

By Senator Saunders

37-1357-06

See HB

1 A bill to be entitled

2 An act relating to entertainment industry

3 economic development; transferring,

4 renumbering, and amending s. 288.1254, F.S.;

5 revising the entertainment industry financial

6 incentive program to provide corporate income

7 tax credits to qualified entertainment entities

8 rather than reimbursements from appropriations;

9 revising provisions relating to definitions,

10 creation and scope, application procedures,

11 approval process, eligibility, required

12 documents, qualified productions, rules,

13 fraudulent claims, and annual reports;

14 providing criteria and limitations for awards

15 of tax credits; providing marketing

16 requirements; providing for future repeal;

17 amending s. 477.0135, F.S.; correcting a

18 cross-reference; providing an effective date.

19

20 Be It Enacted by the Legislature of the State of Florida:

21

22 Section 1. Section 288.1254, Florida Statutes, is

23 transferred and renumbered as section 220.192, Florida

24 Statutes, and amended to read:

25 220.192 ~~288.1254~~ Entertainment industry financial

26 incentive program; creation; purpose; definitions; application

27 procedure; approval process; ~~reimbursement~~ eligibility;

28 submission of required documentation; recommendations for

29 credit award ~~payment~~; policies and procedures; fraudulent

30 claims.--

31

1 (1) CREATION AND PURPOSE OF PROGRAM.--~~Subject to~~
2 ~~specific appropriation,~~ There is created within the Office of
3 Film and Entertainment an entertainment industry financial
4 incentive program. The purpose of this program is to encourage
5 the use of this state as a site for filming and providing
6 production services for filmed entertainment.

7 (2) DEFINITIONS.--As used in this section, the term:

8 (a) "Distributor" means a distribution company that
9 enters into a binding distribution agreement for a
10 feature-length independent film or video.

11 (b)(a) "Filmed entertainment" means a theatrical or
12 direct-to-video motion picture, a made-for-television motion
13 picture teleproduction, a commercial, excluding political
14 commercials, a music video, an industrial or educational film,
15 a promotional video or film, a documentary film, a television
16 pilot, a presentation for a television pilot, a television
17 series, including, but not limited to, a drama, a reality, a
18 comedy, a soap opera, a telenovela, a game show, and a
19 miniseries production, or a digital-media-effects production
20 by the entertainment industry to be sold or displayed in an
21 electronic medium. As used in this paragraph, the term "motion
22 picture" means a motion picture made on or by film, tape, or
23 otherwise and produced by means of a motion picture camera,
24 electronic camera or device, tape device, any combination of
25 the foregoing, or any other means, method, or device now used
26 or which may hereafter be adopted. As used in this paragraph,
27 the term "digital-media-effects" means visual elements created
28 through the modification of already existing or newly created
29 visual elements for film, video, or animated media through the
30 use of digital 2D/3D animation or painting, motion capture, or
31 compositing technologies. ~~For purposes of this section, the~~

1 ~~term "filmed entertainment" does not include the electronic~~
2 ~~gaming industry or sporting events.~~

3 (c) "High-impact television series" means a production
4 created to run multiple production seasons with an estimated
5 order of at least seven episodes per season and qualified
6 expenditures of at least \$625,000 per episode.

7 ~~(d)(b)~~ "Production costs" means the costs of real,
8 tangible, and intangible property used and services primarily
9 or customarily performed in the production, including
10 preproduction and postproduction, of qualified filmed
11 entertainment. Production costs generally include, but are not
12 limited to:

13 1. Wages, salaries, or other compensation for
14 technical and production crews, directors, producers, and
15 performers ~~who are residents of this state.~~

16 2. Expenditures for sound stages, backlots, production
17 editing, digital effects, sound recordings, sets, and set
18 construction.

19 3. Expenditures for rental equipment, including, but
20 not limited to, cameras and grip or electrical equipment.

21 4. Expenditures for meals, travel, and accommodations,
22 ~~and goods~~ used in producing filmed entertainment ~~that is~~
23 ~~located and doing business in this state.~~

24 5. Expenditures for goods and services used in
25 producing filmed entertainment.

26 ~~(e)(e)~~ "Qualified expenditures" means production costs
27 incurred in this state for goods purchased or leased from or
28 services provided by ~~purchased, leased, or employed from a~~
29 ~~resident of this state or a vendor or supplier who is located~~
30 ~~and doing business in this state,~~ or payments to residents of
31 this state ~~but~~ excluding wages, salaries, or other

1 compensation paid to the two highest-paid employees in this
2 state.

3 ~~(f)(d)~~ "Qualified production" means filmed
4 entertainment that makes expenditures in this state for the
5 total or partial production of filmed entertainment.
6 Productions that are deemed by the Office of Film and
7 Entertainment to contain obscene content, as defined by the
8 United States Supreme Court, are not qualified productions.
9 ~~Also, a production is not a qualified production if it is~~
10 ~~determined that the first day of principal photography in this~~
11 ~~state occurred on or before the date of submitting its~~
12 ~~application to the Office of Film and Entertainment or prior~~
13 ~~to certification by the Office of Tourism, Trade, and Economic~~
14 ~~Development.~~

15 ~~(g)(e)~~ "Qualified production company relocation
16 ~~project~~" means a corporation, limited liability company,
17 partnership, ~~corporate headquarters~~, or other artificial
18 ~~private~~ entity engaged in productions of filmed entertainment
19 ~~that is domiciled in another state or country and relocates~~
20 ~~its operations to this state, is organized under the laws of~~
21 ~~this or any other state or country, and includes as one of its~~
22 ~~primary purposes digital media effects or motion picture and~~
23 ~~television production, or postproduction.~~

24 (3) APPLICATION PROCEDURE; APPROVAL PROCESS.--

25 (a) Any company engaged in this state in producing
26 filmed entertainment may submit an application to the Office
27 of Film and Entertainment for the purpose of determining
28 qualification for an award of credits against the tax imposed
29 by this chapter as receipt of reimbursement provided in this
30 section. The office must be provided information required to
31 determine if the production is a qualified production and to

1 determine the qualified expenditures, production costs, and
2 other information necessary for the office to determine both
3 eligibility for and amounts of tax credits level of
4 ~~reimbursement.~~

5 ~~(b) A digital media effects company in the state which~~
6 ~~furnishes digital material to filmed entertainment may submit~~
7 ~~an application to the Office of Film and Entertainment for the~~
8 ~~purpose of determining qualification for receipt of~~
9 ~~reimbursement authorized by this section. The office must be~~
10 ~~provided information required to determine if the company is~~
11 ~~qualified and to determine the amount of reimbursement.~~

12 ~~(c) Any corporation, limited liability company,~~
13 ~~partnership, corporate headquarters, or other private entity~~
14 ~~domiciled in another state which includes as one of its~~
15 ~~primary purposes digital media effects or motion picture and~~
16 ~~television production and which is considering relocation to~~
17 ~~this state may submit an application to the Office of Film and~~
18 ~~Entertainment for the purpose of determining qualification for~~
19 ~~reimbursement under this section.~~

20 ~~(b)(d)~~1. The Office of Film and Entertainment shall
21 adopt rules ~~establish a process~~ by which an application is
22 accepted and reviewed and ~~reimbursement~~ eligibility for and
23 amounts of tax credits ~~reimbursement amount~~ are determined.
24 The Office of Film and Entertainment may request assistance
25 from a duly appointed local film commission in determining a
26 production's qualifications for awards of tax credits
27 ~~reimbursement~~ and compliance.

28 2. The Office of Film and Entertainment shall develop
29 a standardized application form for use in approving a
30 qualified production or distribution bonus, ~~a qualified~~
31 ~~relocation project, or a company qualifying under paragraph~~

1 ~~(a), paragraph (b), or paragraph (c).~~ The application form for
2 a qualified production must include, but need not be limited
3 to, production-related information on employment, proposed
4 total production budgets, planned expenditures in this state
5 which are intended for use exclusively as an integral part of
6 preproduction, production, or postproduction activities
7 engaged primarily in this state, and a signed affirmation from
8 the applicant ~~Office of Film and Entertainment~~ that the
9 information on the application form has been verified and is
10 correct. The application form shall be distributed to
11 applicants by the Office of Film and Entertainment or local
12 film commissions.

13 3. The Office of Film and Entertainment must complete
14 its review of each application and recommend a maximum tax
15 credit award to the Office of Tourism, Trade, and Economic
16 Development or notify the applicant that he or she has not met
17 the requirements for qualification within 10 business 5 days
18 after receipt of the completed application, including all
19 required information, and it must notify the applicant of the
20 certified maximum tax credit award, if any, its determination
21 within 10 business days after being notified of certification
22 by the office receipt of the completed application and
23 required information.

24 4. ~~Upon determination that all criteria are met for~~
25 ~~qualification for reimbursement,~~ The Office of Film and
26 Entertainment shall notify the ~~applicant of such approval. the~~
27 ~~office shall also notify the~~ Office of Tourism, Trade, and
28 Economic Development of the applicant approval and amount of
29 tax credit award reimbursement required. The Office of
30 Tourism, Trade, and Economic Development shall make final
31 determination for actual tax credit award reimbursement.

1 5. The Office of Film and Entertainment shall deny an
2 application if it determines that:

3 a. The application is not complete or does not meet
4 the requirements of this section; or

5 b. The tax credit amount ~~reimbursement~~ sought does not
6 meet the requirements of this section ~~for such reimbursement~~.

7 (4) CREDIT REIMBURSEMENT ELIGIBILITY; SUBMISSION OF
8 REQUIRED DOCUMENTATION; APPLICATION RECOMMENDATIONS FOR
9 TRANSFER PAYMENT.--

10 (a) A production that is qualified by the Office of
11 Film and Entertainment and is certified by the Office of
12 Tourism, Trade, and Economic Development is eligible for a tax
13 credit for reimbursement of up to 15 percent of its qualifying
14 expenditures in this state on a filmed entertainment program,
15 excluding wages, salaries, or other compensation paid to the
16 two highest-paid employees of the production in this state
17 that demonstrates a minimum of \$850,000 in total qualified
18 expenditures for the entire run of the project, versus the
19 budget on a single episode, within the fiscal year from July 1
20 to June 30. However, the maximum reimbursement that may be
21 made with respect to any filmed entertainment program is \$2
22 million. All reimbursements under this section are subject to
23 appropriation. Tax credits awarded Payments under this section
24 in a fiscal year shall be made to qualified productions
25 according to a production's principal photography start date,
26 for those qualified productions having entered into the first
27 queue as cited in subparagraph 1. or the second queue cited in
28 subparagraph 2. within the first 2 weeks after the queue's
29 opening. All other qualified productions entering into either
30 queue after the initial 2-week openings shall be on a
31 first-come, first-served basis ~~until the appropriation for~~

1 ~~that fiscal year is exhausted. The aggregate amount of tax~~
2 ~~credits allowed under this section in any fiscal year is \$25~~
3 ~~million. If the total amount of allocated tax credits applied~~
4 ~~for in any fiscal year exceeds the aggregate amount of tax~~
5 ~~credits authorized annually under this section, such excess~~
6 ~~shall be treated as having been applied for on the first day~~
7 ~~of the next fiscal year in which tax credits remain available~~
8 ~~for allocation. On February 1 of each year, the remaining~~
9 ~~funds within both queues shall be combined into a single queue~~
10 ~~and distributed based on a project's principal photography~~
11 ~~start date. The eligibility of qualified productions may not~~
12 ~~carry over from year to year, but such productions may reapply~~
13 ~~for eligibility under the guidelines established for doing so.~~
14 The Office of Film and Entertainment shall develop a procedure
15 to ensure that qualified productions continue on a reasonable
16 schedule until completion. If a qualified production is not
17 continued according to a reasonable schedule, the office shall
18 withdraw its eligibility and reallocate the funds to the next
19 qualified productions already in the queue that have yet to
20 receive their full tax credit ~~maximum or 15 percent financial~~
21 ~~reimbursement~~, if they have not started principal photography
22 by the time the funds become available.

23 1. Film, television, and episodic queue.--Theatrical
24 or direct-to-video motion pictures, made-for-television
25 movies, commercials, music videos, industrial and educational
26 films, promotional videos or films, documentary films,
27 television specials, television series, including, but not
28 limited to, miniseries and telenovelas, and
29 digital-media-effects productions by the entertainment
30 industry to be sold or displayed in an electronic medium which
31 demonstrate a minimum of \$625,000 in total qualified

1 expenditures for the entire run of the project, which, for a
2 television series, means a season even if the season is not
3 completed in the same fiscal year in which principal
4 photography began, shall have their own separate queue
5 established, and such queue shall have dedicated to it 60
6 percent of all available tax credits in any fiscal year for
7 which this section applies ~~of the state incentive money.~~ The
8 maximum tax credit award that may be made from this queue for
9 any single production is \$2 million, unless the production is
10 a high-impact television series, in which case the production
11 shall be eligible for a maximum tax credit award of \$3
12 million, provided such production meets the other criteria of
13 this section. On March 1 of each year, the remaining tax
14 credits within this queue shall be merged into a general queue
15 and may be used for other purposes of this section as
16 determined by the Office of Film and Entertainment. A
17 qualified high-impact television series shall be allowed first
18 position in this queue for its first five production seasons
19 if the application is received by the Office of Film and
20 Entertainment within the first 2 weeks after the queue's
21 opening. A television series after its fifth production season
22 is not eligible for tax credit awards under this section.

23 2. Television pilot queue.--~~Television pilots and,~~
24 ~~presentations for television pilots~~ for television series
25 intended to be shot in this state and, ~~or television series,~~
26 ~~including, but not limited to, drama, reality, comedy, soap~~
27 ~~opera, telenovela, game show, or miniseries productions, by~~
28 ~~the entertainment industry to be sold or displayed in an~~
29 ~~electronic medium~~ which demonstrate a minimum of \$625,000 in
30 total qualified expenditures for the pilot episode or
31 presentation shall have their own separate queue established,

1 and such queue shall have dedicated to it ~~20~~ 40 percent of all
2 available tax credits in any given fiscal year for which this
3 section applies ~~of the state incentive money~~. The maximum tax
4 credit award that may be made from this queue for any single
5 project is \$2 million. On March 1 of each year, the remaining
6 tax credits within this queue shall be merged into a general
7 queue and may be used for other purposes of this section as
8 determined by the Office of Film and Entertainment.

9 3. Commercials and music video queue.--Commercials and
10 music videos by the entertainment industry to be sold or
11 displayed in an electronic medium which demonstrate a minimum
12 of \$500,000 in total qualified expenditures from a production
13 company during the state fiscal year with a minimum of \$75,000
14 in qualified expenditures for each production shall have their
15 own separate queue established. Such queue shall have
16 dedicated to it 20 percent of available tax credits in any
17 given fiscal year for which this section applies. The maximum
18 tax credit award that may be made from this queue for any
19 single production company is \$500,000. On April 1 of each
20 year, the remaining tax credits within this queue shall be
21 merged into a general queue and may be used for other purposes
22 of this section as determined by the Office of Film and
23 Entertainment.

24 4. Independent film and video distribution queue.--If
25 a distributor enters into a distribution agreement and
26 licenses theatrical or home video release rights for an
27 independent feature film or video more than 70 minutes in
28 length with 90 percent of its production days in this state
29 and that demonstrates a maximum of \$625,000 in total qualified
30 expenditures in this state during the state fiscal year, there
31 shall be a separate queue established for releases of such

1 films or videos. Such queue shall have dedicated to it the
2 first \$250,000 of available tax credits in any given fiscal
3 year for which this section applies. The maximum tax credit
4 award that may be made to a distributor from this queue for
5 any single project is \$40,000 for a theatrical release and
6 \$10,000 for a home video release. A distributor may not
7 receive more than \$120,000 in total tax credits from this
8 queue. The Office of Film and Entertainment may adopt rules to
9 determine an acceptable theatrical or home video release. On
10 May 1 of each year, the remaining tax credits within this
11 queue shall be merged into a general queue and may be used for
12 other purposes of this section as determined by the Office of
13 Film and Entertainment.

14 (b) The tax credit available under this section shall
15 only be surrendered in satisfaction of the tax owed by a
16 qualified production company under this chapter and only up to
17 the face amount of the credit. If the qualified production
18 company cannot use the entire tax credit in the year in which
19 the credit is approved, any excess may be carried over to a
20 succeeding taxable year. A tax credit granted under this
21 section may be carried forward only for a maximum of 5 years
22 following the year in which the credit was approved. A
23 ~~digital media effects company in the state which furnishes~~
24 ~~digital material to filmed entertainment may be eligible for a~~
25 ~~payment in an amount not to exceed 5 percent of its annual~~
26 ~~gross revenues on qualified expenditures as defined in~~
27 ~~paragraph (2)(c) before taxes or \$100,000, whichever is less.~~
28 ~~A company applying for payment must submit documentation~~
29 ~~annually as required by the Office of Film and Entertainment~~
30 ~~for determination of eligibility of claimed billing and~~
31

1 ~~determination of the amount of payment for which the company~~
2 ~~is eligible.~~

3 (c) Upon application and approval by the Office of
4 Film and Entertainment, a taxpayer may sell or assign, in
5 whole or in part, a tax credit granted under this section. The
6 sale or assignment of any amount of the tax credit may not be
7 exchanged for consideration received by the taxpayer of less
8 than 75 percent of the transferred amount of tax credit. The
9 purchaser or assignee shall surrender the tax credit in the
10 year acquired from the qualified production company and
11 otherwise may carry the tax credit over, subject to the same
12 limitations on credit usage as the qualified production
13 company awarded the tax credit. The purchaser may not sell,
14 assign, or otherwise transfer the tax credit. A qualified
15 ~~relocation project that is certified by the Office of Film and~~
16 ~~Entertainment is eligible for a one time incentive payment in~~
17 ~~an amount equal to 5 percent of its annual gross revenues~~
18 ~~before taxes for the first 12 months of conducting business in~~
19 ~~its Florida domicile or \$200,000, whichever is less. A company~~
20 ~~applying for payment must submit documentation as required by~~
21 ~~the Office of Film and Entertainment for determination of~~
22 ~~eligibility of claimed billing and determination of the amount~~
23 ~~of payment for which the company is eligible.~~

24 (d) A qualified production company that is not a
25 corporation, as defined in s. 220.03(1)(e), shall make an
26 election, a digital media effects company, or a qualified
27 ~~relocation project applying for a payment under this section~~
28 ~~must submit documentation for claimed qualified expenditures~~
29 ~~to the Office of Film and Entertainment under paragraph (e) or~~
30 distribute tax credits awarded under this section to its
31 partners or members in proportion to the respective

1 distributive share of such partners' or members' income or
2 loss in the year in which such tax credits were approved. A
3 tax credit granted under this section shall be carried forward
4 only for a maximum of 5 years following the year in which the
5 credit was approved.

6 (e) A qualified production applying for a tax credit
7 award under this section must submit by August 15 of the state
8 fiscal year following the state fiscal year in which claimed
9 qualified expenditures were incurred a single report from a
10 certified public accountant based in this state, preapproved
11 by the Office of Film and Entertainment, documenting the
12 amount of claimed qualified expenditures to the Office of Film
13 and Entertainment. The Office of Film and Entertainment shall
14 notify the Office of Tourism, Trade, and Economic Development
15 whether an applicant meets the criteria for reimbursement and
16 shall recommend the reimbursement amount. The Office of
17 Tourism, Trade, and Economic Development shall make the final
18 determination for actual reimbursement.

19 (f) A qualified distribution company applying for tax
20 credits under this section shall submit an application and
21 verification of the fulfillment of distribution requirements
22 by May 1 of the state fiscal year.

23 (5) MARKETING REQUIREMENTS.--The Office of Film and
24 Entertainment shall ensure that appropriate marketing
25 materials, including promotions of this state as a tourist and
26 filming destination, are required to be included on any filmed
27 entertainment as a condition of receiving a tax credit under
28 this section. The Office of Film and Entertainment shall
29 coordinate with VISIT Florida and other appropriate state
30 entities for the development and implementation of marketing
31 materials.

1 ~~(6)(5) RULES POLICIES AND PROCEDURES.~~--The Office of
2 Tourism, Trade, and Economic Development ~~may shall~~ adopt rules
3 ~~policies and procedures~~ to implement this section, including,
4 but not limited to, rules specifying requirements for the
5 application and approval process, records required for
6 submission for substantiation for credit awards reimbursement,
7 ~~and~~ determination of and qualification for credit awards, and
8 marketing requirements for credit recipients reimbursement.

9 ~~(7)(6) FRAUDULENT CLAIMS.~~--An eligible entity or
10 company that obtains a payment under this section through a
11 claim that it knows is fraudulent is liable for reimbursement
12 of the amount paid plus a penalty in an amount double the
13 payment and reimbursement of reasonable costs, which penalty
14 is in addition to any criminal penalty to which the entity or
15 company is liable for the same acts. The entity or company is
16 also liable for costs and fees incurred by the state in
17 investigating and prosecuting the fraudulent claim. Any
18 applicant who knowingly submits an application under this
19 section which includes fraudulent information shall be liable
20 for reimbursement of the reasonable costs and fees associated
21 with the review, processing, investigation, and prosecution of
22 the fraudulent application.

23 ~~(8)(7) ANNUAL REPORT.~~--The Office of Film and
24 Entertainment shall provide an annual report for the previous
25 fiscal year, due October 1, to the Governor, the President of
26 the Senate, and the Speaker of the House of Representatives
27 outlining the return on investment to the state on funds
28 expended pursuant to this section.

29 (9) REPEAL.--This section is repealed July 1, 2014.

30 Section 2. Subsection (5) of section 477.0135, Florida
31 Statutes, is amended to read:

1 477.0135 Exemptions.--
2 (5) A license is not required of any individual
3 providing makeup, special effects, or cosmetology services to
4 an actor, stunt person, musician, extra, or other talent
5 during a production recognized by the Office of Film and
6 Entertainment as a qualified production as defined in s.
7 220.192 ~~288.1254(2)~~. Such services are not required to be
8 performed in a licensed salon. Individuals exempt under this
9 subsection may not provide such services to the general
10 public.

11 Section 3. This act shall take effect July 1, 2006.
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