

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1131 CS Entertainment Industry Financial Incentive Trust Fund  
**SPONSOR(S):** Davis, D.  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 114

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Tourism Committee</u>	<u>6 Y, 0 N</u>	<u>McDonald</u>	<u>McDonald</u>
2) <u>Transportation &amp; Economic Development Appropriations Committee</u>	<u>11 Y, 0 N, w/CS</u>	<u>McAuliffe</u>	<u>Gordon</u>
3) <u>State Infrastructure Council</u>		<u>McDonald</u>	<u>Havlicak</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

The bill creates the Entertainment Industry Financial Incentive Trust Fund. The Entertainment Industry Financial Incentive Trust Fund is created within, and administered by, 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 bill also requires that balances in the trust fund at the end of each fiscal year 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 created in this bill terminates, in accordance with s. 19(f)(2) of Article III of the State Constitution, four years after its effective date, if not terminated sooner. This bill also provides for review of the trust fund prior to its termination pursuant to s. 215.3206, F.S.

Section 19(f)(1) of Article III of the State Constitution maintains that no trust fund shall be created without a three-fifths vote of the memberships in both houses of the Legislature. Also, the bill creating the trust fund must not be part of another bill.

Annual funding for the entertainment industry financial incentive program is subject to legislative appropriation. The bill creates an Entertainment Industry Financial Incentive Trust Fund but does not provide appropriations for the incentive program.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill provides additional responsibility for the Office of Tourism, Trade, and Economic Development by requiring it to administer the trust fund created by the bill.

#### B. EFFECT OF PROPOSED CHANGES:

##### **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.<sup>1</sup> Annual funding for the incentive program is subject to legislative appropriation.<sup>2</sup> 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.<sup>3</sup>

##### 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).<sup>4</sup> The Office of Film and Entertainment (OFE) administers Florida's economic development programs for the development and expansion of the state's motion picture and entertainment industry.<sup>5</sup> The purpose of the 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.<sup>6</sup> The major role of OFE includes gathering statistical information related to the state's entertainment industry; providing information and services to businesses, communities, organizations, and individuals engaged in entertainment industry activities; administering field offices outside of the state;<sup>7</sup> and coordinating with regional offices maintained by counties and regions across the state.

##### 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.<sup>8</sup> 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.<sup>9</sup>

<sup>1</sup> Chapter 2003-81, L.O.F.; s. 288.1254, F.S.

<sup>2</sup> Section 288.1255, F.S.

<sup>3</sup> See *General Appropriations Act for Fiscal Year 2004-2005*, line item 2480Q, ch. 2004-268, L.O.F.

<sup>4</sup> Chapter 99-251, L.O.F.; s. 288.1251(1), F.S.

<sup>5</sup> Office of Film & Entertainment, *About Us: Vision & Mission*, at <http://www.filminflorida.com/about/vm.asp> (last visited Jan. 16, 2004).

<sup>6</sup> Section 288.1251(2)(a), F.S.

<sup>7</sup> The Office of Film and Entertainment administers a field office in Los Angeles, California.

<sup>8</sup> Chapter 96-320, L.O.F.; s. 14.2015(1), F.S.

<sup>9</sup> Section 14.2015(2)(h), F.S.

### Creation and Operation of Trust Funds

A trust fund consists of monies received by the state which, under law or under trust agreement, are segregated for a purpose authorized by law.<sup>10</sup> 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.<sup>11</sup> This provision further specifies that a trust fund must be created in a separate bill for that purpose only.

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:

- 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.<sup>12</sup>

The Chief Financial Officer is directed to invest all the trust funds and all agency funds of each state agency.<sup>13</sup> 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 reappropriation.<sup>14</sup> 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.<sup>15</sup>

### 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.<sup>16</sup>

The Legislature established a schedule and process for reviewing trust funds.<sup>17</sup> Before the regular session of the Legislature immediately before 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 be allowed to terminate or should be re-created.<sup>18</sup> 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.

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<sup>10</sup> Section 215.32(2)(b)1., F.S.

<sup>11</sup> Section 19(f)(1), Art. III of the State Constitution.

<sup>12</sup> Section 215.3207, F.S.

<sup>13</sup> Section 17.61, F.S.

<sup>14</sup> Section 216.301(b), F.S.

<sup>15</sup> Section 216.301(c), F.S.

<sup>16</sup> See Florida Senate, *Manual for Drafting General Bills* 82 (Sept. 1999).

<sup>17</sup> Sections 215.3206 and 215.3208, F.S.

<sup>18</sup> Section 215.3206(1), F.S.

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.<sup>19</sup> 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.

### **Effect of Proposed Changes:**

The bill creates the Entertainment Industry Financial Incentive Trust Fund within, and to be administered by, the Office of Tourism, Trade, and Economic Development. The bill 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 financial incentive program under s. 288.1254, F.S. The bill also specifies that the purpose of the trust fund is to facilitate the payment of incentives under the program, and to pay operational expenses.

The bill requires that balances in the trust fund at the end of each fiscal year 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.<sup>20</sup>

The bill provides for the termination of the trust fund on July 1, 2009, and requires the trust fund to be reviewed before that date.

The bill provides that it takes effect July 1, 2005, contingent on its enactment by a three-fifths vote of the membership of both the Senate and the House of Representatives.

### **C. SECTION DIRECTORY:**

Section 1 creates the Entertainment Industry Financial Incentive Trust Fund within, and to be administered by, the Office of Tourism, Trade, and Economic Development; provides for sources of revenue; states purpose of fund; authorizes carry over of funds; provides for termination and review prior to termination.

Section 2 provides a contingent effective date.

## **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:**

None.

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<sup>19</sup> Section 215.3206(2), F.S.

<sup>20</sup> Legislative authority would still be required to spend such funds in the next fiscal year.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill 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.

D. FISCAL COMMENTS:

Annual funding for the entertainment industry financial incentive program is subject to legislative appropriation. The bill creates an Entertainment Industry Financial Incentive Trust Fund but does not provide appropriations for the incentive program.

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

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

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

B. RULE-MAKING AUTHORITY:

No rule-making authority is granted or removed by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 12, 2005, the Transportation and Economic Development Committee adopted one amendment authorizing the trust fund funds to be used for operations.