HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1325 Entertainment Industry Economic Development
SPONSOR(S): Policy & Budget Council and Rep. D. Davis
TIED BILLS: **IDEN./SIM. BILLS:** SB 0096

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Economic Development	8 Y, 0 N	Croom	Croom
2) Economic Expansion & Infrastructure Council	14 Y, 0 N, As CS	Croom	Tinker
3) Policy & Budget Council	31 Y, 0 N, As CS	Jacobik	Hansen
4)			
5)			

SUMMARY ANALYSIS

The bill substantially amends the Entertainment Industry Financial Incentive Program from a cash reimbursement to a transferable tax credit that can be applied against corporate income tax and sales and use tax liability effective July 1, 2007 through June 30, 2010. The bill provides $75 million in tax credits, $25 million per year, over a three-year period. A tax credit can be sold at no less than 75 percent of its face value and may be carried forward for a maximum of five years.

There are three separate queues created by HB 1325: a General Production Queue that includes TV, film, commercials, and music videos, an Independent Florida Filmmaker Queue, and a Digital Media Project Queue. Productions are qualified by the Florida Office of Film and Entertainment and certified by the Office of Tourism, Trade, and Economic Development (OTTED) for the tax credit award.

The General Production Queue provides a 15 percent credit on qualified TV and film productions. To qualify, these productions must have a minimum of $625,000 in qualified expenditures and may receive a tax credit of up to $8 million per production. Commercials and music video productions within this queue are required to have a minimum of $100,000 in qualified expenditures per production and exceed a total of $500,000 for all productions to qualify for a 15 percent credit. Productions certified in the General Production Queue may also be eligible for an additional 5 percent credit if 75 percent of filming is conducted between June 1 and November 30.

The Independent Florida Filmmaker Queue provides a 15 percent credit to qualified films or documentaries. To qualify a production must be no less than 70 minutes in length, all postproduction must be performed in Florida, and the production must have a minimum of $100,000 in qualified expenditures but no more than $625,000.

The Digital Media Project Queue provides a 10 percent credit on qualified expenditures, or no more than $1 million, for qualified productions. To qualify under this queue a production must have a minimum of $300,000 in qualified expenditures.

The bill requires the recipient of a transferred tax credit to pay five percent of the total amount paid for a tax credit to OTTED to fund newly created film education programs. These funds are to be deposited into the Grants and Donations Trust Fund. OTTED will distribute one-half of these funds to the Florida Office of Film and Entertainment for the Florida Graduate Film Fund. The other one-half of funds will be awarded as grants by the Office of Film and Entertainment to assist film students attending Florida institutions with student-made production costs. The bill provides an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The bill creates a tax credit for productions of filmed entertainment and digital media projects that can be applied toward corporate income and sales and use tax liability.

B. EFFECT OF PROPOSED CHANGES:

Incentive Model

Present Situation

In 2003, the Florida Legislature created the Entertainment Industry Financial Incentive Program in s. 288.1254, F.S. The program offers a 15 percent financial reimbursement on qualified expenditures, up to $2 million, to encourage productions to film in Florida and use Florida-based cast and crew.

The program first received funding in 2004 when the Legislature appropriated $2.4 million. The program has continued to receive incremental increases in appropriations since its inception. In fiscal year 2004-05 and 2005-06 the program received $10 million, and in fiscal year 2006-07 the program received a $20 million appropriation.

Productions are qualified on a first-come, first served basis. The Office of Film and Entertainment reports annually on the use of the incentive program and has found that the incentive funds are quickly obligated to pending productions. Productions incur qualified expenditures by spending money in the state on goods and services from Florida vendors. Also, salaries and wages for Florida residents can be included in this calculation, excluding the two highest-paid residents in the state. Productions that are deemed by the Office of Film and Entertainment to contain obscene content as defined by the United States Supreme Court are not eligible for this program.

The Office of Film and Entertainment reports a total of $166.7 million has been spent in Florida by certified productions. The state's direct return on investment, as reported by the Office of Film and Entertainment was 7:1 in fiscal year 2005-06 and is expected to be at least 6.6:1 in the current fiscal year. The incentive program is attracting both out-of-state and in-state corporations. Of the 48 productions that have qualified and used the incentive program since 2004, approximately 26 of these productions do not have a corporate base in Florida. In addition, these out-of-state productions account for approximately two-thirds, or $110.1 million, of total expenditures.

Proposed Legislation

HB 1325 transforms the entertainment industry incentive program from a cash reimbursement to a transferable tax credit that can be applied against corporate income tax and sales and use tax liability effective July 1, 2007 through June 30, 2010. The credits may apply towards corporate income tax or sales and use tax liability and may be carried forward for up to five years.

The bill provides $75 million in tax credits over three years.

- In fiscal year 2007-08, $25 million of the total may be awarded.
- In fiscal year 2008-09, $25 million of the total may be awarded.
- During the last year, all remaining credits may be awarded.
- In addition, unawarded credits can be rolled over and awarded through June 30, 2010.

A production may sell the tax credit at no less than 75 percent of its face value. Credits for sales tax may be transferred once to only one transferee and corporate tax credits may be transferred once to no more than four transferees. Credits may only be deducted on sales and use tax liability through an electronic data interchange.

Eligibility for a tax credit remains on a first-come, first-served basis. A qualified or certified production must continue on a reasonable schedule to avoid loss of eligibility for the tax credit. Under the proposed legislation, qualified expenditures are incurred by productions spending money in the state, including goods and services, and salaries and wages up to $400,000 per resident.

If a credit is awarded based upon falsified information, repayment is required and a penalty, up to double the credit amount and reimbursement of reasonable costs, may be required. The bill gives the Office of Tourism, Trade and Economic Development the ability to revoke any credit if an applicant submitted false statements or documents related to the application.

The bill amends current definitions to make clarifications and to reflect the change to a tax credit program.

Production Incentives

Present Situation

To qualify for the incentive, a production must apply to the Office of Film and Entertainment on a first-come, first-served basis and spend a minimum of $850,000 in the state. The statute offers two queues in which a production may qualify. Sixty percent of the incentive is dedicated to theatrical or direct-to-video motion pictures, made-for-TV movies, commercials, music videos, industrial and education films, promotional videos or films, TV specials, and digital-media-effects productions by the entertainment industry to be sold or displayed in electronic medium. The remaining 40 percent is dedicated to TV pilots or TV series to be sold or displayed in an electronic medium. Funding for the two queues remains separate until February 1 each fiscal year when the funding is combined and may be used for either qualified production.

The current statute also includes less used incentives. A qualified relocation project that is certified by the Office of Film and Entertainment may be eligible for a one-time incentive payment of 5 percent of its annual gross revenues for the first twelve months of conducting business in Florida or for $200,000, whichever is less. In addition, a digital-media-effects company in the state may be eligible for a payment of 5 percent of its annual gross revenues or $100,000, whichever is less. Since fiscal year 2004-05, one digital media company has received the incentive; presently three digital media projects are certified for the current fiscal year by the Office of Film and Entertainment.

Proposed Legislation

The proposed legislation requires a qualified production to:

- Have combined cast and crew of at least 50 percent Florida residents or students; and
- To promote Florida as a tourist or film and entertainment production destination.

HB 1325 requires the Office of Film and Entertainment to establish a process for qualifying an applicant and approving tax credit eligibility and amounts. The Office of Film and Entertainment may seek assistance from a local film office in determining whether an applicant meets the requirements for the incentive program and whether the applicant is in compliance with statute.

HB 1325 creates three queues: a General Production Queue that includes TV, film, commercials, and music videos, an Independent Florida Filmmaker Queue, and a Digital Media Project Queue. Productions are qualified on a first-come, first-served basis within each queue.

General Production Queue

Eighty-five percent of the film incentive credits are designated for productions that qualify under the General Production Queue. Film and TV productions must have a minimum of $625,000 in qualified expenditures to qualify for a 15 percent reimbursement in tax credits. To attract larger film productions, the cap is raised from $2 million to $8 million. In addition, production expenditures may span two fiscal years. Within the same queue, the bill includes separate standards for commercials and music videos. Under the proposed language, these productions would need to spend a minimum of $100,000 per production and exceed a total of $500,000 for all productions to receive a 15 percent tax credit on qualified expenditures up to a maximum of $500,000. Qualified expenditures for commercials and music videos must be incurred in one fiscal year. In addition, all productions in the General Production Queue are eligible for an off-season incentive—an additional 5 percent reimbursement if 75 percent of filming occurs between June 1 and November 30.

To qualify under the General Production Queue, a qualified production shall make a good faith effort to utilize Florida's existing infrastructure of equipment, including camera gear, grip and lighting equipment, vehicle providers, and post-production services when available in-state.

Independent Filmmaker Queue
Five percent of the film incentive tax credits are designated for productions that qualify under the Independent Florida Filmmaker Queue. To qualify, a film or documentary must be no less than 70 minutes in length, must have a minimum of $100,000 in qualified expenditures and no more than $625,000, and all post-production must be performed in Florida. In addition, productions qualified under this queue must employ at least six of eight key positions with Florida workers. A production qualified under this queue is eligible for a 15 percent reimbursement.

Digital Media Queue
Ten percent of film incentive credits are designated for productions that qualify under the Digital Media Project Queue. To qualify, a digital media project must have a minimum of $300,000 in qualified expenditures during one fiscal year. A digital media production under this queue is eligible for a 10 percent reimbursement, but no more than $1 million per project.

Film Education Program
HB 1325 creates s. 288.1256, F.S., a film education program. Under the program, the Office of Film and Entertainment may award grants or loan guarantees to productions that are written, produced, and directed by Florida residents that are graduates of an approved film program in Florida and that are deemed to be family-friendly based on a review of the script and a personal interview with the director.

The bill defines "family friendly productions" as those that have cross-generational appeal; would be considered suitable for viewing by children age 5 and older; are appropriate in theme, content, and language for a broad family audience; embody a responsible resolution of issues; and do not exhibit any act of smoking, sex, nudity, or vulgar or profane language.

To fund the film education program, the bill requires a recipient of a transferred tax credit to pay 5 percent of the total amount paid for the tax credit for the purpose of film education. These funds are to be deposited in the Grants and Donations Trust Fund. One-half of these funds shall be made available to the Office of Film and Entertainment for the Florida Graduate Film Investment Fund created in s. 288.1256, F.S. The remaining one-half is to be transferred and provided to film and digital media programs at Florida institutions of higher education approved by the Office of Film and Entertainment to be applied as a grant toward production costs for student-made productions.

Advisory Board
<u>Present Situation</u>
The Florida Film and Entertainment Advisory Council (FFEAC) was created within the Office of Tourism, Trade, and Economic Development (OTTED) to serve as an advisory body to OTTED and the Office of Film and Entertainment under s. 288.1252, F.S. The council consists of 17 members appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives.

After conducting a series of public meetings the FFEAC finalized and approved a list of recommendations to the current film and entertainment incentive program on December 15, 2006.[1] Many of these recommendations are incorporated into this legislation.

Proposed Legislation
HB 1325 gives FFEAC the additional power of advising the Office of Film and Entertainment when a film produced under the film education program in s. 288.1256, F.S., meets the required criteria.

Annual Reporting, Rulemaking, and Repeal
Annual reporting requirements under HB 1325 are identical to those provided in current statute. The Office of Film and Entertainment is required to annually report the return on investment to the state to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

HB 1325 provides the Office of Tourism, Trade, and Economic Development and the Department of Revenue the ability to develop and adopt rules to implement the entertainment industry financial incentive program.

The proposed language repeals the entertainment industry financial incentive program on July 1, 2010; except that the tax credit may be carried forward for five years. The bill also repeals s. 288.1255, F.S., which states the incentive program is subject to annual appropriation.

Growing the Entertainment Industry
Many states offer larger incentives than Florida to the film and entertainment industry. New Mexico, Louisiana, North Carolina, Connecticut, Hawaii, Illinois, Georgia, Rhode Island, Massachusetts, and Wisconsin all offer unlimited tax credits to the film industry. In addition, many of these states offer a greater reimbursement than Florida[2]—up to 30 percent on qualified expenditures with no cap per production.

In 2006, the Tourism Committee in the Florida House of Representatives released a study on Florida's entertainment industry infrastructure that concluded other states are aggressively pursuing various incentives and Florida may lose its seasoned workforce to other states. The study recommended:

- Determining whether a tax credit model would be more successful in bringing business to the state on a long-term basis;
- Addressing the minimum threshold required to qualify for the incentive;
- Addressing the perception of uncertainty of funding each year;
- Developing a strategic plan for growth of the industry; and
- Pursuing cooperation with post secondary institutions to further build the industry.[3]

C. SECTION DIRECTORY:

Section 1. – Substantially amends s. 288.1254, F.S., to change the film and entertainment industry incentive from a cash reimbursement program to a tax credit reimbursement program. This section also revises the production queues and sets new requirements for productions to qualify under those queues.

Section 2. – Creates s. 288.1256, F.S., authorizing the Office of Film and Entertainment to administer a Florida Graduate Film Investment Fund to award grants and loan guarantees to films produced by Florida film graduates that are family-friendly.

[1] These recommendations are available online at http://www.filminflorida.com/about/feac_minutes.asp.
[2] Florida's film and entertainment incentive program offers a 15 percent reimbursement with a $2 million cap per production.
[3] A full report on *Florida's Entertainment Industry Infrastructure: Are we Growing the Indigenous Industry as well as Supporting Production* is available online at http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2235&Session=2006&DocumentType=Reports&FileName=Entertainment%20Industry%20Infrastructureonline.pdf.

Section 3. – Amends s. 288.1252, F.S., providing the Florida Film and Entertainment Advisory Council the power necessary to determine whether a film meets the criteria for the Florida Graduate Film Investment Fund.

Section 4. – Amends s. 220.02, F.S., including tax credits created in the Entertainment Industry Economic Development Act in a list of credits and deductions against corporate income tax.

Section 5. – Amends s. 213.053, F.S., authorizes the Department of Revenue to provide information on tax credits to the Office of Tourism, Trade, and Economic Development and the Office of Film and Entertainment.

Section 6. – Amends s. 212.08, F.S., providing a tax credit on sales and use tax for the entertainment industry financial incentive; requiring the tax credit be deducted against sales and use tax remitted by electronic funds transfer.

Section 7. – Repeals s. 288.1255 , F.S., requiring an annual appropriation for the entertainment industry financial incentive.

Section 8. – Providing an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Staff estimates the bill will have a negative fiscal impact annually of $23.6 million to state government in fiscal year 2007-08, fiscal year 2008-09, and fiscal year 2009-10.

2. Expenditures:

   The Department of Revenue indicates a need for 1 FTE and a recurring appropriation of $46,023 for salaries and expense related to this position. The Department also indicates a one-time need of $54,726 to develop, program, and test a registration and tracking system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Staff estimates that the bill will have the following negative fiscal impact on local governments:

	2007-08	**2008-09**	**2009-10**
Revenue Sharing	0.4	0.4	0.4
Local Gov't Half Cent	1.1	1.1	1.1
Local Option	1.0	1.0	1.0
Total Local Impact	2.5	2.5	2.5

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The credit is intended to bring more film and entertainment productions to the State of Florida. The bill is specifically targeted to bring large feature films and television series to the state. These productions have the ability to employ a workforce for a longer period and provide greater stability to the state's entertainment industry infrastructure. The bill will better meet the industry's needs by allowing them more time to schedule and produce a production. The bill also provides greater incentive for commercial and video production.

The Office of Film and Entertainment reported that approximately 53 percent of qualified expenditures for the incentive program have been spent on Florida resident wages. The remaining 47 percent has been spent with Florida vendors or businesses. In fiscal year 2005-06 alone, approximately 6,364 full-time Florida jobs were created due to productions qualifying for the incentive program, according to the Florida Department of Revenue Production Company Exemption Annual Report.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. The provisions of this bill appear to reduce the authority that cities and counties have to raise revenue through local option sales taxes. The bill does not appear to qualify for an exemption. Therefore, the constitutional mandate provision may be applicable and this bill may require a two-thirds vote of the membership of each chamber for passage.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department of Revenue and the Office of Tourism, Trade, and Economic Development the ability to adopt rules and establish guidelines for the entertainment industry financial incentive program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

Due to its multi-year commitment, HB 1325 bill is crucial to the growth of the film and entertainment industry and thus the economic development of the State of Florida. It allows the producers to plan in advance, film in Florida, and qualify for the incentive; unlike the previous legislation where the filming had to be completed before June 30th or the money would revert back to General Revenue. The Sales and Corporate Income tax credit that this bill purports will be a lot better than our current system.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 5, 2007, the Policy and Budget Council adopted nine amendments and reported the bill favorably as a council substitute. CS/CS/HB 1325 differs from the original council substitute in that it provides $75 million in tax credits over three years, with $25 million awarded in each fiscal year beginning in FY 2007-08 and ending in FY 2009-10. The other amendments were technical in nature. The analysis has been updated to reflect these changes.