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.)

Prepared By: Government Efficiency Appropriations Committee

BILL: CS/CS/SB 2110

SPONSOR: Government Efficiency Appropriations Committee, Commerce and Consumer Services and Senator Saunders

SUBJECT: Entertainment Industry Economic Development

DATE: April 24, 2006 REVISED:

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

I. Summary:

The bill changes the Entertainment Industry Financial Incentive Program from a reimbursement of expenditures to a credit that can be applied against corporate income tax and sales and use tax liability.

Productions of filmed entertainment qualified by the Office of Film and Entertainment and certified by the Governor's Office of Tourism, Trade, and Economic Development are eligible for a tax credit on qualified expenditures in the state. The credit is in an amount equal to 15 percent of qualified expenditures and may be applied as a refund of the sales and use tax paid on qualified expenditures and it may be applied as a credit against the corporate income tax.

There are three separate queues eligible to receive an allocation of the credits: the film, television, and episodic queue; the television pilot queue; and the commercial and music video queue. Productions in the first queue must have a minimum of $625,000 in qualified expenditures for the entire run of the project, or $625,000 in qualified expenditures per episode for a high-impact television series. Qualified high-impact television series will be allowed first position in this queue for its first five production seasons in Florida. Productions in the second queue must have $625,000 in expenditures for the pilot episode. Productions in the third queue must have a minimum of $500,000 in total qualified expenditures in a state fiscal year, with a minimum of $75,000 for each production. A single production under a queue may receive no more than $3 million in tax credits. The first queue receives 60 percent of the available tax credits each fiscal year. The second and third queues each receive 20 percent.

There is a total tax credit cap of $25 million per fiscal year. If applications for credit exceed that amount, the excess will be treated as having been applied for on the first day of the next fiscal year in which tax credits remain available. No more than $75 million in tax credits will be allocated over the three year program.

Tax credits received by qualified production companies may be carried forward for up to five years. Sales and use tax credits may not be transferred. The corporate income tax credits may be sold or assigned, in whole or in part. Credits cannot be exchanged for less than 85 percent of their value. The taxpayer may make up to three tax credit transfers which consist of at least ten percent of the total credits awarded. The purchaser cannot sell, assign, or otherwise transfer the tax credit. A qualified production company that is not a corporation can sell or assign credits or distribute credits to its partners or members in proportion to the respective distributive share of their income or loss for the state fiscal year in which the credits were approved.

The entertainment industry tax credits authorized under this bill are repealed July 1, 2009.

This committee substitute creates s. 220.192, F.S., and amends ss. 212.08, 213.053, 220.02, and 288.1254, 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.[1] 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.).[2]
- ***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.[3]
- ***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.[4]
- ***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

[1] Chapter 2000-182, L.O.F.; s. 288.1258, F.S.
[2] Section 212.031(1)(a)9., F.S.
[3] Section 212.06(1)(b), F.S.
[4] Section 212.08(5)(f), F.S.

payments to recording studios and motion picture or television studios for the tangible elements of the tapes, records, films, or videos.[5]

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.[6] Under current law, a production company must apply for the certificate of exemption to the DOR. The DOR forwards the application to the OFE, which must approve or deny the application based on established approval criteria. If the OFE approves an application, the DOR issues the certificate of exemption to the qualified production company. [7]

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 job is higher than the average wage in the community.[8]
- 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.[9]
- 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.[10]
- Enterprise Zone Program—Authorizes a variety of state and local tax credits and other economic development incentives for businesses located in designated geographic areas.[11]

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. [12] 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

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[5] Section 212.08(12), F.S.
[6] 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.
[7] Section 288.1258, F.S.
[8] Section 288.106, F.S.
[9] Sections 212.097 and 220.1895, F.S.
[10] Sections 212.098 and 220.1895, F.S.
[11] Sections 290.001 through 290.016, F.S.
[12] Chapter 99-251, L.O.F.; s. 288.1251, F.S.

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.[13]

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 members of the council.[14] 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.[15]

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.[16] 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:

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[13] Office of Film & Entertainment, *at* http://www.filminflorida.com (last visited March 2006).
[14] Section 288.1252(3)(a), F.S. *See* Office Film & Entertainment, *Florida Film & Entertainment Advisory Council, at* http://www.filminflorida.com.
[15] Section 288.1251(2)(a), F.S.
[16] Chapter 2003-81, L.O.F.; s. 288.1254, F.S.

A qualified production[17] 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 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.[18]

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.[19]

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.[20]

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[17] 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 the OFE or prior to certification by OTTED. Also, note that electronic gaming industry and sporting events are specifically excluded.

[18] Section 288.1254(4)(a), F.S.

[19] Section 288.1254(4)(b), F.S.

[20] Section 288.1254(4)(c), F.S.

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[21]

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 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:

The bill changes the entertainment industry incentive program from a reimbursement of expenditures to a credit against corporate income tax and sales and use tax liability.

Definitions

The following definitions 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:

[21] 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.

- "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.

The application procedure and application approval process for filmed entertainment have been changed to reflect the change of the program from a reimbursement of expenditures to a tax credit. In addition to technical changes and the shift of language to the section on rules, the following changes are made in the bill relating to application:

- the signed affirmation that information on an application form has been verified and is correct is shifted from OFE to the applicant;
- the time frame for OFE to review the application, determine if the applicant is a qualified production, make recommendation to OTTED regarding the maximum amount of the tax credit award, and notify an applicant that the information provided is not complete has been increased from five days to ten business days; and,
- within ten days after receiving notice from OFE, OTTED shall certify the maximum tax credit award, if any. Certification will be transmitted to the applicant and to the executive director of the Department of Revenue (DOR). The applicant is responsible for forwarding a certified application to DOR.

Entertainment Industry Corporate Income Tax Credit Program

Productions of filmed entertainment that are qualified by OFE and certified by OTTED are eligible for a tax credit on qualified expenditures in the state, excluding wages, salaries, and other compensation paid to the two highest-paid residents of this state working on the production. Qualified production companies are eligible for a credit in an amount equal to 15 percent of qualified expenditures and may be applied as a refund of sales and use tax paid on qualified expenditures and as a credit against the corporate income tax impose by ch. 220, F.S.

The bill provides that certain qualified productions that start in one state fiscal year and finish in the next state fiscal year have all qualified expenditures from both fiscal years certified for the latter state fiscal year. This provision does not apply to commercials and music videos.

There is a total credit cap of $25 million per state fiscal year. If applications for credit exceed that amount for a fiscal year, the excess will be treated as having been applied for on the first day of the next fiscal year in which tax credits remain available for allocation. The bill provides for limits on the aggregate amount of tax credits that can be allocated and provides that when the total amount of tax credits allocated reaches $75 million, no more credits can be allocated.

Tax credits awarded in a state fiscal year will be made 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. Other qualified productions entering into a queue after the initial two weeks will be considered on a first come, first served basis.

There are three queues: the film, television, and episodic queue; the television pilot queue; and the commercials and music video queue.

The *film, television, and episodic queue.* Productions in this queue must have a minimum of $625,000 in total qualified expenditures for the entire run of the project, except for high-impact television series which must have a minimum of $625,000 in qualified expenditures for each episode. A single production in this queue may receive a maximum credit of $2 million, with the exception of a high-impact television series which may receive a maximum credit of $3 million. This queue receives 60 percent of the available tax credits in any fiscal year. Television series, including, but not limited to, high-impact television series, are not allowed tax credits after five production seasons in this state. Qualified high-impact television series will be allowed first position in this queue for their first five production seasons in the state, if an application is received by OFE within the first two weeks after the queue opens. Unless otherwise provided in the section, high-impact television series must file an application for each state fiscal year in which it is eligible to receive the tax credit.

The *television pilot queue*. Productions in this queue must demonstrate $625,000 in expenditures for the pilot episode or presentation. A single production in this queue may receive a maximum credit of $2 million. This queue receives 20 percent of the available tax credit in any fiscal year.

The *commercials and music video queue.* This queue requires productions to demonstrate a minimum of $500,000 in combined total qualified expenditures in a state fiscal year, with a minimum of $75,000 in qualified expenditure for each production. A single production in this queue may receive no more than $500,000. This queue receives 20 percent of the available tax credits in any fiscal year.

On March 1 of each year, credits remaining in the first two queues will be merged and placed into a general queue for use for other purposes as determined by OFE. On April 1 of each fiscal year, credits remaining in the third queue will be merged into the general queue.

If a qualified production is not continued subject to a reasonable schedule or if OFE has been notified that a qualified production will no longer be produced, OFE shall withdraw its eligibility and reallocate the funds to the next qualified productions already in the queue that have not received their full tax credit.

The OFE is required to develop a process for receiving information on qualified expenditures from certified productions at the conclusion of the production. The OFE is to verify data to substantiate the qualified expenditures. The OFE reports the verified amount available for the tax credit to OTTED. OTTED then notifies DOR that the qualified production has met all requirements and recommends the final amount of the credit.

Upon application and approval by DOR, a taxpayer may sell, in whole or in part, corporate income tax credits granted under this program. Credits cannot be exchanged for consideration of less than 85 percent of the tax credit to be transferred. Taxpayers are authorized to conduct no more than three transfers of the awarded credits. Each transfer must consist of at least ten percent of the total credits awarded. Tax credits may be sold at any point during ownership. Purchasers of the credit may use it subject to the same limitations as the taxpayer to whom the credit was granted. The purchaser cannot sell or otherwise transfer the tax credit.

A qualified production company that is not a corporation, as defined in s. 220.03(1)(e), F.S., can make an application to DOR to transfer credits or to distribute credits to its partners or members in proportion to the respective distributive share of the partners' or members' income or loss for the year in which the credits were approved.

A company may use the tax credit against the tax liability imposed under ch. 220, F.S., in whole or in part, and against the liability imposed under ch. 212, F.S., as long as the credits are used only once. Unused tax credits may be carried forward for up to five years.

The bill requires OFE to ensure that appropriate marketing materials, when appropriate, are included in filmed entertainment.

The bill requires the development of rules by OTTED and authorizes DOR to adopt rules.

The bill provides that an applicant who submits fraudulent information on an application is liable for reimbursement of reasonable costs and fees associated with the review, processing, investigation, and prosecution of the fraudulent application.

The entertainment industry tax credits authorized under chs. 212, 220, and 288, F.S., are repealed July 1, 2009.

The bill amends s. 220.02, F.S., revising the order in which credits against the corporate income or franchise tax may be applied.

The bill becomes effective July 1, 2006.

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:

The fiscal impact of the entertainment industry tax credit will be a revenue loss of $25 million in fiscal years 2006-07, 2007-08 and 2008-09. 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 and use tax credits equal to 15 percent of qualified expenditures, or $2 million,[22] whichever is less.

C. Government Sector Impact:

In order to implement the tax credit program, the Department of Revenue has indicated a need for an additional $286,257 in fiscal year 2006-2007 and $93,571 in fiscal year 2007-08 and thereafter.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[22] $3 million if the production company is involved in the production of a "high-impact television series."

VIII. Summary of Amendments:

None.