

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 27, 1998 Revised: 04/27/98 _____

Subject: Florida Entertainment Industry Growth Act

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Maclure</u>	<u>Austin</u>	<u>CM</u>	<u>Favorable/CS</u>
2.	<u>Fournier</u>	<u>Smith</u>	<u>WM</u>	<u>Fav/2 amendments</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This committee substitute creates the “Florida Entertainment Industry Growth Act.” Among other provisions, the measure establishes an Entertainment Florida Council administratively housed in the Office of Tourism, Trade, and Economic Development (OTTED) and composed of state residents with expertise in the entertainment industry. The council is assigned responsibility for advising OTTED, promoting the growth of the entertainment industry in Florida, servicing the industry in Florida, and providing private-sector supplemental financial support to programs under the council’s direction. The committee substitute authorizes the council to contract with a direct-support organization or a designated not-for-profit corporation to carry out its functions, including implementation of the council’s strategic plan. The measure also creates the position of Entertainment Industry Commissioner within OTTED, with such individual responsible for facilitating state and local agency coordination on behalf of the entertainment industry.

The committee substitute also revises several existing entertainment industry tax exemptions by providing uniform definitions and a single application process to be used in administering such exemptions. The measure revises an existing sales tax exemption on the purchase of certain entertainment industry equipment to provide that the exemption inures to the taxpayer in the form of an up-front exemption rather than a refund of taxes paid, as currently provided in law.

In addition, the committee substitute creates a one-year task force responsible for reporting to the Legislature on recommendations for model state and local permits for use in connection with activities related to the entertainment industry.

This committee substitute substantially amends the following sections of the Florida Statutes: 14.2015, 212.031, 212.06, 212.0602, 212.08, 213.053, 288.108, and 288.90152; creates the following sections: 288.125, 288.1251, 288.1252, 288.1254, 288.1255, and 288.1258; rennumbers

and amends the following section: 288.12285 (renumbered as 288.1253); and repeals the following sections: 212.08(5)(f), 288.051, 288.052, 288.053, 288.054, 288.055, 288.056, 288.057, and 288.1228.

II. Present Situation:

Organizational Structure for Entertainment Industry Promotion

In 1992, the Legislature revised the enabling statute for the Florida Department of Commerce to permit the department to authorize a direct-support organization (DSO) to assist in the promotion and development of the motion picture, television, video, recording, and related entertainment industries (ch. 92-111, L.O.F.). The statute prescribed, among other requirements, that the DSO be organized as a not-for-profit corporation under ch. 617, F.S.; be governed by a board of directors including private-sector and public-sector representatives; be led by an executive director appointed by the board following a nationwide search; and provide an annual financial and compliance audit of its accounts and records by an independent certified public accountant (s. 20.17(3), F.S. (1995)).

Acting under this authority, the Department of Commerce in December 1993 contracted with a not-for-profit corporation known as the Florida Entertainment Commission (FEC). Prior to the creation of the FEC, there was a Florida Film Bureau located within the department. The bureau, which was responsible for promotion of the entertainment industry, had been established in 1974 and operated until it was dismantled in July 1993.

In 1996, the Department of Commerce was dissolved, and functions comparable to those performed by the department were assigned to public-private partnerships and to a newly created Office of Tourism, Trade, and Economic Development (OTTED) within the Executive Office of the Governor. (See ch. 96-320, L.O.F.) Authority similar to that which had been vested in the department to contract with a direct-support organization for the promotion of the entertainment industry was given to OTTED through the creation of s. 288.1228, F.S. Subsection (1) of this statute, however, provided that OTTED could authorize a DSO *or* a designated not-for-profit corporation whose board members have had prior experience in promotion of the entertainment industry. (Most of the remaining subsections of s. 288.1228, F.S., only address a DSO, creating uncertainty as to whether these remaining provisions apply to the designated not-for-profit corporation.)

Acting under this authority and s. 14.2015(2)(a), F.S., OTTED elected to contract with a designated not-for-profit corporation rather than a DSO, and in October 1996 entered into contracts with the Florida Entertainment Industry Council (FEIC), Inc., a private not-for-profit corporation. The initial board of directors of the FEIC was the same as the outgoing board of directors for the FEC, and the executive director of the FEIC was the former executive director of the FEC. OTTED initially executed two contracts with the FEIC: 1) a designation contract identifying the FEIC as the not-for-profit corporation to assist OTTED with promotion and development of the entertainment industry, and 2) a \$200,000 contract for consultant services

obligating the FEIC to produce a directory and four magazines for the state. For fiscal year 1996-97, the Legislature had appropriated \$200,411 for entertainment promotion activities and required that the funds be matched through direct or in-kind contributions from the private sector.

For fiscal year 1997-98, the Legislature again appropriated \$200,411 for entertainment promotion. OTTED similarly entered into a designation contract and a publications contract with the FEIC governing the current fiscal year. However, to date the state has made only two payments totaling \$35,000 under the fiscal year 1997-98 contracts. An invoice is pending for an additional \$60,000 based upon the organization's completion and distribution of an entertainment industry directory. The executive director of the FEIC announced his resignation effective March 31, 1998, and all other staff positions were terminated by the executive director. Concerned about the FEIC's ability to comply with its contract requirements, OTTED requested the Chief Inspector General's Office to conduct a management review of the organization. Among the findings in the report of the Chief Inspector General's Office were that accounts receivable could not be confirmed and that the FEIC is unable to meet its current financial obligations. (See Office of the Chief Inspector General, *Management Review: Florida Entertainment Industry Council, Inc.*, No. M9800045, Feb. 24, 1998.)

Tax Incentives Related to Entertainment Industry

Florida currently has in place several tax provisions that affect the entertainment industry or activities related to the entertainment industry.

- Section 212.031(1)(a)9., F.S., provides a tax exemption on the lease or rental of real property used as an integral part of the performance of qualified production services.
- Section 212.06(1)(b), F.S., governing sales taxes on persons who fabricate tangible personal property for their own use, provides that fabrication labor shall not be taxable when a person is using his or her own equipment and personnel, for his or her own account, as a producer, subproducer, or coproducer of a qualified motion picture.
- Section 212.0602, F.S., provides an exemption on purchases of materials, equipment, and other items by certain organizations engaged in teaching students to perform activities or services related to the production of a qualified motion picture.
- Section 212.08(5)(f), F.S., provides a sales tax exemption on the sale of motion picture or video equipment and sound recording equipment for use in production activities. The exemption inures to the taxpayer in the form of a refund of previously paid taxes.
- Section 212.08(12), F.S., provides a partial exemption on the sale of master tapes, records, films, or video tapes.

III. Effect of Proposed Changes:

The committee substitute creates the “Florida Entertainment Industry Growth Act.” Among other provisions, the measure revises Florida’s organizational structure for the promotion and development of the entertainment industry, by creating an Entertainment Florida Council composed of state residents with expertise in the industry. The council, which is to be administratively housed within the Office of Tourism, Trade, and Economic Development (OTTED), is charged with promoting the growth of the entertainment industry, servicing the industry, advising OTTED, and generating private-sector financial support for the council’s programs. The committee substitute authorizes the council to contract with a direct-support organization or with a designated not-for-profit corporation for assistance in carrying out its functions, including implementation of its strategic plan for promotion of the industry. The committee substitute also creates the position of Entertainment Industry Commissioner within OTTED, responsible for, among other functions, facilitating relations between state and local government for entertainment industry productions.

The committee substitute also revises several existing tax exemptions that affect the entertainment industry, by providing common definitions and a uniform process under which a production company may become certified to participate in such exemptions. A current sales tax exemption on the purchase of certain entertainment industry equipment is revised to inure to the taxpayer as an up-front exemption rather than a refund, as provided in current law, and to specify the categories of equipment covered by the exemption.

Following is a section-by-section analysis of the measure.

Section 1 designates ss. 288.1251-288.1258, F.S., as the “Florida Entertainment Industry Growth Act.”

Section 2 creates s. 288.1251, F.S., to define several terms used in the act, including: “entertainment industry,” “motion picture or television studio,” “motion picture,” “commercial advertising production,” “recording studio,” “recording industry,” “sound recording,” “music video production,” “production,” “preproduction activities,” “production activities,” “postproduction activities,” “producer,” and “council.”

Section 3 creates s. 288.1252, F.S., to provide for the establishment of an 11-member Entertainment Florida Council (council) administratively housed within the Office of Tourism, Trade, and Economic Development (OTTED). The purpose of the council is to advise OTTED, promote the growth of the entertainment industry in Florida, service the state’s industry, and provide private-sector supplemental financial support to programs under the council’s direction. The council’s members are to be appointed by the Governor and confirmed by the Senate. Appointees, who may be representatives from a broad spectrum of elements of the industry, must be Florida residents and highly knowledgeable about the industry.

The council's powers include, but are not limited to, the authority to: 1) create and serve as the board of directors for a not-for-profit direct-support organization (DSO) to help provide private-sector supplemental financial support for entertainment industry promotion and development, and to help implement council activities; 2) develop a five-year strategic plan to guide the activities of the council; and 3) contract with the DSO or a designated Florida not-for-profit corporation to carry out its purpose and duties, including implementation of the strategic plan.

Section 4 renumbers and amends s. 288.12285, F.S., relating to confidentiality of the identities of donors to a direct-support organization (DSO) for entertainment industry promotion, to specify that such confidentiality relates to the DSO authorized to be created by the Entertainment Florida Council. (See **Section 3** above.)

Section 5 creates s. 288.1254, F.S., to establish within OTTED the position of Entertainment Industry Commissioner responsible for assisting the council in promotion of the state's entertainment industry. The commissioner is to be appointed by the director of OTTED. The Entertainment Industry Commissioner is to nurture smooth working relationships between state and local government agencies on behalf of industry production entities, represent the state's indigenous entertainment industry to government officials and to decision-makers in the global entertainment industry, and act as a liaison between the industry and labor organizations.

Section 6 creates s. 288.1255, F.S., to authorize OTTED to reimburse or advance: 1) state officers and employees for travel or entertainment expenses incurred in connection with the performance of the duties of the Entertainment Florida Council; 2) state officers and employees for such expenses incurred on behalf of guests, business clients, or other authorized persons in connection with the council's duties; and 3) third-party vendors for such expenses incurred on behalf of guests, business clients, or other authorized persons while such persons are participating in events carried out by the council. OTTED is required to report annually to the Legislature on the expenditures of the council. This section also provides for penalties for false claims.

Section 7 creates s. 288.1258, F.S., to establish a process for entertainment industry production companies engaged in specified activities in Florida to be designated as qualified for the purpose of receiving a sales tax exemption certificate from the Department of Revenue. Under this section, a production company must apply to the Entertainment Industry Commissioner (see **Section 5** above) for such designation. The committee substitute provides for two categories of designation:

- Designation as a qualified company for a period of one year, in which case the company shall be issued a single one-year certificate of exemption from the Department of Revenue for certain sales and use tax exemptions.
- Designation as a qualified company for a period of 90 days, in which case the company shall receive a 90-day certificate of exemption from the department for certain sales and use tax exemptions.

Section 8 creates a one-year task force charged with developing a model for uniform permits for use by state and local governments related to entertainment production activities. The committee substitute prescribes that members are to be appointed by the Governor and must represent specified organizations or industry segments. In addition to providing recommendations on model permits, the task force's report, which is due before July 1, 1999, must include cost recommendations on use of state and local government buildings, property, and personnel, and recommendations for developing a timetable for securing state and local environmental permits during the preproduction and production stages of a project.

Section 9 amends s. 14.2015, F.S., relating to the duties of the Office of Tourism, Trade, and Economic Development, to conform this section to the new organizational structure for entertainment industry promotion created by the committee substitute. The measure eliminates a requirement that OTTED contract with a direct-support organization or a designated not-for-profit corporation for assistance in promotion of the entertainment industry. The committee substitute does require OTTED to contract with the Entertainment Florida Council created under **Section 3**.

Section 10 amends s. 212.031, F.S., relating to sales tax on leases of real property, to modify the current exemption for property used as an integral part of the performance of qualified production services. Under the committee substitute, the exemption would apply to property used as an integral part of the preproduction, production, and postproduction activities by a production company that has been qualified by the Entertainment Industry Commissioner. (See **Section 7** above.) The exemption inures upon the presentation of a certificate of exemption. The revisions made by this section are effective January 1, 1999.

Section 11 amends s. 212.06, F.S., relating to sales taxes on persons who fabricate tangible personal property for their own use, to modify the current exemption in place for fabrication labor when a person is using his or her own equipment and personnel as a producer of a qualified motion picture. Under the committee substitute, the exemption would apply to fabrication labor when a person is using his or her own equipment and personnel as an integral part of the preproduction, production, and postproduction activities by a production company that has been qualified by the Entertainment Industry Commissioner. (See **Section 7** above.) The exemption inures upon the presentation of a certificate of exemption. The revisions made by this section are effective January 1, 1999.

Section 12 amends s. 212.0602, F.S., relating to a sales tax exemption on certain purchases by qualified organizations teaching students entertainment industry skills, to expand the exemption to include real or personal property. This section also provides that the exemption covers items used for education or demonstration of the school's curriculum including supporting operations. In addition, this section conforms references to reflect other provisions in the measure. The revisions made by this section are effective January 1, 1999.

Section 13 amends s. 212.08, F.S., relating to specified sales tax exemptions, in order to:

- Modify the current partial exemption on sales of master tapes, records, films, or video tapes. Under the committee substitute, the exemption inures upon the presentation of a certificate of exemption.
- Provide for a sales tax exemption on motion picture or video and sound recording equipment used as an integral part of production or postproduction activities in the state. This exemption represents a revision of the current exemption contained in s. 212.08(5)(f), F.S. The committee substitute specifies the types of equipment to which the exemption applies and changes the exemption from a refund to a point-of-sale exemption. (In **Section 17**, the committee substitute repeals the current refund-based exemption contained in s. 212.08(5)(f), F.S.)
- Define terms applicable to various tax exemptions provided for in the measure.
- Require the Entertainment Industry Commissioner to keep records related to the exemptions.
- Provide for the repeal of the exemptions contained in s. 212.08(12), F.S., October 1, 2008, subject to a legislative review to be completed prior to the conclusion of the 2008 Regular Session.

The revisions made by this section are effective January 1, 1999.

Section 14 amends s. 213.053, F.S., relating to confidentiality and information sharing by the Department of Revenue, to authorize the department to share aggregate information with the Entertainment Industry Commissioner relative to the tax exemptions for qualified production companies.

Sections 15 & 16 amend ss. 288.108 and 288.90152, F.S., to conform statutory references that are renumbered as a result of changes made by the committee substitute.

Section 17 repeals, effective January 1, 1999, paragraph (f) of subsection (5) of s. 212.08, F.S., relating to the current sales tax refund applicable to entertainment industry production equipment.

Section 18 repeals the following sections of the Florida Statutes: 288.051, 288.052, 288.053, 288.054, 288.055, 288.056, and 288.057, relating to the Florida Film and Television Investment Act and activities of the Florida Film and Television Investment Board; and s. 288.1228, F.S., relating to authority for OTTED to contract with a direct-support organization or a designated not-for-profit corporation for promotion of the entertainment industry.

Section 19 provides that, except as otherwise specified, this act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill initially falls under subsection (b) of s. 18, Art. VII, State Constitution. Subsection (b) requires a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate. By adding exemptions to the state sales tax, the bill has the effect of adding exemptions to the local option county sales surtax. The estimated local government revenue loss from this committee substitute appears to be less than \$1.4 million; therefore, the committee substitute is not subject to the requirements of subsection (b) of s. 18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

There is a companion measure to this committee substitute providing a public records exemption for trade secrets and information concerning an entertainment entity's plans to locate, relocate, or expand business activities in Florida. (See CS/SB 1614.)

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This committee substitute has not been reviewed by the Revenue Impact Conference, but review of a similar bill in the House of Representatives indicates that this bill will result in a fiscal year 1998-99 combined annualized revenue loss to state and local government of \$7.4 million. The General Revenue impact will be (\$6.4) million annualized, and the fiscal year 1998-99 General Revenue impact is (\$2.7) million.

B. Private Sector Impact:

This committee substitute revises several exemptions available to taxpayers and establishes a mechanism under which a production company must apply to the Entertainment Industry Commissioner to become qualified for a certificate of exemption in order to utilize certain exemptions. A current sales tax exemption on the purchase of certain entertainment industry equipment is restructured from a refund of taxes paid to an up-front exemption. The actual economic impact of these revisions on the private sector is not known.

C. Government Sector Impact:

The committee substitute provides for the creation a new council administratively housed in the Office of Tourism, Trade, and Economic Development, called the Entertainment Florida Council. The measure assigns to this council a variety of functions related to the promotion and development of the entertainment industry in Florida. The measure also creates a new position in OTTED, called the Entertainment Industry Commissioner. The actual economic or fiscal impact of these revisions on the government sector is not known.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Ways and Means:

This amendment provides that the terms and provisions of this act do not include television, cable, or radio companies licensed by the FCC acting as broadcast companies, but may include them in their capacities as producers of entertainment industry products.

#2 by Ways and Means:

This amendment provides that the terms and provisions of this act do not include television, cable, or radio companies licensed by the FCC acting as broadcast companies, but may include them in their capacities as producers of entertainment industry products.

These amendments reduce the fiscal impact of this bill to an annualized (\$3.5) million total; (\$3.0) million General Revenue. The fiscal year 1998-99 General Revenue impact is (\$1.3) million.