

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/SB 156

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee and Senator Saunders

SUBJECT: Trust Funds

DATE: February 25, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gillespie	Maclure	CM	Favorable/CS
2.	Brown	Lang	JU	Favorable
3.	_____	_____	ATD	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 156 creates the Entertainment Industry Financial Incentive Trust Fund within the Governor’s Office of Tourism, Trade, and Economic Development. The trust fund is created to facilitate the payment of incentives under the entertainment industry financial incentive program. The committee substitute also requires that balances in the trust fund at the end of each fiscal year shall remain in the fund and be available for carrying out the purposes of the fund, thereby preventing appropriations from the General Revenue Fund or other sources from reverting if the appropriations are not used during the fiscal year for which they were provided. The trust fund terminates on July 1, 2008, and must be reviewed before that date.

This committee substitute creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Entertainment Industry Financial Incentive Program

In 2003, the Legislature created the entertainment industry financial incentive program that, subject to specific appropriation, 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.¹ Annual funding for the incentive program is subject to legislative appropriation. s. 288.1255, F.S. The Legislature did not provide funding for the program during fiscal year 2003-2004.²

¹ Chapter 2003-81, L.O.F.; s. 288.1254, F.S.

² See *General Appropriations Act for Fiscal Year 2003-2004*, ch. 2003-397, L.O.F.

Governor's Office of Film and Entertainment

In 1999, the Legislature created the Office of Film and Entertainment within the Governor's Office of Tourism, Trade, and Economic Development (OTTED).³ The Office of Film and Entertainment ("Office") administers Florida's economic development programs for the development and expansion of the state's motion picture and entertainment industry sectors.⁴ The purpose of the Office 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, administers field offices outside of the state,⁵ and coordinates with regional offices maintained by counties and regions across 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.⁶

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.⁷ The purpose of OTTED is to assist the Governor in working with the Legislature, state agencies, business leaders, and economic 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.

Creation and Operation of Trust Funds

A trust fund consists of moneys received by the state which, under law or under trust agreement, are segregated for a purpose authorized by law. s. 215.32(2)(b)1., F.S. Section 19(f), Art. III of the State Constitution, governs the creation of trust funds. This constitutional provision prohibits the creation by law of a trust fund of the state or other public body without a three-fifths vote of the membership of each house of the Legislature.⁸ This provision further specifies that a trust fund must be created in a separate bill for that purpose only. The Florida Supreme Court has interpreted this provision to encompass the inclusion of issues relating to the trust fund's purpose, administration and funding, as well as language addressing its regulation and solvency. *Americans Bankers Insurance Company v. Chiles*, 675 So.2d 922 (Fla. 1996). The First District Court of Appeal construed the three-fifths vote as requiring heightened scrutiny of the bill by the Legislature. *Service Insurance Company v. Chiles*, 660 So.2d 734 (Fla. 1st DCA 1995).

In addition, the Legislature has established criteria governing the establishment of trust funds. Under these criteria, a law creating a trust fund must, at a minimum, specify:

³ Chapter 99-251, L.O.F.; s. 288.1251(1), F.S.

⁴ Office of Film & Entertainment, *About Us: Vision & Mission*, at <http://www.filminflorida.com/about/vm.asp>.

⁵ The Office of Film and Entertainment administers a field office in Los Angeles, California. See Office of Film & Entertainment, *Film Office Directory*, at http://www.filminflorida.com/lr/local_film_commissions.asp.

⁶ Office of Film & Entertainment, *supra* note 4.

⁷ Chapter 96-320, L.O.F.; s. 14.2015(1), F.S.

⁸ Section 19(f)(1), Art. III of the State Constitution.

- The name of the trust fund;
- The agency or branch of state government responsible for administering the trust fund;
- The requirements or purposes that the trust fund is established to meet; and
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund. s. 215.3207, F.S.

The Chief Financial Officer is directed to invest all the trust funds and all agency funds of each state agency. s. 17.61, F.S. Under current law, any balance of an appropriation for any given fiscal year that is remaining after lawful expenditures have been charged against it reverts to the fund from which the Legislature appropriated it and shall be available for re-appropriation. s. 216.301(1)(b), F.S. Any reversion of appropriations provided from the General Revenue Fund must be transferred to the General Revenue Fund within 15 days after the reversion, unless otherwise provided by federal or state law, including the General Appropriations Act. s. 216.301(1)(c), F.S.

Termination of Trust Funds

Section 19(f)(2), Art. III of the State Constitution, specifies that trust funds created after November 4, 1992, with certain exceptions, shall terminate not more than 4 years after the effective date of the act authorizing the creation of the trust fund, unless the Legislature by law sets a shorter time period. Accordingly, a bill that creates a trust fund should specify the trust fund's date of termination, or, if the trust fund is exempt from the automatic 4-year termination requirement, the bill should declare that the trust fund is exempt from this requirement.⁹

The Legislature established a schedule and process for reviewing trust funds. ss. 215.3206 and 215.3208, F.S. Before the regular session of the Legislature and immediately prior to the scheduled termination date of an executive branch trust fund (or an earlier date if specified by the Legislature), the agency responsible for administration of the trust fund and the Governor must recommend to the Legislature whether the trust fund should terminate or be re-created. s. 215.3206(1), F.S. Each recommendation is based on a review of the trust fund's purpose, use, and necessity. A recommendation to re-create the trust fund may include suggested modifications to the purpose, sources of receipts, and allowable expenditures for the trust fund.

If the trust fund is terminated and not immediately re-created, all cash balances and income of the trust fund are deposited into the General Revenue Fund. s. 215.3206(2), F.S. The agency must pay any outstanding debts of the trust fund as soon as practicable, and the Chief Financial Officer closes out and removes the trust fund from the various state accounting systems, using generally accepted accounting practices concerning warrants outstanding, assets, and liabilities.

III. Effect of Proposed Changes:

Entertainment Industry Financial Incentive Trust Fund

The committee substitute creates the Entertainment Industry Financial Incentive Trust Fund to be administered by the Office of Tourism, Trade, and Economic Development. The committee substitute provides that monies credited to the fund shall be those appropriated from the General Revenue Fund or other sources to make incentive payments under the entertainment industry

⁹ See Florida Senate, *Manual for Drafting General Bills* 82 (Sept. 1999).

financial incentive program under s. 288.1254, F.S. The committee substitute also specifies that the purpose of the trust fund is to facilitate the payment of incentives under the program.

The committee substitute also requires that balances in the trust fund at the end of each fiscal year shall remain in the fund and be available for carrying out the purposes of the fund, thereby preventing appropriations from the General Revenue Fund or other sources from reverting if the appropriations are not used during the fiscal year for which they were provided.

The committee substitute provides for the termination of the trust fund on July 1, 2008, and requires the trust fund to be reviewed before that date.

Contingent Effective Date

The committee substitute provides that it takes effect upon becoming a law, contingent on its enactment by a three-fifths vote of the membership of both the Senate and the House of Representatives.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The committee substitute creates the Entertainment Industry Financial Incentive Trust Fund to be administered by the Governor's Office of Tourism, Trade, and Economic Development. The committee substitute appears to comply with s. 19(f), Art. III of the State Constitution, relating to the creation and termination of trust funds.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The committee substitute creates the Entertainment Industry Financial Incentive Trust Fund to facilitate the payment of financial incentives from the state under an entertainment industry financial incentive program 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:

Annual funding for the entertainment industry financial incentive program is subject to legislative appropriation. s. 288.1255, F.S. The committee substitute creates an Entertainment Industry Financial Incentive Trust Fund but does not provide appropriations for the incentive program.

The committee substitute requires the Governor's Office of Tourism, Trade, and Economic Development to administer the trust fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This committee substitute authorizes any balance in the trust fund at the end of the fiscal year to remain within the fund, rather than revert back to General Revenue. The committee substitute cites s. 216.351, F.S., which provides that subsequent inconsistent laws shall supersede this chapter "only to the extent that they do so by express reference to this section" in support of this provision. This may be problematic as it appears to be an exception to s. 216.301, F.S., which requires that all unexpended funds be reverted back to the fund that they were appropriated from at the end of the fiscal year, so that the Legislature retains control over the unspent balances, to decide whether the need exists to re-appropriate the funds.

VIII. Amendments:

None.