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 Appropriations Subcommittee on Transportation, Tourism, and Economic Development

BILL: SB 1046

INTRODUCER: Senators Detert and Soto

SUBJECT: Entertainment Industry

DATE: April 1, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Askey	McKay	CM	**Favorable**
2.	Gusky	Miller	ATD	**Pre-meeting**
3.			AP	

I. Summary:

SB 1046 restructures Florida's approach to the entertainment industry in the state.

The bill transfers the Department of Economic Opportunity's Office of Film and Entertainment, including the Commissioner of Film and Entertainment and the Florida Film and Entertainment Advisory Council, to Enterprise Florida, Inc., (EFI). The office is established as the Division of Film and Entertainment in EFI and maintains its current responsibilities, with the exception of administering the entertainment industry economic development programs, which remains the responsibility of the Department of Economic Opportunity (DEO). The bill reduces the number of council members serving on the Florida Film and Entertainment Advisory Council from 17 to 11 and revises the powers and duties of the council.

The bill renames the Entertainment Industry Incentive Program as the Entertainment Industry Program, and makes the following changes:

- Sets a program expiration date of July 1, 2021;
- Increases the percentage of Florida residents that must be employed in qualified productions;
- Creates a semi-annual application period, and limits the available tax credits to one half for each 6-month period;
- Clarifies the denial, withdrawal, and verification of application processes, and provides that all applications still in a queue at the end of an application period will be denied;
- Sets aside 20 percent of funds available in each application period for "underutilized counties" for 4 months;
- Creates a tax credit bonus for 5 percent of qualified expenditures for productions that make at least a $2 million capital investment that remains in the state after the production ends;
- Reduces the total credit allowed to 25 percent of qualified expenditures, down from the current allowance of 30 percent of qualified expenditures; and

- Repeals tax credit bonuses for underutilized regions, off-season productions, and productions that occur at certain facilities.

The bill creates the Entertainment Industry Quick Action Fund Program to respond to extraordinary opportunities to attract entertainment productions, subject to appropriation. Specifically, the bill:

- Requires the Division of Film and Entertainment and the DEO to evaluate applications for fund awards based on 19 criteria;
- Requires performance-based contracts;
- Limits funding to 30 percent of planned qualified expenditures by the project;
- Creates an approval process that requires legislative approval of certain award amounts;
- Sets aside 50 percent of the fund to be awarded in the second 6 months of a fiscal year;
- Creates the Entertainment Industry Quick Action Account in the State Economic Enhancement and Development Trust Fund for awards and repayments;
- Creates a penalty for fraud; and
- Sets a program expiration date of July 1, 2025, for the quick action fund.

The bill clarifies the application and renewal process for the Entertainment Industry Sales Tax Exemption Program.

The bill prohibits a production from receiving benefits from more than one program at the same time (the Entertainment Industry tax credit and sales tax exemption programs, or the Entertainment Industry Quick Action Fund Program).

The bill does not provide additional tax credits for the Entertainment Industry Program and does not include an appropriation for the Entertainment Industry Quick Action Fund program created in the bill. The DEO indicates that the bill has a fiscal impact to the department. See Section V.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

The Office of Film and Entertainment

The Office of Film and Entertainment (OFE) in 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.[1] 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

[1] Section 288.1251, F.S. See also OFE website, available at http://www.filminflorida.com/about/vm.asp (last visited Mar. 3, 2015).

an annual basis and aligns with the DEO's Strategic Plan for Economic Development.[2] The OFE's mission is to build, support, and market the entertainment industry in Florida.

The head of the OFE is the Commissioner of Film and Entertainment. The executive director of the DEO hires the commissioner, after conducting a statutorily required national search to find a qualified person to fill the position. For Fiscal Year 2014-2015, the OFE has an operating budget of approximately $758,000, five full-time-equivalent (FTE) positions and three temporary other personal services (OPS) positions.[3] The OFE's budget supports a field office in Los Angeles.

The OFE is assisted by the Florida Film and Entertainment Advisory Council (advisory 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.[4] In addition, Enterprise Florida, Inc., Workforce Florida, Inc., and the Florida Tourism Industry Marketing Corporation (commonly referred to as "VISIT Florida") each have a representative that serves as an ex-officio nonvoting member of the advisory council. The advisory council provides the OFE and the DEO with industry insight and assists in the creation of the 5-year strategic plan.

Additionally, over 60 local film offices have been established across the state, organized predominately by county and municipal governments, local chambers of commerce, economic development councils, convention and visitors' bureaus, and tourist development councils.[5]

Entertainment Industry Financial Incentive Program[6]

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program (incentive program).[7] The incentive program's dual purposes are to:

- Promote Florida as a site for filming, creating, or producing movies, television series, commercials, digital media and other types of entertainment productions; and
- Sustain and develop the state's entertainment workforce, studios, and other related infrastructure.

The incentive program is administered by the OFE, subject to the policies and oversight of the DEO. Currently, the incentive program is a 6-year program, which began July 1, 2010, and sunsets June 30, 2016. The incentive program provides tax credits for qualified expenditures related to filming and production activities in Florida. These tax credits may be applied against

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[2] The OFE's Film and Entertainment Industry Strategic Plan for Economic Development is available at http://www.filminflorida.com/about/OFE_Plan_V11.pdf (last visited Mar. 3, 2015).
[3] E-mail from Dean M. Izzo, Chief Financial Officer, Department of Economic Affairs, to Kristin Pingree Gusky, Chief Legislative Analyst, Florida Senate (March 27, 2015) (on file with the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development).
[4] Section 288.1252, F.S.
[5] A list of Florida film commissions is provided at the OFE website, available at http://www.filminflorida.com/lr/local_film_commissions.asp (last visited Mar. 3, 2015).
[6] Information about the incentive program is also available on OFE's website, available at http://filminflorida.com/ifi/incentives.asp (last visited Mar. 3, 2015).
[7] 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.

the corporate income tax or sales and use taxes. Additionally these tax credits may be transferred or sold one time.[8]

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;
- $74.5 million in Fiscal Year 2011-12; and
- $42 million in each Fiscal Year 2012-13, 2013-14, 2014-15, and 2015-16.[9]

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 six-year period have been certified (or allocated to certified productions).[10]

Eligibility and Application

Generally, a production company that plans to engage in a production in Florida can apply to the OFE prior to beginning production for a certification of tax credits based upon estimated qualified expenditures planned for the production. A “production” is defined in s. 288.1054, F.S., as a:

- Theatrical, direct-to-video, or made-for-television motion picture;
- Visual effects or digital animation sequences produced in conjunction with a motion picture;
- Commercial or infomercial;
- Music video;
- Industrial, educational, or documentary film;
- Television pilot program or presentation for a television pilot program;
- Digital media project; or
- Television series, including but not limited to a: drama, reality show, comedy, soap opera, telenovela, game show, awards show, or miniseries production. One season of a television series is considered one production.

A production does not include a: weather or market program; sporting event or sporting event production; gala; production that solicits funds; home shopping program; political program, documentary, or advertising; gambling-related project or production; concert production; a local, regional, or Internet-distributed-only news show or current-events show; a sports news or sports recap show; a pornographic production; or any production deemed obscene under ch. 487, F.S.

A “qualified production” must meet the requirements above, plus two additional criteria:

- Depending on the type of production and period of time in the incentive program, most of the production cast and below-the-line production crew[11] must be Florida residents, or students enrolled full-time in a film and entertainment-related course of study at a Florida university or college.; and

[8] Also, tax credits may be relinquished to the DOR for 90 percent of the amount of the relinquished tax credit.
[9] 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.
[10] Office of Economic and Demographic Research, The Florida Legislature, *Return on Investment for the Entertainment Industry Incentive Programs* (January, 2015).
[11] “Below-the-line production crew” excludes actors, directors, producers, and writers.

- The production does not contain obscene content, as defined in s. 847.001(10), F.S.[12]

Queues

Priority for tax credit certifications is made on a first-come, first-served basis within the appropriate "queue."[13] There are three queues of qualified productions eligible for tax credit certification: general production, commercial and music video, and independent and emerging media production. State incentive funding is allocated to the queues as follows:
- General production queue - 94 percent (no more than 45 percent of which can be certified for television series);
- Commercial and music video queue – 3 percent; and
- Independent and emerging media production queue – 3 percent.

First priority in the general production queue for tax credits not yet certified is given to "high-impact television series" and "high-impact digital media projects,"[14] in alternating order, depending on the type of application first received by the OFE. OFE may certify a project out of order (ex: two high-impact television series productions in a row) if an application by the next appropriate type of production is not received within 5 business days.[15]

Characteristics of Production Queues

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

There are additional tax credits, also referred to as "bonuses," available for general production queue projects. A five percent additional tax credit is available for:
- Feature films, independent films, or television series or pilots that are "off-season certified," including those that are not able to complete 75 percent of their principal photography due to

[12] Pursuant to this section, "'obscene' means the status of material which: (a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest; (b) Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and (c) Taken as a whole, lacks serious literary, artistic, political, or scientific value. A mother's breastfeeding of her baby is not under any circumstance 'obscene.'"
[13] Section 288.1254(4), F.S.
[14] Section 288.1254(1), F.S., provides that: a "high-impact digital media project" means a digital media project that has qualified expenditures greater than $4.5 million; a "high-impact television series" means a production created to run in multiple production seasons and having an estimated order of at least seven episodes per season and qualified expenditures of at least $625,000 per episode.
[15] This rotating schedule was created in ch. 2012-32, L.O.F.

a hurricane or tropical storm. Off-season certified means that the production films 75 percent or more of its principal photography from June 1 to November 30.
- Productions that incur at least 65 percent of its principal photography days in an underutilized region. An "underutilized region" is one with a regional tax credit ratio for a fiscal year that is lower than its regional population ratio that year.[16]
- Productions which conduct at least 50 percent of their principal photography at a qualified production facility. This additional 5 percent may be applied to any qualified expenditures related to production activity at that facility.
- Qualified digital media projects or digital animation components of productions which have at least 50 percent of their qualified expenditures related to a qualified digital media production facility. This additional 5 percent may be applied to any qualified expenditures related to production activity at that facility.

A 15 percent additional tax credit is available for productions that employ students enrolled full-time in a film and entertainment-related or digital media-related course of study or recent graduates of such a course of study. The course of study must have occurred at an institution of higher education in Florida. This additional 15 percent may be applied to any qualified expenditures related to wages, salaries, or other compensation paid to such students or graduates.

Further, family-friendly certified theatrical or direct-to-video movies and video games are eligible for an additional tax credit of 5 percent of its actual qualified expenditures. The determination for "family-friendly" is made by the OFE, with the advice of the advisory council. A family friendly production is one that:
- Has cross-generational appeal;
- Is considered suitable for viewing by children aged 5 years or older;
- Is appropriate in theme, content and language for a broad family audience;
- Responsibly resolves issues raised in the film; and
- Does not include any act of smoking, sex, nudity, or vulgar or profane language.

A qualified production in the general production queue is limited to a total tax credit of 30 percent of its actual qualified expenditures.[17]

Current law defines "qualified expenditures" as production expenditures incurred by a qualified production in Florida for:[18]
- Goods purchased or leased from, or services provided by, a vendor or supplier in Florida that is registered with the Department of State or the Department of Revenue (DOR) and is doing business in Florida. Eligible production goods and services include:
  - Sound stages, back lots, production editing, digital effects, sound recordings, sets, and set construction;
  - Entertainment-related rental equipment, including cameras and grip or electrical equipment;

[16] "Underutilized region" is defined in s. 288.1254(1)(p), F.S. The definition establishes five regions and every county is assigned to a region.
[17] A qualified production in the commercial and music video queue is not eligible for any bonuses. A qualified production in the independent and emerging media production queue may be eligible for the family-friendly bonus.
[18] See s. 288.1254(1)(i), F.S.

  - Newly purchased computer software and hardware, up to $300,000; and
  - Meals, travel, and accommodations.
- Salary, wages, or other compensation paid to Florida residents, up to a maximum of $400,000 per resident.

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.

Award of Credits

After production ends and all certified expenditures are made in Florida, the production company must have an independent certified public accountant licensed in Florida conduct a compliance audit. The OFE is required to review the audit and report to the DEO the final verified amount of actual qualified expenditures. The DEO then must review and approve the final tax credit award, and notify the DOR. Tax credit awards are based on the production queue and are subject to the limitations discussed above. In order to be eligible for tax credits, the production must include, when appropriate, the placement of a “Filmed in Florida” or “Produced in Florida” logo in the end credits.

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

Section 288.1254(9), F.S., authorizes the DOR to conduct audits related to the tax credits, and to revoke or forfeit tax credits under certain circumstances. Fraudulent applications for tax credits may also result in penalties and other costs in addition to repayment of the tax credits.

Sales Tax Exemption Certificate for a Qualified Production Company

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.[19] 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).[20]
- *Fabrication labor* when a producer uses his or her own equipment and personnel to produce a qualified motion picture.[21]

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[19] Section 288.1258, F.S. See also DOR, Film in Florida Sales Tax Exemption, available at http://dor.myflorida.com/dor/taxes/film_in_florida.html (last visited Mar. 3, 2015).

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

[21] Section 212.06(1)(b), F.S. The term “qualified motion picture” is defined in the statute.

- *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.[22]
- *Sale, lease, storage, or use of blank master tapes, records, films, and video tapes*.[23]

The OFE reviews and approves applications for the exemptions, while the DOR issues certificates of exemption to the production companies. The estimated cost of these exemptions was $51.1 million for Fiscal Year 2014-2015.[24]

The OFE Annual Report for Fiscal Year 2013-14[25]

The OFE is required to submit l a report by November 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives, that includes: the incentive program's return on the state's investment and economic benefits to the state; the estimate of FTEs for each production that received tax credits; and the geographic distribution of the credits in Florida. The report is also required to include a summary of the OFE's travel and entertainment expenditures for the previous fiscal year[26], and information describing the relationship between tax exemptions and incentives to industry growth.[27]

The OFE's annual report for Fiscal Year 2013-14 reviewed the incentive program for the first 4 years of the 6-year program. As of June 30, 2014:

- 689 applications were received and processed;
- 342 productions have been certified for tax credits; outcomes for these productions include the following estimates:
  - Over $1.5 billion in qualified expenditures in Florida; and
  - 171,922 positions with over $926 million in wages paid[28] .
- Certified productions include: 74 motion pictures, 59 digital media productions, 154 television productions, and 55 commercials; and
- 146 certified projects completed production in Fiscal Year 2013-14; projected outcomes for these productions include:
  - 8,927 production days;
  - Over $483.9 million in qualified expenditures in Florida;
  - 51,130 positions with over $353.8 million in wages paid;
  - 77,634 lodging/room nights; and
  - Almost $108 million in final tax credits awarded.

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[22] Section 212.08(5)(f), F.S.
[23] Section 212.08(12), F.S.
[24] Florida Revenue Estimating Conference, 2015 Florida Tax Handbook.
[25] OFE, Fiscal Year 2013-14 Annual Report (November 1, 2014), available at http://www.filminflorida.com/ifi/PDFs/annualReports/Entertainment%20Industry%20Financial%20Incentive%20Annual%20Report%20FY2013-2014.pdf (last visited Mar. 3, 2015).
[26] Section 288.1253, F.S.
[27] Sections 288.1254(10), 288.1253, and 288.1258(5), F.S.
[28] Positions are individual positions, not FTEs. Positions may be permanent or temporary. Production cast, crew, extras, and stand-ins, etc., may work for multiple productions and fill multiple positions. The OFE was directed in the 2011 Regular Session to report positions as estimates of FTEs, but according to the annual report the OFE is still developing methodology to report the data. See ch. 2011-76, L.O.F.

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

Florida Economic Development Program Evaluations

Section 288.001, F.S., requires the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA) to provide a detailed analysis of state economic development programs according to a recurring schedule established in law. The OPPAGA must evaluate each program over the three previous years for effectiveness and value to the state's taxpayers and include recommendations for consideration by the Legislature. EDR must evaluate and determine the economic benefits, as defined in s. 288.005(1), F.S., of each program over the previous three years.

In January 2015, the EDR reported the following return on investments (ROI) for the entertainment industry incentive programs for Fiscal Years 2010-11, 2011-12, and 2012-13:[29]

- 0.54 to 1 for the Sales Tax Exemption program;
- 0.43 to 1 for the Financial Incentives (tax credits) program; and
- 0.25 to 1 for the Financial Incentives (tax credits) program when there is a full accounting of all credits awarded, not just the credits awarded in the three-year window.

The OPPAGA made several recommendations related to entertainment industry incentives to the Legislature. First, the OFE staff should discontinue the informal process of backdating sales tax exemption applications to ensure that production company expenditures are tax exempt under state law. In addition, if the Legislature chooses to allocate additional tax credits for the Entertainment Industry Financial Incentive Program, the OPPAGA suggests:

- Requiring the amount of tax credits awarded during a single fiscal year not exceed the amount of tax credits allocated for that year.
- Directing the DEO to use a third party to process tax credit audits to expedite the audit review process and reduce delays in awarding tax credits.30

III. Effect of Proposed Changes:

The bill restructures Florida's approach to the entertainment industry in the state. The bill:

- Establishes the Division of Film and Entertainment in Enterprise Florida, Inc.(EFI);
- Amends the Entertainment Industry Financial Incentive (tax credit) and Sales Tax Exemption programs; and
- Creates the Entertainment Industry Quick Action Fund.

EFI's Division of Film and Entertainment

Section 3 of the bill transfers s. 288.1251, F.S., renumbers it as s. 288.913, and amends that section to transfer the Department of Economic Opportunity's Office of Film and Entertainment

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[29] Office of Economic and Demographic Research, The Florida Legislature, *Return on Investment for the Entertainment Industry Incentive Programs*, 2 (January, 2015).

[30] Office of Program Policy Analysis and Government Accountability, The Florida Legislature, *Florida Economic Development Program Evaluations – Year 2*, Report No. 15-01 (January 1, 2015).

to EFI. The office is established as the Division of Film and Entertainment (division) in EFI and maintains its current responsibilities, with the exception of administering the entertainment industry economic development programs, which remains the responsibility of the DEO. Generally, EFI markets the state to businesses, including working with regional offices to provide assistance and information on location decisions, workforce needs, and economic development programs. The DEO is responsible for administering the economic development programs.

The Division of Film and Entertainment is established for the purpose of developing, recruiting, marketing, promoting, and providing services to the state's entertainment industry. The division will serve as a liaison between the entertainment industry and other state and local governmental agencies, local film commissions, and labor organizations. The division must develop and update a 5-year strategic plan that must include specified information. EFI's board of directors must annually review and approve the plan.

Section 4 of the bill transfers s. 288.1252, renumbers it as s. 288.914, and amends that section to transfer the Florida Film and Entertainment Advisory Council (council) to EFI. The bill reduces the council membership from 17 to 11 members, five appointed by the Governor and three each appointed by the President of the Senate and Speaker of the House of Representatives. A council member serving as of July 1, 2015, may finish his or her term but upon vacancy, appointments may not be made that would result in more than 11 council members.

Section 5 of the bill transfers s. 288.1253, renumbers it as s. 288.915, and amends that section to continue the department's oversight and rule-making responsibilities regarding the travel and entertainment expenses incurred by the Governor, Lieutenant Governor, associated security staff, the Commissioner of Film and Entertainment, or staff of EFI's Division of Film and Entertainment.

Sections 2, 9, 10 and 11 amend ss. 288.125, 288.1258, 288.92 and 477.0135, F.S., respectively, and make conforming changes to reflect the creation of the division and the department's responsibilities.

Entertainment Industry Financial Incentive Program

Section 6 of the bill amends s. 288.1254, F.S., to rename the Entertainment Industry Financial Incentive Program as the "Entertainment Industry Program" and makes several changes to the renamed program.

Definitions and Eligibility

The bill makes numerous changes to definitions section, including:

- Moving an existing definition of "family-friendly production" from the tax credit eligibility subsection to the definitions subsection.
- Amending the definition for "high-impact television series" to include telenovelas that have qualified expenditures of more than $6 million, at least 45 principal photography days in the state, cast and crews that are at least 90 percent state residents, and have at least 90 percent of

production occurring in the state. The required amount of qualified expenditures per episode for a television series is increased from $625,000 to $1 million.

- Including direct-to-Internet motion pictures and television series in the definition of "production."
- Revising the "qualified production" definition to increase the requirements related to the percentage of state residents that must make up a production's cast and crew. For a production, the cast and crew must be at least 70 percent state residents (current law is 60 percent); for a digital media production, the cast and crew must be at least 80 percent state residents (current law is 75 percent). The bill removes an exemption to these requirements that allowed a lower percentage for the first two years of the program.
- Eliminating definitions for high-impact digital media project, off-season certified production, qualified digital media production facility, qualified production facility, regional population ratio, regional tax credit ratio, and underutilized region.

Application Procedure and Approval Process

The bill requires a production company to include additional information in its application. Currently, applications must include production-related information concerning employment of residents, a detailed budget of planned qualified expenditures, and the applicant's signed affirmation that the information provided is correct. The bill requires additional information related to the planned aggregate nonqualified expenditures, including capital investment, and proof of financing for the production. Under current law, a production has 90 days from the date it submits the application to provide proof of financing. The bill requires such proof to be submitted as part of the application.

The bill creates two application periods. One application period runs from January 1 through June 30, and the second application periods runs from July 1 through December 31. Every fiscal year, one half of the allocated tax credits are available during each application period. Applications can be received until 125 percent of the tax credits available in an application period have been applied for, after which all applications are denied and applicants may reapply in the next application period. Applications that are received after all of the available tax credits in a period are applied for, but before the amount of credits applied for exceeds 125 percent of available tax credits in an application period, are placed in a queue as the applications are received. Queued applications may be considered for tax credits that become available during the application period. Applications remaining in the queue at the end of a period are denied and applicants may reapply in the next period. The bill clarifies the denial process.

High-impact television series productions may apply and be certified for a tax credit for a future fiscal year allocation for one additional successive season of a series. The applicant must affirm that the additional season is likely to be ordered, and must notify the DEO within 10 days if the second season is not ordered or is cancelled. The department may not certify tax credits in an amount greater than the allocation for a specified year, with the exception of one additional season of a high-impact television series. The bill clarifies the certification process in regards to the changes made to the Division of Film and Entertainment.

Upon certification, the production is required to provide the DEO and the division with information related to the production's needs for cast, crew, contractors, and vendors. The production must also provide a single point of contact. The division will publish this information online and include relevant information such as the starting date of the production and its location. The DEO and division may adopt procedures for a production to post such information itself within a week of certification.

Current law permits the DEO to withdraw the eligibility of a production for tax credits if the production does not continue on a reasonable basis, or if the production does not provide proof of financing. The bill clarifies when the DEO may deny a certified production. The DEO may deny a certified production upon finding any circumstance that affects the reasonable schedule or timely completion of the production, including a break in production or loss of financing. The certified production must notify the DEO within 5 days after any circumstance affecting the timely completion of the production. However, a certified production that has lost financing may avoid denial by the DEO if it provides the DEO with proof of replacement financing within 10 days of the original loss.

The bill makes clarifying changes to the DEO's verification process. A certified production must submit the required documentation within 180 days of the completion of the production. All production-related information on full and part-time employment and wages paid to state residents is required in the documentation. The DEO must require a certified production to submit data substantiating aggregate nonqualified expenditures in this state, including capital investment.

The Division of Film and Entertainment is required to give the Florida Tourism Industry Marketing Corporation (VISIT Florida) contact information for each qualified production. Qualified productions are required to work with VISIT Florida to develop marketing materials that promote the state. The "VISIT Florida" logo is required to be shown in the end credits of a production, along with other currently required logos.

Section 7 provides that all applications on file with the DEO to receive a tax credit through the entertainment industry program that have not been certified on July 1, 2015, are deemed denied.

General Production Queue

The bill clarifies that first priority in the general production queue for uncertified tax credit awards must go to high-impact television series. The bill repeals the limitations on the total amount of tax credits that can be allocated to high-impact television series. The bill repeals the priority for "high-impact digital media" and related definitions.

The bill amends several of the additional tax credit bonuses. The bill:

- Sets aside 20 percent of the tax credits in each application period for qualified productions in an underutilized county. For a production to be eligible for these tax credits at least 70 percent of its principal photography days must occur within an underutilized county. An "underutilized county" is one in which less than $500,000 in qualified expenditures were made in the last two fiscal years. Any credits set aside for this purpose become available to be certified in the general queue after four months.

- Repeals the tax credit bonus for “underutilized regions” and related definitions.
- Repeals the tax credit bonus for “off-season” productions and related definitions.
- Repeals the tax credit bonus for productions that occur at certain production facilities and related definitions.
- Creates a tax credit bonus of 5 percent for productions that complete a permanent capital investment of at least $2 million before the completion of the qualified production. The capital investment may be the basis of an application only once.

The bill reduces the total tax credits a qualified production in the General Production queue is eligible for from 30 to 25 percent of qualified expenses. The bill makes clarifying changes to the tax credit carry forward process, at the suggestion of the Department of Revenue.[31]

The bill extends the program until July 1, 2021.

Florida Entertainment Industry Quick Action Fund

Section 8 creates in s. 288.1256, F.S., the Entertainment Industry Quick Action Fund. The fund is created to respond to extraordinary opportunities, to compete effectively with other states to attract and retain production companies, and to provide favorable conditions for the growth of the entertainment industry in this state.

The Quick Action Fund will function similarly to other state economic development programs. A production company may apply for funds from the fund and the Division of Film and Entertainment, along with the DEO, will review and evaluate applications to determine eligibility.

In their review and evaluation of applications, the division and the DEO must consider the following 19 criteria:

- Expected contribution to the state’s economy;
- The amount of qualified and nonqualified expenditures that will be made in-state;
- The percentage of principal photography or production activity that will occur at in-state facilities or locations;
- Preproduction and postproduction planned to occur in-state;
- The amount of direct capital investment, especially fixed capital investment, to be made by the production company in this state related to the project;
- The amount of other capital investment made in-state related to the project;
- The duration of the project in this state, including any production occurring in the off-season;
- The amount and duration of principal photography or production activity that will occur in an underutilized county;
- The amount of promotion of Florida that the production company will provide for the state;
- The number of state residents that will be employed in full and part-time positions related to the project, the duration of employment, and the wages paid;
- The employment of full-time students in entertainment-related courses of study and recent graduates from in-state institutions of higher education;

[31] Florida Department of Revenue, *2014 Legislative Bill Analysis SB 1734* (April 22, 2014) *available at* http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=4671 (last visited Mar 3. 2015).

- Any plans the production company has to work with entertainment-related courses of study at an in-state institution of higher education;
- Any local support and financial commitment for the project;
- The project is about this state or shows the state in a positive light;
- The length of time, number, and history of commitment the production company has made in the state;
- The project is an independent film;
- The amount of repayment the production company agrees to pay the state;
- The expected effect of the award on the viability of the project and the probability that the production would be undertaken in-state if funds are granted; and
- A review of the company's past activity in this state and others.

The production company must agree to repay at least 25 percent of the final award amount once the production generates $20 million in gross revenue. A production company must have financing in place for a project before it applies to receive an award from the fund. The DEO must prescribe an application form with information required by similar economic development programs. Any awards funded may not be more than 30 percent of in-state qualified expenditures, and may not fund wages paid to nonresidents.

The approval process is required to be conducted as follows:
- The DEO makes a project recommendation to the Governor within one week after the review and evaluation of an application.
- The recommendation must include the performance conditions that the project must meet to obtain funds.
- The Governor may approve projects:
  - Requiring funding less than $2 million in funding without consulting the Legislature; and
  - Requiring funding between $2 million and $5 million, after providing a written description and evaluation of a project recommended for approval to the chair and vice chair of the Legislative Budget Commission (LBC) at least 10 days before giving final approval. If the chair or vice chair of the LBC or the President of the Senate or the Speaker of the House of Representatives object, the Governor must void the release of funds until the LBC or Legislature addresses the issue.
- Projects requiring funding exceeding $5 million must be approved by the LBC.
- Production must start within 1 year after the date a project is approved.

Once a project has been approved, the DEO and the production company will enter into an agreement that specifies at minimum:
- The total funds awarded and schedule of payment;
- The performance conditions required for payment of funds awarded;
- The methodology for validating the performance conditions and the date by which a production company must submit proof of performance to the DEO;
- That the DEO may review and verify any records of the production company to determine compliance with the agreement;
- Sanctions for failure to meet performance conditions; and
- That the payment of fund awards is contingent upon an appropriation by the Legislature.

The agreement must be signed and finalized within 90 days of the Governor's approval.

The DEO may not approve awards exceeding the amount appropriated in a fiscal year. The department must set aside 50 percent of the appropriated amount each fiscal year, which becomes available to be awarded after 6 months.

Section 1 amends s. 288.1201, F.S., to create the Entertainment Industry Quick Action Account in the State Economic Enhancement and Development Trust Fund to make for payments authorized under the Entertainment Industry Quick Action Fund. In addition, all repayments are deposited into the Entertainment Industry Quick Action Account.

The bill creates a penalty for fraudulent claims. The penalty is a reimbursement for any payment amounts plus an amount double the payment amount.

The DEO may not waive any provision or provide any extension of time to meet requirements, of the new Entertainment Industry Quick Action Fund statute.

The Entertainment Industry Quick Action Fund expires on July 1, 2025.

Sales Tax Exemption Certificates

The bill clarifies that a production can receive a sales tax exemption certificate for purchases made after filing a complete application.

The bill clarifies a portion of the certificate application process, including that:
- A production company may annually renew the 1-year certificate for up to 5 years without submitting a new application;
- A production company may quarterly renew the 90-day certificate for up to 1 year without submitting a new application;
- Upon surrender or expiration of a tax certificate, a production company must report additional production-related information for inclusion in the DEO's annual report.

Limitation

A production company is prohibited from receiving benefits from more than one entertainment industry incentive program at a time (the tax credit, sales tax exemption, or quick action fund).

Miscellaneous

Sections 12 and 13 reenact ss. 212.08 and 220.1899, F.S., respectively, for the purpose of incorporating the amendments made by the bill in cross referenced sections.

The bill provides an effective date of July 1, 2015.

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:

The Revenue Estimating Conference has not yet adopted a fiscal impact for SB 1046.

B. Private Sector Impact:

The private sector impact of the bill is indeterminate.

C. Government Sector Impact:

The bill does not provide additional tax credits for the Entertainment Industry Program and does not include an appropriation for the Entertainment Industry Quick Action Fund program created in the bill.

The Department of Economic Opportunity (DEO) indicates that five full-time equivalent (FTE) positions and $400,000 to $500,000 will be needed annually to administer the new Entertainment Industry Quick Action Fund and to implement the proposed changes in both the Entertainment Industry and Sales Tax Exemption programs.[32]

For Fiscal Year 2014-2015, the OFE has an operating budget of approximately $758,000, five FTE positions and three temporary services (OPS) positions.[33] Senate Bill 2500, as introduced, eliminates two positions and $315,578 of operating budget authority funded with state trust funds in DEO's Office of Film and Entertainment and appropriates that amount in the Enterprise Florida, Inc. appropriation category.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[32] DEO, 2015 Agency Legislative Bill Analysis: SB 1046 (March 27, 2015).
[33] E-mail from Dean M. Izzo, Chief Financial Officer, Department of Economic Affairs, to Kristin Pingree Gusky, Chief Legislative Analyst, Florida Senate (March 27, 2015) (on file with the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 288.1201, 288.125, 288.1251, 288.1252, 288.1253, 288.1254, 288.1258, 288.92, and 477.0135.

This bill creates the following sections of the Florida Statutes: 288.913, 288.914, 288.915, and 288.1256.

This bill reenacts the following sections of the Florida Statutes: 212.08 and 220.1899.

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.