The Florida Senate

PROFESSIONAL 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: Finance and Tax Committee

BILL: CS/SB 96

INTRODUCER: Commerce Committee and Senator Saunders

SUBJECT: Entertainment Industry/Economic Development

DATE: April 20, 2007 REVISED: 04/24/2007

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

Please see last section for Summary of Amendments

- [ ] Technical amendments were recommended
- [ ] Amendments were recommended
- [X] Significant amendments were recommended

I. Summary:

CS/SB 96 converts Florida's Entertainment Industry Financial Incentive Program from a cash reimbursement of qualified expenditures to a credit against sales and use tax liability and a credit against corporate income tax liability. A minimum of $75 million worth of tax credits will be available for the program in each of the next 3 fiscal years.

Productions of filmed entertainment must be qualified by the Office of Film and Entertainment (OFE) and certified by the Governor's Office of Tourism, Trade, and Economic Development (OTTED) to be eligible for a tax credit on qualified expenditures, as defined in the bill. The credit equals 15 percent of qualified expenditures for most productions, with an additional 5 percent available for productions made during Florida's June-November hurricane season. The bill caps the maximum amount of tax credits a production would be eligible to receive.

CS/SB 96 also organizes three "queues" or categories of entertainment productions eligible to receive an allocation of the tax credits: the general production queue; the independent Florida filmmaker queue; and the digital media projects queue. Each queue has specific criteria to meet in terms of qualified expenditures.

Tax credits received by qualified production companies may be carried forward for up to 5

years, and may be sold and transferred, in whole or in part, with certain restrictions.

The entertainment industry tax incentives authorized in CS/SB 96 are repealed on July 1, 2010.

CS/SB 96 creates s. 228.1256, F.S.; amends ss. 212.08, 213.053, 220.02, 288.1252, and 288.1254, F.S.; and repeals s. 288.1255, F.S.

II. Present Situation:

Florida's Entertainment Industry Financial Incentive Program

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program in s. 288.1254, F.S. The purpose of the program is to promote Florida as a site for filming and producing motion pictures, made-for-television movies, commercials, music videos, industrial and educational films, and television programs. The program is administered by OFE, subject to to the policies and oversight of OTTED. Serving as an advisory board to OTTED and OFE is the Florida Film and Entertainment Advisory Council, consisting of 17 members appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The incentive 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 – after OFE has reviewed documentation of their receipts. Briefly:

- A qualified production 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.
- 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.
- 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.

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 2004-2005, when $2.45 million was appropriated. The program received appropriations of $10 million in fiscal year 2005-2006 and $20 million in fiscal year 2006-2007.

Reimbursement payments are distributed according to the type of production. 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 the entertainment industry, to be sold or displayed in an electronic medium. The remaining 40 percent is dedicated to TV pilots or TV series.

OFE reports a total of $166.7 million has been spent in Florida by certified productions. The state's direct return on investment was 7:1 in fiscal year 2005-06 and is expected to be at least 6.6:1 in the current fiscal year.[1]

The incentive program is attracting both out-of-state and in-state corporations. Of the 48 productions that have qualified and used the incentive program since 2004, approximately 26 of these productions do not have a corporate base in Florida. In addition, these out-of-state productions account for approximately two-thirds, or $110.1 million, of total expenditures.[2]

To date, approximately 53 percent of qualified expenditures for the incentive program have been spent on Florida resident wages. The remaining 47 percent has been spent with Florida vendors or businesses. In fiscal year 2005-2006 alone, approximately 4,027 Florida jobs were created due to productions qualifying for the incentive program.[3]

Other Entertainment Industry Tax Incentives in Florida

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 of the tax. Qualified production companies are exempt from paying sales and use tax 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 (including photography, sound and recording, casting, location scouting, and the creation of special and optical effects).[4] This exemption is estimated to save the entertainment industry $5.7 million in sales and use taxes in fiscal year 2007-08.[5]
- 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.[6] This

[1] "Film Incentive By The Numbers" prepared by the Florida Office of Film and Entertainment, 2007.
[2] Ibid.
[3] Ibid.
[4] Section 212.031(1)(a)9., F.S.
[5] 2007 Florida Tax Handbook Including Fiscal Impact of Potential Changes
[6] Section 212.06(1)(b), F.S.

exemption is estimated to save the entertainment industry $9.9 million in sales and use taxes in fiscal year 2007-08.[7]

- 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.[8] This exemption is estimated to save the entertainment industry $26.0 million in sales and use taxes in fiscal year 2007-08.[9]
- 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.[10] This exemption is estimated to save the entertainment industry $32.7 million in sales and use taxes in fiscal year 2007-08.[11]

OFE, in cooperation with the Department of Revenue (DOR), has developed a standardized application form for use in approving qualified production companies. Under current law, a production company must apply to DOR for the certificate of exemption. DOR forwards the application to 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.

Entertainment Industry Financial Incentive Programs in Other States and Countries[12]

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). Several of these states also offer a greater reimbursement than Florida —up to 30 percent on qualified expenditures with no cap per production.

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 certain percentage of residents as crew, or the use of local soundstages or other facilities. Some states offer additional incentives related to employment and to the training or mentoring of crew by a production.

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[7] 2007 Florida Tax Handbook Including Fiscal Impact of Potential Changes
[8] Section 212.08(5)(f), F.S.
[9] 2007 Florida Tax Handbook Including Fiscal Impact of Potential Changes
[10] Section 212.08(12), F.S.
[11] 2007 Florida Tax Handbook Including Fiscal Impact of Potential Changes
[12] "Florida's Entertainment Industry Infrastructure: *Are We Growing the Indigenous Industry as well as Support Production?*", interim project report of the Tourism Committee, Florida House of Representatives, 2006, pages 16-24, and Appendices C and D..

Internationally, the United Kingdom, Australia, New Zealand, Canada, and Mexico offer a variety of incentives that include tax credits, rebates, and even grants to help pay production costs.

III. Effect of Proposed Changes:

CS/SB 96 changes Florida's entertainment industry incentive program from a reimbursement of expenditures to a transferable credit against corporate income tax and sales and use tax liability.

A minimum of $75 million worth of tax credits will be available for the program each year, effective July 1, 2007, through June 30, 2010. The credits may be carried forward for up to 5 years. Among the requirements to obtain a tax credit are that the qualified production has a combined cast and crew of at least 50 percent Florida residents or film students; and promote Florida as a tourist or film-and-entertainment production destination.

The CS also reorganizes the entertainment queues and establishes new expenditure guidelines for each, and deletes provisions that are obsolete because of the program changes.

Section 1 amends s. 212.08(5), F.S., to create a sales and use tax credit for entertainment industry qualified productions, as defined in s. 288.1254(1), F.S. The tax credits may be earned from July 1, 2007, through June 30, 2010. The credits are deducted from any sales and use taxes remitted and must be claimed through electronic filing.

Section 2 substantially revises s. 288.1254, F.S., to incorporate the restructuring of the existing entertainment industry incentive and creation of tax credits.

<u>Definitions</u>
Several definitions in the existing law are amended or created. Briefly:

- "Certified production" is added to mean a qualified production that has tax credits allocated to it based on its estimated qualified expenditures, up to its maximum certified amount of tax credits, by OTTED. The term excludes a production if its first day of principal photography in this state occurred before the production is certified by OTTED, unless the production spans more than one fiscal year, was a certified production on the first day of such photography, and is required to submit an application for continuing the same production in the subsequent year.
- "Digital media project" is added to mean a production of interactive entertainment which is produced for distribution in commercial or educational markets, including a video game, simulation, or animation, or a production intended for Internet or wireless distribution. The term excludes a production deemed by the OFE to contain obscene content as defined in s. 847.001(10), F.S.[13]

[13] Per the statute, "obscene" means the status of material which:
(a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
(b) Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and
(c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

- “High-impact television series” is added to mean a production created to run multiple production seasons having an estimated order of at least seven episodes per season and qualified expenditures of at least $625,000 per episode.
- “Off-season-certified production” is added to mean a production, other than a digital media project or an animated production, which films 75 percent or more of its principal photography days from June 1 through November 30.
- “Production” is added to mean theatrical or direct-to-video motion picture, a made-for-television motion picture, a commercial, a music video, an industrial or educational film, an infomercial, a documentary film, a television pilot program, a presentation for a television pilot program, a television series, including, but not limited to, a drama, a reality show, a comedy, a soap opera, a telenovela, a game show, a miniseries production, or a digital media project by the entertainment industry. One season of a television series is considered one production. The term excludes a weather or market program, a sporting event, a sports show, a gala, a production that solicits funds, a home shopping program, a political program, a political documentary, political advertising, a gambling-related project or production, a concert production, a news show, a current-events show, or a current-affairs show that is local, regional, or distributed only on the Internet. A production may be produced on or by film, tape, or other means.
- “Production costs” is renamed “production expenditures” and amended to clarify that development, marketing, and distribution costs are not included.
- “Qualified expenditures” is amended to mean production costs incurred by a qualified production for goods purchased or leased from, or services provided by, a vendor or supplier doing business in this state, or wages and other compensation paid to Florida residents. The maximum wage per Florida resident is $400,000 for the general production and independent Florida filmmaker queues, and a maximum $200,000 wage per Floridian in the digital media queue.
- “Qualified production” is clarified to mean filmed entertainment that meets or exceeds minimum qualified expenditures in this state, as well as other criteria expressed in s. 288.1254, F.S. Excluded are productions deemed by OFE to contain “obscene content” as defined in s. 847.001(10), F.S., or in which Florida residents fill fewer than half of the production and below-the-line production jobs. For the purposes of this section, Florida residents is defined to mean persons with a valid Florida’s driver’s license or other state-issued identification confirming residency, or are students enrolled full-time in a film- and entertainment-related course of study at a university in Florida.
- The term “qualified relocated project” is deleted, and replaced with a definition for “qualified production company,” which is a corporation, limited liability company, partnership, or other legal entity engaged in producing a qualified production.

<u>Tax credits and their transferability</u>

This section of CS/SB 96 requires the OFE to establish a process for qualifying an entertainment industry applicant and approving tax-credit eligibility and amounts. Among the criteria to qualify for the tax credit is that qualified productions must include a “Filmed in Florida” logo or other marketing materials promoting the state. OFE may seek assistance from a local film office

A mother's breastfeeding of her baby is not under any circumstance “obscene.”

in determining whether an applicant meets the requirements for the incentive program and whether the applicant in complying with the statute.

The tax credits against corporate income tax and sales and use tax liabilities are established as a minimum $75 million a year, effective July 1, 2007, through June 30, 2010. The credits may be carried forward for up to 5 years. A minimum of $75 million in tax credits may be awarded in any one fiscal year.

A certified production company may sell its tax credits at no less than 75 percent of their worth. Credits for sales and use taxes may be transferred once to only one transferee, and the election to transfer must be made at the time these credits are claimed by the certified production company. Corporate tax credits may be transferred once to no more than four transferees within the same tax year, no later than 5 years after the credits were claimed by the certified production company.

Certain entities that purchase credits must pay a tax equal to 5 percent of the total amount paid for the credits, to be appropriated by the Legislature into OTTED's Grants and Donations Trust Fund. Investors, investment companies, or companies affiliated with the certified production are exempt from paying the 5-percent tax. Half of the tax revenues will finance the Florida Graduate Film Investment Fund, described in **Section 3** below. The other half will be awarded to film and digital media programs at Florida higher-education institutions approved by OFE.

<u>Queues</u>
CS/SB 96 creates three queues: a General Production Queue that includes TV, film, commercials, and music videos, an Independent Florida Filmmaker Queue, and a Digital Media Project Queue. Productions are qualified on a first-come, first-served basis within each queue.

- General Production Queue:
    - At least 85 percent of the film incentive credits are designated for these productions.
    - Film and TV productions must have a minimum of $625,000 in qualified expenditures to qualify for a 15-percent reimbursement in tax credits. To attract larger film productions, the credit cap is raised from $2 million to $8 million. In addition, productions expenditures may span multiple fiscal years.
    - There are separate thresholds for commercials and music videos within this queue. They are eligible for a tax credit if they spend a minimum of $100,000 per production, and exceed a total of $500,000 for all productions, to receive a 15-percent tax credit on qualified expenditures. The cap on a tax credit award is the greater of 15 percent of total actual qualified expenditures, or $500,000. Qualified expenditures for commercials and music videos must be incurred in one fiscal year.
    - All productions in the General Production Queue are eligible for an off-season incentive—an additional 5-percent reimbursement if 75 percent of filming occurs between June 1 and November 30. A production filming in these months does not lose the 5-percent incentive if a hurricane or tropical storm disrupts the production.
    - A qualified production shall make a good-faith effort to use Florida's existing entertainment infrastructure or equipment, including camera gear, grip and

lighting equipment, vehicle providers, and post-production services when available.

- Independent Florida Filmmaker Queue:
  - 5 percent of the entertainment tax credits, but no more than $2 million annually, is designated for these productions.
  - To qualify, a film or documentary must be no less than 70 minutes in length; must have a minimum of $100,000 and a maximum of $625,000 in qualified expenditures; and all post-production must be performed in Florida.
  - In addition, productions qualified under this queue must employ Floridians (defined in the bill) in at least six of the eight following key positions: writer, director, producer, director of photography, star or one of the lead actors, unit production manager, editor, or production designer.
  - A production qualified under this queue is eligible for a 15-percent tax credit.
- Digital Media Projects Queue:
  - 10 percent of film incentive credits are designated for these productions.
  - To qualify, a digital media project must have a minimum of $300,000 in qualified expenditures during 1 fiscal year.
  - A digital media production under this queue is eligible for a 10-percent tax credit, but no more than $1 million per project.

<u>Other program changes</u>
CS/SB 96 gives OTTED and DOR explicit rulemaking authority necessary to implement provisions in the revised s. 288.1254, F.S. DOR also has authority to examine and audit records related to the claiming, transference, and application of tax credits.

Entities that fraudulently use tax credits granted under this legislation are liable for repayment and a penalty, up to double the credit amount, plus reimbursement of reasonable costs.

OFE is directed to submit an annual report each October 1 to the Governor, the President of the Senate, and the Speaker of the House of Representatives, that outlines the return on the state's investment of funds expended under the entertainment tax credit program.

Section 288.1254, F.S., is repealed July 1, 2010, except that the tax credit carry forwards as provided in this program shall continue to be valid.

Section 3 creates s. 288.1256, F.S., the Florida Graduate Film Investment Fund. Under the program, OFE may award grants or loan guarantees to productions that are:

- Written, produced, and directed by Florida residents who are graduates of an approved film program offered by a Florida higher-education institution;
- Determined to be family-friendly based on a review of the script and a personal interview with the director. This determination will be made by the state's Commissioner of Film and Entertainment, with the advice of the Florida Film and Entertainment Advisory Council. Among the criteria for determining whether a film is "family friendly" are: cross-generation appeal; is suitable for viewing by children aged 5 and older; and does not exhibit any act of smoking, sex, nudity, or vulgar or profane language.
- Determined by OFE not to contain obscene content as defined in s. 847.001(10), F.S.

As discussed in **Section 2** above, this investment fund is financed by one-half of the 5-percent tax paid by purchasers of transferred entertainment tax credits.

Section 4 amends s. 213.053, F.S**.,** to give DOR permission to disclose to OFE and OTTED confidential information pertaining to the sales and use tax credits and the corporate income tax credits awarded to qualified entertainment production companies. OFE and OTTED are bound by the same confidentiality requirements as DOR regarding the use of this information.

Section 5 amends s. 220.02, F.S., to add the corporate income tax credits awarded to qualified entertainment production companies at the end of the list of similar credits.

Section 6 amends s. 288.1252, F.S., to give the Florida Film and Entertainment Advisory Council the additional responsibility of advising the state's film commissioner whether a film produced under s. 288.1256, F.S., the Florida Graduate Film Investment Fund, meets the criteria specified in that section.

Section 7 repeals s. 288.1255, F.S., which specified that the entertainment incentive program was to be funded by annual legislative appropriation.

Section 8 provides an effective date of July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

As a result of the tax credits proposed in the bill, the bill reduces the sales tax base of municipalities and counties, thereby reducing their revenue-raising authority. The Consensus Estimating Conference determined a loss of local option sales surtax revenues of $2.9 million. The bill may trigger the requirements of Section 18, Article 7, of the State Constitution.[14] For purposes of the mandate analysis, where the fiscal impact is determined to be insignificant, the constitutional requirements do not apply. The term "insignificant" is defined as an amount not greater than the statewide population for the applicable fiscal year multiplied by $0.10. According to the Office of Economic and Demographic Research, the current population in Florida is estimated to be about 18.8 million.[15] Therefore, an insignificant fiscal impact is considered to be in the aggregate of $1.88 million or less.

B. Public Records/Open Meetings Issues:

None.

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[14] s. 18, art. VII, of the State Constitution, provides that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the Legislature determines that the law fulfills an important state interest and that specified funding requirements can be demonstrated. This provision also requires two-thirds approval by the membership of each house.

[15] *Florida Population and Components of Change*, Office of Economic and Demographic Research (Oct. 24, 2006).

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

CS/SB 96 creates a minimum of $75 million of credits that may be applied against sales and use tax and corporate income tax liabilities.

The General Revenue Estimating Conference, working on the assumption that $75 million in corporate income and sales tax credits would be available per year for the next 3 years, determined that the full amount of tax credits likely would be claimed annually. In FY 2007-2008, the $75 million loss includes $68.1 million to the General Revenue Fund, $0.1 million to the Ecosystem and Restoration Management Trust Fund, and $6.8 million to local governments, which includes $2.9 million in local option sales surtaxes, $2.9 million in half-cent sales tax revenues, and $1.0 million in revenue sharing.

The allowance of a minimum of $75 million of annual credits which may be carried forward for 5 years could result in a significant fiscal impact upon state General Revenue collections beyond the program's 3-year period.

B. Private Sector Impact:

The tax credits created in CS/SB 96 are intended to encourage more film and entertainment productions be made in the state of Florida. The use of transferable tax credits eliminates some of the timing and uncertainty issues inherent in the current cash reimbursement incentive program tied to Florida's fiscal year and legislative appropriations process.

C. Government Sector Impact:

DOR indicates a need for 1 FTE and a recurring appropriation of $46,023 for salaries and expenses related to this position. DOR estimates that it will track up to 806 transactions a year for the sales and use tax, and 2,418 transactions a year for the corporate income tax. DOR also indicates a one-time need of $54,726 to develop, program, and test a registration and tracking system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

Barcode 561060 by Finance and Tax:
The amendment deletes all of the tax credit provisions in the bill and appropriates $10 million for fiscal year 2007-2008 from the General Revenue Fund on a non-recurring basis to the Office of Tourism, Trade, and Economic Development for the Office of Film and Entertainment to reimburse qualified production expenditures, as defined in the bill. If the $10 million is not all used in fiscal year 2007-2008, the unencumbered funds will not revert back to the General Revenue Fund until June 30, 2009.

The amendment adds to the list of the types of productions which may not qualify to be certified to receive incentive funding to include (WITH TITLE AMENDMENT)