

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: SB 530

INTRODUCER: Senator Gruters and others

SUBJECT: Entertainment Industry

DATE: December 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Pre-meeting
2.	_____	_____	IT	_____
3.	_____	_____	AP	_____

I. Summary:

SB 530 creates the Film, Television, and Digital Media Targeted Rebate Program to encourage economic development related to the production of film, television, and digital media in Florida. The Program offers rebates to certified film, television, and digital media projects that, among other requirements, employ Florida residents and spend at least 70 percent of their production days in Florida. A certified project may only receive a rebate after it has completed production, and its expenditures have been verified by the Office of Film and Entertainment in the Department of Economic Opportunity.

The Program is subject to legislative appropriation, but there is currently no appropriation of state funds in the bill.

The bill takes effect upon becoming law and expires on June 30, 2023.

II. Present Situation:

The Office of Film and Entertainment (Office) within the Department of Economic Opportunity (Department) develops, markets, promotes, and provides services to Florida's entertainment industry.¹

The Commissioner of Film and Entertainment, who is hired by the Department's Executive Director,² administers the Office's programs and provides other advice and counsel relating to entertainment in Florida.³

¹ Section 288.1251, F.S. See also, Florida Office of Film and Entertainment, *Fiscal Year 2017-2018 Annual Report*, 3 (Nov. 1, 2018), available at https://filminflorida.com/wp-content/uploads/2018/11/Office-of-Film-and-Entertainment-Annual-Report-FY-2017-2018_FINAL.pdf (last visited Dec. 9, 2019).

² Section 288.1251(1)(b), F.S.

³ See, e.g., sections 288.1254(3)(g) and 288.1254(4)(b)4., F.S.

The Florida Film and Entertainment Advisory Council is an advisory body that serves the Office and the Department in an administrative role to provide insight and expertise related to Florida's entertainment industry.⁴ The Council consists of 17 appointees who are active in Florida's motion picture and entertainment industries, including representatives of local film commissions, entertainment associations, entertainment industry labor organizations, and executives of important industry businesses and offices.⁵

Florida Film Tax Incentive and Exemption

In order to promote film and entertainment in Florida, the Office administers two economic incentive programs that are available to film, television, digital media, and other similar projects that are produced in Florida: a tax credit incentive and a tax exemption.

Entertainment Industry Financial Incentive Program

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program (incentive program). Originally, the incentive program offered a reimbursement for qualified expenditures relating to entertainment industry productions in Florida.^{6,7} In its most recent iteration (from July 1, 2010 to June 30, 2016),⁸ the incentive program provided transferrable tax credits for qualified wage, equipment, rental, and other expenditures made to Florida vendors for qualified entertainment industry productions.⁹ A qualified production was defined as a motion picture, commercial, music video, industrial or educational film, infomercial, documentary film, television series, or digital media project. Qualified productions that successfully completed their project and had their expenses verified by the Office could receive up to 30 percent of their qualified expenditures, or \$8 million, in tax credits—whichever is less.¹⁰ Recipients were permitted to apply their tax credits to their corporate income taxes, sales taxes, or both; alternately, the recipients could sell their tax credits on the market or back to the state at a reduced rate.¹¹

During its 6-year lifetime, the incentive program was allocated \$296 million.¹² The Office reports that it awarded \$288 million in tax credit incentives to 299 certified productions by the end of the incentive program.¹³

⁴ Section 288.1252, F.S.

⁵ See, Florida Office of Film and Entertainment, *Florida Film and Entertainment Advisory Council*, <https://filminflorida.com/advisorycouncil/> (last visited Dec. 9, 2019).

⁶ Chapter 2003-81, Laws of Fla.

⁷ The reimbursement incentive program was subject to annual appropriation as follows: in FY 2004-2005, \$2.45 million; FY 2005-2006, \$10 million; FY 2006-2007, \$20 million; FY 2007-2008, \$25 million; FY 2008-2009, \$5 million; FY 2009-2010, \$10.8 million. Florida EDR, *Return on Investment for the Entertainment Industry Incentives Programs*, 4-5 (Jan. 1, 2018), available at, <http://edr.state.fl.us/content/returnoninvestment/EntertainmentIndustryIncentivePrograms2018.pdf> (last visited Dec. 9, 2019).

⁸ Section 288.1254(7), F.S. In 2012, the Legislature added an additional year to the program. See s. 15, ch. 2012-32, Laws of Fla.

⁹ Chapter 2010-147, Laws of Fla. See also, s. 288.1254, F.S.

¹⁰ Section 288.1254(4), F.S.

¹¹ Sections 288.1254(5)-(6), F.S. See also, Florida EDR, *supra* note 7.

¹² Section 288.1254(7), F.S.

¹³ Florida Office of Film and Entertainment, *supra* note 1, at 5.

The Entertainment Industry Sales Tax Exemption Program

The Entertainment Industry Sales Tax Exemption (tax exemption program) offers tax exemption certificates to companies that create qualified productions in Florida.¹⁴ This tax exemption program currently offers several exemptions from taxes under ch. 212, F.S., 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 (“activity or service” includes photography, casting, location scouting, and set design);¹⁵
- *Fabrication labor* when a producer uses his or her own equipment and personnel to produce a qualified motion picture;¹⁶
- *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;¹⁷ and
- *Sale, lease, storage, or use of blank master tapes, records, films, and video tapes.*¹⁸

To qualify for these tax exemptions, a company must submit an application to the Department of Revenue (DOR). This application must then be approved by the Office.¹⁹ The Office approved 1,024 applications for the tax exemption program during Fiscal Year 2018-2019.²⁰ Purchases under this tax exemption program are not subject to verification, but may be subject to audit by the DOR.

Other Film Incentives

Florida Local Incentive Programs²¹

Several of Florida’s local governments offer production incentives.

- Miami-Dade County has a two-tier incentive. The first tier grants up to \$100,000 to productions that spend at least \$1 million, and the second tier grants up to \$50,000 to productions that spend \$500,000 to \$999,999 in Miami-Dade.²² At least 70 percent of all qualified productions must take place within the county, in addition to other hiring and salary requirements.²³

¹⁴ Section 288.1258, F.S.

¹⁵ Section 212.031(1)(a)9., F.S.

¹⁶ Section 212.06(1)(b), F.S., provides a definition of the term “qualified motion picture” for purposes of ch. 212, F.S.

¹⁷ Section 212.08(5)(f), F.S.

¹⁸ Section 212.08(12), F.S.

¹⁹ Section 288.1258(2), F.S.

²⁰ Florida Dept. of Economic Opportunity, *Entertainment Industry Sales Tax Exemption Fiscal Year Comparison FY 2001-2019*, on file with the Senate Committee on Commerce and Tourism.

²¹ See, Florida EDR, *supra* note 4, at 6-7.

²² Miami-Dade County, *Resolution No. R-619-19*, (Jun. 4, 2019) available at <http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2019/190728min.pdf> (last visited Dec. 9, 2019). See also, Jesse Scheckner, *Film Incentives Get Added Boost to Lure Productions*, Miami Today, Jun. 4, 2019, available at <https://www.miamitodaynews.com/2019/06/04/film-incentives-get-added-boost-to-lure-productions/> (last visited Dec. 9, 2019).

²³ FilMiami, *Incentives*, <http://www.filmmiami.org/incentives.asp> (last visited Dec. 9, 2019). See also, FilMiami, *Miami-Dade County Television, Film and Entertainment Production Incentive Program Grant Application* at 2-7, http://www.filmmiami.org/pdf/Film_Grant_Application_revised_2_tiers_fillable.pdf (last visited Dec. 9, 2019).

- Hillsborough County offers a 10 percent rebate for companies that spend at least \$100,000 on production in the county.²⁴
- Jacksonville offers 10 percent of a production's qualified expenditures as an incentive to film in Duval County; a production must make at least \$50,000 in qualified expenditures to qualify.²⁵

*Other State's Programs*²⁶

The popularity of entertainment industry incentives has decreased in state legislatures. In 2009, 44 states offered some form of entertainment industry incentive, but in 2018, only 31 states did so.²⁷ However, Georgia continues to fund its film tax credit program at the level of demand by placing no cap on their program.²⁸ North Carolina reversed its 2014 decision to eliminate film tax credits, and offered \$31 million in available incentives for productions made in its state in 2018.²⁹

III. Effect of Proposed Changes:

The bill creates the Film, Television, and Digital Media Targeted Rebate Program (rebate program) within the Department, to be supervised by the Commissioner of Film and Entertainment (Commissioner). The rebate program gives rebates to certified projects that engage in film, television, and digital media production in the state in order to create high-paying jobs, expand the industry's impact on Florida's economy, enhance tourism, and encourage more family-friendly productions in Florida. After production has completed, each certified project is eligible to receive a rebate for up to 23 percent of its qualified expenditures, or \$2 million, whichever is less. A project's qualified expenditures must be verified by the Commissioner before the project may receive its rebate payment and any such payment is subject to claw back if received as a result of fraudulent information.

General Project Requirements

A proposed project is eligible for a rebate under the rebate program if it:

- Is registered to do business in Florida;

²⁴ Paul Guzzo, *Hillsborough's Film Incentive has Attracted \$1.7 Million in Local Spending, Audits Show*, The Tampa Bay Times, May 28, 2018, available at https://www.tampabay.com/news/business/Hillsborough-s-film-incentive-has-attracted-1-17-million-in-local-spending-audits-show_168536945 (last visited Dec. 9, 2019). See also, Film Tampa Bay, *FAQ*, <https://filmtampabay.com/faq> (last visited Dec. 9, 2019).

²⁵ FilmJax, *Incentive Program*, <https://www.filmjax.com/Incentive-Program> (last visited Dec. 9, 2019).

²⁶ See, e.g., Florida Tax Watch, *Is the Sun Setting on Film in Florida: An Analysis of the State's Film and Television Industry*, 4-6, 15 (Nov. 2018), available at <https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/18645/Is-the-Sun-Setting-on-Film-in-Florida> (last visited Dec. 9, 2019).

²⁷ National Conference of State Legislatures, *State Film Production Incentives and Programs* (Feb. 5, 2018), <http://www.ncsl.org/research/fiscal-policy/state-film-production-incentives-and-programs.aspx> (last visited Dec. 9, 2019).

²⁸ Georgia offers a 20 percent tax credit for productions that spend \$500,000 or more in the state, with an additional 10 percent tax credit if the project includes a Georgia promotional logo on its project. Georgia Dep't. of Economic Development, *Incentives and Applications*, <https://www.georgia.org/industries/film-entertainment/georgia-film-tv-production/production-incentives> (last visited Dec. 9, 2019).

²⁹ North Carolina Film Office, *North Carolina Film Incentives*, <https://www.filmnc.com/25-rebate.html> (last visited Dec. 9, 2019). Macy Myer, *North Carolina Film Industry Regains Footing with Revived Film Incentives*, THE DAILY TAR HEEL, Oct. 8, 2018, available at <https://www.dailytarheel.com/article/2018/10/film-incentives-1007> (last visited Dec. 9, 2019).

- Is a film, television, or digital media project that is not obscene, as defined in s. 847.001, F.S., or pornographic;
- Has a proposed budget of qualified expenditures of at least;
 - \$1.5 million for a film project,
 - \$500,000 per episode for a television series, or
 - \$1.5 million for a digital media project.
- Projects to employ a crew, excluding extras, made up of at least 60 percent Florida residents, and at least one military veteran;
- Proposes to spend at least 70 percent of its total production days in Florida;
- Does not use both the Florida entertainment sales tax exemption, established under s. 288.1258, F.S., and a rebate available under the rebate program;
- Makes a good faith effort to use existing Florida providers of infrastructure or equipment, including providers of gear, grip and lighting equipment, vehicles, and postproduction services and to employ a cast and crew who are Florida residents;
- Agrees to include marketing that promotes Florida tourism or Florida’s film and entertainment industry on its project, e.g., a “Filmed in Florida” logo, local film office logo, or other statement that has been approved by the Commissioner;
- Permits the Commissioner or an affiliate to visit the project’s production site, along with at least two guests; and
- Provides at least five photos of the production to the Commissioner for use in promoting Florida as a film, television, or digital media production location, or a tourist destination.

Application and Award Process

To become a qualified project that is eligible to receive a rebate under the rebate program, an applicant must submit an application to the Office. The Commissioner will receive assistance from the Florida Film and Entertainment Advisory Council (Council) to review the applications and assign a score to each. Ultimately, the Commissioner alone will make a determination to certify or reject the project. This process is discussed in detail below.

Application

To qualify for the rebate program, a film, television, or digital media project must submit an application that outlines the project’s:

- Proof of funding;
- Employment information, including how many Florida residents it intends to employ;
- Line-item budget of planned qualified expenditures;
- Distribution plan for use in estimating the project’s potential economic impact in Florida;
- Expected total expenditures in Florida—both qualified and non-qualified—including a specific amount for wages to be paid to Florida residents;
- Most recent script, production schedule, Day out of Days report, and list of expected shooting locations, if it is a film project;
- Detailed game design document, if it is a digital media project;
- A signed affirmation that the information included in the application is correct; and
- Florida tax identification number.

An applicant or its parent company may submit up to five applications per application window, but only one project per applicant, per year may receive a rebate.

The Commissioner will determine the start date for both application windows, but the windows must end on or before the fifth business day after July 1, and the fifth business day after January 1, respectively. The proposed project must begin production within 6 months after July 1 or January 1, depending on the window during which the application was submitted.

Scoring Criteria

The Council and Commissioner, with input from other persons must develop a priority order and scoring system (scoring system) to apply to the applicants as part of the determination for certification for the rebate program. The system must include consideration of the project's:

- Overall qualified expenditures;
- Employment of Florida residents, including their wages paid, benefits provided, and duration of employment;
- Full-time-equivalent jobs created;
- Economic impact on direct and indirect tourism based on its distribution plans;
- Production in an underutilized area, defined as any Florida county, excluding Broward, Miami-Dade, Orange, and Seminole counties;
- Status as a family friendly project, defined as a project that has cross-generational appeal, is appropriate in theme, content, and language for a broad audience, embodies a responsible resolution of issues, and does not contain drunkenness, illicit drug use, sex, nudity, gratuitous violence, vulgar or profane language, or smoking portrayed in a positive light;
- Employment of a Florida resident as a writer, producer, or star;
- Employment of Florida film school graduates;
- Employment of veterans who are also residents of Florida;
- Use of a Florida film, television, or digital media school to assist with its production; and
- Leadership team's track record.

The Commissioner and Council may use any other criteria they determine important, but they must be outlined as part of the scoring system before the first application window opens. Specifically, the highest scores must apply to the projects determined to provide the best economic impact and return on investment to Florida.

Award of Rebates

After the initial review and scoring of the applicants, the Commissioner makes the final determination to certify or reject an applicant. The Commissioner must also send a notice of the decision to each applicant. If a project is certified, the Commissioner must include in the notice the project's maximum rebate amount and the specific percent of qualified expenditures for which the project is eligible.

The Commissioner must also give the Department a list of certified projects and their maximum rebate amounts. Based on this notice, the Department must set aside enough money to fund the rebates, if funds are available. However, the number of rebates awarded in the first application window is limited because the Department may only set aside up to 60 percent of the fiscal year

appropriation or rolled-over rebate funds for those applications. Any rebate funds that are not set aside for the first application window roll over to be applied to the second application window. The Department cannot accept additional applications for the rebate program if all of its rebate funds are allocated to other projects. Additional applications may be processed after the rebate program receives additional funds. Any rebate fund that is allocated but not awarded to a certified project by the end of a fiscal year rolls over to the next fiscal year.

Determination and Verification of Qualified Expenditures

Qualified Expenditures

The rebate award starts at 20 percent of a project's verified qualified expenditures; a project may earn one additional 3 percent bonus if either 75 percent of its production will occur in an underutilized area,³⁰ or its content is family friendly. Therefore, a project's rebate award is capped at 23 percent of its qualified expenditures, or \$2 million—whichever is less.

A qualified expenditure is a preproduction, production, or postproduction expenditure made by a qualified project in Florida to a Florida resident or Florida-registered business for:

- Goods rented or leased from, or services provided by, a Florida vendor that is registered with the Department of State or the DOR, has a physical address in Florida, and employs one or more Florida residents in a full-time capacity;
- Salaries or wages, including benefits such as pension or healthcare payments, paid to Florida residents, up to \$200,000 per resident;
- Car, truck, or trailer leases or rentals, if the vehicle is registered with the Department of Highway Safety and Motor Vehicles;
- Catered meals and on-set craft service supplies; and
- Rented hotel rooms or other accommodations for cast or crew.

Qualified expenditures exclude internet transactions; costs associated with the project's development, marketing or distribution; airfare costs; and purchases made before the project qualified for the rebate program.

Verification

A certified project may not collect its rebate until it has completed its production and its qualified expenditures have been verified by the Commissioner. The Commissioner must develop policies and procedures to implement this process, which must require all of the following:

- Submission by the Project within 120 days after making its final qualified expenditure, but no later than 1 year after its production start date, of:
 - Data that substantiates each qualified expenditure, which has been audited by an independent certified public account (CPA) who is licensed in Florida;
 - Documents that verify the Florida residency of the persons represented as such;
 - The project's final script;
 - The project's most recent production board and shooting schedule;

³⁰ An underutilized county is defined in the bill as any county in Florida that is not Broward County, Miami-Dade County, Orange County, or Seminole County.

- The project's most recent credit list, which shows the required marketing logo or other approved statement;
- The project's cast list and final crew list with contact information; and
- Verification that at least one person employed by the project is a veteran of the United States Armed Forces.
- An affidavit or written declaration signed under the penalty of perjury by the qualified project that states that all of the salaries, wages, and other compensation submitted as a qualified expenditure to the Office comply with the requirements of the rebate program; and
- A compliance audit, to be conducted by an independent CPA at the project's expense, to prove each qualified expenditure and a report of the audit's findings, including substantiating data. The audit and report must be submitted to the Commissioner within a reasonable amount of time after the Commissioner's initial receipt of records from the project.

The Commissioner must report the Project's actual qualified expenditures and the amount of rebate due to the Project to the Department. The Department then must approve the project's final rebate amount and issue the rebate within a reasonable amount of time.

Disqualification and Reimbursement of Awards

Disqualification

A certified project may be disqualified from the rebate program if it:

- Does not begin principal photography within 30 days before, or 90 days after the production start date listed on the project's application;
- Fails to abide by the policies, procedures, deadlines, or requirements of the rebate program's verification process;
- Changes the project's production start date without also providing notice of the change to the Commissioner;
- Submits fraudulent information; or
- Uses the state sales tax exemption.

In addition to disqualification, an applicant that submits fraudulent information is subject to repayment of costs and fees associated with the Department's investigation and prosecution of the project's fraudulent statements, reimbursement of any rebate awards, and civil and penalties.

Miscellaneous

The Commissioner is granted rulemaking authority to administer the rebate program.

The Commissioner must provide an annual report to the Governor, President of the Senate, and Speaker of the House of Representatives by November 1 of each year. The report must identify the rebate program's return on investment and resulting economic benefits from the previous fiscal year.

The rebate program expires on June 30, 2023. Any funds that were appropriated to the rebate program that have not been earmarked and set aside for qualified projects revert to the General

Revenue Fund at the rebate program's expiration. All remaining funds revert to the General Revenue Fund by October 31, 2024.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill defines a "television project" as either a television pilot program or a television series, but only specifies that a television series (in addition to a film project and digital media project) is eligible for a rebate.

While the bill requires film and digital media projects to submit project details with their applications (e.g., a script, game design document, and production schedule), it does not require a television project to submit any similar documents with its application.

The bill disqualifies a project that uses “the state sales tax exemption.” It is unclear whether this refers to any state sales tax exemption, or to the entertainment industry state sales tax exemption available under s. 288.1258, F.S.

VII. Related Issues:

The bill gives rulemaking authority to the Commissioner, but neither the Office, nor the Commissioner have a specific grant of rulemaking authority.³¹

VIII. Statutes Affected:

This bill creates an unnumbered section of the Florida Statutes.

IX. Additional Information:

A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

³¹ See, e.g., section 120.536, F.S., which states that “a grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule...”