

By Senator Kirkpatrick

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See HB

1 A bill to be entitled
2 An act relating to entertainment industry
3 incentives; creating s. 288.1258, F.S.;
4 authorizing entertainment industry production
5 companies to apply for approval by the Office
6 of the Film Commissioner as a qualified
7 production company for the purpose of receiving
8 sales tax exemptions; directing the office to
9 develop application procedures; providing for
10 denial and revocation of a certificate of
11 exemption; providing a penalty for
12 falsification of an application or unauthorized
13 use of a certificate of exemption; providing
14 categories of qualification for a certificate
15 of exemption; providing duties of the
16 Department of Revenue with respect to issuance
17 of a certificate of exemption for qualified
18 production companies; requiring the Office of
19 the Film Commissioner to keep specified
20 records; requiring an annual report to the
21 Legislature; amending s. 212.031, F.S.,
22 relating to the tax on the lease or rental of
23 or license in real property; providing that the
24 exemption for property used as an integral part
25 of the performance of qualified production
26 services inures to the taxpayer upon
27 presentation of a certificate of exemption
28 issued under s. 288.1258, F.S.; amending s.
29 212.06, F.S.; providing that the exemption for
30 fabrication labor used in the production of a
31 qualified motion picture inures to the taxpayer

1 upon presentation of a certificate of exemption
2 issued under s. 288.1258, F.S.; amending s.
3 212.0602, F.S., which exempts the purchase or
4 lease of materials, equipment, and other items
5 by specified educational entities,
6 institutions, or organizations under certain
7 limited circumstances; expanding the exemption
8 to include the license in or lease of real
9 property by, and support operations of, such
10 educational institutions; amending s. 212.08,
11 F.S.; providing that the exemption for certain
12 motion picture or video equipment and sound
13 recording equipment shall be a point of sale
14 exemption rather than by refund; providing that
15 the exemption inures to the taxpayer upon
16 presentation of a certificate of exemption
17 issued under s. 288.1258, F.S.; providing that
18 the partial exemption for master tapes,
19 records, films, or video tapes inures to the
20 taxpayer upon presentation of a certificate of
21 exemption issued under s. 288.1258, F.S.;
22 amending s. 213.053, F.S.; authorizing the
23 Department of Revenue to share certain
24 information with the Office of the Film
25 Commissioner; providing contingent effective
26 dates.

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

29
30 Section 1. Section 288.1258, Florida Statutes, is
31 created to read:

1 288.1258 Entertainment industry qualified production
2 companies; application procedure; categories; duties of the
3 Department of Revenue; records and reports.--

4 (1) PRODUCTION COMPANIES AUTHORIZED TO APPLY.--

5 (a) Any production company engaged in this state in
6 the production of motion pictures, made-for-TV motion
7 pictures, television series, commercial advertising, music
8 videos, or music recordings may submit an application to the
9 Office of the Film Commissioner to be approved as a qualified
10 production company for the purpose of receiving a sales and
11 use tax certificate of exemption from the Department of
12 Revenue.

13 (b) For the purposes of this section, "qualified
14 production company" means any production company that has
15 submitted a properly completed application to the Office of
16 the Film Commissioner and that is subsequently qualified by
17 that office.

18 (2) APPLICATION PROCEDURE.--

19 (a)1. The Office of the Film Commissioner shall
20 establish a process by which an entertainment industry
21 production company may be approved by the office as a
22 qualified production company and may receive a certificate of
23 exemption from the Department of Revenue for the sales and use
24 tax exemptions under ss. 212.031, 212.06, and 212.08.

25 2. Upon determination by the Office of the Film
26 Commissioner that a production company meets the established
27 approval criteria and qualifies for exemption, the Office of
28 the Film Commissioner shall forward the approved application
29 or application renewal or extension to the Department of
30 Revenue, which shall issue a certificate of exemption.

31

1 3. The Office of the Film Commissioner shall deny an
2 application or application for renewal or extension from a
3 production company if it determines that the production
4 company does not meet the established approval criteria.

5 (b) The Office of the Film Commissioner shall develop,
6 with the cooperation of the Department of Revenue and local
7 government entertainment industry promotion agencies, a
8 standardized application form for use in approving qualified
9 production companies.

10 1. The application form shall include, but not be
11 limited to, production-related information on employment,
12 proposed budgets, planned purchases of items exempted from
13 sales and use taxes under ss. 212.031, 212.06, and 212.08, a
14 signed affirmation from the applicant that any items purchased
15 for which the applicant is seeking a tax exemption are
16 intended for use exclusively as an integral part of
17 entertainment industry preproduction, production, or
18 postproduction activities engaged in primarily in this state,
19 and a signed affirmation from the Office of the Film
20 Commissioner that the information on the application form has
21 been verified and is correct. In lieu of information on
22 projected employment, proposed budgets, or planned purchases
23 of exempted items, a production company seeking a 1-year
24 certificate of exemption may submit summary historical data on
25 employment, production budgets, and purchases of exempted
26 items related to production activities in this state. Any
27 information gathered from production companies for the
28 purposes of this section shall be considered confidential
29 taxpayer information and shall be disclosed only as provided
30 in s. 213.053.

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1 2. The application form may be distributed to
2 applicants by the Office of the Film Commissioner or local
3 film commissions.

4 (c) All applications, renewals, and extensions for
5 designation as a qualified production company shall be
6 processed by the Office of the Film Commissioner.

7 (d) In the event that the Department of Revenue
8 determines that a production company no longer qualifies for a
9 certificate of exemption, or has used a certificate of
10 exemption for purposes other than those authorized by this
11 section and chapter 212, the Department of Revenue shall
12 revoke the certificate of exemption of that production
13 company, and any sales or use taxes exempted on items
14 purchased or leased by the production company during the time
15 such company did not qualify for a certificate of exemption or
16 improperly used a certificate of exemption shall become
17 immediately due to the Department of Revenue, along with
18 interest and penalty as provided by s. 212.12. In addition to
19 the other penalties imposed by law, any person who knowingly
20 and willfully falsifies an application, or uses a certificate
21 of exemption for purposes other than those authorized by this
22 section and chapter 212, commits a felony of the third degree,
23 punishable as provided in s. 775.082, s. 775.083, or s.
24 775.084.

25 (3) CATEGORIES.--

26 (a)1. A production company may be qualified for
27 designation as a qualified production company for a period of
28 1 year if the company has operated a business in Florida at a
29 permanent address for a period of 12 consecutive months. Such
30 a qualified production company shall receive a single 1-year
31 certificate of exemption from the Department of Revenue for

1 the sales and use tax exemptions under ss. 212.031, 212.06,
2 and 212.08, which certificate shall expire 1 year after
3 issuance or upon the cessation of business operations in the
4 state, at which time the certificate shall be surrendered to
5 the Department of Revenue.

6 2. The Office of the Film Commissioner shall develop a
7 method by which a qualified production company may annually
8 renew a 1-year certificate of exemption for a period of up to
9 5 years without requiring the production company to resubmit a
10 new application during that 5-year period.

11 3. Any qualified production company may submit a new
12 application for a 1-year certificate of exemption upon the
13 expiration of that company's certificate of exemption.

14 (b)1. A production company may be qualified for
15 designation as a qualified production company for a period of
16 90 days. Such production company shall receive a single 90-day
17 certificate of exemption from the Department of Revenue for
18 the sales and use tax exemptions under ss. 212.031, 212.06,
19 and 212.08, which certificate shall expire 90 days after
20 issuance, with extensions contingent upon approval of the
21 Office of the Film Commissioner. The certificate shall be
22 surrendered to the Department of Revenue upon its expiration.

23 2. Any production company may submit a new application
24 for a 90-day certificate of exemption upon the expiration of
25 that company's certificate of exemption.

26 (4) DUTIES OF THE DEPARTMENT OF REVENUE.--

27 (a) The Department of Revenue shall issue a numbered
28 certificate of exemption to a qualified production company
29 within 5 working days of the receipt of a properly completed
30 and approved application, application renewal, or application
31 extension from the Office of the Film Commissioner.

1 (b) The Department of Revenue may promulgate such
2 rules and shall prescribe and publish such forms as may be
3 necessary to effectuate the purposes of this section or any of
4 the sales tax exemptions that are reasonably related to the
5 provisions of this section.

6 (c) The Department of Revenue is authorized to
7 establish audit procedures in accordance with the provisions
8 of ss. 212.12 and 212.13 which relate to the sales tax
9 exemption provisions of this section.

10 (5) RELATIONSHIP OF TAX EXEMPTIONS TO INDUSTRY GROWTH;
11 REPORT TO THE LEGISLATURE.--The Office of the Film
12 Commissioner shall keep annual records from the information
13 provided on taxpayer applications for tax exemption
14 certificates beginning January 1, 2000. These records shall
15 reflect a percentage comparison of the annual amount of funds
16 exempted to the estimated amount of funds expended in relation
17 to entertainment industry products. In addition, the office
18 shall maintain data showing annual growth in Florida-based
19 entertainment industry companies and entertainment industry
20 employment and wages. The Office of the Film Commissioner
21 shall report this information to the Legislature by no later
22 than December 1 of each year.

23 Section 2. Section 1 shall take effect on the
24 effective date of Senate Bill or similar legislation
25 creating the Office of the Film Commissioner takes effect, if
26 such legislation is adopted in the same legislative session or
27 an extension thereof.

28 Section 3. Paragraph (a) of subsection (1) of section
29 212.031, Florida Statutes, 1998 Supplement, is amended to
30 read:
31

1 212.031 Lease or rental of or license in real
2 property.--
3 (1)(a) It is declared to be the legislative intent
4 that every person is exercising a taxable privilege who
5 engages in the business of renting, leasing, letting, or
6 granting a license for the use of any real property unless
7 such property is:
8 1. Assessed as agricultural property under s. 193.461.
9 2. Used exclusively as dwelling units.
10 3. Property subject to tax on parking, docking, or
11 storage spaces under s. 212.03(6).
12 4. Recreational property or the common elements of a
13 condominium when subject to a lease between the developer or
14 owner thereof and the condominium association in its own right
15 or as agent for the owners of individual condominium units or
16 the owners of individual condominium units. However, only the
17 lease payments on such property shall be exempt from the tax
18 imposed by this chapter, and any other use made by the owner
19 or the condominium association shall be fully taxable under
20 this chapter.
21 5. A public or private street or right-of-way occupied
22 or used by a utility for utility purposes.
23 6. A public street or road which is used for
24 transportation purposes.
25 7. Property used at an airport exclusively for the
26 purpose of aircraft landing or aircraft taxiing or property
27 used by an airline for the purpose of loading or unloading
28 passengers or property onto or from aircraft or for fueling
29 aircraft.
30 8.a. Property used at a port authority, as defined in
31 s. 315.02(2), exclusively for the purpose of oceangoing

1 vessels or tugs docking, or such vessels mooring on property
2 used by a port authority for the purpose of loading or
3 unloading passengers or cargo onto or from such a vessel, or
4 property used at a port authority for fueling such vessels, or
5 to the extent that the amount paid for the use of any property
6 at the port is based on the charge for the amount of tonnage
7 actually imported or exported through the port by a tenant.

8 b. The amount charged for the use of any property at
9 the port in excess of the amount charged for tonnage actually
10 imported or exported shall remain subject to tax except as
11 provided in sub-subparagraph a.

12 9. Property used as an integral part of the
13 performance of qualified production services. As used in this
14 subparagraph, the term "qualified production services" means
15 any activity or service performed directly in connection with
16 the production of a qualified motion picture, as defined in s.
17 212.06(1)(b), and includes:

18 a. Photography, sound and recording, casting, location
19 managing and scouting, shooting, creation of special and
20 optical effects, animation, adaptation (language, media,
21 electronic, or otherwise), technological modifications,
22 computer graphics, set and stage support (such as
23 electricians, lighting designers and operators, greensmen,
24 prop managers and assistants, and grips), wardrobe (design,
25 preparation, and management), hair and makeup (design,
26 production, and application), performing (such as acting,
27 dancing, and playing), designing and executing stunts,
28 coaching, consulting, writing, scoring, composing,
29 choreographing, script supervising, directing, producing,
30 transmitting dailies, dubbing, mixing, editing, cutting,

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1 looping, printing, processing, duplicating, storing, and
2 distributing;

3 b. The design, planning, engineering, construction,
4 alteration, repair, and maintenance of real or personal
5 property including stages, sets, props, models, paintings, and
6 facilities principally required for the performance of those
7 services listed in sub-subparagraph a.; and

8 c. Property management services directly related to
9 property used in connection with the services described in
10 sub-subparagraphs a. and b.

11

12 This exemption will inure to the taxpayer upon presentation of
13 the certificate of exemption issued to the taxpayer under the
14 provisions of s. 288.1258.

15 10. Leased, subleased, or rented to a person providing
16 food and drink concessionaire services within the premises of
17 a movie theater, a business operated under a permit issued
18 pursuant to chapter 550, or any publicly owned arena, sports
19 stadium, convention hall, exhibition hall, auditorium, or
20 recreational facility. A person providing retail
21 concessionaire services involving the sale of food and drink
22 or other tangible personal property within the premises of an
23 airport shall be subject to tax on the rental of real property
24 used for that purpose, but shall not be subject to the tax on
25 any license to use the property. For purposes of this
26 subparagraph, the term "sale" shall not include the leasing of
27 tangible personal property.

28 11. Property occupied pursuant to an instrument
29 calling for payments which the department has declared, in a
30 Technical Assistance Advisement issued on or before March 15,
31 1993, to be nontaxable pursuant to rule 12A-1.070(19)(c),

1 Florida Administrative Code; provided that this subparagraph
2 shall only apply to property occupied by the same person
3 before and after the execution of the subject instrument and
4 only to those payments made pursuant to such instrument,
5 exclusive of renewals and extensions thereof occurring after
6 March 15, 1993.

7 Section 4. Paragraph (b) of subsection (1) of section
8 212.06, Florida Statutes, 1998 Supplement, is amended to read:

9 212.06 Sales, storage, use tax; collectible from
10 dealers; "dealer" defined; dealers to collect from purchasers;
11 legislative intent as to scope of tax.--

12 (1)

13 (b) Except as otherwise provided, any person who
14 manufactures, produces, compounds, processes, or fabricates in
15 any manner tangible personal property for his or her own use
16 shall pay a tax upon the cost of the product manufactured,
17 produced, compounded, processed, or fabricated without any
18 deduction therefrom on account of the cost of material used,
19 labor or service costs, or transportation charges,
20 notwithstanding the provisions of s. 212.02 defining "cost
21 price." However, the tax levied under this paragraph shall
22 not be imposed upon any person who manufactures or produces
23 electrical power or energy, steam energy, or other energy at a
24 single location, when such power or energy is used directly
25 and exclusively at such location, or at other locations if the
26 energy is transferred through facilities of the owner in the
27 operation of machinery or equipment that is used to
28 manufacture, process, compound, produce, fabricate, or prepare
29 for shipment tangible personal property for sale or to operate
30 pollution control equipment, maintenance equipment, or
31 monitoring or control equipment used in such operations. The

1 manufacture or production of electrical power or energy that
2 is used for space heating, lighting, office equipment, or
3 air-conditioning or any other nonmanufacturing, nonprocessing,
4 noncompounding, nonproducing, nonfabricating, or nonshipping
5 activity is taxable. Electrical power or energy consumed or
6 dissipated in the transmission or distribution of electrical
7 power or energy for resale is also not taxable. Fabrication
8 labor shall not be taxable when a person is using his or her
9 own equipment and personnel, for his or her own account, as a
10 producer, subproducer, or coproducer of a qualified motion
11 picture. For purposes of this chapter, the term "qualified
12 motion picture" means all or any part of a series of related
13 images, either on film, tape, or other embodiment, including,
14 but not limited to, all items comprising part of the original
15 work and film-related products derived therefrom as well as
16 duplicates and prints thereof and all sound recordings created
17 to accompany a motion picture, which is produced, adapted, or
18 altered for exploitation in, on, or through any medium or
19 device and at any location, primarily for entertainment,
20 commercial, industrial, or educational purposes. This
21 exemption for fabrication labor associated with production of
22 a qualified motion picture will inure to the taxpayer upon
23 presentation of the certificate of exemption issued to the
24 taxpayer under the provisions of s. 288.1258. A person who
25 manufactures factory-built buildings for his or her own use in
26 the performance of contracts for the construction or
27 improvement of real property shall pay a tax only upon the
28 person's cost price of items used in the manufacture of such
29 buildings.

30 Section 5. Section 212.0602, Florida Statutes, is
31 amended to read:

1 212.0602 Education; limited exemption.--To facilitate
2 investment in education and job training, there is also exempt
3 from the taxes levied under this chapter, subject to the
4 provisions of this section, the purchase or lease of
5 materials, equipment, and other items or the license in or
6 lease of real property by any entity, institution, or
7 organization that is primarily engaged in teaching students to
8 perform any of the activities or services described in s.
9 212.031(1)(a)9., that conducts classes at a fixed location
10 located in this state, that is licensed under chapter 246, and
11 that has at least 500 enrolled students. Any entity,
12 institution, or organization meeting the requirements of this
13 section shall be deemed to qualify for the exemptions in ss.
14 212.031(1)(a)9. and 212.08(5)(f) and (12), and to qualify for
15 an exemption for its purchase or lease of materials,
16 equipment, and other items used for education or demonstration
17 of the school's curriculum, including supporting operations.
18 Nothing in this section shall preclude an entity described in
19 this section from qualifying for any other exemption provided
20 for in this chapter.

21 Section 6. Paragraph (f) of subsection (5) and
22 subsection (12) of section 212.08, Florida Statutes, 1998
23 Supplement, are amended to read:

24 212.08 Sales, rental, use, consumption, distribution,
25 and storage tax; specified exemptions.--The sale at retail,
26 the rental, the use, the consumption, the distribution, and
27 the storage to be used or consumed in this state of the
28 following are hereby specifically exempt from the tax imposed
29 by this chapter.

30 (5) EXEMPTIONS; ACCOUNT OF USE.--

31

1 (f) Motion picture or video equipment used in motion
2 picture or television production activities and sound
3 recording equipment used in the production of master tapes and
4 master records.--

5 1. Motion picture or video equipment and sound
6 recording equipment purchased or leased for use in this state
7 in production activities is exempt from the tax imposed by
8 this chapter ~~upon an affirmative showing by the purchaser or~~
9 ~~lessee to the satisfaction of the department that the~~
10 ~~equipment will be used for production activities.~~ The
11 exemption provided by this paragraph shall inure to the
12 taxpayer upon presentation of the certificate of exemption
13 issued to the taxpayer under the provisions of s. 288.1258.

14 ~~only through a refund of previously paid taxes.~~
15 ~~Notwithstanding the provisions of s. 212.095, such refund~~
16 ~~shall be made within 30 days of formal application, which~~
17 ~~application may be made after the completion of production~~
18 ~~activities or on a quarterly basis. Notwithstanding the~~
19 ~~provisions of chapter 213, the department shall provide the~~
20 ~~Department of Commerce with a copy of each refund application~~
21 ~~and the amount of such refund, if any.~~

22 2. For the purpose of the exemption provided in
23 subparagraph 1.:

24 a. "Motion picture or video equipment" and "sound
25 recording equipment" includes only equipment meeting the
26 definition of "section 38 property" as defined in s.
27 48(a)(1)(A) and (B)(i) of the Internal Revenue Code that is
28 used by the lessee or purchaser exclusively as an integral
29 part of production activities; however, motion picture or
30 video equipment and sound recording equipment does not include
31 supplies, tape, records, film, or video tape used in

1 productions or other similar items; vehicles or vessels; or
2 general office equipment not specifically suited to production
3 activities. In addition, the term does not include equipment
4 purchased or leased by television or radio broadcasting or
5 cable companies licensed by the Federal Communications
6 Commission.

7 b. "Production activities" means activities directed
8 toward the preparation of a:

9 (I) Master tape or master record embodying sound; or

10 (II) Motion picture or television production which is
11 produced for theatrical, commercial, advertising, or
12 educational purposes and utilizes live or animated actions or
13 a combination of live and animated actions. The motion picture
14 or television production shall be commercially produced for
15 sale or for showing on screens or broadcasting on television
16 and may be on film or video tape.

17 (12) PARTIAL EXEMPTION; MASTER TAPES, RECORDS, FILMS,
18 OR VIDEO TAPES.--

19 (a) There are exempt from the taxes imposed by this
20 chapter the gross receipts from the sale or lease of, and the
21 storage, use, or other consumption in this state of, master
22 tapes or master records embodying sound, or master films or
23 master video tapes; except that amounts paid to recording
24 studios or motion picture or television studios for the
25 tangible elements of such master tapes, records, films, or
26 video tapes are taxable as otherwise provided in this chapter.
27 This exemption will inure to the taxpayer upon presentation of
28 the certificate of exemption issued to the taxpayer under the
29 provisions of s. 288.1258.

30 (b) For the purposes of this subsection, the term:
31

1 1. "Amounts paid for the tangible elements" does not
2 include any amounts paid for the copyrightable, artistic, or
3 other intangible elements of such master tapes, records,
4 films, or video tapes, whether designated as royalties or
5 otherwise, including, but not limited to, services rendered in
6 producing, fabricating, processing, or imprinting tangible
7 personal property or any other services or production expenses
8 in connection therewith which may otherwise be construed as
9 constituting a "sale" under s. 212.02.

10 2. "Master films or master video tapes" means films or
11 video tapes utilized by the motion picture and television
12 production industries in making visual images for
13 reproduction.

14 3. "Master tapes or master records embodying sound"
15 means tapes, records, and other devices utilized by the
16 recording industry in making recordings embodying sound.

17 4. "Motion picture or television studio" means a
18 facility in which film or video tape productions or parts of
19 productions are made and which contains the necessary
20 equipment and personnel for this purpose and includes a mobile
21 unit or vehicle that is equipped in much the same manner as a
22 stationary studio and used in the making of film or video tape
23 productions.

24 5. "Recording studio" means a place where, by means of
25 mechanical or electronic devices, voices, music, or other
26 sounds are transmitted to tapes, records, or other devices
27 capable of reproducing sound.

28 6. "Recording industry" means any person engaged in an
29 occupation or business of making recordings embodying sound
30 for a livelihood or for a profit.

31

1 7. "Motion picture or television production industry"
2 means any person engaged in an occupation or business for a
3 livelihood or for profit of making visual motion picture or
4 television visual images for showing on screen or television
5 for theatrical, commercial, advertising, or educational
6 purposes.

7 Section 7. Paragraph (s) is added to subsection (7) of
8 section 213.053, Florida Statutes, 1998 Supplement, to read:

9 213.053 Confidentiality and information sharing.--

10 (7) Notwithstanding any other provision of this
11 section, the department may provide:

12 (s) Information relative to the tax exemptions under
13 ss. 212.031, 212.06, and 212.08 for those persons qualified
14 under s. 288.1258 to the Office of the Film Commissioner. The
15 Department of Revenue shall provide the Office of the Film
16 Commissioner with information in the aggregate.

17
18 Disclosure of information under this subsection shall be
19 pursuant to a written agreement between the executive director
20 and the agency. Such agencies, governmental or
21 nongovernmental, shall be bound by the same requirements of
22 confidentiality as the Department of Revenue. Breach of
23 confidentiality is a misdemeanor of the first degree,
24 punishable as provided by s. 775.082 or s. 775.083.

25 Section 8. Section 7 shall take effect on the
26 effective date of Senate Bill ____ or similar legislation
27 creating the Office of the Film Commissioner.

28 Section 9. Except as otherwise provided in this act,
29 this act shall take effect January 1, 2000, but only if Senate
30 Bill ____ or similar legislation creating the Office of the
31 Film Commissioner becomes a law.

LEGISLATIVE SUMMARY

Authorizes entertainment industry production companies to apply to the Office of the Film Commissioner for approval to receive a sales tax exemption certificate for purposes of the exemptions for property used as an integral part of the performance of qualified production services, fabrication labor used in the production of a qualified motion picture, certain motion picture or video equipment and sound recording equipment, and master tapes, records, films, and video tapes. Directs the office to establish a standard application form and approval procedures. Directs the Department of Revenue to issue an exemption certificate upon receipt of an application approved by the office. Specifies periods for which such exemption certificates are valid and provides for renewal. Provides a penalty for falsifying an application or misuse of a certificate.

Specifies that such exemptions will inure to the taxpayer upon presentation of the exemption certificate, and removes provisions which specify that the exemption for certain motion picture or video equipment and sound recording equipment inures only through a refund. Revises the exemption for the purchase of materials by certain educational entities that teach entertainment industry skills, to include the license in or lease of real property, and support operations of such entities.

Takes effect contingent on adoption of legislation creating the Office of the Film Commissioner.