

**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.)

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

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BILL: CS/SB 1646

INTRODUCER: Commerce and Tourism Committee and Senator Latvala

SUBJECT: Economic Development

DATE: January 27, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Askey	McKay	CM	Fav/CS
2.			ATD	
3.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1646 makes changes to some of the state's economic development programs to increase accountability and efficiency, and reforms the state's entertainment industry development incentive programs.

Specifically the bill:

- Provides a standard definition for "average private sector wage in an area" across the state's economic development incentive programs.
- Limits contract term to 10 years and requires notice of executed contracts to the Legislature.
- Requires that public funds be included when calculating ROI of a project's economic benefits.
- Adds reporting requirements regarding job creation and health care benefits to incentive program reports.
- Renames the Quick Action Closing Fund as the "Florida Enterprise Fund," and makes the following changes to the fund:
  - Lowers the required return on investment (ROI) from 5 to 1, to 3 to 1.
  - Requires that projects create at least 10 jobs.
  - Requires that 20 percent of the award comes from local financial support.
- Moves the Florida Sports Foundation under the Department of Economic Opportunity (DEO), and removes all sports-related responsibilities from Enterprise Florida, Inc. (EFI).
- Repeals expired provisions related to an International Game Fish Association World Center facility.

The bill reforms the state's entertainment industry development efforts by:

- Moving the DEO Office of Film and Entertainment (OFE) to EFI, and renaming it the Division of Film and Entertainment (division).
- Providing that the Florida Film and Entertainment Advisory Council will have an 11-member board, down from 17 members.
- Creating the Entertainment Action Fund, from which approved production companies may receive funds from the program for qualified expenditures in the state.
- Requiring application periods for the fund, and requiring applications to be reviewed, evaluated, and ranked according to criteria designed to maximize the state's investment.
- Prohibiting distribution of funds in excess of the amount appropriated by the Legislature in a given fiscal year.
- Requiring that fund projects above specified award amounts need approval by the Legislative Budget Commission.
- Changing the repeal date of the entertainment industry incentive tax credit program to April 1, 2016, and prohibiting program tax credits from being awarded after that date.
- Providing that a production company cannot benefit from both the Entertainment Action Fund and the entertainment industry tax exemption certificate program.

The bill also makes a number of clarifying, conforming, and technical changes to economic development and entertainment industry incentive programs.

## II. Present Situation:

*For the purposes of this bill analysis, the Present Situation will be addressed in the Effect of Proposed Changes section below.*

## III. Effect of Proposed Changes:

### Economic Development Incentive Programs

#### *Current Situation*

Florida has a number of incentive programs intended to promote economic development in the state. These programs are collectively referred to as the economic development "toolkit" and come in a variety of forms including tax refunds, tax credits, tax exemptions, and cash grants.

The Qualified Target Industry Business Tax Refund (QTI) was established in 1995 with the purpose of attracting high wage jobs to the state.<sup>1</sup> The tax refunds are made to qualified, pre-approved businesses creating jobs in target industries. The target industries are identified by the DEO for criteria including future growth, stability, high wages, market and resource independence, industrial base diversification, and positive economic impact. Approved QTI projects have contractual performance measures with specific milestones to be verified prior to payment of any tax refunds. This incentive requires 20 percent of the award to come from the local government. The program is funded through a specific annual appropriation.<sup>2</sup> The program

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<sup>1</sup> Section 288.106, F.S.

<sup>2</sup> Section 288.095, F.S.

shares a \$35 million cap on tax refund payments, per fiscal year, with the Qualified Defense and Space Contractor Tax Refund (QDSC) program.

The QDSC program was established in 1996 and is designed to attract high wage jobs in the space and defense industries.<sup>3</sup> The QDSC tax refunds are made to qualified and approved businesses bidding on new or securing existing defense or space contracts. As with the QTI refund, 20 percent of the award comes from the local government. As with other programs, the QDSC tax refunds are awarded after contractual performance-based milestones are met and verified by the state. The program is funded through a specific annual appropriation. The program shares a \$35 million cap on tax refund payments, per fiscal year with the QTI tax refund. Certification for applicants has been prohibited since June 30, 2014, but any agreements in effect after that date continue in accordance with their terms.

The Capital Investment Tax Credit (CITC) became effective in 1998 and its purpose is to attract and grow capital-intensive industries in Florida.<sup>4</sup> Eligible projects must be in designated high-impact portions of certain sectors, determined by the DEO, including clean energy, biomedical technology, financial services, information or silicon technology, or transportation equipment manufacturing. The project could also be a corporate headquarters facility. The DEO reports that the value of credits claimed is often lower than the value of credits approved because the company's tax liability may be lower than the value of the credits, and most often, because the credits can only be used to offset a portion of the incremental new tax liability attributable to a project. There is no cap for this program. The DEO reported that \$21.5 million in tax credits were claimed in 2014.<sup>5</sup>

The Quick Action Closing (QAC) Fund was established in 1999.<sup>6</sup> The program is designed to be a competitive "deal closing" tool for negotiations where the state's other incentives are not enough to incentivize a business to remain, locate, or expand in the state.

Under current law, in order to be eligible for QAC funds a project must meet five criteria:

- Be in a qualified target industry;
- Have a positive economic benefit ratio of at least 5 to 1;
- Be an inducement to the project's location or expansion in the state;
- Pay an average annual wage of at least 125 percent of the area-wide or statewide private sector average wage; and
- Be supported by the local community in which the project is to be located.

The DEO is permitted to waive these criteria under certain conditions.

All QAC Fund projects have a performance based contract requiring specific scheduled milestones and annual compliance requirements. The program authorizes sanctions and penalties

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<sup>3</sup> Section 288.1045, F.S.

<sup>4</sup> Section 220.191, F.S.

<sup>5</sup> The Department of Economic Opportunity, *DEO: 2015 Incentives Report*, December 30, 2015, (on file with the Commerce and Tourism Committee).

<sup>6</sup> Section 288.1088, F.S.

for failure to perform. The program is funded by a specific annual appropriation, and has no cap. The DEO reports that \$44.2 million in grant incentives was approved in Fiscal Year 2014-15.<sup>7</sup>

The Innovation Incentive Program (IIP) was created in 2006.<sup>8</sup> The program is designed to empower the state to compete effectively for research and development, innovation business, or alternative and renewable energy projects. The program creates long-term investments, made by the state, in industry clusters critical to the state's future economic diversification. The projects have contractual performance measures and milestones that must be achieved before grant payment. The contracts also include a reinvestment portion, requiring recipients to reinvest a portion of royalty revenues earned back to the state for investment in existing state trust funds. The DEO reports that as of 2015, nine companies have been awarded funds of \$455.7 million, in addition to the Scripps Florida Grant (\$310 million).<sup>9</sup>

The Office of Economic Development and Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA) are required to provide a detailed analysis of state economic development programs according to a recurring schedule established in law.<sup>10</sup> The EDR must evaluate and determine the economic benefits, as defined in s. 288.005(1), F.S., of each program over the previous 3 years. For the purposes of EDR's analysis, the calculation of economic benefits is the same as the state's return on investment.

The Sports Development Program, established under s. 288.11625, F.S., provides state funding to pay for a facility for a professional sports franchise, under certain circumstances. Local governments, non-profit and for-profit entities may apply to the program. The program is scheduled for recurring review by EDR and OPPAGA beginning January 1, 2018. The retention of Major League Baseball spring training baseball franchises program, established under section 288.11631, F.S., provides state funds to pay for construction and renovation of spring training baseball facilities under certain circumstances. This program is currently not included in the list of economic development programs that must be analyzed by EDR and OPPAGA.

### *Effect of Proposed Changes*

The bill amends s. 288.005, F.S., to include a definition for "average private sector wage in the area." The term is defined to mean the statewide average wage in the private sector or the average of all private sector wages in the county or standard metropolitan area in which the project is located, as determined by the DEO (**Section 7**).

The bill makes conforming changes to reflect the new definition for "average private sector wage in the area" in:

- The Capital Investment Tax Credit program;<sup>11</sup>
- The Research and Development Tax Credit program;<sup>12</sup>

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<sup>7</sup> *Supra* note 5, at 18.

<sup>8</sup> Section 288.1089, F.S.

<sup>9</sup> *Supra* note 5, at 27.

<sup>10</sup> Section 288.0001, F.S.

<sup>11</sup> Section 220.191, F.S.

<sup>12</sup> Section 220.196, F.S.

- The Qualified Defense Contractor and Space Flight Business Tax Refund (QDSC) program;<sup>13</sup>
- The Qualified Target Industry Tax Refund Program;<sup>14</sup>
- The Quick Action Closing Fund;<sup>15</sup> and
- The Innovation Incentive Program<sup>16</sup> (**Sections 4, 5, 11, 12, 14, 15**).

The bill requires that all state funds used to benefit a business be included in the ROI for calculating projects' economic benefits. For all incentive programs, the bill clarifies:

- That when calculating projects' economic benefits, a business's capital investment does not include any public funds;
- Requires capital investment made by a business to remain in the state for the duration of the incentives contract;
- Limits the duration of contracts to 10 years (except for the Capital Investment Tax Credit program and the Innovation Incentive Program); and
- Requires the DEO to provide a notice to the Legislature of executed contracts (**Section 8**).

The bill also prohibits the use of public funds when calculating cumulative investment by a high-impact business pursuant to s. 288.108, F.S., (**Section 13**).

The bill repeals expired language allowing a waiver between July 1, 2011, and June 30, 2014, under certain circumstances, in the Capital Investment Tax Credit program (**Section 4**).

The bill extends certification for the QDSC program to June 30, 2018, and allows for late filings in 2014 to be claimed under certain conditions (**Section 11**).

The bill clarifies that the Qualified Target Industry "tax refund" program is not a repayment of taxes, but that taxes paid operate as a limitation on the incentive award amount (**Section 12**).

The bill sets the required ROI for a project receiving Quick Action Closing funds at 3 to 1 (currently 5 to 1), requires that a project create 10 jobs, and that 20 percent of the award must come from local financial support. The bill provides that if a local government and EFI request a waiver of criteria required for a project to be eligible to receive funds from the Quick Action Closing Fund, a written request must be sent to the DEO explaining the reasons for the request. Additionally, the DEO must write an explanation regarding the reasons for an approval of any such request. The bill requires that after the Governor approves a Quick Action Closing Fund applicant, the DEO will issue a letter certifying the applicant is qualified for an award. The bill prohibits any payment of program funds until scheduled performance conditions have been met. The bill renames the Quick Action Closing Fund as the "Florida Enterprise Fund." (**Section 14**).

The bill requires that the incentive project reports by the DEO (**Section 9**), and the annual incentives report by EFI (**Section 30**), include data on the number of jobs created and retained and the number of jobs created and retained that provide health benefits.

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<sup>13</sup> Section 288.1045, F.S.

<sup>14</sup> Section 288.106, F.S.

<sup>15</sup> Section 288.1088, F.S.

<sup>16</sup> Section 288.1089, F.S.

The bill adds a report on the retention of MLB spring training baseball franchises under s. 288.11631, F.S., to the list of reports required by the economic development programs evaluation<sup>17</sup> schedule beginning January 1, 2018, and every 3 years thereafter (**Section 6**).

The bill repeals an expired provision allowing an application for state funding under the Sports Development program<sup>18</sup> related to new facilities or projects commenced before July 1, 2014 (**Section 17**).

Additionally the bill makes clarifying, conforming, or technical changes to:

- ROI reporting for economic development programs in s. 288.076, F.S., (**Section 9**);
- The Economic Development Trust Fund in s. 288.095, F.S., (**Section 10**);
- The Innovation Incentive Program in s. 288.1089, F.S., (**Section 15**);
- Sports Development in s. 288.11625, F.S., (**Section 17**); and
- The Retention of MLB spring training baseball franchises in s. 288.11631, F.S., (**Section 18**).

## **Florida Sports Foundation**

### *Current Situation*

The Florida Sports Foundation (foundation) was a direct-support organization of the Office of Tourism Trade and Economic Development, prior to the governmental reorganization that created the DEO and EFI.<sup>19</sup> The foundation served as the official sports promotion and development organization for the state. Currently the foundation is a non-profit corporation serving as the Division of Sports Industry Development within EFI. The foundation's mission is to:

- Assist state communities with securing, hosting and retaining, sporting events that generate economic impact and sports-tourism for the state;
- Provide state citizens with participation opportunities in the Sunshine State Games and Florida Senior Games;
- Serve as the state's leading source for sports-tourism research and information;
- Assist in the promotion of targeted leisure sport industries in the state; and
- Assist national and state governing bodies to promote amateur sports development through the Sunshine State Games and hosting events in the state.

### *Effect of Proposed Changes*

The bill revives, reenacts, and amends s. 288.1229, F.S., ch. 2011-142, L.O.F., as s. 288.1229, F.S., and makes conforming changes, thereby housing the foundation within the DEO (**Section 20**). The DEO is directed to contract with the foundation by July 1, 2016. The foundation is charged with:

- The promotion and development of the sports industry and any related industries to improve their economic presence in the state;

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<sup>17</sup> Section 288.0001, F.S.

<sup>18</sup> Section 288.11625, F.S.

<sup>19</sup> Chapter 2011-142, L.O.F.

- The promotion of amateur athletic participation for state citizens and the state as a host for national and international amateur athletic competition to encourage and increase the direct and ancillary economic events of any such events and competitions; and
- The retention of professional sports franchises, including the spring training operations of Major League Baseball.

The statutorily provided powers and duties of the DEO are amended to include contracting with the foundation to (**Section 1**):

- Guide, stimulate, and promote the sports industry in the state;
- Promote the participation of state residents in amateur athletic competition; and
- Promote the state as a host for national and international amateur athletic competition.

The bill repeals all duties and responsibilities related to the sports industry from EFI. These repeals include the requirement for a sports marketing director on the EFI Board of Directors, marketing the state for sports, and having a Division of Sports Industry Development (**Section 28, 29, 31**).

The bill transfers EFI responsibilities related to spring training baseball franchises under s. 288.11621, F.S., to the foundation (**Section 16**).

Any responsibilities held by EFI regarding sports-related specialty license plates in s. 320.08058, F.S., have been given to the foundation (**Section 33**). The specialty license plates included are:

- Florida United States Olympic Committee license plates;
- Florida Professional Sports Team license plates;
- Florida Golf license plates;
- Florida NASCAR license plates; and
- Florida Tennis license plates.

The bill removes the requirement that the foundation use proceeds from the Florida Professional Sports Team license plate to promote and develop education programs in state schools (**Section 33**).

## **International Game Fish Association World Center**

### ***Current Situation***

The International Game Fish Association (IGFA) is a nonprofit organization founded in 1939 that focuses on the conservation of game fish and the promotion of responsible and ethical angling practices. The association is housed at the IGFA Museum and Hall of Fame in Dania Beach, Florida. The facility was certified by the state as an IGFA World Center facility in February 2000. Section 288.1169, F.S., establishes the IGFA World Center facility funding program which allows the DEO to approve applicants and certify one applicant as the IGFA World Center facility.

Every 10 years the world center facility must be recertified by demonstrating that it is open, continues to be the only international administrative headquarters, fishing museum, and hall of fame in the country recognized by the IGFA, and is meeting at least one of the minimum

projections established at the time of original certification: 300,000 annual visitors or \$1 million in annual sales tax revenue. The facility reported an average of \$3.8 million in annual sales tax revenues generated from 2000 through 2010, and it was recertified in 2011. Certified applicants are eligible to receive monthly disbursements from the state in an amount equal to \$83,333 for up to 168 months (a total of \$13,999,944 for 14 years).<sup>20</sup> The state made its last disbursement to the facility in February 2014.

### *Effect of Proposed Changes*

The bill repeals s. 288.1169, F.S., which provides for the application process, and certification, of an IGFA World Center facility (**Section 19**). Additionally, the bill repeals the distribution of state funds to any such facility, pursuant to s. 212.20(6)(d)6.d., F.S., (**Section 3**); and economic development programs evaluation reporting requirements regarding any such facility, pursuant to s. 288.0001(2)(b)4., F.S., (**Section 6**).

## **Office of Film and Entertainment**

### *Current Situation*

The Office of Film and Entertainment (OFE) in the DEO develops, markets, promotes, and provides services to Florida's entertainment industry, including serving as a liaison between the industry and government entities and facilitating access to filming locations.<sup>21</sup> The OFE gathers statistical information related to the state's entertainment industry; provides information and services to businesses, communities, organizations, and individuals engaged in entertainment industry activities; administers field offices outside the state; and coordinates with regional offices maintained by counties and regions of the state. The OFE is also required to develop a 5-year strategic plan to guide its activities, which is updated on an annual basis and aligns with the DEO's Strategic Plan for Economic Development. The OFE's mission is to build, support, and market the entertainment industry in Florida.

### *Effect of Proposed Changes*

The bill rennumbers and amends s. 288.1251, F.S., as s. 288.913, F.S., to rename the OFE as the Division of Film and Entertainment and house it within EFI (**Section 22**). The bill makes corresponding conforming changes. Additionally, the bill requires the 5-year plan to address new issues including:

- Any field offices outside the state;
- The coordination of the division with local and regional offices in the state, local film commissions, and labor organizations to facilitate a working relationship; and
- Strategies to identify, solicit, and recruit entertainment production opportunities for the state.

The bill provides that EFI's board of directors will review and approve the 5-year plan annually, and any funds provided for the purposes of the 5-year plan will be deposited in a separate account with EFI.

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<sup>20</sup> Section 212.20(6)(d)6.d., F.S.

<sup>21</sup> Section 288.1251, F.S. See also OFE website, available at <http://www.filminflorida.com/about/vm.asp> (last visited January 21, 2016).



The bill renumbers s. 288.1253, F.S., related to travel and entertainment expenses incurred by employees of OFE, as s. 288.915, F.S., and makes conforming changes to apply the section to the division. Additionally, the bill prohibits the division, its employees, and its representatives, from accepting any complimentary travel, accommodations, meeting space, meals, equipment, transportation, or other goods and services from any entity, or employee, designee, or representative of such entity, which has received, applied to receive, or anticipates to receive, any funds from the Entertainment Action Fund created under s. 288.1256, F.S., (**Section 24**). Failure to abide by this prohibition is subject to the penalties provided for in s. 112.317, F.S.

## **Florida Film and Entertainment Advisory Council**

### *Current Situation*

The OFE is assisted by the Florida Film and Entertainment Advisory Council (council), which is composed of 17 members, of which seven members are appointed by the Governor, and five members each are appointed by the President of the Senate and the Speaker of the House of Representatives.<sup>22</sup> In addition, EFI, Workforce Florida, Inc., and the Florida Tourism Industry Marketing Corporation (VISIT Florida) each have a representative that serves as an ex-officio nonvoting member of the council. The council provides the OFE and the DEO with industry insight and assists in the creation of the 5-year strategic plan.

### *Effect of Proposed Changes*

The bill amends and renumbers s. 288.1552, F.S., as s. 288.914, F.S., (**Section 23**). The bill conforms this section to reflect that the council now advises EFI's Division of Film and Entertainment, rather than the OFE. Additionally, the bill reduces the number of members appointed to 11 from 17, with five members appointed by the Governor and three members by each chamber of the Legislature. Members may serve out the remainder of their term, but upon vacancy or the conclusion of a term, members must be appointed in accordance with the section. The bill provides that the council will no longer assist in the creation of the 5-year plan.

## **Entertainment Action Fund**

### *Current Situation*

The Entertainment Action Fund does not exist in current law.

### *Effect of Proposed Changes*

The bill creates s. 288.1256, F.S., as the Entertainment Action Fund (**Section 26**). The bill provides that the fund is created within the DEO in order to:

- Respond to extraordinary opportunities;
- Compete effectively to attract and retain production companies; and
- Provide favorable conditions for the growth of the entertainment industry in the state.

Production companies may submit applications to receive funds from the fund. The division must accept applications for 3 months and provide public notice of the application period. There

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<sup>22</sup> Section 288.1252, F.S.

can be multiple application periods in a single fiscal year depending on the availability of funds. The division is to review and evaluate applications to identify, if any, competitive projects for approval. The evaluation criteria, listed in order of priority, are:

- The number of state residents to be employed in full and part-time positions related to the project and the average wages paid;
- The amount of qualified, and unqualified, expenditures to be made in the state;
- Planned or executed contracts with production facilities in the state for production activity;
- The amount of capital investment, especially fixed capital, made directly by the production company in this state related to a project;
- The duration of the project;
- The amount of principal photography that will occur in an underutilized county;
- The extent to which the state will be promoted by the production company;
- The employment of in-state students and recent graduates;
- Any plans to work with in-state higher education institutions;
- Any local support, financial or otherwise;
- If the project is about the state, or positively reflects the state;
- A review of the production company's past activity in the state;
- A production company's number of productions already made and overall commitment to the state;
- Expected contributions to the state's economy; and
- The effect of any award on the viability of a project and the possibility of the project being undertaken in the state.

The DEO is directed to prescribe an application form with specific required information to aid in the review and evaluation of project criteria.

The DEO must make a recommendation to the Governor within 7 days of reviewing an application. Recommendations must include performance conditions required to obtain any funds. Any award cannot constitute more than 30 percent of qualified expenditures in the state and cannot be used for wages paid to nonresidents. A recommendation can be for less than that amount. A production must start within 1 year of having an award being approved by the Governor.

The Governor may approve any project requiring less than \$2 million in funding without consulting the Legislature. For projects requiring funding between \$2 million and \$5 million, the Governor must submit a written description and evaluation of the project to the Legislative Budget Commission (LBC) at least 10 days before giving final approval. The LBC, President of the Senate, or Speaker of the House of Representatives may direct the Governor to avoid release of funds until the LBC or the Legislature addresses the issue. For projects requiring over \$5 million in funding, LBC approval is required before any funds can be released.

Upon approval, the DEO and the production company must enter into an agreement specifying;

- The total funds awarded and scheduled payments;
- The performance conditions required to obtain payments;
- The methodology for validating performance conditions;
- That the DEO may review and verify company records to ascertain compliance;

- Sanctions for failure to meet performance conditions; and
- That fund payments are contingent upon appropriation by the Legislature.

Agreements must be signed within 90 days of the Governor's approval. Production companies cannot receive funds from this section and benefit from tax exemptions in s. 288.1258, F.S., for the same production. The DEO cannot approve awards in excess of, if any, amount appropriated in a fiscal year. For the first 6 months, the DEO will set aside 50 percent of any amount appropriated to the fund. These funds can be used for awarding application received on or after January 1<sup>st</sup> of each fiscal year. The DEO cannot accept applications or commit awards in a period where there has been no appropriations for the fund. The bill provides for the reimbursement of costs and penalties associated with fraudulent claims. Any penalty is in addition to any criminal penalties liable for the committing of such an act.

The DEO, nor the division, may waive any requirements of this program.

The DEO must validate contractor performance and include such findings in an annual report required to be submitted on November 1<sup>st</sup> of each year.

This program (s. 288.1256, F.S.) expires on July 1, 2026. Agreements in existence on that date continue in accordance with their terms.

The bill does not provide an appropriation for the fund.

## **Other Entertainment Incentive Programs**

### ***Current Situation***

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program.<sup>23</sup> The 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
- Sustain and develop the state's entertainment workforce, studios, and other related infrastructure.

The program is administered by the OFE, subject to the policies and oversight of the DEO. Currently, the program is a 6-year program, which began July 1, 2010, and sunsets June 30, 2016. The 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 or sold one time.<sup>24</sup>

Over the 6 year period, a total of \$296 million in tax credits were authorized. Annual limitations for tax credits are set at:

- \$53.5 million in Fiscal Year 2010-11;

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<sup>23</sup> Section 288.1254, F.S. See ch. 2003-81, L.O.F. In 2010, the incentive program was changed from a cash reimbursement type program to the current form. See ch. 2010-147, L.O.F.

<sup>24</sup> Also, tax credits may be relinquished to the Department of Revenue for 90 percent of the amount of the relinquished tax credit.

- \$74.5 million in Fiscal Year 2011-12; and
- \$42 million in each Fiscal Year 2012-13, 2013-14, 2014-15, and 2015-16.<sup>25</sup>

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. The OFE reports that all of the tax credits authorized for the 6-year period have been certified (or allocated to certified productions).<sup>26</sup>

Entertainment industry qualified production companies are eligible for several exemptions from taxes under ch. 212, F.S. A qualified production company can obtain a certificate to avoid paying tax at the point of sale, rather than claiming a refund after paying the tax.<sup>27</sup> Qualified production companies are exempt from paying sales tax for the following:

- *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 (the term “activity or service” includes photography, casting, location scouting, and designing sets).<sup>28</sup>
- *Fabrication labor* when a producer uses his or her own equipment and personnel to produce a qualified motion picture.<sup>29</sup>
- *Purchase or lease of motion picture and video equipment and sound recording equipment* used in Florida for motion picture or television production or for the production of master tapes or master records.<sup>30</sup>
- *Sale, lease, storage, or use of blank master tapes, records, films, and video tapes.*<sup>31</sup>

The OFE reviews and approves applications for the exemptions, while the Department of Revenue (DOR) issues certificates of exemption to the production companies. The estimated cost of these exemptions was \$51.1 million for Fiscal Year 2014-2015.<sup>32</sup>

### ***Effect of Proposed Changes***

The bill amends s. 288.1254, F.S.,<sup>33</sup> to provide that duties held by OFE, including the approval of transferring of tax credits, authority over the revocation and forfeiture of tax credits, and responsibility to submit an annual program report, remain with the DEO. Additionally, the bill changes the repeal date of the program to April 1, 2016, 2 months forward from July 1, 2016, and provides that no credits certified before the repeal date may be awarded after the repeal date, and that the DOR must deny any credit claimed on a tax return if the credit was awarded on or after the repeal date (**Section 25**).

<sup>25</sup> Section 288.1254(7), F.S. In 2012, an additional year was added to the program. See s. 15, ch. 2012-32, L.O.F.

<sup>26</sup> Office of Economic and Demographic Research, The Florida Legislature, *Return on Investment for the Entertainment Industry Incentive Programs* (January, 2015).

<sup>27</sup> Section 288.1258, F.S. See also Department of Revenue, Film in Florida Sales Tax Exemption, available at [http://dor.myflorida.com/dor/taxes/film\\_in\\_florida.html](http://dor.myflorida.com/dor/taxes/film_in_florida.html) (last visited January 21, 2016).

<sup>28</sup> Section 212.031(1)(a)9., F.S.

<sup>29</sup> Section 212.06(1)(b), F.S. The term “qualified motion picture” is defined in the statute.

<sup>30</sup> Section 212.08(5)(f), F.S.

<sup>31</sup> Section 212.08(12), F.S.

<sup>32</sup> Florida Revenue Estimating Conference, 2015 Florida Tax Handbook.

<sup>33</sup> The entertainment industry financial incentive program.

The bill makes changes to reflect any responsibilities held by OFE regarding tax exemption will remain with the DEO. The bill provides that production companies that receive a sales tax exemption certificate under this section may not receive benefits from the Entertainment Action Fund under s. 288.1256, F.S. The bill provides that each year, or upon surrender of a certificate, the production company will submit aggregate data for production-related information on employment, in-state expenditures, capital investment, and items purchased exempt from sales and use tax, for inclusion in the required annual report. Additionally, the bill provides for a 90-day certificate of exemption, which can be applied for and is approved in the same manner as the 1-year certificate. The same aggregate data must be submitted for each 90-day certificate for inclusion in the annual report (**Section 27**).

Additionally, the bill fixes cross references to the definition of “entertainment industry” in s. 288.125, F.S., (**Section 21**); and makes conforming changes in s. 477.0135, F.S., related to certain individuals providing service to a production being exempt from licensure (**Section 34**).

### **Miscellaneous Changes**

The bill makes clarifying, conforming, or technical changes to:

- The Military Base Retention Grants Program in s. 288.980, F.S., (**Section 32**); and
- Definitions related to tax exemption in s. 196.012, F.S. (**Section 2**).

The bill is effective upon becoming law, except as otherwise expressly provided for in the bill.

## **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.

**C. Government Sector Impact:**

The DEO and the DOR have not yet submitted an analysis on the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 20.60, 196.012, 212.20, 220.191, 220.196, 288.0001, 288.005, 288.061, 288.076, 288.095, 288.1045, 288.106, 288.108, 288.1088, 288.1089, 288.11621, 288.11625, 288.11631, 288.125, 288.1254, 288.1258, 288.901, 288.9015, 288.907, 288.92, 288.980, 320.08058, and 477.0135.

This bill revives, re-enacts, and amends section 288.1229 of the Florida Statutes.<sup>34</sup>

This bill substantially amends and renumbers the following sections of the Florida Statutes: 288.1251 as 288.913, 288.1252 as 288.914, and 288.1253 as 288.915.

This bill creates section 288.1256 of the Florida Statutes.

This bill repeals section 288.1169 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS by Commerce and Tourism on January 25, 2016:**

- The CS renames the Quick Action Closing Fund as the “Florida Enterprise Fund,” and makes the following changes to the fund:
  - Lowers the required return on investment (ROI) from 5 to 1, to 3 to 1.
  - Requires that projects create at least 10 jobs.
  - Requires that 20 percent of the award comes from local financial support.
- The bill requires that all state funds used to benefit a business be included in the ROI for calculating projects’ economic benefits.
- For all incentive programs, the bill:
  - Clarifies that when calculating projects’ economic benefits a business’s capital investment does not include any public funds;
  - Requires capital investment made by a business to remain in the state for the duration of the incentives contract;

<sup>34</sup> Section 288.1229, F.S., was repealed by ch. 2011-142, L.O.F.

- Limits the duration of contracts to 10 years; and
- Requires the DEO to provide a notice to the Legislature of executed contracts.
- The bill extends certification for the QDSC program to June 30, 2018 and allows for late filings in 2014 to be claimed under certain conditions. The bill clarifies that the “tax refund” program is not a repayment of taxes but taxes paid operate as a limitation on the incentive award amount.
- The bill requires that the incentive project reports by the DEO, and the annual incentives report by EFI, include data on the number of jobs created and retained and the number of jobs created and retained that provide health benefits.
- The bill updates the board requirements for the Florida Sports Foundation to reflect their current board. The bill also removes the requirement that the foundation use proceeds from the Florida Professional Sports Team license plate to promote and develop education programs in state schools.

B. Amendments:

None.