

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1756

SPONSOR: Appropriations Subcommittee on Transportation and Economic Development,
Commerce, Economic Opportunities, and Consumer Services Committee and
Senator Saunders

SUBJECT: Economic Development

DATE: April 23, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gillespie	Maclure	CM	Favorable/CS
2.			JU	Withdrawn
3.	Kelly	Kelly	ATD	Fav/CS
4.			AP	
5.				
6.				

I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 1756 creates an entertainment industry financial incentive program, subject to appropriation, which provides for the payment of financial incentives to qualified productions of filmed entertainment and digital-media-effects companies for expenditures made in Florida and to filmed entertainment projects that relocate to Florida from other states. The committee substitute provides for an application process to be administered by the Governor's Office of Film and Entertainment, with oversight by the Office of Tourism, Trade, and Economic Development. The committee substitute specifies eligibility requirements for qualified productions and projects, requires an annual report on the state's return on investment from these financial incentives, and provides that annual funding for the entertainment industry financial incentive program is subject to legislative appropriation. The committee substitute also provides a conforming change to the definition of the term "entertainment industry."

This committee substitute substantially amends section 288.125, Florida Statutes. The committee substitute also creates s. 288.1254, F.S., and creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Runaway Productions

The film and entertainment industry commonly refers to a production developed in the United States, but produced in another country, as a "runaway production." The term also entails

interstate competition for productions.¹ In 1999, the Screen Actors Guild and the Directors Guild of America commissioned a study on the economic impact of runaway production on the domestic film and entertainment industry.² The study distinguished between “creative” runaway production (a film’s setting requires production on location in another country) and “economic” runaway production (a production is filmed in another country to reduce production costs).³ According to the study, approximately 27 percent of runaway productions are economic runaways. In addition, the study reports the nation’s number of economic runaways increased by 14 percent from 1990 to 1998, causing a \$10.3 billion loss of revenues to the U.S. economy in 1998.

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

Financial Incentives

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

¹ See, e.g., Martha Jones, *Motion Picture Production in California* 46 (Mar. 2002), available at <http://www.library.ca.gov/crb/02/01/02-001.pdf> (last visited Mar. 30, 2003) (citing that film production capacity has spread from California to other states, with the most significant growth occurring during the 1980s and 1990s in Florida and North Carolina).

² Monitor Co., *U.S. Runaway Film and Television Production Study Report* (July 1999), available at http://www.dga.org/thedga/leg_rp_runaway.pdf (last visited Mar. 30, 2003).

³ *Id.* at 2.

⁴ *Id.* at 3 & 9.

⁵ U.S. Department of Commerce, *Migration of U.S. Film and Television Production* (Jan. 1, 2001), available at <http://www.ita.doc.gov/media/migration1901.pdf> (last visited Mar. 30, 2003).

⁶ *Id.* at 25.

⁷ Jones, *supra* note 1, at 43.

⁸ *Id.* at 41.

programs as direct competition with Canada.⁹ By contrast, North Carolina provides rebates to producers for expenditures of qualified in-state goods, and California provides reimbursements for production costs when filming on public property. In addition, Illinois established an interest-rate-reduced loan program for motion picture production, industrial films, and commercials.

Entertainment Industry Tax Incentives in Florida

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

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

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

⁹ *Id.* at 89-97.

¹⁰ *Id.* at 25.

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

¹² Department of Revenue, *Entertainment Industry Qualified Production Company Application for Certificate of Exemption*, Form DR-230 (Mar. 2001), available at <http://www.myflorida.com/dor/forms/2001/DR230-i.pdf> (last visited Mar. 30, 2003); s. 288.1258(2)(c), F.S.

application, the Department of Revenue issues the certificate of exemption to the qualified production company (s. 288.1258(2)(b)2., F.S.).

In its annual report on these sales and use tax exemptions, the Office of Film and Entertainment details that the entertainment industry received more than \$1.4 million in tax exemptions during calendar year 2001.¹³ The report estimates the industry added approximately \$162 million to the state's economy during that period. The report concludes the sales and use tax exemptions provided the state a return on investment of about \$113 to \$1. According to the Office of Film and Entertainment, in 2002, the state paid almost \$4 million in tax exemptions and generated about \$267 million in economic impact, a return on investment of \$67 to \$1.

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

- **Qualified Target Industry Businesses Tax Refund Program.**—Authorizes a tax refund for a business in a targeted industry of \$3,000 per new job created or \$6,000 per new job created in an enterprise zone or rural county. A refund may be increased if the average wage of the new jobs is higher than the average wage in the community (s. 288.106, F.S.).
- **Urban High-Crime Area Job Tax Credit Program.**—Authorizes new and existing businesses located in a qualified high-crime area to receive a tax credit against the corporate income tax or the sales and use tax in an amount between \$500 and \$2,000 for each new employee under certain conditions (ss. 212.097 and 220.1895, F.S.).
- **Rural Job Tax Credit Program.**—Authorizes new and existing businesses located in a qualified rural area to receive a tax credit against the corporate income tax or the sales and use tax in an amount of \$1,000 to \$1,500 for each new employee under certain conditions (ss. 212.098 and 220.1895, F.S.).
- **Enterprise Zone Program.**—Authorizes a variety of state and local tax credits and other economic development incentives for businesses located in designated geographic areas (ss. 290.001-290.016, F.S.)

Governor's Office of Film and Entertainment

In 1999, the Legislature created an Office of Film and Entertainment within the Governor's Office of Tourism, Trade, and Economic Development (OTTED).¹⁴ The purpose of the Office of Film and Entertainment is to develop and promote the state's entertainment industry and to serve as a liaison between the entertainment industry and other state and local governmental agencies, local film commissions, and labor organizations (s. 288.1251(2)(a), F.S.). The office gathers statistical information related to the state's entertainment industry, provides information and services to businesses, communities, organizations, and individuals engaged in entertainment industry activities, and administers field offices outside the state¹⁵ and coordinates with regional

¹³ Governor's Office of Film & Entertainment, *Annual Report of Motion Picture Sales & Use Tax Exemption 3* (Jan. 2002).

¹⁴ Chapter 99-251, L.O.F.; s. 288.1251(1), F.S.

¹⁵ The Office of Film and Entertainment administers a field office in Los Angeles, California. See Office of Film & Entertainment, *Florida Film Offices*, at <http://www.filminflorida.com/incentives/offer-is.htm> (last visited Mar. 30, 2003).

offices maintained by counties and regions of the state. The Office of Film and Entertainment affirms that its mission is to build, support, and market the film and entertainment industry in Florida.¹⁶ The office has a budget of approximately \$799,000 and 4 full-time-equivalent positions, including its Los Angeles field office.

Although the state has not created local film commissions, approximately 49 local film offices have been established across the state, organized predominately by county and municipal governments, local chambers of commerce, economic development councils, convention and visitors bureaus, and tourist development councils.¹⁷

The head of the Office of Film and Entertainment is the Commissioner of Film and Entertainment. The film commissioner is hired by the director of OTTED, who must conduct a national search for a qualified person to fill the position. The film commissioner is assisted by the Florida Film and Entertainment Advisory Council, which is composed of 17 members, of which 7 members are appointed by the Governor, 5 members are appointed by the President of the Senate, and 5 members are appointed by the Speaker of the House of Representatives (s. 288.1252(3)(a), F.S.).¹⁸ In addition, the film commissioner, a representative of Enterprise Florida, Inc., a representative of Workforce Florida, Inc., and a representative of the Florida Tourism Industry Marketing Corporation (commonly cited as “VISIT FLORIDA”) serve ex officio as nonvoting members of the council (s. 288.1252(3)(e), F.S.). The advisory council provides the Office of Film and Entertainment and OTTED with industry insight and expertise related to developing, marketing, promoting, and providing service to the state’s entertainment industry.

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

In 1999, Florida’s film and entertainment industry accounted for more than 39,000 full-time-equivalent employees and more than 3,500 employers, and added about \$3.9 billion in total revenues to the state’s economy.¹⁹

Governor’s Office of Tourism, Trade, and Economic Development

In 1996, the Legislature created the Office of Tourism, Trade, and Economic Development (OTTED) within the Executive Office of the Governor.²⁰ The purpose of OTTED is to assist the Governor in working with the Legislature, state agencies, business leaders, and economic

¹⁶ Office of Film & Entertainment, *OFE Vision & Mission*, at <http://www.filminflorida.com/about/about-vm.htm> (last visited Mar. 30, 2003).

¹⁷ See Office of Film & Entertainment, *supra* note 15.

¹⁸ See Office Film & Entertainment, *Florida Film & Entertainment Advisory Council*, at <http://www.filminflorida.com/about/about-ffac.htm> (last visited Mar. 30, 2003).

¹⁹ MGT of America, Inc., *An Economic Assessment of the Florida Film and Entertainment Industry* 3-23 (Dec. 31, 2000).

²⁰ Chapter 96-320, L.O.F.; s. 14.2015, F.S.

development professionals to formulate and implement policies and strategies designed to provide economic opportunities for all Floridians. The director of OTTED is appointed by and serves at the pleasure of the Governor. As part of its responsibilities, OTTED is also required to provide administrative oversight for the Office of Film and Entertainment (s. 14.2015(2)(h), F.S.).

III. Effect of Proposed Changes:

Definition of “Entertainment Industry” (Section 1)

The committee substitute revises the definition of the term “entertainment industry” to expand the sections of law to which this definition applies, to include the entertainment industry financial incentive program (s. 288.1254, F.S.) created by the committee substitute and the sales and use tax exemption for entertainment industry qualified production companies (s. 288.1258, F.S.). Although the term “entertainment industry” is found in both sections of law, these sections do not use the term as part of the eligibility criteria for either the entertainment industry financial incentive program or the sales and use tax exemption for entertainment industry qualified production companies. The revision of this definition, consequently, would have no practical effect on these programs.

Entertainment Industry Financial Incentive Program (Section 2)

The committee substitute creates, subject to specific appropriation, an entertainment industry financial incentive program within the Governor’s Office of Film and Entertainment. The committee substitute specifies that the purpose of the program is to encourage Florida’s use as a site for filming and production of motion pictures, made-for-television movies, commercials, music videos, industrial and educational films, and television programs by the entertainment industry. The committee substitute provides for the program to be administered by the Office of Film and Entertainment, subject to the policies and oversight of the Governor’s Office of Tourism, Trade, and Economic Development (OTTED).

Through this entertainment industry financial incentive program, the committee substitute authorizes the payment of financial incentives from the state to three categories of filmed entertainment producers: qualified productions, digital-media-effects companies, and qualified relocation projects.

The committee substitute requires the Governor’s Office of Film and Entertainment to establish an application process, including a standardized application form. As part of the application process, the Office of Film and Entertainment must review each application, determine the eligibility of applicants, and calculate the amount of financial incentives to which each applicant is eligible. The committee substitute allows the Office of Film and Entertainment to request assistance from the local film commissions in determining the eligibility of applicants.

The committee substitute requires the Office of Film and Entertainment to review each application within 5 days after receipt and to notify the applicant whether the application is approved or denied within 10 business days after receipt. The committee substitute also requires the Office of Film and Entertainment to notify OTTED of each approved application and of the

calculated amount of financial incentives to which each applicant is eligible. The committee substitute authorizes OTTED to make the final determination concerning the actual financial incentives.

The committee substitute also requires OTTED to adopt policies and procedures, including requirements for the application and approval process, records required for submission and substantiation of the financial incentives, and the determination of and qualification for the financial incentives.

Qualified Productions

A qualified production is a motion picture, teleproduction, commercial, music video, or digital-media-effects production that demonstrates at least \$850,000 in total qualified expenditures²¹ in this state for the total or partial production of a motion picture, made-for-television movie with a running time of 90 minutes or more, commercial, music video, industrial and educational film, television series pilot, or television episode. The committee substitute specifies that a production deemed by the Office of Film and Entertainment to contain obscene content, as defined by the United States Supreme Court, is not considered a qualified production.

A qualified production is eligible to receive financial incentives from the state, in the form of reimbursements for up to 15 percent of its qualifying expenditures in the state on the production. These qualifying expenditures include:

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

The committee substitute specifies that reimbursement may not be authorized for salaries of the production's two highest-paid actors, but that salaries of other actors are reimburseable. Although the committee substitute is clear that reimbursements may not be paid for salaries of the two highest-paid actors, the committee substitute is unclear whether these salaries are considered for purposes of determining if a production demonstrates at least \$850,000 in expenditures in the state.

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

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

²¹ The committee substitute provides that qualified expenditures include those goods or services purchased or leased from a Florida resident or from a vendor or supplier who is located and doing business in Florida.

- Industrial film or an educational film: \$15,000.

The committee substitute specifies that all reimbursements in a fiscal year are subject to appropriation on a “first-come, first-served basis” until the appropriation for that fiscal year is exhausted. The committee substitute provides that, subject to subsequent appropriations, the eligibility of qualified productions carries over from year to year.

The committee substitute requires the Office of Film and Entertainment to develop a procedure to ensure that qualified productions continue on a reasonable schedule until completion. If a qualified production is not continued according to a reasonable schedule, the committee substitute requires the Office of Film and Entertainment to withdraw the production’s eligibility and reallocate the production’s financial incentives to other qualified productions.

Digital-Media-Effects Companies

A digital-media-effects company in this state which furnishes digital material for a qualified production may be eligible to receive financial incentives from the state, in the form of a payment of \$100,000 or 5 percent of the company’s annual gross revenues on qualified expenditures²² before taxes, whichever is less. To be eligible for the incentive payment, the digital-media-effects company must furnish the digital material for a qualified production that is certified by the Office of Film and Entertainment.

Qualified Relocation Projects

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

Fraudulent Claims

The committee substitute provides that an eligible entity or company that obtains a payment under the entertainment industry financial incentive program through a claim which it knows to be fraudulent is liable for reimbursement of the amount paid plus a penalty in an amount double the payment and reimbursement of reasonable costs. The committee substitute also specifies that this penalty is in addition to any criminal penalty to which the entity or company is liable for the same acts and that the entity or company is also liable for costs and fees incurred by the state in investigating and prosecuting the fraudulent claim.

²² See qualified expenditures, *supra* note 21.

Annual Report

The committee substitute requires the Governor's Office of Film and Entertainment to submit an annual report to the Governor and Legislature, by January 1 of each year, outlining the return on investment to the state of funds expended for the entertainment industry financial incentive program.

Appropriation (Section 3)

The committee substitute provides that annual funding for the entertainment industry financial incentive program is subject to legislative appropriation.

Effective Date (Section 4)

The committee substitute provides an effective date of July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Direct Payment of Financial Incentives

The committee substitute provides for the payment by the state of financial incentives directly to qualified productions of filmed entertainment and digital-media-effects companies for expenditures made in Florida and to filmed entertainment projects that relocate to Florida from other states. Under s. 10, Art. VII of the State Constitution, the state may not "become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person." However, opinions of the Attorney General conclude that public funds may benefit a private entity under an economic development program if a legislative body found the program serves a public purpose.²³ Although no analogous judicial decisions are found determining whether a direct payment or reimbursement to a private entity, as provided for by this committee substitute, is permissible under s. 10, Art. VII of the State Constitution, the Attorney General's opinions appear to be consistent with a ruling of the

²³ Op. Att'y Gen. Fla. 94-53 (1994); Op. Att'y Gen. Fla. 96-50 (1996).

Florida Supreme Court that “a legislative determination that private economic development serves a public purpose . . . is entitled to great weight.”²⁴

Obscenity

The committee substitute specifies that productions deemed by the Office of Film and Entertainment to contain “obscene content, as defined by the United States Supreme Court,” may not be considered qualified productions. The opinions of the United States Supreme Court interpreting the First Amendment to the federal constitution, as applied to obscenity, have generally established a three-pronged test for judging obscene content:

(a) whether “the average person, applying contemporary community standards” would find that the work, taken as a whole, appeals to the prurient interest [citations omitted]; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.²⁵

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the entertainment industry financial incentive program, the committee substitute authorizes the payment of financial incentives from the state to qualified productions of filmed entertainment and digital-media-effects companies for expenditures made in Florida and to filmed entertainment projects that relocate to Florida from other states.

C. Government Sector Impact:

The financial incentives authorized by the committee substitute are each subject to appropriation. The committee substitute provides that annual funding for the entertainment industry financial incentive program is subject to legislative appropriation. As part of the program, the committee substitute requires the Office of Film and Entertainment to administer an application process, with oversight by the Governor’s Office of Tourism, Trade, and Economic Development, and submit an annual report on the state’s return on investment from the financial incentives paid under the program.

VI. Technical Deficiencies:

None.

²⁴ *Linscott v. Orange County Industrial Development Authority*, 443 So. 2d 97, 101 (Fla. 1983).

²⁵ *Miller v. California*, 413 U.S. 15, 24 (1973).

VII. Related Issues:

The committee substitute is linked to CS/SB 1758, which creates the Entertainment Industry Financial Incentive Trust Fund to facilitate the payment of financial incentives under the entertainment industry financial incentive program created by this committee substitute.

VIII. Amendments:

None.

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