HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1129 CS Economic Development
SPONSOR(S): Davis, D.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1372

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Tourism Committee	6 Y, 0 N, w/CS	McDonald	McDonald
2) Transportation & Economic Development Appropriations Committee	12 Y, 0 N	McAuliffe	Gordon
3) State Infrastructure Council	8 Y, 0 N	McDonald	Havlicak
4)			
5)			

SUMMARY ANALYSIS

In 2003, the Legislature created the entertainment industry financial incentive program, subject to specific appropriation, within the Office of Film and Entertainment (OFE). The program's purpose is to encourage the use of Florida as a site for filming, and for providing production services for the film and television industry. The program 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.

In addition to technical and clarifying changes, the bill broadens the definition of what constitutes "entertainment industry" for purposes of OFE activities and the industry incentives under OFE to include television programming. The bill expands the definition of "filmed entertainment" for purposes of the entertainment industry financial incentive program and further defines the terms "motion picture" and "digital-media-effects". Also, the definitions of "production costs", "qualified expenditures", and "qualified production" are amended to conform to other definitional changes, to provide more detail, and to clarify that productions cannot be eligible for funding if they have already begun certain activities in the state.

The application and approval process is amended to allow a digital-media-effects company to apply for reimbursement for providing digital material to filmed entertainment as defined in the bill.

The reimbursement eligibility and recommendation for payment provisions are changed. Included in those changes is an expansion of the types of qualified productions eligible for up to 15 percent reimbursement up to a maximum of $2 million and the criteria for determining demonstration of minimum total qualified expenditure. The bill establishes two queues for the incentive funds. The first queue is to have 60 percent of any incentive money dedicated to it and the second queue is to have 40 percent of all incentive money.

In addition, the eligibility for funding is changed from a first-come, first-served basis for all projects to the following: for the first 2 weeks of an application period, the funding is based upon a project's principal photography start date; then, projects are funded on a first-come, first-served basis within their individual queue. On February 1 of each year, all funds remaining will be combined and distributed on a first-come, first-served basis. If eligibility is withdrawn from a qualified production, funds will be reallocated to the next qualified production in the queue that has not received 15 percent of financial reimbursement or the maximum allowable and has not started principal photography when the funds become available.

The incentive program is based upon specific appropriation. See "Fiscal Comments."

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background:

Office of Film and Entertainment

Created in 1999, the Office of Film and Entertainment (OFE) in the Executive Office of the Governor is responsible for administering Florida's economic development programs for the development and expansion of the state's motion picture and entertainment industry.[1] The purpose of OFE 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.[2] OFE 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;[3] and, coordinates with regional offices maintained by counties and regions across the state.

The OFE activities are guided by a 5-year strategic plan developed in part by its industry advisory council.[4] Among other statutorily mandated responsibilities, the Florida Film and Entertainment Advisory Council advises and consults with the Film and Entertainment Commissioner and the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor (OTTED) regarding the promulgation, administration, and enforcement of all laws and rules relating to the entertainment industry.[5]

Entertainment Industry Financial Incentive Program

In 2003, the Legislature created the entertainment industry financial incentive program, subject to specific appropriation, within the OFE. The program's purpose is to encourage the use of this state as a site for filming, and for providing production services for, motion pictures, made-for-television movies, commercials, music videos, industrial and education films, and television programs by the entertainment industry. The program 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.[6] Annual funding for the incentive program is subject to legislative appropriation.[7] While the Legislature did not provide funding for the program during fiscal year 2003-2004, it appropriated $2.45 million in fiscal year 2004-2005.[8] According to OFE, a total of 24 applications for funding were received the first year, with 21 of those being received within the first two weeks. The total potential return on investment if funding had

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[1] Chapter 99-251, L.O.F.; s. 288.1251(1), F.S. Note: OFE was created within the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor.
[2] Section 288.1251(2)(a), F.S.
[3] The Office of Film and Entertainment administers a field office in Los Angeles, California.
[4] Sections 288.151(2) and 288.152, F.S.
[5] See s. 288.1252(5), F.S., for a delineation of the responsibilities of the Council.
[6] Chapter 2003-81, L.O.F.; s. 288.1254, F.S.
[7] Section 288.1255, F.S.
[8] See *General Appropriations Act for Fiscal Year 2004-2005,* line item 2480Q, ch. 2004-268, L.O.F.

been available for all of the projects would have been $108,874,123. Only three were able to be funded. The estimated return on investment on those three is $19,577,277.[9]

The program offers various types of reimbursement incentives. The first type is a reimbursement of up to 15 percent for qualifying expenditures in Florida for specified filmed entertainment that demonstrates a minimum of $850,000 in total qualified expenditures. A $2 million cap is placed on the reimbursement for a motion picture. The maximum reimbursement for a made-for-television movie or television series pilot is $450,000, for a single television pilot or episode is $150,000, for a music video or commercial is $25,000, and for an educational or industrial film is $15,000. Eligible expenditures used in determining reimbursement include the following:

- Salaries and employee benefits paid for services rendered within the state;
- Rental of real and personal property used in production;
- Payments for preproduction, production, postproduction, and digital-media-effects services rendered within the state; and,
- Costs of set construction.

Salaries of the two highest paid actors cannot be reimbursed; however, salaries of other actors are reimbursable.

The second type provides a reimbursement not to exceed 5 percent of annual gross revenues on qualified expenditures before taxes or $100,000, whichever is less, for a digital-media-effects company in the state that provides digital material to a qualified production certified by OFE.

Another type of incentive offered pertains to luring a certified qualified relocation project to move its operation to Florida.[10] If certified by OFE, such a project is eligible for a one-time incentive payment of 5 percent of its annual gross revenues before taxes for the first 12 months of conducting business in its Florida domicile or $200,000, whichever is less.

OFE is responsible for receiving documentation for claimed expenditures, reviewing applications, certifying eligibility of applicants and making recommendations to the Office of Tourism, Trade and Economic Development (OTTED) regarding an applicant meeting the criteria and the amount of reimbursement to be provided. OTTED makes the final determination for actual reimbursement.

The incentive program provides for recovery of funds plus penalties and costs incurred by the state for investigating the claim if payment is made based upon a fraudulent claim.

Effect of Proposed Changes:

The bill amends s. 288.125, F.S., to broaden the definition of what constitutes “entertainment industry” for purposes of the Office of the Film and Entertainment responsibilities by changing the term “television series” to “television programming”.

The remainder of the legislation amends provisions of s. 288.1254, F.S., relating to the entertainment industry financial incentive program.

The bill changes the definition of “filmed entertainment” by replacing the term “teleproduction” with specific kinds of teleproductions; replacing the phrase “television program or series” with “television pilots, presentations for television pilots and television series”; defining the term “motion picture” that is used in the definition to ensure that all forms of recording devices are included; defining “digital-media-effects” that is used in the definition as it is defined in policies and procedures of the Office of Film and

[9] *“Update from the Governor’s Office of Film & Entertainment”*, January 2005, presentation to Tourism Committee.
[10] This is a corporation, limited liability company, partnership, corporate headquarters, or other private entity that is domiciled in another state or country and relocates its operations to this state, is organized under the laws of this or any other state or country, and includes as one of its primary purposes digital-media-effects or motion picture and television production, or postproduction.

Entertainment; and, specifically excluding the electronic gaming industry and sporting events from the definition.[11]

The definition of "production costs" is changed to provide a more detailed listing of what is considered a legitimate cost as it relates to the incentive program.

The definition of "qualified expenditures" is changed to exclude wages, salaries, or other compensation paid to the two highest paid employees. The exclusion included in the definition replaces language in another provision of the section that requires that the salary of the two highest paid actors be excluded from consideration as a qualified expenditure.

The definition of "qualified production" is changed to add language to exclude those productions that already planned to shoot in the state as determined by the first day of principal photography based by the application for incentive reimbursement.

Three changes are made in the provisions of the law governing the application procedure and approval process. Currently, the only way a digital-media-effects company in the state can apply for and receive a reimbursement is if the digital material is furnished to a qualified production that is certified by the Office of Film and Entertainment. The bill changes that to allow a digital-media-effects company to apply for reimbursement for providing digital material to filmed entertainment as defined in the bill, whether or not the filmed entertainment receives funds through the entertainment industry incentive program. The bill combines current language regarding the application forms and process and places it under paragraph (d) of that subsection.[12] The last change is a technical change which provides the complete name of the Office of Film and Entertainment.

In provisions relating to reimbursement eligibility, submission of required documentation, and recommendation for payment several changes are made:

- The type of production that qualifies for reimbursement is broadened to include the new definition of filmed entertainment and the demonstration of the minimum in qualified expenditures is changed to reflect the "entire run of the project, versus the budget on a single episode, within the fiscal year from July 1 to June 30." This provides that a production can achieve the current minimum threshold of $850,000 in qualified expenditures in more than one way. Primarily, this addresses an issue in current law that limits incentives to television episodes that spend a minimum of $850,000 per year;
- Deletes levels of reimbursement for different types of filmed entertainment;
- Restates, as is in current law, that reimbursements are subject to appropriation;
- In lieu of the requirement that qualified projects be funded on a first-come, first-served basis, the bill requires that for the first 2 weeks, that the funding be based upon a project's principal photography start date. After the first two weeks, projects will be funded on a first-come, first-served basis within their individual queue. On February 1 of each year, all funds remaining will be combined and distributed on a first-come, first-served basis regardless of type of project;
- Removes the automatic carry over of a qualified production from one year to another but does allow for reapplication based upon established guidelines;
- Provides that if eligibility is withdrawn from a qualified production, funds will be reallocated to the next qualified production in the queue that has not received the 15 percent of financial reimbursement or the maximum allowable and has not started principal photography when the funds become available; and,
- Establishes two queues for the incentive funds. The first queue is to have 60 percent of any incentive money dedicated to it and the second queue is to have 40 percent of all incentive money dedicated to it. If money in the queues is not exhausted by February 1 of each year, the money will be combined and made available to projects in either queue.

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[11] According to the Office of Film and Entertainment, these exclusions are provided because the incentive program is not to include projects or productions that would occur in Florida any way.

[12] Section 288.1254, F.S.; Changes are on lines 135 – 176 of the bill. There is one technical amendment on lines 178-179.

The date for submission of the OFE annual report on return on investment of the incentive program is changed from January 1 to October 1, and the report will reflect the previous fiscal year.

The bill takes effect on July 1, 2005.

C. SECTION DIRECTORY:

Section 1 amends s. 288.125, F.S., relating to the definition of "entertainment industry"; broadens definition as it relates to television for purposes of responsibility of the Office of Film and Entertainment.

Section 2 amends s. 288.1254, F.S., relating to the entertainment industry financial incentive program; changing purpose of program to conform to changes in definitions; amending definitions of "filmed entertainment", "production costs", "qualified expenditures", and "qualified productions"; changing application process as it relates to digital-media-effects company; clarifying minimum qualified expenditures; establishing new procedure for distribution of incentive funds; changing date of annual report.

Section 3 provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If there is funding for the incentive program, according to the Film and Entertainment Advisory Council, changes proposed in the bill could help increase television, motion picture, and digital effects work in the state. Such an increase could assist in the employment of Florida residents in the entertainment and related industries.

D. FISCAL COMMENTS:

The bill amends the requirements for eligibility of qualified productions and distribution of incentive funds to qualified productions. The bill does not change the requirements throughout s. 288.1254, F.S., that the program is based upon availability of specific appropriations. Additionally, the bill does not amend s. 288.1255, F.S., which states that "annual funding for the entertainment industry financial incentive program is subject to legislative appropriation."

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The legislation does not require expenditure of funds by local governments, does not reduce the authority to raise revenue, nor reduce the percentage of state tax shared with local governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require nor remove any rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2005, the Tourism Committee unanimously passed HB 1129 with a committee substitute. The amendments were as follows:

Amendment #1: Replaced the phrase "television program" with "television pilots, presentations for television pilots"; corrected spelling errors; removed ", and has always meant and included," from the definition of "motion picture".

Amendment #2: Technical amendment. Reinserted words "goods purchased or leased or" in definition of "qualified expenditures".

Amendment #3: Technical amendment. Reinserted words inadvertently stricken.

Amendment #4: Rewords language to make it more clear.

Amendment #5: Clarifies that a digital-media-effects company in the state that furnishes digital material to "filmed entertainment" can apply for qualification for reimbursement.

Amendment #6: Clarifies that the Office of Film and Entertainment "qualifies" a production for an incentive and that OTTED "certifies the production as being eligible for an incentive. Also, reinstates language providing eligibility for a reimbursement of "up to" 15 percent which gives flexibility to the Office of Film and Entertainment.

Amendment #7: Rewords the language to make it more understandable and refers to "queues" by reference rather than by giving each a name that is not consistent with definitions in the bill.

Amendment #8: Replaces the phrase "long-form television programs" with "television pilots, presentations for television pilots." Corrects spelling error.

Amendment #9: Conforms language to earlier changes relating to digital-media-effects companies.