

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1129

Economic Development

SPONSOR(S): Davis

TIED BILLS:

IDEN./SIM. BILLS: SB 1372

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Tourism Committee</u>	_____	<u>McDonald</u>	<u>McDonald</u>
2) <u>Transportation & Economic Development Appropriations Committee</u>	_____	_____	_____
3) <u>State Infrastructure Council</u>	_____	_____	_____
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 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.

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 and not just television series. The bill expands the definition of "filmed entertainment" for purposes of the entertainment industry financial incentive program by providing a more extensive listing of what is meant by the term as well as further defining 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 a qualified production as defined in the bill, whether or not the qualified production receives funds through the incentive program.

The reimbursement eligibility and recommendation for payment provisions are changed. Included in those changes is the requirement that a qualified production is eligible for a 15% reimbursement (currently up to 15%) under certain circumstances up to a maximum of \$2 million. The bill establishes two queues for the incentive funds. The first queue is to have 60% of any incentive money dedicated to it and the second queue is to have 40% of all incentive money. Also, 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 be based upon a project's principal photography start date; then, 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. 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% 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."

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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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 sectors.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. OFE is responsible for the single application process for the upfront tax exemption certification for the sales and use tax exemption and for qualifying companies for eligibility for receipt of such certification and for the entertainment industry financial incentive program described below.⁴

The OFE activities are guided by a 5-year strategic plan developed in part by its industry advisory council.⁵ 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.⁶ In fact, the Council discussed changes to the laws governing the operation of OFE and the incentive programs during the previous year. At the Council's quarterly meeting in December 2004, final recommendations were made for changes in the law and the drafting of those proposed changes for consideration by OFE and the Legislature was agreed to by the Council.

Entertainment Industry Financial Incentive Program

In 2003, the Legislature created the entertainment industry financial incentive program, subject to specific appropriation, within the Office of Film and Entertainment. 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

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 288.1258 and 288.1254, F.S., respectively.

⁵ Sections 288.151(2) and 288.152, F.S.

⁶ See s. 288.1252(5), F.S., for a delineation of the responsibilities of the Council.

states.⁷ Annual funding for the incentive program is subject to legislative appropriation.⁸ While the Legislature did not provide funding for the program during fiscal year 2003-2004, it appropriated \$2.45 million in fiscal year 2004-2005.⁹ 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 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 \$19,577,277.¹⁰

Specifically, the program offers two types of reimbursement incentives. The first type is a reimbursement of up to 15% 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% 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.¹¹ If certified by OFE, such a project is eligible for a one-time incentive payment of 5% 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 broadens the definition of what constitutes “entertainment industry” for purposes of the Office of the Film and Entertainment activities and the incentives under the OFE by changing the term “television series” to “television programming”. This includes such things as television pilots, presentations for television pilots and television series, including, but not limited to, drama, reality comedy, soap, telenovela, game shows or miniseries productions.

⁷ Chapter 2003-81, L.O.F.; s. 288.1254, F.S.

⁸ Section 288.1255, F.S.

⁹ See *General Appropriations Act for Fiscal Year 2004-2005*, line item 2480Q, ch. 2004-268, L.O.F.

¹⁰ “Update from the Governor’s Office of Film & Entertainment”, January 2005, presentation to Tourism Committee.

¹¹ 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.

The bill also changes the definition of “filmed entertainment” by replacing the term “teleproduction” with specific kinds of teleproductions, 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 Entertainment, and specifically excluding the electronic gaming industry and sporting events from the definition.¹²

The definition of “production costs” is changed to provide, in law, a more detailed, but not exhaustive, listing of what is considered a legitimate cost as it relates to the incentive program.

The definition of “qualified expenditures” is changed to reflect only production costs for services and 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 reflect other definitional changes and 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 a qualified production as defined in the bill, whether or not the qualified production 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.¹³ 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.

- A qualified production is eligible for a reimbursement of 15% (current law says up to 15%) if the program demonstrates \$850,000 minimum in total qualified expenditures. Maximum expenditure is \$2 million (current maximum);
- The type of production that qualifies 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 fixes a problem in current law that limits incentive to television episodes that spend \$850,000 per year, which is impossible to qualify for since most episodes do not cost this much, as opposed to an entire series of episodes in a fiscal 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% of financial

¹² 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.

¹³ Section 288.1254, F.S.; Changes are on lines 135 – 176 of the bill. There is one technical amendment on lines 178-179.

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% of any incentive money dedicated to it and the second queue is to have 40% 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.

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. Additionally, language is added to state that the report will be for 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; requiring minimum percentage of funding for qualified productions; 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:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES