

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 Committee on Commerce and Tourism

BILL: CS/SB 1576

INTRODUCER: Committee on Commerce and Tourism and Senator Gibson

SUBJECT: Florida Film Investment Corporation

DATE: April 17, 2017

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1576 creates the Florida Film Investment Corporation to encourage film and television production in the state by making equity investments in productions. The bill provides for:

- The incorporation, as a non-profit, of the Florida Film Investment Corporation in the state;
- Criteria, bylaws, and rules for the operation of the corporation and its investment activities;
- Objective criteria required for all investments and for determining preference when making equity investments in productions;
- The appointment of a board of directors for the corporation;
- The powers and duties of board members;
- The creation of the Florida Film Investment Account, into which funds for investment and returns on investments are deposited and utilized;
- The appointment of a president by the board of directors; and
- The public notice of investments made by the corporation.

II. Present Situation:

Office of Film and Entertainment

The Office of Film and Entertainment (OFE) within the Department of Economic Opportunity (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. The Commissioner of Film and Entertainment is selected through a national search and must meet certain qualifications. 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.

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.

Entertainment Industry Incentive Programs

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program,¹ a 6-year program that began July 1, 2010, and sunset June 30, 2016. The program provided tax credits for qualified expenditures related to filming and production activities in Florida. These tax credits could be applied against the corporate income tax or sales and use taxes. Additionally these tax credits could be transferred or sold one time.²

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

- \$53.5 million in Fiscal Year 2010-11;
- \$74.5 million in Fiscal Year 2011-12; and
- \$42 million in each Fiscal Year 2012-13, 2013-14, 2014-15, and 2015-16.³

The OFE reports that all of the tax credits authorized for the 6-year period have been certified (*allocated to certified productions*).⁴

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.⁵ Qualified production companies are exempt from paying sales tax for the following:

¹ 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.

² Also, tax credits may be relinquished to the Department of Revenue for 90 percent of the amount of the relinquished tax credit.

³ 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.

⁴ Office of Economic and Demographic Research, The Florida Legislature, *Return on Investment for the Entertainment Industry Incentive Programs* (January, 2015).

⁵ 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 (last visited April 13, 2017).

- *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).⁶
- *Fabrication labor* when a producer uses his or her own equipment and personnel to produce a qualified motion picture.⁷
- *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.⁸
- *Sale, lease, storage, or use of blank master tapes, records, films, and video tapes.*⁹

The OFE reviews and approves applications for the exemptions and the Department of Revenue (DOR) issues certificates of exemption to the production companies.

III. Effect of Proposed Changes:

CS/SB 1576 creates the Florida Film Investment Corporation (FFIC). The bill directs the FFIC to be incorporated as a non-profit under ch. 617, F.S., and organized on a nonstock basis. The purpose of the FFIC is to encourage in-state productions through equity investments in such productions. The bill defines a production as:

- A feature film of at least 70 minutes produced for theatrical, television, or direct-to-video release;
- A television series created to run multiple seasons and having an order for distributions of at least five episodes, or a miniseries; and
- One that does not include a commercial, infomercial, political advertising, reality show, game show, awards show, music video, industrial or educational film, weather program, market program, sporting event, sporting event broadcast, gala, production that solicits funds, home shopping program, political program, documentary, gambling-related production, concert production, news shows, current event show, sports news show, sports recap show, video game, pornographic production, or any production deemed obscene under ch. 847, F.S.

The FFIC is directed to adopt criteria, rules, and policies for making equity investments in productions. The criteria must include that:

- The FFIC make investments in productions estimated to generate the greatest economic impact to the state through high-wage jobs and in-state expenditures;
- The amount of the FFIC investment may not exceed the amount of in-state expenditures made by the production;
- The FFIC investment must share highest priority with other preferred shareholders in the event of liquidation of bankruptcy;
- Investments must be less than one-half of total shares or other ownership interest;
- The amount of any one investment must not exceed 12.5 percent of the program funds, both uncommitted funds and funds currently invested;

⁶ Section 212.031(1)(a)9., F.S.

⁷ Section 212.06(1)(b), F.S., provides a definition of the term “qualified motion picture” for purposes of ch. 212, F.S.

⁸ Section 212.08(5)(f), F.S.

⁹ Section 212.08(12), F.S.

- The FFIC is prohibited from having any voting rights, creative control, or authority over productions that are being invested in;
- The FFIC must limit the return on its investments, establishing variable limits on returns that account for time value and reduce returns in exchange for an early buyout of the investment;
- In cases of early buyout, the FFIC must limit its return on investment to the minimum that is actuarially measurable and ensures preservation of the state appropriations provided for investment; and
- The FFIC must conduct at least two investment cycles each fiscal year that commit no more than 40 percent of its total investments for the fiscal year in any one cycle.

The bill directs the FFIC to adopt preference criteria and required criteria. The required criteria for all productions receiving equity investments includes that:

- The corporation uses a bonded third party collection account management firm to ensure Corporation gets its due;
- Presales or sales estimate of at least 1.5x the corporation's exposure;
- The production must carry insurance package that has general liability, workers' comp, key cast/director insurance, and hurricane insurance in season;
- The production must provide proof of other funding before corporation's money is released;
- The producer/production company must have completed 5 feature films or provide a completion bond;
- The production's budget, script, and schedule must be evaluated by a production expert;
- The production budget must include contingency funds at least equal to 5% of total budget;
- The corporation's money is released 50% on the first day of principal photography, 25% upon principal photography completion, and 25% after final picture lock; and
- The corporation has right to inspect and audit weekly cost reports and general ledger of the production.

The FFIC criteria to determine preference for investments includes that:

- Productions with the greatest economic impact to the state demonstrated by creating high-wage jobs and the amount of in-state expenditures as a percentage of total expenditures;
- Productions that the proposed FFIC investment is lowest as a percentage of the production's total shares or other ownership interest;
- Productions that make in-state expenditures the soonest after the FFIC investment;
- Productions by companies with verifiable history of producing successful productions;
- Productions by companies based in-state or by producers, writers, or directors who are residents of this state;
- Productions estimated to increase in-state tourism by using a screenplay based on a Florida story or including recognizable in-state locations;
- Productions whose development demonstrates the likelihood of success including having a recognized director, actor, or other creative talent involved with the production; and
- Productions that the FFIC investment is matched from local sources.

The FFIC may charge fees, not exceeding a reasonable estimated cost, for applications seeking an equity investment.

The bill directs the FFIC to have a board of directors who are permanent residents of the state. The members must be:

- Two members with experience in investment banking and funds management focused on feature film and television production (initially appointed by the Florida Venture Forum and the Florida Chamber of Commerce);
- Three members with recent experience and are recognized leaders in producing feature films and television in this state, they may include producers, directors, production managers, or supervisors (initially appointed by the Governor, President of the Senate, and Speaker of the House of Representatives);
- One member representing businesses that provide supplies for in-state productions (initially appointed by the Department of Economic Opportunity); and
- One member representing the in-state film and television workforce (initially appointed by the Congress of Motion Picture Association of Florida).

The bill establishes staggered terms for the board of directors with three initial members being appointed 1-year terms, two initial members being appointed 2-year terms, two initial members being appointed 3-year terms. Board members will be appointed to 3-year terms and be eligible for reappointment. The board will fill vacancies within 30 days.

Board members are subject to the code of ethics for public officers and employees in ch. 112, F.S., must comply with disclosure requirements, and abstain from voting if there appears to be a possible conflict. A principal who retains a board member is not prohibited from applying for or receiving an equity investment from the FFIC. Board members may not comment on, or discuss, an application with an applicant or someone retained by an applicant outside a board meeting that is pending before the board, or that is known or reasonably expected to be submitted to the FFIC within 180 days. Board members serve without compensation but may be reimbursed in accordance with s. 112.061, F.S., for necessary expenses in the performance of their duties.

The bill directs the board to adopt bylaws, rules, and policies to carry out FFIC responsibilities before the expenditure of any funds used for investments. The board is to schedule regular meetings, at least once per investment cycle.

The bill directs the board to create the Florida Film Investment Account to receive funding used for investments, and the return from investments of those funds. Appropriations provided for the FFIC investments are to be placed in the account. The board may deposit the funds in the account with state or federally chartered financial institutions and invest the remaining portion in permissible investments.¹⁰ Dividends received from investments made by the FFIC are to be redeposited into the account to be reinvested by the FFIC.

The bill directs the FFIC to maintain minimal operation costs that are funded by appropriations and returns received on investments.

¹⁰ As described in s. 560.210(1), F.S., a list of permissible investments include cash, CDs, bankers' acceptances, investment securities, shares in a money market mutual fund, demand borrowing agreements, receivables due to a license, and any other investments approved by rule. The Department of Revenue establishes the rules for this chapter.

The bill maintains that claims against the account will be paid solely from the account, and that under no circumstances is the credit of the state pledged, other than the funds appropriated to the account. The bill maintains that the state will not be liable or obligated in any way for claims against the account or the FFIC.

The bill directs the board to appoint a president who is knowledgeable about private and public financing of film and television projects. The president serves at the pleasure of the board and receives a salary and benefits to be determined by the board. The president will administer the programs of the FFIC and perform duties delegated by the board. The president is to provide staff, as requested, to the board. The president will submit an annual budget to be approved by the board.

The FFIC will notify the Department of Economic Opportunity on the final execution of each contract in which the FFIC makes an equity investment. The FFIC will publish and maintain a notice on their website while the investment is outstanding. The notice will include information about the production for businesses and workforce that provides supplies to productions.

The bill has an effective date of July 1, 2017.

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:

It is unclear what, if any, impact this may have on state agencies including the Department of Economic Opportunity and the Office of Film Entertainment.

D. Other Constitutional Issues:

CS/SB 1576 may implicate the prohibitions in Article VII, Section 10 of the Florida Constitution, prohibiting the state from becoming a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership, or person.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not address what, if any, coordination the FFIC must have with the Office of Film and Entertainment. The bill has no appropriation.

The bill contains several areas that lack clarity including that:

- It is unclear how the criteria for determining “greatest economic impact on the state” and “greatest economic impact to the state” are verified;
- The FFIC investments are limited to the amount of a production’s in-state expenditures, it is unclear how the expenditures are verified;
- High-wage jobs is undefined;
- Preference is given to productions that make in-state expenditures soonest after receiving an investment; it is unclear if this is supposed to mean all in-state expenditures or any amount;
- It is unclear how a production company’s track record is to be verified and by what standard of success it is to be measured;
- The bill establishes staggered terms for the board of directors but does not provide which initial members will serve shorter terms; and
- It is unclear if initial board appointments of less than 3-years are eligible for successive 3-year appointments.

VIII. Statutes Affected:

This bill creates section 288.1259 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 April 17, 2017:

The CS differentiates preference criteria, which was already in the bill, and required criteria, which is added by the CS. The required criteria for all productions receiving equity investments includes that:

- The corporation uses a bonded third party collection account management firm to ensure Corporation gets its due;
- Presales or sales estimate of at least 1.5x the corporation’s exposure;

- The production must carry insurance package that has general liability, workers' comp, key cast/director insurance, and hurricane insurance in season;
- The production must provide proof of other funding before corporation's money is released;
- The producer/production company must have completed 5 feature films or provide a completion bond;
- The production's budget, script, and schedule must be evaluated by a production expert;
- The production budget must include contingency funds at least equal to 5% of total budget;
- The corporation's money is released 50% on the first day of principal photography, 25% upon principal photography completion, and 25% after final picture lock; and
- The corporation has right to inspect and audit weekly cost reports and general ledger of the production.

B. Amendments:

None.