section if it is
 659 discovered that the tax credit applicant submitted any false
 660 statement, representation, or certification in any application,
 661 record, report, plan, or other document filed in an attempt to
 662 receive tax credits under this section. The department shall
 663 immediately notify the Department of Revenue of any revoked or
 664 modified orders affecting previously granted tax credits.
 665 Additionally, the applicant must notify the Department of
 666 Revenue of any change in its tax credit claimed.

667 (c) A determination by the Department of Revenue, as a

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668 result of an audit pursuant to paragraph (a) or from information
 669 received from the Office of Film and Entertainment, that an
 670 applicant received tax credits pursuant to this section to which
 671 the applicant was not entitled is grounds for forfeiture of
 672 previously claimed and received tax credits. The applicant is
 673 responsible for returning forfeited tax credits to the
 674 Department of Revenue, and such funds shall be paid into the
 675 General Revenue Fund of the state. Tax credits purchased in good
 676 faith are not subject to forfeiture unless the transferee
 677 submitted fraudulent information in the purchase or failed to
 678 meet the requirements in subsection (13).

679 (18) ANNUAL REPORT.—Each November 1, the commissioner shall
 680 provide an annual report on the program for the previous fiscal
 681 year to the Governor, the President of the Senate, and the
 682 Speaker of the House of Representatives. The report must
 683 identify the return on investment associated with, and economic
 684 benefits to this state attributable to, the program.

685 (19) FUNDS NOT SUBJECT TO REVERSION.—Notwithstanding s.
 686 216.301, Florida Statutes, funds appropriated for this purpose
 687 are not subject to reversion.

688 (20) EXPIRATION.— The Targeted High Wage Production Program
 689 expires June 30, 2026, at which point all remaining appropriated
 690 funds not earmarked and set aside for certified projects must
 691 revert to the General Revenue Fund. All remaining appropriated
 692 funds must revert to the General Revenue Fund no later than
 693 October 31, 2027.

694 Section 2. This act shall take effect upon becoming a law.

CourtSmart Tag Report

Room: SB 110

Caption: Commerce and Tourism

Case No.:

Judge:

Type:

Started: 1/10/2022 4:02:00 PM

Ends: 1/10/2022 4:30:15 PM

Length: 00:28:16

4:01:59 PM Chair Hooper calls meeting to order
4:02:00 PM Roll Call by Committee Administrative Assistant
4:02:41 PM Quorum present
4:02:47 PM Chair Hooper gives opening comments
4:03:17 PM Tab 4 - SB 946 by Senator Gruters
4:03:35 PM Senator Gruters explains the bill
4:04:21 PM No questions
4:04:35 PM BD Jogerst, Associated Industries of Florida, waives in support of bill
4:04:40 PM Bob McKee, Florida Association of Counties, waives in support of the bill
4:04:42 PM Phillip Suderman, Americans for Prosperity, speaking against the bill
4:07:11 PM Lauren Starch, Hillsborough County Board of County Commissioners, waives in support of the bill
4:07:20 PM Senator Steve Geller, Broward County Board of County Commissioners, speaking for the bill
4:10:23 PM Edward Briggs, Tampa Hillsborough Film and Digital Media Commission, waives in support of the bill
4:10:32 PM Carolyn Johnson, Florida Chamber of Commerce, waives in support of the bill
4:10:44 PM John Lux, Film Florida, speaking in favor of the bill
4:13:47 PM Jess M. McCarty, Executive Assistant County Attorney Miami-Dade County, waives in support of the bill
4:14:02 PM Senator Wright in debate
4:14:37 PM Senator Gruters closes on bill
4:16:31 PM Roll call on SB 946
4:17:31 PM SB 946 is reported favorably
4:17:53 PM Tab 3 - SB 546 by Senator Gruters
4:18:10 PM Senator Gruters explains the bill
4:18:51 PM Senator Powell in questions
4:19:01 PM Senator Gruters responds
4:19:22 PM Ivonne Fernandez, AARP, waives in support of the bill
4:19:31 PM Scott Jenkins, FL Financial Services Assoc., waives in support of the bill
4:19:45 PM No debate
4:19:48 PM Senator Gruters waives close on bill
4:19:55 PM Roll call on SB 546
4:20:03 PM SB 546 is reported favorably
4:20:17 PM Tab 2 - SB 418 by Senator Pizzo
4:20:26 PM Senator Pizzo explains the bill
4:21:06 PM No questions
4:21:08 PM Whitney Doyle, Florida Alliance for Assistive Services and Technology, speaking for the bill
4:22:55 PM Senator Pizzo in questions
4:23:16 PM Whitney Doyle responds
4:23:20 PM No debate
4:23:42 PM Senator Pizzo closes on bill
4:23:48 PM Roll call on SB 418
4:23:55 PM SB 418 is reported favorably
4:24:09 PM Tab 1 - SB 842 by Senator Brodeur presented by Senator Diaz
4:24:27 PM Senator Diaz explains the bill
4:24:55 PM Senator Torres in questions
4:25:08 PM Senator Diaz responds
4:26:05 PM Amanda Prater, FGA Action, waives in support of the bill
4:26:13 PM David Mica Jr., Florida Hospital Association, waives against the bill
4:26:38 PM David Mica Jr. with Florida Hospital Association speaking against the bill
4:27:21 PM Senator Pizzo in questions
4:27:32 PM David Mica Jr. in response
4:27:40 PM Back and forth in questions
4:29:11 PM Senator Diaz waives close
4:29:19 PM Roll call SB 842

4:29:25 PM SB 842 is reported favorably
4:29:45 PM Chair Hooper in closing remarks
4:29:59 PM Senator Hutson moves to adjourn
4:30:05 PM Meeting is adjourned