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 Committee

BILL: CS/SB 1430

INTRODUCER: Commerce Committee, Senator Haridopolos and others

SUBJECT: Entertainment Industry Economic Development

DATE: March 24, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh/Hoyle	Cooper	CM	**Fav/CS**
2.			FT	
3.			TA	
4.			WPSC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS........................		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

Florida offers a film and entertainment incentive that reimburses production companies a percentage of qualifying production expenditures related to the activities of filming movies or commercials, or creating video games. The incentive is paid after the production is complete. The incentive is subject to legislative appropriation; for FY 09-10, the incentive totaled $10.8 million.

CS/SB 1430 replaces Florida's existing film and entertainment incentive, a cash reimbursement of qualified expenditures, with a transferrable credit against sales and corporate income taxes for qualified expenditures. The tax credit is $75 million annually from FY 10-11 to FY 14-15. The credits cannot be claimed against tax liability until after July 1, 2011.

The CS:

- Renames and reorganizes the categories of film and entertainment productions.
- Raises to 20 percent the amount of qualified expenditures on which the tax credit amounts will be based, for all types of productions. Currently, the incentive for general productions is based on 15 percent of qualified expenditures, and for commercials and independent programs the basis is10 percent.

- Places an $8 million cap on the amount of tax credits an individual general production can be awarded, sets a maximum $500,000 in tax credits for commercials and music videos, and $125,000 in tax credits for independent productions.
- Raises from 2 percent to 5 percent the bonus incentive for productions that meet the "family-friendly" criteria.

Under CS/SB 1430, the basic application and approval process is almost identical to that in current law. The Governor's Office of Film and Entertainment (OFE) manages the incentive program, reviews applications, and makes recommendations for approval to the Governor's Office of Tourism, Trade, and Economic Development (OTTED), which makes the final decision to award the incentives and in what amount. New to the process is the Department of Revenue (DOR), which will assist in the implementation of the program by tracking the credits, conducting audits, and recovering state funds in cases of fraud.

CS/SB 1430 amends ss. 212.08, 213.053, 220.02, and 288.1254, F.S. It takes effect July 1, 2010.

II. Present Situation:

Background on Florida's Entertainment Industry Financial Incentive Program

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program.[1] 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 to
- Sustain and develop the state's entertainment workforce, studios, and other related infrastructure.

The incentive program is administered by OFE, subject to the policies and oversight of OTTED. Serving as an advisory board to OTTED and OFE is the Florida Film and Entertainment Advisory Council, consisting of 17 members appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives.[2]

Over the years, the incentive program has been amended several times. Currently, the program provides what amounts to a reimbursement of a certain percentage of qualified wage, equipment, and other expenditures, based on the type of production. There are three types, or "queues," of eligible productions: general production (which includes two subcategories), Independent Florida Filmmaker, and digital media products. As percentage of funding:

- 85 percent of the state incentive funding is dedicated to the general production queue;
- 5 percent is dedicated to the Independent Florida Filmmaker Queue; and
- 10 percent is dedicated to the digital media production queue.

As Table 1 on page 3 indicates, two types of bonus incentives are available, depending on the type of production. General productions that film between June 1 and November 30, the so-called "hurricane season," are eligible for an additional "off-season" reimbursement of 5 percent

[1] Section 288.1254, F.S.
[2] Section 288.1252, F.S.

of their qualified expenses. They also receive the incentive if they complete less than 75 percent of their principle photography due to a hurricane or tropical storm.

All certified productions are eligible for an additional reimbursement of 2 percent of the qualified expenses if the state's Film and Entertainment Commissioner, as advised by the Florida Film and Entertainment Advisory Council, determines they are "family friendly." This determination is based on an interview with the director and a review of the script. "Family friendly" is defined as a production 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.

TABLE 1
Salient Characteristics of Florida's Entertainment Industry Incentive Program Queues

Attribute	Gen.Production Queue A: movies, TV series documentaries, etc.	Gen. Production Queue B: commercials & music videos	Independent Fla. Filmmaker Queue	Digital Media
Minimum amount of qualified expenses Needed	$625,000	$100,000 per commercial or video and exceeds $500,000 combined threshold in a fiscal year	At least $100,000, but not more than $625,000 in qualified expenses	$300,000
Amount of basic incentive	15% of qualified expenses, up to $8 million	15% of qualified expenses, up to $500,000	15% of qualified expenses, up to $93,750	10% of qualified expenses, up to $1 million per project
Special criteria	-- Must make a "good faith effort" to use existing Fla. film infrastructure & services, when available. -- Only Fla. resident wages, goods & services are eligible for incentive.	-- Must make a "good faith effort" to use existing Fla. film infrastructure & services, when available. -- Only Fla. resident wages, goods & services are eligible for incentive.	-- Be a feature or a doc. at least 70 mins. long; -- Prove that 50% of its total financing is in escrow; -- Do all major post-production in Fla.; and -- Employ Floridians in at least 6 key jobs.[3]	-- Max 3 projects a year; -- Max $200,000 in wages paid per Florida employee; -- Only wages or salaries are considered qualified expenses
Eligible for 5% Off-Season Incentive?	Yes	Yes	No	No
Eligible for 2% Family-Friendly Incentive?	Yes	No	Yes	No

[3] The statute lists 8 key positions: writer, director, producer, director of photography, star or one of the lead actors, unit production manager, editor, and production designer.

"Qualified expenditures" made by a production company – not the amount of state taxes a production company has paid – form the basis of the cash refund incentive.

Current law defines qualified expenditures as production expenditures incurred by a qualified production in Florida for:

- Goods purchased or leased from, or services provided by, a vendor or supplier in this state which is registered with the Department of State or the DOR and which is doing business in this state. 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; and
  - Meals, travel, and accommodations.
- Salary, wages, or other compensation paid to Florida residents, up to a maximum of $400,000 per resident for the general production queue and the independent Florida filmmaker queue and up to a maximum of $200,000 for the digital media queue.

Further, only qualified expenditures for "qualified productions" are eligible for the incentive cash. A qualified production must meet the requirements in s. 288.1254, F.S., plus two additional criteria:

- At least half of its production crew and below-the-line production crew [4] are Florida residents, or are students enrolled full-time in a film- and entertainment-related course of study at a Florida university, and
- OFE determines that the production does not contain obscene content, as defined in s. 847.001(10), F.S.[5]

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.

Application and Award Process

OFE begins accepting incentive applications on July 1 of each fiscal year, and must review each application for completeness within 10 business days of receipt.

The completeness standards vary depending on the type of production. For example, for general productions that are films (Queue A), the application must include the script, screenplay or story boards; a synopsis; the Florida Qualified Expenditures Budget; a shooting schedule; and an actor work schedule, if applicable. A digital media production must include with its application only a

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

[5] 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."

project synopsis; the Florida Qualified Expenditures Budget; and a detailed project production schedule.

The incentive is granted on a "first-come, first-served" basis per queue.[6] However, the state funds are not paid to the production entity until its receipts for the qualified expenditures are verified by an independent certified public accountant, who is licensed in Florida, reviewed and recommended for approval by OFE, and certified by OTTED. Sometimes, the incentive amount set aside for a production upon application is not supported by the verified documentation. In such cases, the excess incentive funds are awarded to the next certified production. There also have been years where the OFE did not award all of the appropriated funds because of disqualified expenditures, and because the timing of productions did not coincide with the state's fiscal year.[7]

OTTED has authority to adopt rules, and develop policies and procedures, to administer the incentive program. No rules have been promulgated. The application forms and procedures are available on the Office of Film and Entertainment's website.[8]

Entities that submit fraudulent applications in order to obtain incentive funds are liable for repayment of those funds and a penalty, up to double the incentive awarded, plus any criminal penalties the applicant might have to pay. Also, these entities are liable for reimbursement of costs incurred by the state in investigating and prosecuting the fraudulent claims. There is no explicit mention in s. 288.1254, F.S., of the Department of Revenue participating in auditing the incentive recipients or recovering the funds.

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, and the program's economic benefits to the state.

Economic Impact

A recent four-part economic impact study of Florida's film and entertainment industry[9] concluded that in 2007, film and entertainment-related spending accounted for:

- $17.9 billion, or 2.4 percent, of Florida's Gross State Product (GSP);[10]
- $8.5 billion in personal income;
- $498 million in tax revenue to Florida; and
- 207,800 jobs (direct and indirect).

The Hass Center study also indicated that for every $1 spent on a production within Florida, the state sees a return on investment of $1.60.[11]

[6] Section 288.1254(4)(a), F.S.
[7] Section 3 of ch. 2007-125, L.O.F., provided for a 2 year rollover of the $25 million appropriation for the incentive.
[8] See http://www.filminflorida.com. Last visited March 1, 2010.
[9] "2008 Economic Assessment of the Florida Film & Entertainment Industry," prepared by the Haas Center for Business Research and Economic Development at The University of West Florida. Available at http://www.filminflorida.com/ifi/ea.asp. Last visited March 1, 2010.
[10] Florida's total GSP (also known as Gross Domestic Product) in 2007 was estimated at $734.5 billion by the U.S. Bureau of Economic Analysis. See http://www.bea.gov/regional/gsp/. Last visited March 15, 2010.

According to OFE's annual reports,[12] the state's return on investment was 7:1 in FY 05-06; 7.3:1 in FY 06-07; 6.7:1 in FY 07-08; and 6.44:1 in FY 08-09. In FY 08-09, there were 29 qualified productions (25 filmed productions and 4 digital media products) that spent $55.3 million in qualified expenditures, including $37.3 million in wages and $18 million to Florida businesses.[13] These qualified productions created 6,623 jobs.[14]

Funding history

Legislative appropriations for the film incentive have fluctuated over the years. Although enacted in 2003, the incentive program received its first legislative appropriation the following year, in the amount of $2.45 million. The incentive program received appropriations of $10 million in FY 05-06; $20 million in FY 06-07; $25 million in FY 07-08; $5 million in FY 08-09;[15] and $10.8 million in FY 09-10.

Other Entertainment Industry Tax Incentives in Florida

Entertainment industry qualified production companies are eligible for several exemptions from the sales and use tax. In 2000, the Legislature authorized qualified production companies to 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. 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).[16]
- 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.[17]
- 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.[18]
- 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.[19]

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[11] Supra FN 9, Page 178. "Return on Investment" is generally understood, in this context, as the gain in state revenues (both direct and indirect) as a percentage of the state's economic incentive investment, which is consistent with generally accepted formulas. It is unclear whether the Haas Center calculation includes the other major state incentive for film production, the sales tax exemption on the purchase of motion picture related purchases. *See* Other Entertainment Industry Tax Incentives in Florida on page 6 of this analysis.

[12] On file with the Senate Commerce Committee.

[13] Ibid.

[14] The number of jobs may not equal the number of individual Floridians who held them in FY 08-09, and likely does not represent full-time jobs. Film and entertainment industry workers, such as carpenters, sound engineers, and set designers, may work on multiple productions that last a few weeks or months each year.

[15] The total available for FY 08-09 was $11.89 million, because the Legislature allowed a one-time carryforward from the previous fiscal year.

[16] Section 212.031(1)(a)9., F.S.

[17] Section 212.06(1)(b), F.S.

[18] Section 212.08(5)(f), F.S.

[19] Section 212.08(12), F.S.

The annualized estimated cost of these exemptions will be $57.7 million in FY 10-11, according to the 2010 Florida Tax Handbook.[20]

Entertainment Industry Financial Incentive Programs in Other States and Countries
Currently, 44 states have some combination of film and entertainment tax incentives.[21] The most common incentives are sales tax exemptions, offered by 28 states, and tax credits, offered by 28 states. Thirteen states offer both of those: Arizona, California, Connecticut, Georgia, Indiana, Kentucky, Massachusetts, New Jersey, New York, North Carolina, Utah, West Virginia, and Wisconsin.

California, which in 2008 generated an estimated 31 percent of the U.S. film and television industry revenues (down from 65 percent in 2005[22]) until recently offered relatively few state incentives: a state sales tax exemption on the purchase or lease of post-production equipment, an exemption from the state hotel occupancy taxes, and free permits to film on state-owned properties. On February 20, 2009, as part of an economic stimulus package, California Governor Schwarzenegger signed legislation creating a 5-year, $500-million transferrable tax credit program for qualified expenditures of eligible film productions. For example, the tax credit is 20 percent of qualified expenditures for motion pictures, and 25 percent of qualified expenditures for television series and independent films. The California Film Commission[23] is now maintaining a waiting list of credit applicants, with the first credits becoming available in FY 2010-2011.

Florida and 16 other states offer rebates, which are structured in a variety of ways and at different levels of reimbursement. Several states' rebates are more generous than Florida's. For example:

- Maryland offers a rebate of up to 25 percent of the total direct costs incurred while filming on-location for qualifying film and television productions.[24] To be eligible, production must incur at least $500,000 in total direct costs; at least 50 percent of the production's filming must occur in Maryland; and the production must have nationwide distribution. The state also offers an exemption from the state's sales tax for certain purchases or rentals.
- Michigan offers an uncapped 40-percent refundable tax credit on film production costs.[25] A production entity must register with the state and spend at least $50,000 to be eligible. A production entity can claim an extra 2 percent tax credit if filming is done in one of the 103 "Core Communities," as well as 30 percent of qualified employment expenditures.
- New Mexico offers a 25-percent rebate on all direct production expenditures, including wages paid to New Mexico residents, which are subject to taxation by the state.[26] There is

[20] Pages 150-153 of report, which is prepared by the Legislature's Office of Economic & Demographic Research and the Florida Department of Revenue. Available at http://edr.state.fl.us/taxhandbooks/taxhandbook2010.pdf.
[21] Luther, William, "Movie Production Incentives: Blockbuster Support for Lackluster Policy." Jan. 2010, The Tax Foundation: see, http://www.taxfoundation.org/files/sr173.pdf.
[22] See http://latimesblogs.latimes.com/lanow/2010/01/la-city-council-to-consider-creating-a-city-film-commission-to-market-los-angeles-to-film-and-televi.html. Last viewed Feb. 24, 2010.
[23] See http://www.film.ca.gov.
[24] See http://www.marylandfilm.org/productionrebate.htm.
[25] See http://www.michigan.gov/textonly/0,,7-248-46457---,00.html.
[26] See http://www.nmfilm.com/filming/incentives/.

no minimum spending required, no cap, and no sunset clause. Productions also can apply for a 0-percent loan for up to $15 million, in addition to the rebate. A third incentive is a sales tax exemption for film productions that cannot be combined with the rebate; typically this is used by companies filming commercial or public service announcements.

The use of financial incentives by states to attract the film and entertainment industry has become a topic of debate recently, with states weighing the effectiveness of the incentives. For example, in 2008 the Michigan Legislature enacted laws that boosted the state's film incentives, but by year's end, a bill was filed to cap the amount of credits that could be claimed each fiscal year. A November 2008 analysis by the Michigan Senate Fiscal Agency had indicated that by September 2008, nearly $150 million in film tax credits had been tentatively approved.[27] These productions were estimated to generate $26.6 million in new income and sales tax revenues, resulting in a net loss of more than $122 million in state revenues. The bill failed, and has not been refiled for the Michigan Legislature's 2009-2010 session.

In New Mexico, two recently completed economic studies of that state's film incentives arrived at opposite conclusions about whether they are economically beneficial.[28] One study indicated that the incentives were generating a return on investment of 14.5 cents for every $1 the state rebated, but the other study calculated an ROI of $1.50 for every $1 in state rebates. Like Michigan, New Mexico has seen legislation filed with the aim of reducing available incentives for film and entertainment production; this legislation failed in 2008 and 2009, but has been filed again for the 2010 session. [29]

Wisconsin is yet another state to respond to questions over its film incentive. Governor Doyle's 2009 budget and the 2010 and 2011 proposed budgets reduced incentive funding to $500,000 annually following concerns over the effectiveness of the incentive.[30]

The debate over the effectiveness of film incentives focuses on what is often seen as a weak return on investment to the state treasury versus a strong indirect impact to the state's economy. A number of public studies of the return on investment of states' film incentives completed in the last 2 years are shown in the table below.[31]

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[27] See http://www.legislature.mi.gov/documents/2007-2008/billanalysis/Senate/htm/2007-SFA-1535-A.htm.

[28] The two reports are available at the following web addresses:
http://legis.state.nm.us/LCS/lfc/lfcdocs/film%20credit%20study%20TP&JP_08.pdf
and http://www.nmfilm.com/locals/downloads/nmfilmCreditImpactAnalysis.pdf.
Similar studies are on file with the Commerce Committee staff for: Arizona, Colorado, Connecticut, Louisiana, Maine, Massachusetts, Michigan, Montana, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia and Wisconsin.

[29] See news report at: http://www.santafenewmexican.com/SantaFeNorthernNM/Plenty-of-drama---on-film-and-at-Capitol with current bill analysis at: http://legis.state.nm.us/Sessions/10%20Regular/firs/SB0235.pdf.

[30] See http://milwaukee.bizjournals.com/milwaukee/stories/2010/02/22/story4.html?b=1266814800%5E2915691.

[31] Public Study means a study commissioned by a public entity. The reports are listed in note 28 and are on file with the Commerce Committee staff. To see arguments on the effectiveness of state film incentives, consider: Luther, William, "Movie Production Incentives: Blockbuster Support for Lackluster Policy." Jan. 2010, The Tax Foundation: see, http://www.taxfoundation.org/files/sr173.pdf., and Foster, Pacey. "Film and Television Production in Massachusetts: An Industry Overview and Analysis" Feb. 2010.
http://www.management.umb.edu/faculty/workingpaper/foster_pacey/UMBCMWP1046.pdf. The Tax Foundation report criticizes film incentives as ineffective options for boosting a state economy, whereas the UMass-Boston report focuses on

TABLE 2
RETURN ON INVESTMENT – OTHER STATES

STATE	PROGRAM	SOURCE OF STUDY	STATE ROI/DOLLAR AWARDED
Arizona	--Transferable credit --20-30% state expenditures --$70M annual cap	Arizona Dept. of Commerce	$0.27
Colorado	--Cash Rebate --10% production costs	Colorado Film Office	$1.40
Connecticut	--Credit --30% expenditures	Dept. of Economic & Community Development	$0.07
Louisiana	--Transferable credit --30% in state production --No funding caps	Economic Research Associates	$0.13
		Legislative Fiscal Office	$0.17
Maine	--Tax rebate --10-12% wages	Maine Film Office	$0.11
Massachusetts	--Transferable Credit --25% state spend	Massachusetts DOR	$0.16
Michigan	--Refundable & Transferable credit --40% state expenditures	Michigan State University	$0.19
New Mexico	--Tax Rebate --25% production expenditures	Arrowhead Center at New Mexico State U.	$0.19
		Ernst & Young for NM Film Office	$0.94
New York	--Refundable credit --30% production expenditures	Ernst & Young for NY Film Office	$1.10
North Carolina	--Tax credit --15-25% state spending	Ernst & Young for NC Film Office	$0.67
Pennsylvania	--Transferable credit --25% state spend --$75M program cap	Legislative Budget & Finance Committee	$0.28
Rhode Island	--Transferable Credit --10-20% wages	Rhode Island DOR	$0.19
South Carolina	--Cash Rebate --10-20% wages	South Carolina Coordinating Council for Econ. Dev.	$0.19
Texas	--Cash Rebate --15% in-state wages	Texas State Comptroller	$1.03
Wisconsin	--Tax Credit --25% production costs	Wisconsin Dept. of Commerce	$0.06

Many locales however, report other positive economic impacts from the introduction or increase in tax incentives available to industry.

- Ontario, Canada saw a 40-percent increase in production spending during 2009, much of it coming after its Ontario Production Services Tax Credit was increased in June.[32]
- Similarly, a newly released Massachusetts study suggests the state's film incentive has led to a 117-percent increase in film production jobs within the state, a steady growth in

the increasing direct and indirect jobs within the Film and Entertainment industry NAICS codes following implementation of the state incentive.

[32] See http://www.newswire.ca/en/releases/archive/February2010/17/c2506.html.

the number of vendors who supply to film productions, and the increased potential for growth in film related tourism.[33] Additionally, 89 percent of the credits awarded in Massachusetts have been transferred, creating a secondary market.
- The same Louisiana impact study citing a $0.13 ROI notes that in 2007, the Louisiana motion picture incentive was responsible for $429 million in direct and indirect private sector spending, and 6,230 jobs directly or indirectly related to the motion picture industry.
- New York state's comptroller released a report in March 2010, showing that the state benefited from $3.3 billion in wages paid by the film industry in 2008. The governor also has requested that the state increase its tax credit incentive from $350 million in FY 2010 to $420 million over the next 5 years.[34]
- New Zealand has estimated that the "Lord of the Rings" trilogy, filmed on location, has led to the equivalent media exposure of $41 million in tourism marketing dollars.[35]

Internationally, the United Kingdom, Ireland, Hungary, Austria, Australia, New Zealand, Canada, and Mexico offer a variety of incentives that include tax credits, rebates, and even grants to help pay production costs.[36]

III. Effect of Proposed Changes:

CS/SB 1430 replaces Florida's existing film and entertainment incentive, a cash reimbursement of qualified expenditures, with a transferrable credit against sales and corporate income taxes for qualified expenditures. The tax credit is $75 million annually from FY 10-11 to FY 14-15. The credits cannot be claimed against tax liability until after July 1, 2011.

Section 1 makes a number of significant changes to Florida's current film and entertainment incentive program. *(See Table 3 on page 12.)* This section:
- Replaces the cash refund incentive dependent on annual legislative appropriations with a transferable tax credit program. The amount of tax credits available is $75 million annually, beginning in FY 10-11 through FY 14-15; however, the tax credits cannot be claimed prior to July 1, 2011.
- Specifies that these tax credits:
  - Can be carried forward for up to 5 years.
  - Can be transferred one time only to any other taxpayer, or can be distributed to the partners or other affiliated companies of the original recipient of the tax credits.
- Reorganizes the current production "queues:"
  - 94 percent of the tax credits (or $70.5 million annually) would be allocated to the "general production queue" that includes movies, television series, video games, visual effects, digital animation, and most other types of entertainment

[33] See http://www.management.umb.edu/faculty/workingpaper/foster_pacey/UMBCMWP1046.pdf.
[34] See http://www.osc.state.ny.us/reports/other/filmindustry22-2010.pdf. Last viewed 3/18/2010.
[35] New Zealand Institute of Economic Research. (2002). *Scoping the Lasting Effects of the Lord of the Rings*: Thorton Wellington: New Zealand Institute of Economic Research.
[36] See the Association of Film Commissioners International for an interactive map of film and entertainment incentives. See http://www.afci.org/incentives.htm.

productions except commercials, music videos, and independent Florida films. To be eligible, the production must make a minimum $625,000 in qualified expenditures. The tax credit per production is 20 percent of qualified expenditures and is capped at $8 million per production.
  - 3 percent of the tax credits (or $2.25 million annually) would be allocated to the "commercial and music video queue." A production company under this category must spend at least $100,000 in qualified expenditures per commercial or video, and must exceed a threshold of $500,000 in qualified expenditures in a single state fiscal year. The tax credit is 20 percent of qualified expenditures, up to a cap of $500,000.
  - 3 percent of the tax credits (or $2.25 million annually) would be allocated to the "independent production queue," which includes independent Florida films and smaller-scale digital media productions. To be eligible, the production must make a minimum of $100,000 and a maximum of $625,000 in qualified expenditures, and meet other requirements unique to this queue. The tax credit is equal to 20 percent of qualified expenditures. The individual production cap is $125,000.
- Makes available the "off-season" and "family-friendly" bonuses, but rewords their application:
  - The off-season bonus remains at 5 percent of qualified expenditures, and would be available only to feature films, independent films, or a television series or its pilot.
  - The family-friendly bonus is increased from 2 percent to 5 percent of qualified expenditures. The new language incorporates the existing criteria, plus an additional requirement – that the production not exhibit "gratuitous violence."
- Sunsets the tax credit incentive program on July 1, 2015.
- Similar to its current duties, the OFE would qualify productions as eligible to receive the tax credits, and also review audited expenditure documentation from the qualified production companies before the tax credits are released.

The application process for the new tax credit incentive program is very similar to that in existing law for the cash incentive. The applications are received and processed by OFE within 15 days of the submission, and as a production winds down, the production submits an audited report of qualified expenditures to OFE for its review. OFE submits its recommendations to OTTED, which determines and approves the final amount of tax credits (rather than the amount of cash incentive) to be awarded.

New in CS/SB 1430 is that OTTED also must notify DOR that a certified production has met the requirements for a specific amount of tax credits, and if the production has decided to transfer those credits to another entity, in what amount.

Both OTTED and DOR are given specific rulemaking authority to administer the tax credit incentive program. OTTED may adopt rules specifying requirements for the application and approval process, records need to substantiate the eligibility for the tax credits and to claim or transfer the credits, and marketing requirements for tax credit recipients. DOR's rules may include examination and audit procedures required to administer the program, and the manner and form of documentation required to claim or transfer the tax credits.

TABLE 3
Comparison of Current Queues with Proposed Production Categories

Type of production	Current Law	CS/SB 1430
Films, TV shows, Documentaries	-- In Queue "A." -- 15% of qualified expenditures, equaling at least $625,000. -- Maximum incentive payment per production is $8 million.	-- In "General Production Queue." -- 94% of the tax credits -- 20% of qualified expenditures, equaling at least $625,000. -- Maximum incentive payment per production is $8 million.
Commercials and music videos	-- In Queue "A." -- 15% of qualified expenditures, based on a minimum $100,000 per commercial or video <u>and</u> total qualified expenditures of $500,000. -- Maximum incentive payment is $500,000.	-- In "Commercial & Music Video Queue." -- 3% of the tax credits --20% of qualified expenditures, based on a minimum $100,000 per commercial or video <u>and</u> total qualified expenditures of at least $500,000. -- Maximum tax credits of $500,000 can be awarded.
Digital Media	-- In Queue "C." -- 10% of qualified expenditures equaling at least $300,000 -- Maximum incentive refund payment is $1 million per project.	-- In "General Production Queue" and "Independent Production Queue." -- If in "General Production Queue," the qualified expenditures must be a minimum of $625,000, with $8 million cap. -- If in the "Independent Production Queue," then qualified expenditures must be a minimum $100,000 and a maximum $625,000, with an incentive cap of $125,000.
Fla. Independent Film	-- In Queue "B." 15% of qualified expenditures of at least $100,000, but not more than $625,000. -- Per-production cap is $93,750.	-- Presumably part of the "Independent Production Queue." --3% of the tax credits. --20% of qualified expenditures of at least $100,000, but not more than $625,000. -- Per-production cap is $125,000.

The new section creates provisions for revocation and forfeiture of tax credits, under certain specific circumstances. If the tax credits were awarded based on the submission of fraudulent information, then the production company or the holder of the tax credits must reimburse the state the value of the tax credits, and any reasonable costs and fees associated with the review, processing, investigation, and prosecution of the fraudulent claim. Additionally, taxpayers who fraudulently claim the credits are liable to pay the state a penalty in an amount double that of the credit amount; this penalty is in addition to any criminal penalty.

CS/SB 1430 also requires OFE 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 incentive program's return on investment, and other economic benefits to the state.

The incentive program is repealed July 1, 2015, except that the 5-year tax credit carryforward provision will continue to be valid for the time specified.

Section 2 amends s. 220.02, F.S., which establishes the order in which a corporate income taxpayer may claim the film and entertainment industry tax credit. The film and entertainment industry tax credit is last in the list.

Section 3 amends s. 213.053, F.S., to allow DOR to share confidential tax information related to the film and entertainment industry tax credits with OTTED and OFE, which are bound by the same confidentiality requirements as DOR regarding the use of this information.

Section 4 amends s. 212.08(5), F.S., to create a sales-and-use tax credit for film and entertainment productions qualified and certified pursuant to s. 288.1254, F.S. The credits may be taken only as refunds of previously paid sales taxes. But unused credits may be carried forward for up to 5 years.

Section 5 adds a severability clause.

Section 6 specifies an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article 18, s. VII, of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met. There are a number of different types of legislative actions that trigger a mandates review, and a list of the categories of laws exempt from mandate requirements.

Relevant to this discussion is subsection (b) of Art. 18, s. VII. Subsection (b) prohibits the Legislature from "enacting, amending, or repealing any general law if the anticipated effect" is to reduce county or municipal aggregate revenue-generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by two-thirds of the membership of each chamber.

However, subsection (d) of Art. 18, s. VII, provides an exemption from subsection (b): laws determined to have an "insignificant fiscal impact," which means an amount not greater than the average statewide population for the applicable fiscal year times $0.10, are exempt from mandate requirements.

According to research compiled by the Legislature's Office of Economic and Demographic Research, the estimated statewide population in FY 2010-2011 will be 18.8

million residents and 19 million residents in FY 2011-12.[37] Using the formula of statewide population for the applicable fiscal year times $0.10, the maximum local-revenue impact of a bill cannot exceed $1.88 million in FY 10-11 and $1.9 million in FY 11-12, without triggering the subsection (b) requirement for a two-thirds vote.

The Florida Revenue Estimating Conference (REC) has estimated that the film tax credit language in the original SB 1430 could have a total estimated negative impact on local-option sales tax collections of $4.7 million annually in FY 11-12 through FY 14-15.

However, based on provisions now incorporated into CS/SB 1430, exempting discretionary sales surtaxes authorized under s. 212.055, F.S. from being subject to refund, there are no mandate issues associated with the legislation.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

At its March 12, 2010, meeting, the REC evaluated the fiscal impact of CS/SB 697, which is nearly identical to CS/SB 1430. The REC adopted by consensus an estimate of $75 million in foregone annual state and local tax revenues in fiscal years 2011-2015. The breakdown between state and local impacts is expressed in the chart below:

Taxes Impacted (in millions of dollars)	**FY 11-12 (cash)**	**FY 12-13 (cash)**	**FY 13-14 (cash)**
GR – State Sales	(53.2)	(53.2)	(53.2)
GR – CIT	(15.0)	(15.0)	(15.0)
Total State Impact	(68.2)	(68.2)	(68.2)
State/Local Revenue-Sharing	(1.8)	(1.8)	(1.8)
Local Gov't Half-Cent	(5.0)	(5.0)	(5.0)
Local-Option Sales Tax	0	0	0
Total Local Impact	(6.8)	(6.8)	(6.8)
Total Impact	(75.0)	(75.0)	(75.0)

[37] Florida Population and Components of Change, page 3, prepared by the Legislature's Office of Economic and Demographic Research. Presented Jan. 26, 2010. Available at http://edr.state.fl.us/conferences/population/FDEC1001_pop_change.pdf. Last visited March 5, 2010.

B. Private Sector Impact:

Indeterminate, but likely positive.

C. Government Sector Impact:

Indeterminate. OFE and DOR are expected to incur additional costs related to workload and computer software.

VI. Technical Deficiencies:

Lines 312-328 create a queue for “independent productions,” and references are made to independent Florida film and digital media projects being eligible for this queue, if certain criteria are met. One of the criteria is the production must “be planned as a feature film or documentary of at least 70 minutes in length.” Since digital media projects are defined as “productions of <u>interactive</u> entertainment” – more applicable to games rather than films and documentaries are not – it may be impossible for a digital media project to qualify under this queue.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by the Commerce Committee on March 24, 2010:

- Removes the local government mandates issue by exempting from refund local-option discretionary sales surtaxes authorized under s. 212.055, F.S.;
- Provides that the credit against sales tax authorized in the CS is implemented as a refund from previously paid taxes;
- Includes visual effects and digital animation within the definition of “production;”
- Caps at $8 million the amount any one qualifying production is eligible to receive within the general production queue; and
- Removes the term “non-traditional values” from the definition of what type of production does not constitute a family friendly production.
- Makes several technical amendments to conform to the House companion, CS/HB 697.

B. Amendments:

None.