HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1149 w/CS Economic Development/Entertainment Industry
SPONSOR(S): D. Davis
TIED BILLS: HB 1167 **IDEN./SIM. BILLS:** SB 1756

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Tourism (Sub)	5 Y, 0 N	McDonald	Whitfield
2) Commerce	17 Y, 0 N w/CS	McDonald	Whitfield
3) Transportation & Econ. Dev. Apps. (Sub)	14 Y, 0 N	Birnholz	Hawkins
4) Appropriations			
5)			

SUMMARY ANALYSIS

HB 1149 creates, subject to specific appropriation, an entertainment industry financial incentive program within the Office of Film and Entertainment (OFE) in the Executive Office of the Governor. The program's purpose is to encourage the use of this state as a site for filming, and for providing production services for, motion pictures, made-for-television movies, commercials, music videos, industrial and education films, and television programs by the entertainment industry.

There are two types of reimbursement incentives provided in the bill. The first is a reimbursement of up to 15% for qualifying expenditures in Florida for a qualified production that demonstrates a minimum of $850,000 in total qualified expenditures. The second type of reimbursement provides a payment not to exceed 5% of annual gross revenues on qualified expenditures before taxes or $100,000, whichever is less, for a digital-media-effects company in the state that provides digital material to a qualified production certified by OFE. Another type of incentive offered by the legislation pertains to convincing a certified qualified relocation project, as defined in the bill, to move its operation to Florida. If certified by OFE, such a project is eligible for a one-time incentive payment of 5% of its annual gross revenues before taxes for the first 12 months of conducting business in its Florida domicile or $200,000, whichever is less.

OFE is responsible for all aspects of the program, including such things as receiving documentation for claimed expenditures, reviewing applications, making recommendations to the Office of Tourism, Trade, and Economic Development (OTTED) in the Executive Office of the Governor regarding an applicant meeting the criteria and the amount of reimbursement to be provided, and providing an annual report to the Governor and the Legislature. OTTED is required to adopt policies and procedures to implement the incentive program.

The bill provides for recovery of funds plus penalties and costs incurred by the state for investigating the claim if payment is made based upon a fraudulent claim. Penalties provided are in addition to any criminal penalties.

Although the bill appropriates $20 million from the General Revenue Fund to implement the program in FY 2003-04, on April 15, 2003, the Transportation & Economic Development Subcommittee on Appropriations adopted an amendment which deletes the appropriation and reiterates that funding for the program is subject to legislative appropriation.

See "Amendments/Committee Substitute Changes" for explanation of the differences between the original bill and the bill with committee substitute passed by the Committee on Commerce.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[x]	N/A[]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

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

The bill creates a new program within the Office of Tourism, Trade and Economic Development in the Office of the Governor. The program is intended to encourage economic growth in the entertainment industry in Florida.

B. EFFECT OF PROPOSED CHANGES:

Current Situation & Background

Office of Film and Entertainment

Created in 1999, the Office of Film and Entertainment (OFE) in the Executive Office of the Governor is responsible for developing, marketing, promoting, and providing services to the state's entertainment industry. The OFE activities are guided by a 5-year strategic plan developed in part by its industry advisory council. OFE is also responsible for the single application process for the upfront tax exemption certification for the sales and use tax exemption and for qualifying companies for eligibility for receipt of such certification

As of 2000, the motion picture industry in Florida was comprised of over 3,500 establishments, employed over 39,000 full time employees, and generated approximately $3.9 billion in total revenues from all business units (in-state and out-of-state, including location filming).[1]

OFE has a budget of approximately $799,000 and a staff of 4 FTE, including a Los Angeles Office, ($290,034 was appropriated for staff in FY 02-03). The funding and staffing of such offices in Florida's competitor states is higher. For example, North Carolina has a staff of 6 and a budget of over $850,000; Texas has 6 staff with a $1 million budget; California has a staff of 10 with a $1.3 million budget; Illinois has 9 staff and over $850,000 in funds; and Maryland has 6 staff with over $1 million in its budget.

Some of the concerns brought to the Tourism Subcommittee by the Film and Entertainment Commissioner at its February 2003 meeting were as follows:

- Florida continues to lose its market share in the US film industry.
- Sales tax exemption helps, but it is not enough.
- Incentives provided by other US states with infrastructure similar to Florida, and places such as Canada and Australia, have caused Florida's production numbers to plummet.
- Florida has been out-competed by Canada, Africa, Australia, California, Louisiana, New Mexico, and New York.

[1] Information is from "An Economic Assessment of the Florida Film and Entertainment Industry" a report prepared by MGT of America for the Office of Film and Entertainment. An updated report will be released within the next two months.

- Florida's reputation as a "big movie" hub is enjoying a renaissance, particularly in South Florida; however, the state's production slate is not nearly as active as the early 1990's due to runaway production.
- Level of staffing and resources don't match up with the level of statutory deliverables.

Use of Incentives for Entertainment Industry: Nationally & In Florida

The US Dept. of Commerce's 2001 study on the US motion picture industry indicated that the industry is especially significant for several state economies: California, New York, Florida, Texas, Illinois and North Carolina. These six states account for about 88% of national revenues generated directly by the motion picture industry in the US. They also account for almost four-fifths of total employment and 65% of the total number of establishments classified in the industry. According to the 2001 Annual Report on the Motion Picture Tax Exemption prepared by the Florida Office of Film and Entertainment, countries, states, and local communities have developed policies that include governmental incentives as key selling tools to recruit and retain production business. Decisions on where to begin a project have become increasingly driven by the cost parameters, rather than creative ones.

The incentives offered by other countries plus lower exchange rates have been part of the reason for what is referred to as "runaway" productions and the loss of industry activity in the United States, in general, and Florida, in particular. An example of incentives offered by other countries is that of Canada which offers federal and provincial tax credits of 22% to 46% of labor expense (yielding up to a 10% reduction in overall production expense), and Australia offers more than a 10% labor tax credit in certain cases.

Over ten US states have implemented rebate-based or reimbursement-based incentives to attract motion picture industry activity and jobs.

The Florida Office of Film and Entertainment stressed the need to retain Florida's current tax exemption for the entertainment industry as an incentive both to recruit such businesses to bring their work to Florida and to retain such businesses in the state. More than 22 states now offer similar sales and use tax exemptions with 13 of those states, including Florida, offering a point of sale exemption. The return on investment (ROI) analysis of the Florida point of sale exemption in 2002 showed that for $3,968,877 in tax exemption, the economic impact to the state was approximately $266.7 million for a return on investment of 67:1.

Florida Exemptions & Tax Advantages

Currently, Florida provides a single application process for qualified entertainment industry production companies to obtain a certificate of exemption to take advantage of exemptions under ss. 212.031, 212.06, and 212.08, F.S.

1. **Lease or rental of real property:** Section 212.031(1)(a)9., F.S., provides that property used as an integral part of performance of any activity or service performed directly in connection with the production of a qualified motion picture is tax exempt. Examples of things included in exempt services are photography, sound & recording, casting, location managing and scouting, shooting, creation of special and optical effects, animation, and adaptation.
2. **Fabrication labor exemption for motion picture producers:** Section 212.06(1)(b), F.S., provides that fabrication labor is not taxable when a motion picture producer uses his or her own equipment and personnel to produce a qualified motion picture defined in Florida law.
3. **Master tapes, records, films, or video tapes (partial exemption):** Section 212.08(12), F.S., provides that gross receipts from the sale or lease of, and the storage, use, or other consumption in Florida of, master tapes or master records embodying sound, or master films

or master video tapes are exempt from taxation. Amounts paid to studios for the tangible elements of such masters are taxable.

4. **Equipment exemptions:** POINT OF SALE EXEMPTION—Section 212.08(5)(f), F.S., provides an exemption on the purchase or lease of certain equipment used exclusively as an integral part of production activities in Florida. This pertains to motion picture equipment, video equipment, and sound recording equipment. In order to be exempt at the point of sale, the production company must apply for a certificate of exemption to be presented to a registered Florida sales and use tax dealer when making purchases and rentals of qualified production equipment.

Section 288.1258, F.S., provides the single application process for qualified entertainment industry production companies to obtain a certificate of exemption from sales and use taxes on the lease or rental of real property used as an integral part of the performance of qualified production services; motion picture or video equipment and sound recording equipment that are purchased or leased for use in this state in certain specific entertainment production activities; and, part of the sales price of master tapes, records, films, or video tapes. OFE is responsible for determining if a company is a "qualified production company" and is, therefore, eligible for exemption certification. The Department of Revenue provides the certificate of exemption. OFE and the Department of Revenue work together on the implementation of this application and certification process.

In addition to any other tax exemptions that are specific to the entertainment industry, Florida offers certain tax advantages to persons coming to the state for a specific project or for companies considering relocation. Some of those tax advantages are as follows:

- No personal income tax (41 states do have a personal income tax),
- No corporate income tax on limited partnerships,
- No corporate income tax on subchapter S-corporations,
- No assessment of property taxes at state level,
- No property tax on business inventories,
- No property tax on goods-in-transit for up to 180 days,
- No sales and use tax on goods manufactured or produced in Florida for export outside the state,
- No sales tax on purchases of raw materials incorporated in a final product for resale, including non-reusable containers or packaging,
- No sales/use tax on boiler fuels, and
- No sales/use tax on electricity used in the manufacturing process.

Florida also offers incentives through Enterprise Florida, Inc., for the relocation of corporate headquarters that afford a certain number of new jobs to Floridians.

Effects of Proposed Changes

HB 1149 creates, subject to specific appropriation, an entertainment industry financial incentive program within the Office of Film and Entertainment (OFE) in the Executive Office of the Governor. The program's purpose is to encourage the use of this state as a site for filming, and for providing production services for, motion pictures, made-for-television movies, commercials, music videos, industrial and education films, and television programs by the entertainment industry.

There are two types of reimbursement incentives provided in the bill. The first is a reimbursement of up to 15% for qualifying expenditures in Florida for a qualified production that demonstrates a minimum of $850,000 in total qualified expenditures. A $2 million cap is placed on the reimbursement for a motion picture. The maximum reimbursement for a made-for-television movie or television series pilot is $450,000; for a single television pilot or episode, it is $150,000; for a music video or commercial, it is

$25,000; and for an educational or industrial film it is $15,000. Eligible expenditures used in determining reimbursement include the following:

- Salaries and employee benefits paid for services rendered with the state;
- Rental of real and personal property used in production;
- Payments for preproduction, production, postproduction, and digital-media-effects services rendered within the state; and,
- Costs of set construction.

Salaries of two highest paid actors cannot be reimbursed; however, salaries of other actors are reimbursable.

The second type of reimbursement provides a payment not to exceed 5% of annual gross revenues on qualified expenditures before taxes or $100,000, whichever is less, for a digital-media-effects company in the state that provides digital material to a qualified production certified by OFE.

Another type of incentive offered by the legislation pertains to convincing a certified qualified relocation project, as defined in the bill, to move its operation to Florida. If certified by OFE, such a project is eligible for a one-time incentive payment of 5% of its annual gross revenues before taxes for the first 12 months of conducting business in its Florida domicile or $200,000, whichever is less.

OFE is responsible for receiving documentation for claimed expenditures, reviewing applications, certifying eligibility of applicants and making recommendations to the Office of Tourism, Trade, and Economic Development regarding an applicant meeting the criteria and the amount of reimbursement to be provided.

The bill provides for recovery of funds plus penalties and costs incurred by the state for investigating the claim if payment is made based upon a fraudulent claim. Penalties provided are to be in addition to any criminal penalties.

The bill provides for OFE to provide the Governor and the Legislature with an annual report regarding this new incentive program.

Finally, the bill provides for a $20 million appropriation from the General Revenue Fund to implement the program in FY 2003-04.

C. SECTION DIRECTORY:

Section 1 amends s. 288.125, F.S., relating to the definition of “entertainment industry”, expanding applicability of the definition to other sections of law.

Section 2 creates s. 288.1254, F.S., which, subject to specific appropriation, creates the entertainment industry financial incentive program within OFE; provides definitions; provides eligibility criteria for reimbursement; provides grant application and selection procedures; requires adoption of policies and procedures by OTTED; provides for liability and cause of action for fraudulent claims; and, requires an annual return on investment report.

Section 3 appropriates $20 million from General Revenue Fund for implementation; provides for staff and administrative costs funding.

Section 4 provides a July 1, 2003, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The new incentives could bring additional television, motion picture, and digital effects work to the state. Such an increase could assist in the employment of Florida residents in the entertainment and related industries, thereby increasing spending by residents and increased sales tax revenue. One of the incentives in the bill involves encouraging the relocation of companies to the state which could bring additional employment and tax revenues to the state.

2. Expenditures:

The bill states that the creation of the program is subject to specific appropriation. The bill appropriates $20 million from the General Revenue Fund to OFE to implement the act in FY 2003-2004. The bill provides that $50,000 of the appropriation can be used by OFE for staffing and administrative costs to implement the bill. Although the bill appropriates $20 million from the General Revenue Fund to implement the program in FY 2003-04, on April 15, 2003, the Transportation & Economic Development Subcommittee on Appropriations adopted an amendment which deletes the appropriation and reiterates that funding for the program is subject to legislative appropriation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The new incentives could bring additional television, motion picture, and digital effects work to the state. Such an increase could assist in the employment of Florida residents in the entertainment and related industries, thereby increasing spending by residents and increased sales tax revenue. One of the incentives in the bill involves encouraging the relocation of companies to the state which could bring additional employment and tax revenues to local government.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Through the appropriation, the bill could bring additional television, motion picture, and digital effects work to the state. Such an increase could assist in the employment of Florida residents in the entertainment and related industries, thereby increasing spending by residents and increased sales tax revenue. One of the incentives in the bill involves encouraging the relocation of companies, corporations, partnerships, or other private entities which has as one of its primary purposes digital-media-effects, or motion picture and television production, or postproduction which could bring additional employment and tax revenues to the state.

D. FISCAL COMMENTS:

Although the program's creation is itself "subject to specific appropriation" and the reimbursements/payments related to qualified productions are "subject to appropriation" and are to be "made on a first-come, first-served basis until the appropriation for that fiscal year is exhausted," the bill does not make the same provisions for digital-media-effects companies or qualified relocation projects.

Although the bill appropriates $20 million from the General Revenue Fund to implement the program in FY 2003-04, on April 15, 2003, the Transportation & Economic Development Subcommittee on Appropriations adopted an amendment which deletes the appropriation and reiterates that funding for the program is subject to legislative appropriation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The legislation does not require expenditure of funds by local governments, does not reduce the authority to raise revenue, nor reduce the percentage of state tax shared with local governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires OTTED to adopt policies and procedures to implement the newly created s. 288.1254, F.S., including requirements relating to application and approval process, records to be submitted in substantiation of an application, and determination of and qualification for reimbursement.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 15, 2003, the Transportation & Economic Development, Subcommittee on Appropriations adopted one amendment by Rep. D. Davis:

- Amendment 1 – This amendment deletes a $20 million General Revenue appropriation for the entertainment industry financial incentive program and reiterates that funding for the program is subject to legislative appropriation.

On March 24, 2003, the Committee on Commerce passed the strike all amendment recommended by the Subcommittee on Tourism and then passed HB 1149 with a committee substitute. The differences between the original bill and the bill as passed by the Committee are described in the explanation of the strike all amendment approved by the Subcommittee on Tourism.

On March 17, 2003, the Subcommittee on Tourism approved HB 1149 with a strike all amendment. The amendment conforms the bill to its Senate companion with some modifications. The differences between the Senate companion and the strike all amendment are as follows:

1. Recording studios remain in the definition of "entertainment industry" in section 1 of the bill.
2. The program is created within the Office of Film and Entertainment (OFE), not OTTED, and the funding for staffing and administration in the appropriations is directed to OFE instead of OTTED.
3. OFE may request assistance from a local film commission in determining qualifications for reimbursement and compliance instead of delegating the responsibility for such determinations to a local film commission.
4. Section 4 of the bill relating to an annual report on the return on investment of the incentive program is moved to section 2 as subsection 7 of s. 288.1254, F.S. This change is necessary because this is an ongoing requirement of the newly created incentive program and needs to appear in law in that section.

As written in the legislation, there is no designation for placement and the wording does not tie the report specifically to the new section of law.