

# 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.)

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Prepared By: Commerce and Consumer Services Committee

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BILL: CS/SB 2110

SPONSOR: Commerce and Consumer Services and Senator Saunders

SUBJECT: Entertainment Industry Economic Development

DATE: March 28, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barrett	Cooper	CM	Fav/CS
2.	_____	_____	GE	_____
3.	_____	_____	TA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This committee substitute transfers the entertainment industry financial incentive program from s. 288.1254, F.S., to s. 220.192, F.S., and changes the program from a reimbursement program, which is dependent upon annual appropriation, to a corporate income tax program.

This committee substitute provides that qualified production companies may apply entertainment industry tax credits against sales tax as well as corporate income tax. The aggregate amount of sales and corporate income tax credits may not exceed \$25 million in any fiscal year. Qualified productions are eligible for tax credits equal to 15 percent of qualified expenditures on filmed entertainment in Florida. Individual recipients may not receive more than \$2 million in sales and corporate income tax credits, unless the qualified production is a high-impact television series, in which case the recipient may receive no more than \$3 million in sales and corporate income tax credits.

This committee substitute also amends the program to:

- Delete the digital-media-effects company and qualified relocation project incentives; consequently, only “qualified productions” will be eligible for the tax credit;
- Allow tax credits to be carried forward for up to 5 years;
- Allow tax credits to be sold or transferred, under certain conditions;
- Amends the categorization of qualified productions, providing for three queues rather than two queues;
- Revise the tax credit application process; and
- Authorize the Department of Revenue (DOR) to adopt rules to administer the program.

The entertainment industry tax credit program will be repealed on July 1, 2014.

This committee substitute transfers s. 288.1254, F.S., to s. 220.192, F.S., and amends that section; and amends ss. 212.08, 220.02, and 477.0315, F.S.

## II. Present Situation:

### 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. 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.<sup>1</sup> Qualified production companies are eligible for sales tax exemptions for the following:

- ***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.).<sup>2</sup>
- ***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.<sup>3</sup>
- ***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.<sup>4</sup>
- ***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.<sup>5</sup>

The Office of Film and Entertainment (OFE), in cooperation with the Department of Revenue (DOR), developed a standardized application form for use in approving qualified production companies.<sup>6</sup> Under current law, a production company must apply for the certificate of exemption to DOR. DOR forwards the application to the OFE, which must approve or deny the application based on established approval criteria. If OFE approves an application, DOR issues the certificate of exemption to the qualified production company.<sup>7</sup>

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<sup>1</sup> Chapter 2000-182, L.O.F.; s. 288.1258, F.S.

<sup>2</sup> Section 212.031(1)(a)9., F.S.

<sup>3</sup> Section 212.06(1)(b), F.S.

<sup>4</sup> Section 212.08(5)(f), F.S.

<sup>5</sup> Section 212.08(12), F.S.

<sup>6</sup> 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 March 2006); s. 288.1258(2)(c), F.S.

<sup>7</sup> Section 288.1258, F.S.

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.<sup>8</sup>
- 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 \$1,500 for each new employee under certain conditions.<sup>9</sup>
- 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.<sup>10</sup>
- Enterprise Zone Program—Authorizes a variety of state and local tax credits and other economic development incentives for businesses located in designated geographic areas.<sup>11</sup>

### **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). 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.<sup>12</sup> 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 state and coordinates with regional 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.<sup>13</sup>

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 whom 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. In addition, the film commissioner, a representative of Enterprise Florida, Inc., a representative of Workforce Florida, Inc., and a representative of Visit Florida serve ex officio as nonvoting

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<sup>8</sup> Section 288.106, F.S.

<sup>9</sup> Sections 212.097 and 220.1895, F.S.

<sup>10</sup> Sections 212.098 and 220.1895, F.S.

<sup>11</sup> Sections 290.001 through 290.016, F.S.

<sup>12</sup> Chapter 99-251, L.O.F.; s. 288.1251, F.S.

<sup>13</sup> Office of Film & Entertainment, at <http://www.filminflorida.com> (last visited March 2006).

members of the council.<sup>14</sup> 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.<sup>15</sup>

### **Entertainment Industry Financial Incentive Program**

In 2003, the Legislature created the entertainment industry financial incentive program within the Governor's Office of Film and Entertainment.<sup>16</sup> The purpose of the program is to encourage Florida's use as a site for filming and producing motion pictures, made-for-television movies, commercials, music videos, industrial and educational films, and television programs by the entertainment industry. The program is 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. The Office of Film and Entertainment is required to submit an annual report to the Governor and Legislature regarding the return on investment of funds expended for the entertainment industry financial incentive program. The program allows the state to provide financial incentives to three categories of filmed entertainment producers: qualified productions, digital-media-effects companies, and qualified relocation projects.

#### *Production Incentive:*

A qualified production<sup>17</sup> is eligible to receive a cash reimbursement of up to 15 percent of in-state qualifying expenditures. Reimbursements may not exceed \$2 million per recipient. The production must have a minimum of \$850,000 in total qualified expenditures for the entire run of the project. The wages, salaries, or other compensation of the two highest paid employees are excluded from qualified expenditures. The final reimbursement amount is determined after receipts and other information have been submitted to the Office of Film and Entertainment (OFE) for review.

Reimbursement payments are made according to queues. During the first two weeks of an application period, funds are distributed based on the project's principal start date; after that, projects are funded on a first-come, first-served basis within the individual queue. After February 1 of each year, all remaining funds are combined and distributed on a first-come, first served basis. Sixty percent of the incentive funding is dedicated to theatrical or direct-to-video

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<sup>14</sup> Section 288.1252(3)(a), F.S. See Office Film & Entertainment, *Florida Film & Entertainment Advisory Council*, at <http://www.filminflorida.com>.

<sup>15</sup> Section 288.1251(2)(a), F.S.

<sup>16</sup> Chapter 2003-81, L.O.F.; s. 288.1254, F.S.

<sup>17</sup> A "qualified production" is filmed entertainment that makes expenditures in this state for the total or partial production of filmed entertainment. Productions cannot contain obscene content as defined by the United States Supreme Court. A production is not qualified if it is determined that the first day of principal photography in this state occurred on or before the date of submitting an application to OFE or prior to certification by OTTED. Also, note that electronic gaming industry and sporting events are specifically excluded.

motion pictures, made-for-TV movies, commercials, music videos, industrial and education films, promotional videos or films, documentary films, TV specials, and digital-media-effects productions by entertainment industry to be sold or displayed in an electronic medium. The remaining 40 percent is dedicated to TV pilots or TV series to be sold or displayed in an electronic medium.<sup>18</sup>

*Digital Media Effects Company:*

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 expenditures 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.<sup>19</sup>

*Qualified Relocation Project:*

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.<sup>20</sup>

The amount of funds available for the entertainment industry financial incentive program is based upon an annual legislative appropriation. The program was enacted in 2003 but did not receive funding until fiscal year 2004-05 when \$2.45 million was appropriated. The program received an appropriation of \$10 million for fiscal year 2005-06.

### **Entertainment Industry Financial Incentive Programs in Other States<sup>21</sup>**

Eight states have enacted transferable tax credits that are assignable, can be sold, or can be carried forward for a number of years. Depending upon the state, these credits are offered to production companies on investments (LA, GA), payroll (LA, GA, IL, MA), and production costs (LA, AZ, GA, MA, MO, PA, RI). Nine states offer income tax refunds, rebates, or credits on payroll, production costs, or investments. New Mexico and New Jersey offer low interest loans or loan guarantees to encourage film production. Louisiana, Oklahoma, and South Carolina offer incentives for investment in facilities, productions, and certain entertainment businesses. Unlike Florida's incentive, the production incentives offered by many other states are tied to employment of residents, with some requiring the hiring of a percentage of local crew, or the use of soundstages or other facilities. Some states offer additional incentives related to employment

<sup>18</sup> Section 288.1254(4)(a), F.S.

<sup>19</sup> Section 288.1254(4)(b), F.S.

<sup>20</sup> Section 288.1254(4)(c), F.S.

<sup>21</sup> Florida's Entertainment Industry Infrastructure: *Are We Growing the Indigenous Industry as well as Support Production?*, Tourism Committee, Florida House of Representatives, 2006, p 16.

and to the training or mentoring of crew by a production. Often these are used to help build the infrastructure base of a state.

### III. Effect of Proposed Changes:

**Section 1** amends s. 212.08(5), F.S., to provide for entertainment industry sales tax credits.

In order for a company to be eligible for the sales tax credits, the company must: be engaged in producing filmed entertainment in Florida; be registered with the Department of Revenue (DOR) to collect or remit sales tax; have met the requirements of s. 220.192, F.S.; and have received credits under s. 220.192, F.S. (Section 220.192, F.S., is created in section 3 of this bill, and provides for entertainment industry corporate income tax credits.)

The total amount of sales tax and corporate income tax credits that may be granted pursuant to this section and s. 220.192, F.S., is \$25 million in any one state fiscal year. A single company may not receive more than \$2 million in sales and corporate income tax credits, unless the company is involved in the production of a “high-impact television series,” in which case the production may not receive more than \$3 million in sales and corporate income tax credits. A company may use the tax credit against sales tax and corporate income tax, as long as the credit is actually applied only once.

This section provides that the entertainment industry sales tax credits will be granted as refunds against sales taxes reported on returns and remitted in the 12 months prior to the date of application for the credits.

This section authorizes DOR to adopt rules to administer the entertainment industry sales tax credits.

**Section 2** amends s. 220.02, F.S., to provide that the entertainment industry corporate income tax credits must be claimed after all other corporate income tax credits.

**Section 3** transfers the entertainment financial incentive program from s. 288.1254, F.S., to s. 220.192, F.S., and changes the program from a reimbursement of expenditures, which are dependent upon annual appropriation, to a corporate income tax credit. This section also amends the entertainment financial incentive program.

#### *Definitions*

The following terms have been amended as follows:

- “Qualified expenditures” means production costs incurred in this state for goods purchased or leased from or services provided by a vendor or supplier doing business in this state, or payments to residents of this state, excluding wages, salaries, or other compensation paid to the two highest-paid employees in this state.

- “Qualified production” means filmed entertainment that meets or exceeds minimum qualified expenditures in this state for the total or partial production of filmed entertainment.

The definition of “filmed entertainment” is expanded to include made-for-television motion picture *teleproductions* and television specials, and to specifically exclude news shows and sporting events.

This section defines the following terms:

- “High-Impact television series” means a production created to run multiple production seasons with an estimated order of at least seven episodes per season and qualified expenditures of at least \$625,000 per episode.
- “Qualified production company” means a corporation, limited liability company, partnership, or other artificial entity engaged in productions of filmed entertainment.

#### *Digital-media-effects company and qualified relocation project incentives*

This section deletes the digital-media-effects company and qualified relocation project incentives, making only qualified productions eligible for the entertainment industry tax credit. This section makes additional conforming changes throughout s. 220.192, F.S., to reflect the exclusion of digital-media-effects companies and relocation projects.

#### *Entertainment Industry Corporate Income Tax Credit Program*

This section provides that a company may use the tax credit against corporate income tax and sales tax. The aggregate amount of tax credits that may be distributed in any one fiscal year is \$25 million. If the total amount of tax credits applied for in any fiscal year exceeds \$25 million, such excess must be treated as having been applied for on the first day of the next fiscal year in which tax credits are available for allocation. However, no more than \$100 million in tax credits may be allocated in fiscal year 2006-07, no more than \$133 million in tax credits may be allocated in fiscal year 2007-08, no more than \$166 million in tax credits may be allocated in fiscal year 2008-09, and no more than \$200 million in tax credits may be allocated in fiscal year 2009-10 and thereafter.

This section provides that qualified productions are eligible for tax credits equal to 15 percent of qualified expenditures on filmed entertainment in the state. An individual recipient may receive no more than \$2 million in tax credits, unless it is a high-impact television series, in which case, it may receive no more than \$3 million in tax credits.

Consistent with current law, the tax credits will be distributed based on the production’s principal photography start date for the queue in which it is placed, within the first two weeks after the queue’s opening. Tax credits awarded to other qualified productions entering into a queue after the initial two weeks will be on a first come, first served basis.

Consistent with current law, qualified productions are separated into queues. Currently, there are two queues, this section provides for three queues. The *film and television queue* is amended to

require that productions must have qualified expenditures of at least \$625,000 to be eligible for the tax credit. A single qualified production may receive a maximum credit of \$2 million. However, a high-impact television series may receive a maximum credit of \$3 million and are granted priority over other productions under specified circumstances. A television series is only eligible for tax credits for the first five production seasons. Consistent with current law, 60 percent of all annual tax credits are allotted to this category. Any credits remaining after March 1 of each year are to be merged into the general queue.

The *television pilot queue* is amended to require that productions have qualified expenditures of at least \$625,000 for the pilot episode or presentation to qualify for the tax credit. In addition, 20 percent, rather than 40 percent, of all annual tax credits are allotted to this category. A maximum of \$2 million may be distributed to a single project in this queue. Any credits remaining after March 1 of each year are to be merged into the general queue.

The remaining 20 percent is allotted to the new *commercials and music video queue*. Qualified productions in this queue must have qualified expenditures of at least \$500,000. A maximum of \$500,000 may be distributed to a single project in this queue. Any credits remaining after April 1 of each year are to be merged into the general queue.

Funds in the general queue may be distributed to qualified productions as determined by the Office of Film and Entertainment.

This section also provides that, if a qualified production is not continued on schedule or will no longer be produced, OFE must withdraw the production's tax credit eligibility and reallocate the tax credits to the next qualified productions in the queue.

This section requires OFE to develop a process by which qualified productions must submit verifying data to substantiate qualified expenditures. OFE must report to OTTED the final verified amount of actual qualified expenditures. OTTED must notify DOR that the qualified production has met all requirements of the program and must recommend the final amount of tax credit to be granted to the qualified production. This section also provides that if a production spans two state fiscal years, all qualified expenditures for both years must be certified in the latter fiscal year.

This section provides that, if the qualified production company cannot use the entire tax credit it is awarded because of insufficient tax liability, the credit may be carried forward for up to five years. Alternatively, the taxpayer may sell or assign the tax credit, provided it is for at least 85 percent of the value of the credit. The purchaser of the tax credit may not transfer the tax credit. A qualified production company that is not a corporation, as defined in s. 220.03(1)(e), F.S.,<sup>22</sup>

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<sup>22</sup> (e) "Corporation" includes all domestic corporations; foreign corporations qualified to do business in this state or actually doing business in this state; joint-stock companies; limited liability companies, under ch. 608, F.S.; common-law declarations of trust, under ch. 609, F.S.; corporations not for profit, under ch. 617, F.S.; agricultural cooperative marketing associations, under chapter 618; professional service corporations, under ch. 621, F.S.; foreign unincorporated associations, under ch. 622, F.S.; private school corporations, under ch. 623, F.S.; foreign corporations not for profit which are carrying on their activities in this state; and all other organizations, associations, legal entities, and artificial persons which are created by or pursuant to the statutes of this state, the United States, or any other state, territory, possession, or jurisdiction. The term "corporation" does not include proprietorships, even if using a fictitious name; partnerships of any type, as such; limited liability companies



may transfer credits or distribute credits to its partners or members. Application deadlines for tax credits are specified in the committee substitute.

This section authorizes OFE to develop a standardized application form to use in qualifying an applicant as a qualified production. This section also amends the application process for qualified productions to reflect the change from a reimbursement program to a tax credit program. In addition to technical changes, the following changes are made in this section relating to the application process:

- The signed affirmation that information on an application form has been verified and is correct is shifted from OFE to the applicant.
- OFE must review the application and determine whether or not an applicant qualifies within 10 business days after receipt of the application.
- OFE must notify OTTED when applicants are qualified, and recommend tax credit amounts to be awarded.
- OTTED must certify the tax credit amount to be awarded to a qualified production within 10 business days after receiving notice from OFE that the applicant is qualified.
- OTTED must notify the applicant of certification, and the applicant must submit the certified application to DOR.
- A qualified production company applying for a tax credit is required to submit a report documenting the amount of claimed qualified expenditures to OFE. The report must be prepared by a certified public accountant in Florida.
- OFE is required to ensure that appropriate marketing materials are included on any filmed entertainment as a condition of receiving the entertainment tax credit. The marketing materials may include promotions of Florida as a tourist and filming destination.

OTTED and DOR are authorized to adopt rules to implement and administer the tax credit program.

This section provides that, if an applicant fraudulently claims the tax credit, they are liable for reimbursement of costs and fees associated with the review of their application, in addition to reimbursement of twice the amount of the tax credit.

Finally, this section provides that s. 220.192, F.S., will be repealed on July 1, 2014.

**Section 4** amends s. 477.0135, F.S.,<sup>23</sup> to change a reference to s. 288.1254, F.S., to a reference to s. 220.192, F.S.

**Section 5** provides an effective date of July 1, 2006.

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that are taxable as partnerships for federal income tax purposes; state or public fairs or expositions, under ch. 616, F.S.; estates of decedents or incompetents; testamentary trusts; or private trusts.

<sup>23</sup> Section 477.0135(5), F.S., exempts those providing makeup, special effects, or cosmetology services, during a qualified production recognized by OFE, from being required to have a cosmetology license.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

On March 17, 2006, the Revenue Estimating Conference estimated that the fiscal impact of the entertainment industry tax credit will be a recurring revenue loss of \$25 million. It is expected that the funding cap will be reached each year.

**B. Private Sector Impact:**

Qualified production companies that are eligible for the entertainment industry financial incentive program will benefit, as they may receive corporate income tax and sales tax credits equal to 15 percent of qualified expenditures, or \$2 million, whichever is less.

**C. Government Sector Impact:**

DOR may incur administrative costs relating to implementation of the tax credit program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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

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