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HOUSE OF REPRESENTATIVES
COMMITTEE ON
TOURISM
ANALYSIS

BILL #: HB 0743 (PCB TU 00-02a)

RELATING TO: Entertainment Industry Incentives

SPONSOR(S): Committee on Tourism

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) TOURISM YEAS 5 NAYS 0
(2) Referred to Governmental Rules & Regulations
(3) Finance & Taxation
(4) Transportation & Economic Development Appropriations
(5)

I. SUMMARY:

The bill creates s. 288.1258, F.S., which provides a single application process for qualified entertainment industry production companies for a certificate of exemption applying to taxes relating to the entertainment industry that are covered under ss. 212.031, 212.06, and 212.08, F.S. The application and exemption process is developed to make it easier for the entertainment industry, create as little confusion as possible, provide necessary safeguards, and provide administrative soundness. The Office of the Film Commissioner is directed to work with the Department of Revenue and local film commissions to develop an application form for qualifying production companies. The Office is directed to forward an approved application to the Department of Revenue which must issue a certificate of exemption within five working days of receiving the application. Two exemption certificate categories are provided: a one-year certificate and a 90-day certificate. The bill requires the Office of the Film Commissioner to gather and maintain information on the relationship of tax exemptions to the entertainment industry growth. The application process provides a mechanism for obtaining information on the level of production activated in the state. Finally, December 1 of each year, the Legislature is to receive a report that provides information on annual growth in Florida-based entertainment industry companies and entertainment industry employment and wages.

The bill amends provisions in ss. 212.031, 212.06, and 212.08, F.S., relating to the entertainment industry, to tie them back to the process established in s. 288.1258, F.S. The proposal also changes the current sales and use tax refund in s. 212.08(5)(f), F.S., relating to certain motion picture or video equipment and sound recording equipment, to a point of sale exemption. This change addresses concerns that the existing retroactive and time consumptive nature of the refund does not allow the production decision makers to include any financial value this “incentive” may have into the projected expense budget of a project. Therefore, decisions on where to activate the project have a greater chance of being driven by the offer of a point of sale exemption rather than a refund. The bill also provides for information sharing between the Department of Revenue and the Office of the Film Commissioner.

During the 1999 Session the refund projection by the Department of Revenue for s. 212.08(5)(f), F.S., for FY 1999/00 was $3.22 M. On February 12, 1999, the Revenue Estimating Conference estimated the fiscal impact of the change in the refund to a point of sale exemption to the state to be ($1.3 m) in FY 1999-00 and ($3.3 m) in FY 2000-01. The impact on local governments was estimated to be ($.2 m) in FY 1999-00 and ($.5 m) in FY 2000-01. A request has been made to have the bill brought before the Revenue Estimating Conference for updated estimates.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No [x]	N/A []
2.	Lower Taxes	Yes []	No [x]	N/A []
3.	Individual Freedom	Yes []	No []	N/A [x]
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

For any principle that received a "no" above, please explain:

The bill authorizes the Department of Revenue to promulgate rules to govern the state's entertainment industry sales tax exemptions which are revised by the bill. The bill also provides that the Office of the Film Commissioner will be responsible for administering the application and approval process for the state's entertainment industry tax exemptions amended by the bill.

The bill does change a refund to a point of sale exemption, thereby, increasing the number of entertainment industry companies that will benefit from the tax break that the law affords them already. Because revenue projections are based on the likelihood that a percentage of people will not request refunds, the change in exemption to a point of sale exemption is projected to have a negative impact on state tax revenues.

B. PRESENT SITUATION:

Recent History of Entertainment Industry Promotion by the State

In 1992, s. 20.17, F.S., was amended to authorize the Department of Commerce to create a direct-support organization and to contract with this organization for the administration of Florida's entertainment industry promotion and development programs. The initial organization was named the Florida Entertainment Commission (FEC). In 1993, Governor Chiles dissolved the Department of Commerce's Film Bureau and the department contracted with the FEC to conduct the state's programs for the entertainment industry. An executive director was hired and put in charge of entertainment industry promotion and development with the direction to raise private funds to supplement an appropriation of $200,000.

Chapter 96-320, LOF, dissolved the Florida Department of Commerce and authorized the newly created Governor's Office of Tourism, Trade, and Economic Development (OTTED) to contract with either a not-for-profit corporation or a direct-support organization to assist OTTED in developing and promoting the state's entertainment industry. In 1996, the FEC reorganized itself into the Florida Entertainment Industry Council, Inc. (FEIC). Initially, the FEIC board of directors consisted of the same members that had served on the FEC even though the FEIC members were not officially appointed by the Governor. At that time, OTTED contracted with FEIC and continued to contract with FEIC until June 30, 1998.

Numerous problems were reported regarding the contract. Production deadlines were delayed or missed, and in some instances, production did not occur. The FEIC had difficulty maintaining the 1-800 line used by industry representatives to contact the state and concerns had been expressed about the possibility of financial difficulties. In fact, in a February 24, 1998 management review by the Office of the Inspector General of the Executive Office of the Governor it was found that FEIC did not follow prudent business practices, that the accounts receivable could not be confirmed under current circumstances, and the current financial resources were not adequate to pay current accounts payable.

Section 14.2015, F.S., requires that performance measures be included in any contract entered into by OTTED. The performance measures included with the contract related to the publications and not to any other development or promotion activities which the FEIC was carrying out on behalf of the state.

During the 1997 interim, staff of the House Tourism Committee was instructed by the Tourism Committee to do an interim study on the entertainment industry encompassing a review of Florida's laws, laws in other states, and an assessment of the involvement of local governmental entities in this type of activity and of the level of interaction between entertainment industry groups and the state's designated entertainment industry promotional representative. To this end, committee staff surveyed entertainment industry segments such as large studios and entertainment support businesses for input on the relationship between such groups and government representatives. Staff also interviewed governmental entertainment industry liaisons from other states about the organization of those state entertainment industry liaison offices and the incentives offered by those states. The committee also received public testimony from entertainment industry professionals operating in Florida in several hearings. House Bill 3687 developed from this interim work and originated as a proposed committee bill (PCB TU 98-01) sponsored by the Committee on Tourism. The bill proposed both structural changes and industry incentives. The bill passed the House of Representatives twice but died in the Senate on the Special Order Calendar.

Continued appropriations for entertainment promotion under OTTED were tied to the passage of HB 3687. With the failure of its passage, no state revenues were appropriated in FY 1998-99.

Current Status of Entertainment Industry Promotion Activities by the State

In 1999, two bills were introduced by the Committee on Tourism to address the entertainment industry: one relating to organizational structure for promotion of the entertainment industry and the other relating to incentives for promotion and development of the industry. On June 8, 1999, the Governor signed into law a bill which created the Office of the State Film Commissioner within the OTTED to develop and promote the states entertainment industry. The Office is directed, among other things, to develop and implement a 5-year strategic plan, develop a methodology for providing service to the industry, and serve as a liaison between government and the entertainment industry and between the entertainment industry and labor interests. The Office is given authorization to expend funds on travel and entertainment for certain business clients and certain business-related functions. The new law also created the Florida Film Advisory Council, to be administratively housed within OTTED, to provide industry direction on promoting the growth of the entertainment industry in the state, to advise on the 5-year strategic plan, and to provide other advice and direction to help the Office of the Film Commissioner to function effectively and efficiently. The Office of the Film Commissioner received $535,000 for FY 99-00 and 3 FTE. The Film Commissioner was hired in October 1999 and the Office is being staffed and organized. Progress in underway for establishment of a web page, for identification of a statewide directory for entertainment, for liaison with local commissioners and labor organizations, for finding ways to help rural areas become active viable participants in gaining part of the entertainment industry work, for working with educational institutions on meeting training needs for the industry, as well as moving forward on many different areas of promotion and development.

At the local level, the local film commissioners and others in the entertainment industry through Film Florida provide assistance at the local level and through their employee in California who fields questions, directs leads, and performs some liaison functions.

In the area of entertainment industry incentives, after several committee hearings on incentives needed by the industry, the Committee on Tourism introduced legislation proposing a change from the existing sales tax refund to a point of sale exemption. The legislation did not pass.

During the interim before the 2000 Session, Tourism Committee staff was directed to study the status of the fifty states regarding tax incentives and other incentives regarding growing the entertainment industry. Staff was also instructed to examine the major competitive foreign markets.

Current Tax Exemptions for the Entertainment Industry in Florida

Florida's sales tax code contains three exemptions related to entertainment industry sales activities and the administrative activities associated with these are the responsibility of the Department of Revenue. The exemptions are as follows:

- Section 212.031(1)(a)9., F.S., provides an exemption on the lease or rental of real property used as an integral part of the performance of qualified production services.
- Section 212.08(5)(f), F.S., provides a refund on sales taxes paid on motion picture or video equipment and sound recording equipment that is purchased or leased for use in this state in certain specific entertainment production activities. Equipment must meet the definition of "Section 38 Property" as defined in s. 48(a)(1)(A) and (B)(I) of the Internal Revenue Code. (The estimated fiscal impact for FY 1999-00 is $3.22 million.)
- Section 212.08(12), F.S., provides a partial exemption on the sale of master tapes, records, films, or video tapes. (Department of Revenue reported that the fiscal impact of this exemption may only be $3.5 million annually.)

Governmental entertainment industry liaisons and industry representatives alike have questioned the value of the sales tax refund provided in s. 212.08(5)(f), F.S., as an effective incentive for a number of years. Typical entertainment industry financing and accounting treats each production activity or project as an independent entity with a finite lifespan. The retroactive and time consumptive nature of the refund does not allow the production decision makers to include any financial value this "incentive" may have into the projected expense budget of a project. By the time the refund is computed and returned, the books of the project for which it was intended will, in most cases, have been closed out. Ultimately, the parent company may realize some financial value from the incentive, but decisions on where to activate the project have less of a chance of being driven by the offer of the refund.

C. EFFECT OF PROPOSED CHANGES:

The bill creates s. 288.1258, F.S., which provides a single application process for qualified entertainment industry production companies for a certificate of exemption applying to taxes relating to the entertainment industry that are covered under ss. 212.031, 212.06, and 212.08, F.S. The application and exemption process is developed to make it not cumbersome for the entertainment industry, create as little confusion as possible, provide necessary safeguards, and provide administrative soundness. The Office of the Film Commissioner is directed to work with the Department of Revenue and local film commissions to develop an application form for qualifying production companies. The Office is directed to forward an approved application to the Department of Revenue which must issue a certificate of exemption within five working days of receiving the application. Two exemption certificate categories are provided: a one-year certificate and a 90-day certificate. Finally, the application process provides a mechanism for obtaining information on the level of production activated in the state.

The bill requires the Office of the Film Commissioner to keep annual records from information provided to reflect a percentage comparison of the annual amount of funds exempted to the estimated amount of funds expended in relation to entertainment industry products. Additionally, data is to be maintained showing the annual growth in Florida-based entertainment industry companies and entertainment industry employment and wages. The report is to be submitted to the Legislature by December 1 each year.

The bill amends provisions in ss. 212.031, 212.06, and 212.08, F.S., relating to the entertainment industry, to tie them back to the process established in s. 288.1258, F.S. The proposal also changes the current sales and use tax refund in s. 212.08(5)(f), F.S., relating to certain motion picture or video equipment and sound recording equipment, to a point of sale exemption. This change addresses concerns expressed to the Committee about the existing retroactive and time consumptive nature of the refund.

Additionally, s. 213.053(7), F.S., is amended to provide information sharing between the Department of Revenue and the Office of the Film Commissioner.

Sections 1 and 5 of the bill take effect on July 1, 2000. All provisions relating to changes in the tax code take effect on January 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 288.1258, F.S., to establish the **application process for qualified entertainment industry production companies**. This section provides that the Office of the Film Commissioner will administer the application process for entertainment industry production companies working in Florida that are seeking sales tax certificates of exemption from the Department of Revenue. This section provides that any entertainment industry production company may apply for such a certificate. This section also provides for renewal, extension and revocation of the certificates.

The Office of the Film Commissioner is directed to work with the Department of Revenue and local entertainment promotion entities to develop an application form for qualifying production companies. Forms may be distributed by both the Office of the Film

Commissioner and local entertainment promotion entities. Information gathered on the application forms will provide the Office and the Department of Revenue with statistical data on the physical and fiscal level of production in the state and will be treated as taxpayer information under s. 213.053, F.S. The Office is directed to forward an approved application to the Department of Revenue which must issue a certificate of exemption to the qualified production company within five work days of receiving the application.

This section also provides for two categories of certificates of exemption. The one-year certificate category is created for companies that have been residing in Florida for at least 12 months. A qualified production company that has received a one-year certificate may annually request the Office of the Film Commissioner to renew its application for a period of up to five years without having to submit an entirely new application. Such companies may also provide summary historical data for production related information on budgets, employment, and purchase of tax exempt items instead of having to project figures for such information. The 90-day certificate of exemption category may be applied for by any entertainment industry production company. The Office of the Film Commissioner is authorized to process extensions for this category.

This section takes effect July 1, 2000.

Section 2. Amends s. 212.031(l)(a)9., F.S., providing that exemption under this subparagraph will inure to the taxpayer upon presentation of a certificate of exemption issued pursuant to s. 288.1258, F.S.

Section 3. Amends s. 212.06(1)(b), F.S., providing that exemption under this paragraph will inure to the taxpayer upon presentation of a certificate of exemption issued pursuant to s. 288.1258, F.S.

Section 4. Amends s. 212.08(5)(f), F.S., relating to the current tax exemption for equipment used as an integral part of entertainment production, by changing the exemption from a refund to a point of sale exemption and by providing that the exemption will inure to the taxpayer upon presentation of a certificate of exemption issued under the provisions of s. 288.1258, F.S. The section also amends s. 212.08(12), F.S., to provide that the current sales tax exemption for the sale or use of master visual or audio tapes will inure to qualified production companies which have received a certificate of exemption from the Department of Revenue pursuant to the provisions of s. 288.1258, F.S.

Section 5. Adds paragraph (s) to s. 213.053, F.S., to provide for the sharing of qualified production company taxpayer information in the aggregate between the Department of Revenue and the Office of the Film Commissioner.

This section is effective on July 1, 2000.

Section 6. Provides that unless otherwise provided in the bill, that the bill takes effect January 1, 2001.

III. <u>FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT</u>:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:*

	2000-01	2001-02
General Revenue - Sales Tax	($1.3 m)	($3.3 m)
Solid Waste Management TF	(Insignificant)	(Insignificant)
TOTAL REVENUES	($1.3 m)	($3.3 m)

2. Expenditures:

There possibly will be both non-recurring and recurring expenditures incurred by the Office of the Film Commissioner because of the added responsibility. Staffing and OCO needs are being considered at this time.

*These figures are the ones used for projecting the 1999-00 and 2000-01 costs and assume no change for 2000-01 and 2001-02. When new Revenue Estimating Conference figures become available, they will be substituted.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:*

	2000-01	2001-02
Local Govt. ½ Cent	($100,000)	($300,000)
Local Option Sales Tax	($100,000)	($200,000)
TOTAL LOCAL IMPACT	($200,000)	($500,000)

*These figures are the ones used for projecting the 1999-00 and 2000-01 costs and assume no change for 2000-01 and 2001-02. When new Revenue Estimating Conference figures become available, they will be substituted.

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Entertainment industry production companies opting to take advantage of the equipment sales tax exemption revised from a refund to a point of sale exemption by this bill would be able to immediately dedicate the dollars saved to their production budgets.

Any cost savings experienced by entertainment industry production companies engaged in production in Florida could encourage the principals of those companies to bring future projects to the state which would have a positive fiscal and employment impact on Florida.

D. FISCAL COMMENTS:

The estimated combined total state and local impact for the changes in the tax provisions for FY 2000-01 is ($1.5 m) and the estimated total impact for FY 2000-02 is ($3.8). These estimates are based on the February 1999 estimates for FY 1999-00 and FY 2000-01 and assume no changes. When new Revenue Estimating Conference figures are available, they will be substituted. Additional nonrecurring and recurring costs will be incurred by the need for possible additional staff for the Office of the Film Commissioner.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require the counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON TOURISM:

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