HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 697 Entertainment Industry Economic Development
SPONSOR(S): Precourt and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1430

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Economic Development Policy Committee		Wintering	Kruse
2)	Finance & Tax Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

HB 697 creates the Entertainment Industry Financial Incentive Program as a tax credit award for companies that have certain expenditures associated with a movie, television, or other similar media production. The aggregate amount of tax credits authorized under this bill is $75 million per year. The bill provides that productions that are certified by the Governor's Office of Tourism, Trade, and Economic Development may attain tax credit awards by demonstrating an amount of qualified expenditures that meets or exceeds minimum requirements. Qualified expenditures are goods purchased, leased from, or services which are provided by a vendor or supplier in this state that is registered with the Department of State or the Department of Revenue and doing business in the state and whose primary employees that facilitated the transaction are legal residents of and employed in this state.

The bill provides that credits awarded may be used to offset corporate income tax or sales and use tax liabilities. Unused tax credits may be transferred or carried forward under certain circumstances.

The Department of Revenue has reported an estimated total cost of $79,216 to implement this legislation for fiscal year 2010-2011.

The Revenue Estimating Conference has estimated the fiscal impact of the bill for 2010-2011 will be $64 million in recurring state dollars and $11 million in recurring local dollars for a total of $75 million.

This bill may be a Mandate requiring a 2/3 vote of the membership. See Mandates section of the analysis.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

National Context

Many states offer larger incentive packages than Florida to the film and entertainment industry. New Mexico, Louisiana, North Carolina, Connecticut, Hawaii, Illinois, Georgia, Rhode Island, Massachusetts, and Wisconsin offer a greater reimbursement than Florida— at least 25 percent on qualified expenditures with no cap per production. As more states enact film incentive programs, existing programs have expanded.[1] In addition to direct jobs, increased production activity may create indirect employment, increase state tourism dollars related to productions, and invest capital in the state's film industry infrastructure. The following is a chart surveying current state film incentive programs created by Economics Research Associates in 2009.[2]

[1] Tax Foundation, Special Report, January 2010 No. 173, written by William Luther.
[2] Project Report, Louisiana Motion Picture, Sound Recording and Digital Media Industries, Prepared for the State of Louisiana, Louisiana Economic Development, February 2009 by Economics Research Associates. http://www.louisianaentertainment.gov/film/files/(ERA%20report)pdf.pdf.

State	Production Tax Credit	Caps per Project/Year	Infrastructure Tax Credit	Wage/ Withholding Credits	Sales Tax Exempt.	Lodging Tax Exempt.
Alabama						✓
Alaska	30% (T)	Aggregate tax credits ≤ $100 million		10%, plus 2% rural	No Tax State	
Arizona	20-30% (T)	$7 million/$50 million	15% of base investment		✓	
Arkansas						
California[P]					✓	✓
Colorado	10% CR	$600,000				✓
Connecticut	30% (T)		10-20%		✓	✓
Delaware						
Dist. of Columbia	10% G	$1.6 million for program			Grant may apply	
Florida	15% CR + bonuses	$5 million for program			✓	
Georgia	20% (T) + 10% bonus				✓	
Hawaii	15%-20% ®	$8 million per project				
Idaho	20% CR	$500,000 per project			✓	✓
Illinois	20% (T)			15%		✓
Indiana	15% ®	$5 million annual funding			✓	✓
Iowa	25% (T)	Investor's pro rata share	25% (T)			✓
Kansas	30%	$2 million per year				✓
Kentucky					✓	✓
Louisiana	25% (T)		40% (T)	10%		
Maine				10%-12%	✓	✓
Maryland	25% CR	$4 million for FY 08-09			✓	
Massachusetts	25% ® (T)			25%	✓	
Michigan	40-42% ® & T		25% (T)	30%		✓
Minnesota	20% CR				✓	✓
Mississippi	20% CR	$8 million per project		20-25%	✓	
Missouri	35% (T)	$4.5 million annual funding				
Montana	9% ®			14%	No Tax State	✓
Nebraska[P]						✓
Nevada						✓
New Hampshire					No Tax State	
New Jersey	20% (T)	$10 million per year			✓	✓

State	Production Tax Credit	Caps per Project/Year	Infrastructure Tax Credit	Wage/ Withholding Credits	Sales Tax Exempt.	Lodging Tax Exempt.
New Mexico	25% ®	$5 million for out of state			✓	
New York	30% ®	$65 million in 2008	4-5% eligible investment base		✓	
North Carolina	15% ®	$7.5 million per feature			✓	✓
North Dakota						✓
Ohio						✓
Oklahoma	5-15% CR	$5 million per year			✓	
Oregon	20% CR			16.2%	No Tax State	✓
Pennsylvania	25% (T)	Annual cap of $75 million				✓
Rhode Island	25% (T)	Annual cap of $15 million				
South Carolina	30% CR	$5.5 million for FY 07-08		10-20% CR	✓	✓
South Dakota					✓	✓
Tennessee	13-17% ® + bonuses				✓	✓
Texas	5% G + bonus	$2 million per feature, $2.5 million per TV, $200,000 per commercial		includes resident wages	✓	✓
Utah	15% CR	$500,000 per project, $5.5 million FY 09			✓	✓
Vermont					✓	✓
Virginia	CR - amt. discretionary	$200,000 for FY 09			✓	✓
Washington	20% CR	Annual cap of $3.5 million			✓	✓
West Virginia	27% (T) + bonus	Annual cap of $10 million			✓	✓
Wisconsin	25% ®			includes resident & non-resident wages	✓	
Wyoming	12-15% CR	Annual cap of $2 million				✓

P = pending legislation; ® =refundable tax credit; (T) = transferable tax credit; CR = cash rebate; G = grant
Sources: Individual film commissions; Entertainment Partners (September 30, 2008); and Economics Research Associates

Comparison States

New Mexico

New Mexico began its tax incentive program in 2002 with a 15 percent tax credit and expanded to 25 percent in 2006. Data from New Mexico's 2007 film incentive program indicate (in millions)[3]:

- New Mexico's combined state and local tax return on investment is $1.50 for each $1.00 of state film tax credits.
- The direct income was $314.4 m, indirect income was $ 173.1 m, totaling $487.5 m in income.

[3] *Economic and Fiscal Impacts of the New Mexico Film Production Tax Credit*, Prepared for the New Mexico State Film Office and State Investment Council, by Ernst & Young, January 2009. http://www.nmfilm.com/locals/downloads/nmfilmCreditImpactAnalysis.pdf

- The incentive program created 5,989 direct jobs, 3,221 indirect jobs, totaling 9,209 jobs.
- In 2007, 30 films participated in the credit program, reflecting the steady increase of participating productions from the first 7 which participated in 2003.
- The economic activity created by the film production tax credit program also resulted in higher state and local tax collections. State tax collections resulting from film production activities in 2007 totaled $22.6 million. Additional state tax impacts from capital expenditures in 2007 and film tourism during 2008-2011 are estimated to total $21.5 million in 2007 dollars, resulting in a total state tax impact of $44.1 million.
- Film production expenditures in 2007 qualified for $49.4 million of state film production tax credits to be paid in 2008. Expressed in 2007 dollars, these film credits total $47.1 million. Based on the 2007 value of present and future year tax receipts and the 2007 value of state film production tax credits, the program earns $0.94 in additional tax revenue for each $1.00 that is paid out in incentives. Local governments in New Mexico earn $0.56 for each dollar of state credits, resulting in combined state and local tax collections of $1.50 for each $1.00 of state credits.

<u>New York</u>

New York began its tax incentive program in 2004 with a 10 percent state tax credit and an additional 5 percent City tax credit. New York's tax credit expanded to 30 percent in 2008. The expansion to the tax incentive program was in response to the $750 million drop in New York film production caused by Connecticut and Massachusetts' competing incentive programs.

- In 2007, New York's combined state and City return on investment was $1.90 for each $1.00 of state film tax credits.
- The credit yielded $816 m in direct income, $1,242 m in indirect income, a combined total income of $2,057.4 m.
- New York's tax credit film incentive program created an estimated 7,031 direct jobs, 12,481 indirect jobs, totaling 19,512 jobs.[4]

<u>Louisiana</u>

Louisiana began its tax incentive program in 2002 with a 10 percent state tax credit and a 10 percent employment credit for investments between $300,000 and $1,000,000 and a 15 percent tax credit and a 20 percent employment credit for investments greater than $1,000,000. Louisiana's current transferable tax credit is 25 percent with an additional 10 percent credit for resident payroll and a 15 percent infrastructure credit capped at $25 million per project. Louisiana's 2007 tax incentive data accounts for the economic impact of production activities, capital investments and film tourism. The results of Louisiana's film incentive program are as follows (in millions):[5]

- For every potential tax credit issued Louisiana on motion picture productions, total value added to the economy was $2.63 m in 2007.

[4] *Estimated Impacts of the New York State Film Credit*, Prepared for the New York State Governors Office of Motion Picture and Television Development and the Motion Picture Association of America, February 2009, by Ernst & Young. http://www.southwindsor.org/pages/swindsorct_IT/New%20York%20Ernst%20&%20Young%20State%20Film%20Credit%20Study.pdf

[5] Project Report, Louisiana Motion Picture, Sound Recording and Digital Media Industries, Prepared for the State of Louisiana, Louisiana Economic Development, February 2009 by Economics Research Associates. http://www.louisianaentertainment.gov/film/files/(ERA%20report)pdf.pdf

- Direct earnings of $100.3 m, indirect earnings of $72.5 m, induced earnings of $30.9 m resulting in total earnings of $203.7 m.
- The incentive program created 3,310 direct jobs, 1,970 indirect jobs, totaling 6,230 jobs.

Michigan

Michigan anticipates their film industry will grow parallel to New Mexico and Louisiana's as a result of its film incentive program. Michigan expects to double its 2008 film expenditures in 2009 and to increase at a decreased rate in following years, to reach a total of $187.7 million in total expenditures by 2012. Michigan projects the multiplier to increase to 1.90 for employment and 1.79 for output. Michigan also expects infrastructure to grow and develop in the coming years as a result of the incentive program.[6] Michigan's film incentive fiscal impact for 2008 (in millions.):

- Michigan's total film expenditures for 2008 was $65.4 m.
- Film expenditures generated multiplier effects of 1.66 for employment and 1.43 for output in 2008.
- Michigan received 136 project applications and approved 71.
- Completed projects: 32
- Michigan's total direct employment for 2008 was 2,763 jobs, with an average salary of $49,000

Georgia

Previously a multi-part, tier incentive, Georgia's program is now a 20 percent flat tax credit on qualified Georgia expenditures. Production companies that spend a minimum of $500,000 in the state on qualified production and post production expenditures in a single year are eligible for this credit. This includes most materials, services and labor. The 20 percent credit applies to both residential and out-of-town hires with a salary cap of $500,000 per person, per production. An additional 10 percent tax credit is provided if a production company includes a Georgia promotional logo in the finished feature film, TV series, music video or video game project. According to the Georgia Department of Revenue and the Georgia Film, Music & Digital Entertainment Office of the Georgia Department of Economic Development, no study has been done investigating how many jobs have been created or detailing the fiscal impact of the incentive program.[7]

- Georgia's Department of Revenue had 42 companies claim a total of $33,565,779.00 of film tax credits for the 2008 tax year. The incentive program allows three years to file claims, so this figure is not yet complete.[8]

Issues Relevant to State Film Tax Incentive Programs

In 2008, National Public Radio (NPR) reported on Louisiana's film tax incentive program. Louisiana's chief economist reported that for the $100 million of tax credits claimed under the incentive, the state gets back $25 million a year. Despite its four to one loss to the state, the incentive program was described as one investment among multiple subsidies granted to private sector industries. In Michigan, Senator Mike Bishop reported that the Michigan treasury under-estimated the incentive

[6] *The Economic Impact of Michigan's Motion Picture Production Industry and the Michigan motion Picture Production Credit*, Center for Economic Analysis, Michigan State University, February 2009. http://www.michiganfilmoffice.org/cm/The-Film-Office/MSU_Economic_Impact_Study_269263_7%5B1%5D.pdf
[7] http://www.georgia.org/About/ContactUs/Pages/GeorgiaFMDEOffice.aspx
[8] Email correspondence with Beverly J. Bennett, Georgia Department of Revenue, Problem Resolution Specialist, Tax Credits & Incentives, February 22, 2010.

program's cost to the state, and the $50 million liability will turn out to cost Michigan $100 million in the first year and over $200 million in years following.[9] In 2009, NPR reported that Hollywood's production days are at record lows because other state tax incentive programs are luring business away from California, which has seen a 70 percent drop in on location productions.[10]

States with a balanced budget requirement must move money around to make up for the losses in tax credits awarded which are not put back into the state economy.[11] Although local productions produce direct and indirect infusions into the economy, sales and use taxes are often exempt as a part of the incentive package, preventing ancillary tax sources from putting revenue back into the state.[12] The following chart lists the fiscal impact estimates of state film tax credits and notes the states that have balanced budget requirements:[13]

Date	State	Source of Study/Estimate	State Revenues Generated Per $ of Tax Credit
March 2005	LA	Louisiana Legislative Fiscal Office	$0.17
February 2008	CT	CT Dept of Economic & Comm. Development	$0.07
June 2008	PA	PA Dept of Comm. & Economic Development	$0.24*
July 2008	RI	Rhode Island Department of Revenue	$0.28*
August 2008	NM	Arrowhead Center - NM State University	$0.14*
January 2009	MI	MI Department of the Treasury/Legislature	$0.19*
January 2009	NM	Ernst & Young	$0.94*
February 2009	NY	Ernst & Young	$1.10*
February 2009	LA	Economics Research Associates	$0.13*
May 2009	PA	Economics Research Associates	$0.28**
June 2009	MA	Massachusetts Department of Revenue	$0.14 to $0.16

* No balanced budget requirement assumed

** No balance budget requirement assumed - includes state and local revenues

Whether the tax credits are transferable also merits consideration. One study characterized transferable credits as more closely resembling direct appropriations than non transferable credits because unused tax credits can be sold to state tax payers.[14] In Massachusetts, credits sell for 90 percent of their face value, and credit brokers and purchasers split the remaining 10 percent value. Purchasers save less than tax payments to the state are reduced.[15]

Critics of the incentive program argue from a national perspective that all states cannot capture the film industry, and thus only states that attract filming early on will develop the infrastructure to sustain growth in the film industry. All things being equal in terms of inter-state tax incentive competition, the

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[9] Louisiana Seduces Filmmakers with Tax Breaks, December 3, 2008, http://www.npr.org/templates/story/story.php?storyId=97750550

[10] As Films Leave, Behind-the-Scenes Hollywood Fades, August 10, 2009, http://www.npr.org/templates/story/story.php?storyId=111586301

[11] Massachusetts Department of Revenue Film Industry Tax Incentives Report, July 2009, Navjeet K. Bal, Commissioner of Revenue, Commonwealth of Massachusetts, Department of Revenue; Memorandum, Cost Benefit Analysis of Connecticut's Film Tax Credit, January 2009, Jennifer Weiner, Policy Analyst, Federal Reserve Bank of Boston.

[12] Special Report, Tax Foundation, January 2010, No. 173, William Luther, Summer Researcher.

[13] Massachusetts Department of Revenue Film Industry Tax Incentives Report, July 2009, Navjeet K. Bal, Commissioner of Revenue, Commonwealth of Massachusetts, Department of Revenue.

[14] Memorandum, Cost Benefit Analysis of Connecticut's Film Tax Credit, January 2009, Jennifer Weiner, Policy Analyst, Federal Reserve Bank of Boston.

[15] Massachusetts Department of Revenue Film Industry Tax Incentives Report, July 2009, Navjeet K. Bal, Commissioner of Revenue, Commonwealth of Massachusetts, Department of Revenue.

films will be made in states where the ground production crew is established and where infrastructure exists.[16] From that perspective, Florida may have a policy interest in preserving its earlier investments in film, film infrastructure, film schools, post production facilities, digital media projects, and digital media businesses.

The Tax Foundation also raised a number of criticisms of state film tax incentive programs:[17]

- Michigan's fiscal impact report failed to accurately account for the actual cost to the state to implement the film tax incentive. The REMI model needs to be revised to accurately account for actual costs of implementation.
- The film tax incentive program shifts jobs rather than creates jobs, and fiscal impact reports fail to account for the jobs eliminated when residents are hired to work on production crews.
- Incentives likely subsidize the production of films that would be created in the state regardless of the incentive program.

Florida's Current Film Incentive

The 2007 Florida Legislature repealed s. 288.1254, F.S., and enacted the Don Davis Entertainment Industry Economic Development Act to improve Florida's position with the film and entertainment industry. The incentive is a cash reimbursement for certain expenditures associated with qualified productions. The program allows production companies to apply to the Office of Film and Entertainment (OFE) which then determines whether or not the application contains all of the required information and meets the program criteria. The OFE has 10 business days from the receipt of application until a finding must be made regarding the application's eligibility. The OFE will recommend that the Governor's Office of Tourism, Trade, and Economic Development (OTTED) certify the production as an eligible production. Once the OFE has recommended certification, OTTED has five business days to certify the application. Incentive awards are determined on a first-come, first-serve basis.

According to the Office of Film and Entertainment's (OFE) Entertainment Industry Sales Tax Exemption Report for FY 2008-2009[18]:

- Florida had a total production expenditure of $780,849,043 and granted sales and use tax exemptions totaling $14,038,041, creating a combined return on investment of $55.60 for every $1.00 credit, and creating 33,353 jobs (5,671 full-time and 27,682 freelance.)
- The Anticipated Florida Expenditures was $69,938,964.
- The estimated number of employed Floridians was 9,266.
- Out of 36 applications, 12 productions are actively certified for the tax credit, 24 are pending qualified productions.

<u>Queues</u>
There are three parts, or queues, to the current film incentive, the General Production Queue, the Independent Florida Filmmaker Queue, and the Digital Media Projects Queue.

<u>General Production</u>
The general production queue accounts for 85 percent of all appropriated funds in any given year. A qualified television series is allowed first position in the general production queue for incentive funding

[16] Special Report, Tax Foundation, January 2010, No. 173, William Luther, Summer Researcher.
[17] Special Report, Tax Foundation, January 2010, No. 173, William Luther, Summer Researcher.
[18] Fiscal Year 2008-2009 Entertainment Industry Sales Tax Exemption Report issued by Lucia Fishburne, State Film Commissioner on November 17, 2009 to the Office of the Governor and the Speaker of the House of Representatives.

not yet certified. Productions certified under this queue are eligible for a 15 percent reimbursement of their qualified expenditures. When calculating qualified expenditures, Florida-based vendors are considered those that are registered with the Department of State or Department of Revenue as doing business in Florida. Payments to Florida residents in the form of salary, wages, or other similar compensation, up to $400,000, are also considered qualified expenditures.

A qualified production, not including commercials, music videos, and digital media projects with a minimum of $625,000 in qualified expenditures is eligible for up to $8 million in funding. A qualified production spanning multiple state fiscal years may combine qualified expenditures from those years to satisfy the $625,000 threshold.

Qualified production companies that produce commercials or music videos may be eligible for up to $500,000 in incentive funding if they can demonstrate at least $100,000 in qualified expenditures per qualified production. Taken together, the qualified expenditures must exceed a combined threshold of $500,000 after combining qualified expenditures from qualifying commercials or music videos during a single state fiscal year.

Off-season productions are eligible for an additional 5 percent incentive funding for qualified expenditures. The incentive for off-season productions cannot be disqualified if 75 percent of photography could not be completed during the allowable timeframe due to disruption from a hurricane or tropical storm.

Each qualified production must make a good-faith effort to utilize Florida-based vendors for infrastructure or equipment needs, including providers for camera gear, grip and lighting equipment, vehicles, and postproduction services.

<u>Independent Florida Filmmaker</u>
Five percent of incentive funding appropriated in any state fiscal year must be dedicated to the independent Florida filmmaker queue. Productions certified under this queue are eligible for a 15 percent reimbursement on its qualified expenditures. Qualified expenditures associated with salaries or wages are capped at $400,000 for this queue. A production that generates more than $100,000 but less than $650,000 in qualified expenditures is eligible for a reimbursement. Under this queue, to qualify for an incentive a production must:

- Be a feature film or documentary lasting longer than 70 minutes;
- Provide evidence of 50 percent of the financing for its total budget in an escrow account or other form dedicated to the production;
- Do all major postproduction work in Florida; and
- Employ Florida workers in at least six of the following positions: writer, director, producer, director of photography, star or a lead actor, unit production manager, editor, or production designer.

For the purposes of this queue, Florida workers are people who have lived in the state for more than a year prior to application for this incentive or graduated from a film school, college, university, or community college no more than five years prior to the application for this incentive.

<u>Digital Media Projects</u>
Ten percent of incentive funding appropriated in any state fiscal year must be dedicated to the digital media projects queue. Productions certified under this queue are eligible for a 10 percent reimbursement on its qualified expenditures. Qualified expenditures associated with salaries or wages are capped at $200,000 for this queue. A production that generates more than $300,000 in qualified expenditures is eligible for up to $1 million in funding. A qualified production company may not qualify for more than three projects in any given year. Projects that extend beyond a single state fiscal year must reapply each fiscal year in order to be eligible for funding in that year.

Schedule for All Queues

Qualified productions must operate on a reasonable schedule, which means beginning principal photography in this state no more than 45 calendar days before or after the date provided in the program's application. OTTED must withdraw the eligibility of a qualified production for incentive funding if any such production does not continue on a reasonable schedule.

Additional Reimbursements Available

A certified production determined by the Commissioner of Film and Entertainment, with the advice of the Florida Film and Entertainment Advisory Council, to be family friendly based on the review of the script and an interview with the director is eligible for an additional reimbursement of two percent of its qualified expenditures.

Film Incentive Funding

The program first received funding in 2004. The program received incremental increases in appropriations since its inception, until fiscal year 2008-09:

FY 2004-05 $2.4 million appropriation
FY 2005-06 $10 million appropriation
FY 2006-07 $20 million appropriation
FY 2007-08 $25 million appropriation
FY 2008-09 $4.8 million appropriation
FY 2009-10 $10.8 million appropriation

Effects of Proposed Changes

The Entertainment Industry Financial Incentive Program

HB 697 creates the Entertainment Industry Financial Incentive Program which is a tax credit award for certain expenditures associated with qualified productions. The current incentive is a cash reimbursement program. The aggregate amount of tax credits authorized under this section is $75 million per year. Any unused tax credits at the end of a fiscal year shall be carried forward and made available for award during the following 2 fiscal years. If the total amount of allocated credits applied for in any particular fiscal year exceeds the aggregate amount of credits authorized, such excess must be treated as having been applied for on the first day of the next fiscal year in which credits remain available for allocation. Tax credits will be awarded in any fiscal year according to the start of the productions. However, tax credits may not be applied in any tax period beginning before July 1, 2011 regardless of when the credits are awarded.

Relevant Terms

The bill provides several key terms:

Certified Production— Production that has incentive funds allocated to it by the Office of Tourism, Trade and Economic Development, (OTTED) based on its estimated qualified expenditures. The term excludes a production if its first day of principal photography occurred before the production was certified by OTTED and does not include a digital media project if its first day of production in this state occurs before certification.

Digital Media Project—Production of interactive entertainment such as video games or a production for internet or wireless distribution. Current law defines "digital media project" to include simulations and animations.

Principal photography—means the filming of major or significant components of the qualified production which involve lead actors. Current law does not include this definition.

Off-Season Certified Production—Production that films at least 75 percent of its principal photography days between June 1 and November 30.

Production—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, or 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 number of productions such as weather or market program, sporting event, pornographic production, political documentary, or a concert production.

Production Expenditures—Costs of tangible and intangible property used and services performed primarily and customarily in production, including preproduction and postproduction, excluding costs for development, marketing, and distribution. Production expenditures include, but are not limited to wages and salaries, costs for equipment, up to $300,000 of the costs of newly purchased computer software and hardware unique to the project, including servers, data processing, and visualization technologies, which are located in and used exclusively in the state for the production of digital media, meals, travel, and other similar expenses. The current "production expenditures" does not provide for newly purchased computer software and hardware.

Qualified Expenditures— Goods purchased, leased from, or services, including, but not limited to, insurance costs and bonding, payroll services, and legal fees, which are provided by, a vendor or supplier in this state that is registered with the Department of State or the Department of Revenue and doing business in the state and whose primary employees that facilitated the transaction are legal residents of and employed in this state. The current incentive program does not allow for insurance costs and bonding or legal fees. Payments to legal residents of this state in the form of salary, wages, or other compensation up to a maximum of $650,000 per resident unless otherwise specified. The current "qualified expenditures" definition caps expenses allowed at $600,000, portioning $400,000 to the general production and independent Florida filmmaker queues and $200,000 for the digital media queue. The current incentive program does not require recipients to be "legal residents" of the state, just "state residents."

Qualified Production—Production in Florida meeting all of the requirements of this section. The term does not include a production in which, for the first 2 years, less than 50 percent, and thereafter, less than 60 percent, of the positions that make up its production cast and below-the-line production crew, or, in the case of digital media projects, less than 75 percent of such positions, are filled by legal residents of this state, whose residency is demonstrated by a valid Florida driver's license or other state-issued identification confirming residency, or students enrolled full-time in a film-and-entertainment-related course of study at an institution of higher education in this state and the production not being deemed obscene by the OFE. The current "qualified production" definition does not require that positions be filled by "legal residents" of the state, but rather requires that positions be filled by "state residents." The current law requires that at least 50 percent of employees be Florida residents, but does not include the proposed 60 percent requirement after the first two years or the 75 percent requirement for digital media projects.

Qualified Production Company—Corporation, limited liability company, partnership, or other legal entity engaged in a production or productions in this state. The current definition of a "qualified production company" does not have the language "in this state."

Application Procedure, Approval Process and Program Requirements

Program Application.—A qualified production company producing a qualified production in this state may submit an application to the Office of Film and Entertainment (OFE) no earlier than 6 months before the stated principal photography or digital media project start date. The applicant must provide the OFE with information necessary to determine whether the production is a qualified production and to determine the qualified expenditures.

Certification.—The OFE shall review the application within 15 business days of receiving an application. Upon its determination that the application contains all the required information, the OFE shall qualify the applicant and recommend to the Office of Tourism, Trade, and Economic Development (OTTED) that the applicant be certified for the maximum tax credit award amount. Five (5) business days after receipt of the recommendation, OTTED must reject the recommendation or certify the maximum recommended tax credit award, if any, to the applicant and to the executive director of the Department of Revenue. (DOR).

Verification of Actual Qualified Expenditures.— The OFE must develop a process to verify the actual qualified expenditures of a certified production. The process must require a certified production to submit data substantiating each qualified expenditure to an independent certified public accountant licensed in this state, in a timely manner after principal photography or the digital media project ends, and after making all of its qualified expenditures. The accountant must conduct a compliance audit, at the certified production's expense, to substantiate each qualified expenditure and submit the results as a report, along with the required substantiating data, to the OFE. The OFE must review the accountant's submittal and report to the OTTED the final verified amount of actual qualified expenditures made by the certified production. The OTTED must determine and approve the final tax credit award amount to each certified applicant based on the final verified amount of actual qualified expenditures and shall notify the executive director of the DOR in writing that the certified production has met the requirements of the incentive program and of the final amount of the tax credit award. The current incentive program does not require the OFE to notify the DOR in writing.

Production Timing— A qualified or certified production must begin principal photography, or, in the case of a digital media project, the start date of the production, in this state no more than 45 calendar days before or after the start date provided in the production's program application. If the production fails to begin within 45 days of the applicant's named start date, the Office of Tourism, Trade, and Economic Development (OTTED) must withdraw the eligibility of a qualified or certified production for not continuing on a reasonable schedule.

Promoting Florida.— To receive a tax credit, the OFE must ensure that marketing materials promoting this state as a tourist destination or film and entertainment production destination are included, when appropriate, at no cost to the state. The OFE must provide a logo. Marketing must at a minimum, place a "Filmed in Florida" or "Produced in Florida" logo in the opening credits and end credits and on all packaging material and hard media, unless prohibited by licensing or other contractual obligations. If no logos are used, the statement "Filmed in Florida using Florida's Entertainment Industry Financial Incentive," or a similar statement approved by the OFE, must be used.

Annual Report— By October 1 of each year OFE must submit an annual report detailing the return on investment and economic benefit to Florida to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Queues

The bill provides for three parts, or queues, the General Production Queue, the Commercial and Music Video Queue, and the Independent Production Queue.

General Production—Ninety-four percent of tax credits authorized in any state fiscal year must go to the general production queue. A qualified production, excluding a commercial, music video, or independent Florida film, that has a minimum of $625,000 in qualified expenditures is eligible for tax credits equal to 20 percent of its actual qualified expenditures. An off-season certified production that is a feature film, independent film, commercial, or television series or pilot is eligible for an additional 5-percent tax credit on actual qualified expenditures. An off-season certified production that does not complete 75 percent of principal photography due to a disruption caused by a hurricane or tropical storm may not be disqualified from eligibility for the additional 5-percent credit as a result of the disruption. A qualified high-impact television series shall be allowed first position in this queue for tax credit awards not yet certified.

Commercial and Music Video Queue—Three percent of tax credits authorized in any state fiscal year must be dedicated to the commercial and music video queue. A qualified production company that produces commercials or music videos may be eligible for a tax credit award if it meets a minimum of $100,000 in qualified expenditures per production and exceeds a combined threshold of $500,000 after combining actual qualified expenditures from qualified productions during a single state fiscal year. After a qualified production company producing commercials, music videos, or both reaches $500,000, it can apply for certification for a tax credit award. The maximum credit award is equal to 20 percent of actual qualified expenditures up to a maximum of $500,000. Surplus tax credits remaining after the OFE certifies and determines the tax credits for all applications from qualified commercial and video projects made 270 days into the application process must go to eligible qualified productions under the general production queue.

Independent Production Queue—Three percent of tax credits authorized in any state fiscal year must be dedicated to the independent production queue. An independent Florida film or digital media project that is planned as a feature film or documentary of at least 70 minutes in length and employs legal residents of this state in at least two key positions: writer, director, producer, star, or composer, and that costs a minimum of $100,000, but not more than $625,000, in total qualified expenditures is eligible for tax credits equal to 20 percent of its actual qualified expenditures.

Transfer of tax credits

Rulemaking—The Department of Revenue (DOR) may adopt rules to administer tax credit transfers.

Authorization—Upon application to the Office of Film and Entertainment (OFE) and approval by the Office of Tourism, Trade, and Economic Development, (OTTED) a certified production company, or a partner or member that has received a distribution may elect to transfer, in whole or in part, any unused credit amount granted under this section. An election to transfer any unused tax credit amount under chapter 212 or chapter 220 must be made no later than 5 years after the date the credit is awarded, after which period the credit expires and may not be used. OTTED must notify the DOR of the election and transfer.

Number of Transfers Permitted— A certified production company that elects to apply a credit amount against taxes remitted under chapter 212 is permitted a one-time transfer of unused credits to one transferee. A certified production company that elects to apply a credit amount against taxes due under chapter 220 is permitted a one-time transfer of unused credits to no more than four transferees, and such transfers must occur in the same taxable year.

Transferee Rights and Limitations—The transferee is subject to the same rights and limitations as the certified production company awarded the tax credit, except that the transferee may not sell or otherwise transfer the tax credit.

Additional Provisions

Additional Credit—A certified production determined by the Commissioner of Film and Entertainment, with the advice of the Florida Film and Entertainment Advisory Council, to be family-friendly, based on the review of the script and the review of the final release version, is eligible for an additional tax credit equal to 5 percent of its actual qualified expenditures. Family-friendly productions are those that have cross-generational appeal; would be considered suitable for viewing by children age 5 or older; are appropriate in theme, content, and language for a broad family audience; embody a responsible resolution of issues; and do not exhibit or imply any act of smoking, sex, nudity, nontraditional family values, gratuitous violence, or vulgar or profane language. Under the current incentive program, review of the final release version is not required and nontraditional family values, gratuitous violence, and implied acts do not exclude a film from receiving this additional credit.

Election and Distribution of Tax Credits—A certified production company receiving a tax credit award must at the time the credit is awarded by the Office of Tourism, Trade, and Economic Development (OTTED), after production is completed and all requirements to receive a credit award have been met, make an irrevocable election to apply the credit against taxes due under chapter 220, those due under chapter 212 or against a stated combination of the two taxes. The election is binding upon any distributee, successor, transferee, or purchaser. OTTED must notify the Department of Revenue (DOR) of any election made pursuant to this paragraph.

Tax Credit Carryforward—If the certified production company cannot use the entire tax credit in the taxable year or reporting period in which the credit is awarded, any excess amount may be carried forward to a succeeding taxable year or reporting period. A tax credit applied against taxes imposed under chapter 212 may be carried forward for a maximum of 5 years after the date the credit is awarded. A tax credit applied against taxes imposed under chapter 220 may be carried forward for a maximum of 5 years after the date the credit is awarded, after which the credit expires and may not be used.

Consolidated Returns—A certified production company that files a Florida consolidated return as a member of an affiliated group under s. 220.131(1) may be allowed the credit on a consolidated return basis up to the amount of the tax imposed upon the consolidated group under chapter 220.

Partnership and Non Corporate Distributions— A qualified production company that is not a corporation as defined in s. 220.03 may elect to distribute tax credits awarded under this section to its partners or members in proportion to their respective distributive income or loss in the taxable fiscal year in which the tax credits were awarded.

Mergers or Acquisitions— Tax credits available under this section to a certified production company may succeed to a surviving or acquiring entity subject to the same conditions and limitations as described in this section; however, they may not be transferred again by the surviving or acquiring entity.

Audit Authority— DOR may conduct examinations and audits as provided in s. 213.34 to verify that tax credits under this section are received, transferred, and applied. If the Department of Revenue determines that tax credits are not received, transferred, or applied as required by the bill, it may pursue recovery of such funds pursuant to the laws and rules governing the assessment of taxes.

Revocation of tax credits.—OTTED may revoke or modify any written decision qualifying, certifying, or otherwise granting eligibility for tax credits if it is discovered that the tax credit applicant submitted any false statement, representation, or certification in any application, record, report, plan, or other document filed in an attempt to receive tax credits.

Forfeiture of tax credits.—A determination by the DOR, as a result of an audit or examination by the DOR or from information received from the OFE, that an applicant received tax credits to which the applicant was not entitled is grounds for forfeiture of previously claimed and received tax credits. The applicant is responsible for returning forfeited tax credits to the DOR, and such funds must be paid into the General Revenue Fund of the state. Tax credits purchased in good faith are not subject to forfeiture unless the transferee submitted fraudulent information in the purchase or failed to meet the requirements.

Fraudulent Claims— Any applicant that submits information that is fraudulent is liable for reimbursement of the costs and fees associated with the review, processing, investigation, and prosecution of the fraudulent claim. An applicant that obtains a credit payment through a claim that is fraudulent is liable for reimbursement of the credit amount plus a penalty in an amount double the credit amount.

Repeal— The Entertainment Industry Financial Incentive Program shall be repealed July 1, 2015 except that the tax credit carry forward provision shall continue to be valid for the period specified.

B. SECTION DIRECTORY:

Section 1: Substantially amends the Don Davis Entertainment Industry Economic Development Act to create the Entertainment Industry Financial Incentive Program.

Section 2: Subsection (8) of s. 220.02, F.S., is amended to provide that those taxes enumerated in s. 288.1254, F.S., are applied in a prescribed order.

Section 3: Paragraph (z) is added to subsection (8) of s. 213.053, F.S., to provide that DOR may provide information relative to tax credits taken under s. 288.1254, F.S., to the OFE and OTTED.

Section 4: Paragraph (q) is added to subsection (5) of s. 212.08, F.S., to provide an entertainment industry tax credit against sales and use tax liabilities, provides the timeframe allowed for credits, and a carry forward provision.

Section 5: Provides that if any provision of the program or the application thereof to any person is deemed invalid, it will not invalidate other provisions of the program which can be given without the invalid process or application.

Section 6: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

If the incentive program increases the frequency of qualified productions in Florida, then state government could see an economic benefit in the form of increased tax revenues due to spending that accompanies qualified productions.

2. Expenditures:

The Revenue Estimating Conference determined that the bill would have a recurring negative fiscal impact of $64 million to state government. Additionally, the Department of Revenue has reported an estimated total cost of $79,216 to implement this legislation for fiscal year 2010-2011. The Department reports that a system would need to be created to register and track sale and use tax credits and corporate income credits. Further, an accountant would be needed to monitor the tracking system. The Department also stated that one FTE accountant III (pay-grade 18) position will be required in the Return Reconciliation to facilitate the transfer of the credits. To accurately apply credits to the proper entities, programming to track and transfer credits will be changed in DOR's integrated tax system, SUNTAX. [19]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

If the incentive program increases the frequency of qualified productions in Florida, then local governments could see an economic benefit in the form of increased tax revenues due to spending that accompanies qualified productions.

2. Expenditures:

The Revenue Estimating Conference determined that the bill would have a recurring negative fiscal impact of $11 million to local governments. The taxes affected are the revenue sharing, local government ½ cent, and local option.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the incentive program increases the frequency of qualified productions in Florida, then Florida-based businesses could see an economic benefit due to spending that accompanies qualified productions. The chart below describes some statistics of expenditures in Florida. [20]

average statistics by type from FY 2006 to FY 2009								
type	Total Approved FLA Qualified Expenditures (QE)	Incentive Reimbursement Amount	rebate %	QE Spent on FLA Vendors	QE Spent on FLA Wages	QW wages %	Total FLA Workers	Est. # of Hotel Room Nights
COMMERCIAL	$566,376	$94,231	16.64%	$316,872	$249,504	44.05%	111	92
DIGITAL MEDIA	$2,769,070	$264,776	9.56%	$433,693	$2,776,128	100.25%	55	400
DOCUMENTARY	$168,254	$25,674	15.26%	$112,829	$55,425	32.94%	11	19
FEATURE	$1,942,353	$318,389	16.39%	$906,870	$1,035,484	53.31%	341	973
TV	$3,065,751	$477,510	15.58%	$1,353,011	$1,770,175	57.74%	258	865
total average	$2,231,798	$336,612	15.08%	$890,292	$1,334,897	59.81%	247	614
sum statistics								
COMMERCIAL	$5,097,384	$848,075	16.64%	$2,851,849	$2,245,536	44.05%	1,001	735
DIGITAL MEDIA	$35,997,906	$3,442,089	9.56%	$2,602,160	$33,313,537	92.54%	665	400
DOCUMENTARY	$841,270	$128,371	15.26%	$564,144	$277,126	32.94%	54	76
FEATURE	$97,117,673	$15,919,450	16.39%	$45,343,492	$51,774,216	53.31%	17,051	44,761
TV	$128,761,545	$20,055,434	15.58%	$55,473,455	$72,577,174	56.37%	10,816	27,682
total	$267,815,778	$40,393,419	15.08%	$106,835,099	$160,187,590	59.81%	29,587	73,654

[19] Fiscal Impact Analysis- On HB 697 for the 2010 session, performed by the Department of Revenue on January 27, 2010.
[20] Data provided by HB 697 bill analysis performed by the Revenue Estimating Conference for 2/24/2010 impact conference.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply to this bill because it reduces the authority of counties to raise total aggregate revenues over 2-1-89 levels. By allowing a qualified production to take a credit against any tax in chapter 212, F.S., this will effectively reduce a county's ability to raise local option sales tax dollars. Therefore, the Legislature must determine that the bill fulfills an important state interest and the bill must have a 2/3 vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

OTTED and DOR are granted rulemaking authority to carry out the provisions of this legislation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES