The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: SPB 7212

INTRODUCER: For consideration by the Commerce and Tourism Committee

SUBJECT: Entertainment Industry Financial Incentive Program

DATE: February 15, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka		**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

SPB 7212 makes substantial changes to the Entertainment Industry Financial Incentive Program (incentive program), including:

- Removing the limitation on the amount of tax credits available for high-impact television series;
- Creating a new priority order for high-impact television series and high-impact digital media projects;
- Revising and expanding the additional tax credits for off-season productions, productions in underutilized regions, and productions that occur at a qualified production facility or a qualified digital media production facility.

This bill substantially amends s. 288.1254, F.S.

II. Present Situation:

Florida's Entertainment Industry Financial Incentive Program[1]

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program (incentive program).[2] The incentive program's dual purposes are to:

- Promote Florida as a site for filming, creating, or producing movies, television series, commercials, digital media and other types of entertainment productions, and to

[1] Information about the incentive program is also available on OFE's website, available at http://filminflorida.com/ifi/incentives.asp (last visited 2/9/2012).

[2] Section 288.1254, F.S. See ch. 2003-81, L.O.F.

- Sustain and develop the state's entertainment workforce, studios, and other related infrastructure.

The incentive program is administered by the Office of Film and Entertainment (OFE), subject to the policies and oversight of the Department of Economic Opportunity (DEO).[3] OFE develops, markets, promotes, and provides services to Florida's entertainment industry, such as serving as a liaison between the industry and government entities and facilitating access to filming locations. Additionally, the Florida Film and Entertainment Advisory Council (council) provides industry insight and expertise to OFE and DEO.[4]

Currently the incentive program is a 5-year program, which began July 1, 2010, and sunsets June 30, 2015.[5] The incentive program provides tax credits for qualified expenditures related to filming and production activities in Florida. These tax credits may be applied against the corporate income tax or sales and use taxes. Additionally these tax credits may be transferred one time.

Over the 5 year period, there are a total of $254 million in available credits. Annual limitations for tax credits were set at:

- $53.5 million in FY 2010-11;
- $74.5 million in FY 2011-12; and
- $42 million in FY 2012-13, FY 2013-14, and FY 2014-15 each.[6]

Already, almost $219 million tax credits have been awarded to certified productions. The law provides that if the total tax credits applied for in a fiscal year is greater than the amount available for that year, then the excess credits are to be treated as if they had been applied for in the next fiscal year. Thus, most of the tax credits have already been awarded for all 5 years.[7]

Eligibility

Generally, a production company planning on engaging in a production in Florida can apply to OFE prior to beginning production for an award of tax credits based upon estimated qualified expenditures planned for the production (pre-certification). Priority for tax credit awards is made on a first-come, first-served basis within the appropriate "queue."[8]

There are three queues of eligible productions: general production, commercial and music video, and independent and emerging media production. As percentage of funding:

- 94 percent of the state incentive funding is dedicated to the general production queue;
- 3 percent is dedicated to the commercial and music video queue; and
- 3 percent is dedicated to the independent and emerging media production queue.

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[3] Section 288.1251, F.S.

[4] The council consists of 17 members appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives. See s. 288.1252, F.S.

[5] In 2010, the incentive program was changed from a cash reimbursement type program to the current form. See ch. 2010-147, L.O.F.

[6] Section 288.1254(7), F.S.

[7] See OFE FY 2010-2011 Annual Report, discussed below under OFE Annual Report for FY 2010-11.

[8] Section 288.1254(4), F.S.

Further, under the general production queue, no more than 25 percent of the tax credits can be awarded to television series. If less than 20 percent of tax credits are awarded to digital media projects, then any digital media project with qualified expenditures greater than $4.5 million are allowed first priority for credits not yet awarded.

Characteristics of Production Queues

	General Production	Commercial & Music Video	Independent and Emerging Media Production Queue
Minimum amount of qualified expenditures	$625,000	$100,000 per commercial or video and exceeds $500,000 combined per FY year	At least $100,000, but not more than $625,000
Amount of basic incentive	20% of qualified expenditures, up to $8 million	20% of qualified expenditures, up to $500,000	20% of qualified expenditures, up to $125,000

In addition to the amount of basic incentives, there are additional tax credits available for general production queue projects:

- 5 percent additional tax credit for feature films, independent films, or television series or pilots that are "off-season certified," including those that are not able to complete 75 percent of their principal photography due to a hurricane or tropical storm. Off-season certified means that the production films 75 percent or more of its principal photography from June 1 to November 30.
- 5 percent additional tax credit for productions that incur at least 85 percent of qualified expenditures in an underutilized region. An "underutilized region" is one with a regional tax credit ratio for a fiscal year that is lower than its regional population ratio that year.[9]
- 15 percent additional tax credit for productions that employ students enrolled full-time in a film and entertainment-related or digital media-related course of study or recent graduates of such a course of study. The course of study must have occurred at an institution of higher education in Florida. This additional 15 percent may be applied to any qualified expenditures related to wages, salaries, or other compensation paid to such students or graduates.
- 5 percent additional tax credit for productions which conduct at least 50 percent of their principal photography at a qualified production facility. This additional 5 percent may be applied to any qualified expenditures related to production activity at that facility.
- 5 percent additional tax credit for qualified digital media projects or digital animation components of productions which have at least 50 percent of their qualified expenditures related to a qualified digital media production facility. This additional 5 percent may be applied to any qualified expenditures related to production activity at that facility.

[9] "Underutilized region" is defined in s. 288.1254(1)(o), F.S.

Further, family-friendly certified theatrical or direct-to-video movies and video games are eligible for an additional tax credit of 5 percent of its actual qualified expenditures. The determination for "family-friendly" is made by OFE, with the advice of the council. A family friendly production is one that:

- Has cross-generational appeal;
- Is considered suitable for viewing by children aged 5 years or older;
- Is appropriate in theme, content and language for a broad family audience;
- Responsibly resolves issues raised in the film; and
- Does not include any act of smoking, sex, nudity, or vulgar or profane language.

Current law defines "qualified expenditures" as production expenditures incurred by a qualified production in Florida for:[10]

- Goods purchased or leased from, or services provided by, a vendor or supplier in Florida that is registered with the Department of State or the Department of Revenue (DOR) and is doing business in Florida. Eligible production goods and services include:
  - Sound stages, back lots, production editing, digital effects, sound recordings, sets, and set construction;
  - Entertainment-related rental equipment, including cameras and grip or electrical equipment;
  - Newly purchased computer software and hardware, up to $300,000; and
  - Meals, travel, and accommodations.
- Salary, wages, or other compensation paid to Florida residents, up to a maximum of $400,000 per resident.

Further, qualified production must meet the requirements in s. 288.1254, F.S., plus two additional criteria:

- Depending on the type of production and period of time in the incentive program, most of the production cast and below-the-line production crew [11] are Florida residents, or are students enrolled full-time in a film- and entertainment-related course of study at a Florida university or college.
- The production does not contain obscene content, as defined in s. 847.001(10), F.S.[12]

Additionally, for a qualified production involving an event, such as an awards show, the term "qualified expenditures" excludes expenditures solely associated with the event itself and not directly required by the production. The term also excludes expenditures prior to certification, with the exception of those incurred for a commercial, a music video, or the pickup of additional episodes of a television series within a single season.

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[10] See s. 288.1254(1)(g) and (h), F.S.

[11] "Below-the-line production crew" excludes actors, directors, producers, and writers.

[12] Pursuant to this section, "'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. A mother's breastfeeding of her baby is not under any circumstance 'obscene.'"

Award of Credits
After production ends and all certified expenditures are made in Florida, the production company must have an independent certified public accountant licensed in Florida conduct a compliance audit. OFE is required to review the audit and report to DEO the final verified amount of actual qualified expenditures. DEO then must review and approve the final tax credit award, and notify DOR. Tax credit awards are subject to the limitations discussed above.

Additionally, after production the company must make an irrevocable election to apply the tax credits to the corporate income taxes or sales and use taxes or a stated combination of both. This decision is binding on any distributee, successor, transferee, or purchaser. Tax credits that are unused in any year may be carried forward to the next for a maximum of 5 years.

The production must also include information, such as a logo at the end of the credits or on packing material, that indicates that the production occurred in Florida in order to be eligible for the tax credits.

Tax credits may be relinquished to DOR for 90 percent of the amount of the relinquished tax credit.

Section 288.1254(9), F.S., provides audit authority to DOR related to the tax credits, and for the revocation or forfeiture of tax credits under certain circumstances. Fraudulent applications for tax credits may also result in penalties and other costs in addition to repayment of the tax credits.

OFE Annual Report for FY 2010-11[13]
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 the incentive program, the program's economic benefits to the state, the estimate of full-time equivalent positions (FTE) for each production that received tax credits, and geographic distribution of the credits in Florida.

OFE's annual report for FY 2010-11 reviewed the incentive program for the first year of the 5-year program, as of September 15, 2011. OFE provided updated data as of February 1, 2012:[14]

- 381 applications were received and processed;
- Overall, 161 projects have been certified for the 5 years; projected outcomes for these projects include:
  - Over $1 billion in qualified expenditures in Florida;
  - 195,675 positions with over $633 million in wages paid;[15]
  - 195,675 lodging/room nights; and
  - Almost $219 million in certified tax credits awarded.

[13] OFE "FY 2010-2011 Annual Report: The Florida Entertainment Industry Financial Incentive Program" (September 2011), available at http://filminflorida.com/ifi/PDFs/annualReports/FY2010-2011%20Annual%20Entertainment%20Industry%20Financial%20Incentive%20Report_UPDATED.pdf (last visited 2/9/2012).
[14] Updated data on the incentive program obtained from OFE, on file with the Senate Commerce and Tourism Committee.
[15] Positions are individual positions, not FTEs. Positions may be permanent or temporary. Production cast, crew, extras, and stand-ins, etc., may work for multiple productions and fill multiple positions. Based upon the change to the program in the 2011 Regular Session, OFE is currently developing methodology to report the positions as FTEs. See ch. 2011-76, L.O.F.

- Productions include 37 motion pictures, 29 digital media productions, and 97 television productions, television series pilots, telenovelas, award shows, and commercials (5 of which are high-impact television series).
- 58 certified projects were started and completed in FY 2010-11; projected outcomes for these projects include:
  - 2,737 production days;
  - Over $130 million in qualified expenditures in Florida;
  - 16,066 positions with over $70 million in wages paid;
  - 24,269 lodging/room nights; and
  - Over $30 million in final tax credits awarded.

Projected outcomes are based on information supplied with the applications. These outcomes are subject to change as some projects may withdraw or additional projects become certified.[16]

III. Effect of Proposed Changes:

SPB 7212 makes substantial changes to the Entertainment Industry Financial Incentive Program (incentive program).

Digital Media
The bill amends the definition of "digital media" to include digital animation and visual effects, including 3-D movie productions and movie conversions.

The bill creates a definition for "high-impact digital media" to mean a digital media project that has qualified expenditures greater than $4.5 million.

Off-Season Productions
The definition of "off-season certified production" is amended to include a high-impact television series that films principal photography during at least 75 percent of the days from June 1 through November 30.

Production
Sporting event broadcasts, sports news shows, sports recap shows, and any production deemed obscene under ch. 847, F.S., are added to the list of projects that are not included in the definition of the term "production."

Tax Credits Priority
Under current law within the general production queue, no more than 25 percent of the tax credits can be awarded to television series. If less than 20 percent of tax credits are awarded to digital media projects, then any digital media project with qualified expenditures greater than $4.5 million are allowed first priority for credits not yet awarded. The bill repeals these distinctions.

[16] For example, the television series "Charlie's Angels" had been certified, however the series was cancelled in late 2011 and the tax credits awarded to the production became available to be awarded to other qualified productions.

Instead the bill requires first priority in the general production queue for tax credits not yet certified be given to high-impact television series and high-impact digital media projects, in alternating order, depending on the type of the first application received. OFE may certify a project out of order (ex: two high-impact television series productions in a row) if an application by the next appropriate type of production is not received within 5 business days.

Additional Tax Credits
High-impact television series that do not film during at least 75 percent of the days from June 1 through November 30 due to a hurricane or tropical storm are eligible for the additional 5 percent tax credit.

The additional tax credit for incurring qualified expenditures in an underutilized region is changed. Under the bill, the 5 percent additional tax credit will be available for productions that film at least 25 percent of their principal production days in an underutilized region.

The additional tax credits for certain productions that occur at a qualified production facility or a qualified digital media production facility is expanded. Under current law the 5 percent additional tax credit is applied to any qualified expenditures related to production activity at that facility. The bill strikes this language, thereby expanding the 5 percent additional tax credit to apply to all qualified expenditures. Further, the requirement for the amount of activity at the facility is reduced, such that:

- Productions are required to conduct at least 25 percent of their principal photography at a qualified production facility (as opposed to 50 percent), and
- Qualified digital media projects or digital animation components of productions must have at least 25 percent of their qualified expenditures related to a qualified digital media production facility (as opposed to 50 percent).

This bill would be effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. OFE indicated that as of February 14, 2012, about $27 million in tax credits have not been awarded.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Other Entertainment Industry Tax Incentives in Florida

Entertainment industry qualified production companies are eligible for several exemptions from the sales and use tax. Qualified production companies may 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.[17] 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).[18]
- *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.[19]
- *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.[20]
- *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.[21]

The estimated cost of these exemptions is $64.6 million for FY 2012-13, according to the 2012 Florida Tax Handbook.[22]

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

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[17] Section 288.1258, F.S.
[18] Section 212.031(1)(a)9., F.S.
[19] Section 212.06(1)(b), F.S.
[20] Section 212.08(5)(f), F.S.
[21] Section 212.08(12), F.S.
[22] Florida Revenue Estimating Conference, 2012 Florida Tax Handbook.

B. Amendments:

None.