

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 Committee

BILL: CS/SB 1646

INTRODUCER: Commerce and Tourism Committee; and Senator Latvala

SUBJECT: Economic Development

DATE: March 2, 2016

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|----------------|------------|--------------------|
| 1. | <u>Askey</u> | <u>McKay</u> | <u>CM</u> | <u>Fav/CS</u> |
| 2. | <u>Gusky</u> | <u>Miller</u> | <u>ATD</u> | <u>Pre-meeting</u> |
| 3. | <u>Gusky</u> | <u>Kynoch</u> | <u>AP</u> | <u>Pre-meeting</u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1646 makes several changes to the state's economic development programs to increase accountability and efficiency.

Related to economic development incentives programs, the bill:

- Revises definitions of “cumulative capital investment,” “economic benefit,” and “average private sector wage in the area” across the state’s economic development incentive programs.
- Regarding incentive contracts, the bill:
 - Limits incentive contract terms to 10 years,
 - Requires contracts to embody the written descriptions provided to the Legislature,
 - Requires contracts to include provisions requiring the capital investment made for the project remain in the state for the duration of the contract, and
 - Requires the Department of Economic Opportunity (DEO) to provide notice of executed contracts to the Legislature.
- Requires incentive reports to include information on jobs created and retained that provide health benefits.
- Renames the Quick Action Closing Fund as the “Florida Enterprise Fund,” and makes the following changes to the program:
 - Lowers the required economic benefits (return on investment) from 5 to 1, to 3 to 1.
 - Requires that projects create at least 10 jobs.
 - Requires local financial support of at least 20 percent of the award.
 - Prohibits payment before performance conditions are met.

- Extends the Qualified Defense and Space Contractors Tax Refund program to 2018 and allows businesses to receive refunds for activity in 2014 if the business failed to timely submit information and meets other conditions.
- Clarifies for the Qualified Target Industry Tax Refund program that payments are not refunds of taxes, but that the taxes paid serve as limitations on the amount of incentive payments a business may receive.

Related to the sports industry in Florida, the bill:

- Moves the Florida Sports Foundation from Enterprise Florida, Inc., (EFI) to the Department of Economic Opportunity (DEO).
 - Revises the membership of the governing board of the Florida Sports Foundation.
 - Deletes residency requirement for participants of the Sunshine State Games and the Florida Senior Games.
 - Conforms distributions from sports-related license plates to be made to the Florida Sports Foundation.
- Repeals expired provisions related to an International Game Fish Association World Center facility.

The bill reforms the state's entertainment industry development efforts by:

- Moving the DEO Office of Film and Entertainment (OFE) to EFI, and renaming it the Division of Film and Entertainment (division).
- Creating the Entertainment Action Fund, from which approved production companies may receive funds from the program for qualified expenditures in the state.
- Changing the repeal date of the entertainment industry financial incentive program to April 1, 2016, and prohibiting program tax credits from being awarded after that date.
- Revising the entertainment industry sales tax exemption certificate program to prohibit backdating of tax exemption certificates.
- Prohibiting a production company from benefiting from both the Entertainment Action Fund and the sales tax exemption certificate program for the same production.

The bill does not provide an appropriation for the Entertainment Action Fund program. The DEO will not be able to implement the program unless funding is included in the Fiscal Year 2016-2017 General Appropriations Act.

The extension of the Qualified Defense Contractor and Space Flight Business Tax Refund (QDSC) program to allow the DEO to certify applications through June 30, 2018, will have a negative impact to state revenues. Funds to make payments for this refund program are appropriated in the General Appropriations Act each year. The bill will have an indeterminate, but positive, fiscal impact to businesses that are certified to participate in the QDSC program.

The bill will have an indeterminate, but expected to be minimal, impact to the DEO and EFI; any additional costs are expected to be absorbed within existing resources.

Except as otherwise expressly provided, the bill provides an effective date of upon becoming a law.

II. Present Situation:

For the purposes of this bill analysis, the Present Situation will be addressed in the Effect of Proposed Changes section below.

III. Effect of Proposed Changes:

Economic Development Incentive Programs

Current Situation

Florida has a number of incentive programs intended to promote economic development in the state. These programs are collectively referred to as the economic development “toolkit” and come in a variety of forms including tax refunds, tax credits, tax exemptions, and cash grants.

The Qualified Target Industry Business Tax Refund (QTI) program is designed to attract high wage jobs in targeted industries to the state.¹ The target industries are identified by the Department of Economic Opportunity (DEO) using such criteria as future growth, stability, high wages, market and resource independence, industrial base diversification, and positive economic impact. Approved QTI projects have contractual performance measures with specific milestones to be verified prior to payment of any tax refunds. This incentive requires 20 percent of the award to come from the local government. QTI businesses are eligible for tax refunds in the amount of eligible taxes that were paid by the business. The program is funded through a specific annual appropriation.²

The Qualified Defense Contractor and Space Flight Business Tax Refund (QDSC) program is designed to attract high wage jobs in the space and defense industries.³ As with the QTI refund, 20 percent of the award comes from the local government. As with other programs, the QDSC tax refunds are awarded after contractual performance-based milestones are met and verified by the state. The program is funded through a specific annual appropriation. Currently, an applicant cannot be certified as qualified after June 30, 2014, but any agreements in effect after that date continue in accordance with their terms.

The QTI and QDSC programs share a \$35 million cap on tax refund payments, per fiscal year.

The Capital Investment Tax Credit (CITC) is designed to attract and grow capital-intensive industries in Florida.⁴ Eligible projects must be in designated high-impact portions of certain sectors, determined by the DEO, including clean energy, biomedical technology, financial services, information or silicon technology, or transportation equipment manufacturing. Corporate headquarters facilities are also eligible. The DEO reported that \$21.5 million in tax credits were claimed in 2014.⁵ The annual credit can be provided for up to 20 years against corporate income tax liability.

¹ Section 288.106, F.S.

² Section 288.095, F.S.

³ Section 288.1045, F.S.

⁴ Section 220.191, F.S.

⁵ Department of Economic Opportunity, *DEO: 2015 Incentives Report*, December 30, 2015, (on file with the Commerce and Tourism Committee).

To apply for the CITC, a business must meet cumulative capital investment requirements, among other criteria. For the purposes of the CITC tax credit “cumulative capital investment” is defined as the total capital investment in land, buildings, and equipment made in connection with a qualifying project during the period from the beginning of construction of the project to the commencement of operations.

The High Impact Performance Incentive (HIPI)⁶ grant program is designed to spur capital investment and job creation in the same high-impact sectors as for the CITC tax credit. The cash grant is reserved for major facilities operating in designated portions of high-impact sectors. The program has an annual cap of \$30 million for scheduled performance grant payments. This program authorizes the recapture of funds if a business fails to meet its contractual performance requirements.

The Quick Action Closing (QAC) Fund grant program is designed to be a competitive “deal closing” tool for negotiations where the state’s other incentives are not enough to incentivize a business to remain, locate, or expand in the state.⁷ Under current law, in order to be eligible for QAC funds a project must meet five criteria:

- Be in a qualified target industry;
- Have a positive economic benefit ratio of at least 5 to 1;
- Be an inducement to the project’s location or expansion in the state;
- Pay an average annual wage of at least 125 percent of the area-wide or statewide private sector average wage; and
- Be supported by the local community in which the project is to be located.

A waiver of eligibility requirements can be considered if certain criteria are met.⁸

A QAC project must have a performance based contract requiring specific scheduled milestones and annual compliance requirements. The program authorizes sanctions and penalties for failure to perform. The DEO reports that \$44.2 million in grant incentives was approved in Fiscal Year 2014-15.⁹

The Innovation Incentive Program (IIP) is designed to empower the state to compete effectively for research and development, innovation business, or alternative and renewable energy projects.¹⁰ The state makes long-term investments in industry clusters critical to the state’s future economic diversification. The projects have contractual performance measures and milestones that must be achieved before grant payment. The contracts also include a reinvestment provision, requiring recipients to pay a portion of earned royalty revenues back to the state for investment in existing state trust funds. A 1 to 1 local match is also required, and the project must ultimately result in a cumulative break-even economic benefit within a 20-year period. The DEO reports

⁶ Section 288.108, F.S.

⁷ Section 288.1088, F.S.

⁸ Section 288.1088(3)(a), F.S.

⁹ *Supra* note 5, at 18.

¹⁰ Section 288.1089, F.S.

that as of 2015, for the life of the program nine companies have been awarded funds of \$455.7 million.¹¹

The Office of Economic Development and Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA) are required to provide a detailed analysis of state economic development programs according to a recurring schedule established in law.¹² The EDR must evaluate and determine the economic benefits, as defined in s. 288.005(1), F.S., of each program over the previous 3 years. For the purposes of EDR's analysis, the calculation of economic benefits is the same as the state's return on investment.

Effect of Proposed Changes

Qualified Target Industry Tax Refund Program

Section 12 amends s. 288.106, F.S., to clarify that the QTI "tax refund" program is not a repayment of taxes, but that taxes paid operate as a limitation on the incentive payments a business can receive.

Qualified Defense and Space Contractor Tax Refund Program

Section 11 amends s. 288.1045, F.S., to extend the expiration date for applicants to become certified as qualified to participate in the program to June 30, 2018. The bill also amends that section to allow a business that does not submit documentation requested by the DEO and as required by the agreement to claim an approved refund if:

- The business submits the documentation to the DEO;
- The business provides a written statement to the DEO detailing the extenuating circumstances that resulted in the failure to timely submit documentation required by the agreement;
- Funds appropriated for the program remain available;
- The business was scheduled to submit information to the DEO between January 1, 2014, and December 31, 2104; and
- The business has met all other requirements in the agreement.

Florida Enterprise Fund (formerly QAC)

Section 14 amends s. 288.1088, F.S., to rename the "Quick Action Closing Fund" as the "Florida Enterprise Fund." The bill amends eligibility criteria to require projects to have a positive economic benefit ratio of at least 3 to 1 and create at least 10 new jobs.

The bill also requires that local support include a resolution adopted by the governing board of the county or municipality in which the project is located. The resolution must include a commitment of local financial support similar to current law requirements for the QTI and QDSC programs. The bill defines "local financial support" as funding from local sources, public or private, which is paid to the Economic Development Trust Fund and which is equal to 20 percent of the Florida Enterprise Fund award to the business. The state share of the award cannot be more than 80 percent.

¹¹ *Supra* note 5, at 27.

¹² Section 288.0001, F.S.

Local financial support can include any tax abatement granted to a business or the appraised market value of municipal or county land conveyed or provided at a discount to the business. The DEO is prohibited from entering into a contract with a business if the local financial support resolution is not passed within a certain timeframe. The bill prohibits a business from providing over 5 percent of the local financial support, and prohibits funds appropriated from the General Revenue Fund or any state trust fund from being used for local financial support.

Prior to payment under the Florida Enterprise Fund, a business must meet and report on contract performance criteria. The bill expands the list of performance criteria that must be included in a Florida Enterprise Fund contract to include the amount of local financial support that will be annually available and will be paid into the Economic Development Trust Fund. The bill prohibits payment to a business unless the required local financial support is paid into the Economic Development Trust Fund.

The bill provides that if a local government and EFI request a waiver of criteria required for a project to be eligible to receive funds from the program, a written request must be sent to the DEO explaining the reasons for the request. Additionally, the DEO must write an explanation regarding the reasons for an approval of any such request. The bill requires that after the Governor approves an applicant, the DEO will issue a letter certifying the applicant is qualified for an award.

Sections 6 and 9 amend ss. 288.0001 and 288.076, F.S., respectively, to make conforming changes related to the name change of the QAC program to the Florida Enterprise Fund.

Section 6 amends s. 288.0001, F.S., to add a report on the retention of Major League Baseball (MLB) spring training baseball franchises under s. 288.11631, F.S., to the list of reports required by the economic development programs evaluation schedule beginning January 1, 2018, and every 3 years thereafter.¹³

Economic Development Incentives Account

Current Situation

Under current law, funds are appropriated to the Economic Development Incentives Account within the Economic Development Trust Fund for the purpose of the QDSC and the QTI programs, and related local financial support. Economic Development Incentives Account funds can only be used to pay tax refunds and make other payments authorized for the QDSC, QTI, and Brownfield Redevelopment Tax Refund programs.¹⁴

Effect of Proposed Changes

Section 10 amends s. 288.095, F.S., to allow local financial support associated with the Florida Enterprise Fund (formerly QAC) to be deposited into the Economic Development Incentives Account. The bill also authorizes payments for the Florida Enterprise Fund to be made out of the Economic Development Incentives Account.

¹³ Section 288.0001, F.S.

¹⁴ Section 288.095, F.S.

Incentive Contract Administration and Evaluation

Current Situation

The DEO is generally responsible for overseeing the incentive application and certification approval process, and for incentive agreement and contract management.

The DEO evaluates each incentive application to determine the economic benefits of the proposed award of state incentives proposed for the project. Currently, “economic benefits” are defined as the direct, indirect, and induced gains in state revenues as a percentage of the state’s investment. The state’s investment includes state grants, tax exemptions, tax refunds, tax credits and other state incentives.¹⁵ The Office of Economic and Demographic Research (EDR) establishes the methodology and model used to calculate the economic benefits. An amended definition of “economic benefits” may be developed by the EDR.¹⁶

The DEO must approve or disapprove of an incentive application and issue a certification letter within 10 business days of application *submission*.¹⁷

The DEO is responsible for entering into incentive contracts or agreements with businesses and overseeing the performance of those contracts. Currently, incentive contracts must specify the following:

- The total amount of the award;
- The performance conditions that must be met to obtain the award;
- The schedule for payment; and
- Sanctions that would apply for failure to meet performance conditions.
- Contracts may also include representations, warranties and other covenants.¹⁸

Current law does not require incentive contracts to specify the duration of the contract nor require any capital investment made by the business to remain in the state for the duration of the contract. In addition, current law does not specifically allow for QAC and HIPI agreements to be amended. However, under certain circumstances an IIP award agreement can be amended.

Effect of Proposed Changes

Section 7 amends s. 288.005, F.S., to include a definition for “average private sector wage in the area,” effectively standardizing use of the term for economic development programs. The term is defined to mean the statewide average wage in the private sector or the average of all private sector wages in the county or standard metropolitan area in which the project is located, as determined by the DEO. The bill makes conforming changes to reflect the new definition in the:

- Capital Investment Tax Credit program (**Section 4**);¹⁹
- Research and Development Tax Credit program (**Section 5**);²⁰

¹⁵ Section 288.005, F.S.

¹⁶ Section 288.061, F.S.

¹⁷ With the exception of the QAC and the IIP.

¹⁸ Section 288.061, F.S.

¹⁹ Section 220.191, F.S.

²⁰ Section 220.196, F.S.

- Qualified Defense Contractor and Space Flight Business Tax Refund program (**Section 11**);²¹
- Qualified Target Industry Tax Refund program (**Section 12**);²²
- Florida Enterprise Fund (FEF), formerly the Quick Action Closing Fund, program (**Section 14**);²³ and
- Innovation Incentive Program (**Section 15**)²⁴.

The bill revises several definitions to effectively standardize the requirement that no public or state funds can be counted when determining the economic benefit or return on investment of an incentive project, specifically:

- **Section 4** amends s. 220.191, F.S., related to the CITC tax credit, to clarify that the definition of “cumulative capital investment” is the total capital investment in land, buildings, and equipment made by, *or on behalf of*, the qualifying business in connection with a qualifying project during the period from the beginning construction of the project or the commencement of operations. The amended definition clarifies that the term does not include funds granted to or spent on behalf of the qualifying business by the state, a local government, or other governmental entity; funds appropriated in the General Appropriations Act (GAA); or funds otherwise provided to the qualifying business by a state agency, local government, or other governmental entity.
- **Section 13** amends s. 288.108, F.S., related to the HIPI program, to clarify that the term “cumulative investment” does not include funds granted to or spent on behalf of the qualifying business by the state, a local government, or other governmental entity; funds appropriated in the GAA; or funds otherwise provided to the qualifying business by a state agency, local government, or other governmental entity.
- **Sections 7 and 9** amends ss. 288.005(3) and 288.076(1)(e), F.S., respectively, related to definitions and return on investment reporting, to clarify that the “state investment” includes all state funds spent or foregone to benefit a business, including state funds appropriated to public and private entities, in addition to state grants, tax exemptions, tax refunds, tax credits, and any other source of state funds reasonably known to the DEO at the time of the approval

Section 8 amends s. 288.061, F.S., related to the economic development incentive application process to:

- Allow the DEO 10 business days from receiving a *complete* application, rather than a *submitted* application, to approve or disapprove the application and issue a certification letter.
- Require the EDR’s amended definition of “economic benefits,” to include all state funds spent or forgone to benefit the business, including state funds appropriated to public and private entities, to the extent that those funds are reasonably known by the DEO at the time of approval. The bill also directs the EDR to include guidelines for the appropriate application of the DEO’s internal model.
- Require the DEO to consider all cumulative capital investment for the purpose of evaluating an incentive application. However, the DEO is prohibited from attributing state funds to the capital investment made by the business when calculating the economic benefit of an award.

²¹ Section 288.1045, F.S.

²² Section 288.106, F.S.

²³ Section 288.1088, F.S.

²⁴ Section 288.1089, F.S.

Section 8 further amends s. 288.061, F.S., to:

- Prohibit the DEO from entering into economic development incentive agreements or contracts that exceed 10 years. However, the bill provides that the DEO may enter into successive agreements or contracts for a project to extend the first 10-year term, contingent upon the successful completion of the previous agreement or contract. Agreements and contracts for the CITC tax credit and IIP projects are not subject to the restriction on the 10 year term.
- Specify that contracts and agreements that require the business to make a capital investment must also require that such investment remain in the state for the duration of the agreement or contract. The bill exempts investments made in transportation-related assets specifically used for the purpose of transporting goods and employees from the requirement.
- Require the DEO to provide a notice, including an updated description and evaluation, to the Legislature upon final execution of each incentive contract or agreement. The bill requires HIPI, FEF (formerly QAC), and IIP contracts to embody the information included in the written description and evaluation presented to the Legislature.

Currently, the DEO and Enterprise Florida, Inc. (EFI) are required to report information pertaining to each incentive program on the DEO's incentive portal (an online listing of all incentive contracts with specified information) and EFI's annual incentive report. **Sections 9 and 30** amend ss. 288.076 and 288.907, F.S., respectively, to require that DEO's incentives portal and EFI's annual incentives report include data on the number of jobs created and retained and the number of jobs created and retained that provide health benefits.

Florida Sports Foundation

Current Situation

The Florida Sports Foundation (FSF) was a direct-support organization of the Office of Tourism Trade and Economic Development, prior to the governmental reorganization that created the DEO and restructured EFI.²⁵ The FSF serves as the official sports promotion and development organization for the state and currently is housed within EFI as the Division of Sports Industry Development. The FSF's mission is to:

- Assist communities in the state with securing, hosting and retaining, sporting events that generate economic impact and sports-tourism for the state;
- Provide Floridians opportunities to participate in the Sunshine State Games and Florida Senior Games;
- Serve as the state's leading source for sports-tourism research and information;
- Assist in the promotion of targeted leisure sport industries in the state; and
- Assist national and state governing bodies to promote amateur sports development through the Sunshine State Games and hosting events in the state.

Effect of Proposed Changes

Section 20 revives, reenacts, and amends s. 288.1229, F.S., to house the FSF within the DEO. The DEO is directed to contract with the FSF by July 1, 2016.

²⁵ Chapter 2011-142, L.O.F.

The bill specifies that the foundation's board of directors must consist of 20 members appointed by the Governor, which include:

- Ten members representing Florida major league franchises of Major League Baseball, National Basketball Association, National Football League, Arena Football League, National Hockey League, and Major League Soccer teams domiciled in this state;
- A member representing Florida's Sports Commissions;
- A member representing the boating and fishing industries in Florida;
- A member representing the golf industry in Florida;
- A member representing Major League Baseball spring training;
- A member representing the auto racing industry in Florida; and
- Five members at-large.

The bill repeals or transfers all duties and responsibilities related to the sports industry from EFI. These repeals include the requirement for an individual with sports marketing expertise to serve on the EFI board of directors, requiring EFI to market the state for sports, and requiring a Division of Sports Industry Development within EFI (**Sections 16, 28, 29, 31, amending ss. 288.11621, 288.901, 288.9015, and 299.92, F.S., respectively**). Further, the bill amends s. 20.60, F.S., the statute which creates the DEO, to reflect DEO's responsibilities with respect to the FSF (**Section 1**).

Section 33 transfers responsibilities and distributions related to sports-related specialty license plates in s. 320.08058, F.S., from EFI to the FSF. The affected specialty license plates are:

- Florida United States Olympic Committee license plate;
- Florida Professional Sports Team license plate;
- Florida Golf license plate;
- Florida NASCAR license plate; and
- Florida Tennis license plate.

Section 33 also removes the requirement that the FSF use proceeds from the Florida Professional Sports Team license plate to promote and develop education programs in state schools.

Office of Film and Entertainment

Current Situation

The Office of Film and Entertainment (OFE) within the 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.²⁶ The Commissioner of Film and Entertainment is selected through a national search and must meet certain qualifications. The OFE is assisted by the Florida Film and Entertainment Advisory Council (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.²⁷

²⁶ Section 288.1251, F.S. See also OFE website, available at <http://www.filminflorida.com/about/vm.asp> (last visited January 21, 2016).

²⁷ Section 288.1252, F.S.

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

Effect of Proposed Changes

Section 22 renumbers and amends s. 288.1251, F.S., as s. 288.913, F.S., to rename the OFE as the Division of Film and Entertainment (division) and house it within EFI. The bill clarifies and revises the responsibilities of the division and requirements for the 5-year plan.

EFI's board of directors is required to annually review and approve the 5-year plan developed by the division. The bill requires the president of EFI to appoint a film and entertainment commissioner, who is subject to confirmation by the Senate. The commissioner is required to have a record of high-level involvement in production deals and contact with industry decision makers, among other criteria.

Section 24 renumbers and amends s. 288.1253, F.S., related to travel and entertainment expenses incurred by employees of the division, as s. 288.915, F.S. Additionally, the bill prohibits the division and its employees and representatives from accepting any complimentary travel, accommodations, meeting space, meals, equipment, transportation, or other goods and services from any entity, or employee, designee, or representative of such entity, which has received, applied to receive, or anticipates to receive, any funds from the Entertainment Action Fund created under s. 288.1256, F.S. Failure to abide by this prohibition is subject to the penalties provided for in s. 112.317, F.S.

Section 23 renumbers and amends s. 288.1552, F.S., as s. 288.914, F.S., to conform to changes made by the bill. Additionally, the bill reduces the number of members on the advisory council from 17 to 11, with five members appointed by the Governor and three members each appointed by the President of the Senate and the Speaker of the House of Representatives. Current members may serve out the remainder of their terms, but upon vacancy or the conclusion of a term, members must be appointed in accordance with the section. The bill provides that the advisory council will review the administration of programs related to the strategic plan, make recommendations on state agency or local government actions that may have an impact on the entertainment industry, advise on the promulgation of rules related to the entertainment industry, and appear on its own behalf before boards, commissions, departments, or other government agencies.

Entertainment Action Fund

Effect of Proposed Changes

The bill creates s. 288.1256, F.S., as the Entertainment Action Fund (**Section 26**) and provides that the fund is created within the DEO in order to:

- Respond to extraordinary opportunities;
- Compete effectively to attract and retain production companies; and
- Provide favorable conditions for the growth of the entertainment industry in the state.

Production companies may submit applications to the division to receive funds. The division must set application periods and accept applications for at least 3 months of a period. There may be multiple application periods in a single fiscal year depending on the availability of funds. The DEO is directed to prescribe an application form with specific required information to aid in the review and evaluation of project criteria.

The division reviews and evaluates applications to identify competitive projects for approval. The evaluation criteria, listed in order of priority, are:

- The number of state residents to be employed in full and part-time positions related to the project and the average wages paid;
- The amount of qualified, and unqualified, expenditures to be made in the state;
- Planned or executed contracts with production facilities in the state for production activity;
- The amount of capital investment, especially fixed capital, made directly by the production company in this state related to a project;
- The duration of the project;
- The amount of principal photography that will occur in an underutilized county;
- The extent to which the state will be promoted by the production company;
- The employment of in-state students and recent graduates;
- Any plans to work with in-state higher education institutions;
- Any local support, financial or otherwise;
- If the project is about the state, or positively reflects on the state;
- A review of the production company's past activity in the state;
- A production company's number of productions already made and overall commitment to the state;
- Expected contributions to the state's economy; and
- The effect of any award on the viability of a project and the possibility of the project being undertaken in the state.

A production must have financing in place in order to qualify for an award. Any award cannot constitute more than 30 percent of qualified expenditures in the state and cannot be used for wages paid to nonresidents. No requirements of this program may be waived.

Similar to the current QAC program, the DEO must make a recommendation to the Governor within 7 days of reviewing an application. Recommendations must include performance conditions required to obtain any funds. The Governor may approve any project requiring less than \$2 million in funding without consulting the Legislature. For projects requiring funding between \$2 million and \$5 million, the Governor must submit a written description and evaluation of the project to the chair and vice chair of the Legislative Budget Commission (LBC) at least 10 days before giving final approval. The LBC, President of the Senate, or Speaker of the House of Representatives may direct the Governor to avoid release of funds until the LBC or the Legislature addresses the issue. For projects requiring over \$5 million in funding, LBC approval is required before any funds can be released.

Upon approval, the DEO and the production company must enter into an agreement specifying;

- The total funds awarded and scheduled payments;
- The performance conditions required to obtain payments;
- The methodology for validating performance conditions;
- That the DEO may review and verify company records to ascertain compliance;
- Sanctions for failure to meet performance conditions; and
- That fund payments are contingent upon appropriation by the Legislature.

Once the Governor has approved a project, agreements must be signed by all parties within 90 days and the production must start within 1 year. Production companies cannot receive an award from the fund and benefit from sales tax exemptions in s. 288.1258, F.S., for the same production.

The DEO cannot approve awards in excess of the amount, if any, appropriated in a fiscal year. For the first 6 months, the DEO will set aside 50 percent of any amount appropriated to the program to be used for awarding applications received on or after January 1st of each fiscal year. The DEO cannot accept applications or conditionally commit awards in a period where there has been no appropriation. The bill provides for the reimbursement of costs and penalties associated with fraudulent claims.

The DEO must validate contractor performance and include such findings in an annual report required to be submitted on November 1st of each year.

This program expires on July 1, 2026. Agreements in existence on that date continue in accordance with their terms.

The bill does not provide an appropriation for the Entertainment Action Fund program.

Other Entertainment Industry Incentive Programs

Current Situation

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program,²⁸ which is a 6-year program that began July 1, 2010, and sunsets June 30, 2016. The program provides tax credits for qualified expenditures related to filming and production activities in Florida. These tax credits may be applied against the corporate income tax or sales and use taxes. Additionally these tax credits may be transferred or sold one time.²⁹

Over the 6 year period, a total of \$296 million in tax credits were authorized. Annual limitations for tax credits were set at:

- \$53.5 million in Fiscal Year 2010-11;
- \$74.5 million in Fiscal Year 2011-12; and

²⁸ 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.

²⁹ Also, tax credits may be relinquished to the Department of Revenue for 90 percent of the amount of the relinquished tax credit.

- \$42 million in each Fiscal Year 2012-13, 2013-14, 2014-15, and 2015-16.³⁰

The OFE reports that all of the tax credits authorized for the 6-year period have been certified (*allocated to certified productions*).³¹

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.³² 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).³³
- *Fabrication labor* when a producer uses his or her own equipment and personnel to produce a qualified motion picture.³⁴
- *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.³⁵
- *Sale, lease, storage, or use of blank master tapes, records, films, and video tapes.*³⁶

The OFE reviews and approves applications for the exemptions and the Department of Revenue (DOR) issues certificates of exemption to the production companies.

Effect of Proposed Changes

Section 25 bill amends s. 288.1254, F.S., the entertainment industry financial incentive program, to change the repeal date of the program from July 1, 2016 to April 1, 2016, and provide that no credits certified before the repeal date may be awarded after the repeal date. The DOR must deny any credit claimed on a tax return if the credit was awarded on or after the repeal date.

Section 27 amends s. 288.1258, F.S., to clarify that the sales tax exemption certificate exempts purchases made on or after the date that a completed application is filed with the DOR. The bill provides that production companies that receive a sales tax exemption certificate under s. 288.1258, F.S., may not also receive benefits from the newly created Entertainment Action Fund under s. 288.1256, F.S. The bill clarifies the renewal and reporting processes for the 1-year and 90-day certificates.

Additionally, the bill amends cross references in the definition of “entertainment industry” in s. 288.125, F.S., (**Section 21**) and in s. 477.0135, F.S. (**Section 34**).

³⁰ 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.

³¹ Office of Economic and Demographic Research, The Florida Legislature, *Return on Investment for the Entertainment Industry Incentive Programs* (January, 2015).

³² Section 288.1258, F.S. See also Department of Revenue, Film in Florida Sales Tax Exemption, available at http://dor.myflorida.com/dor/taxes/film_in_florida.html (last visited January 21, 2016).

³³ Section 212.031(1)(a)9., F.S.

³⁴ Section 212.06(1)(b), F.S., provides a definition of the term “qualified motion picture” for purposes of ch. 212, F.S.

³⁵ Section 212.08(5)(f), F.S.

³⁶ Section 212.08(12), F.S.

Defense Grant Programs

Present Situation

Section 288.980, F.S., establishes grant programs designed to aid defense-dependent communities throughout the state, administered by Enterprise Florida, Inc., (EFI) and the Department of Economic Opportunity (DEO). Among these programs are the Florida Defense Reinvestment Grant Program (DRG)³⁷ and the Defense Infrastructure Grant Program (DIG).³⁸

The DIG program competitively funds local infrastructure projects deemed to have a positive impact on the military value of installations within the state. Authorized DIG projects include, but are not limited to, those relating to encroachment, transportation and access, utilities, communications, housing, environment, and security.

In 2004, the Legislature created the DIG program in s. 288.980(4), F.S, with a provision that the now-defunct Office of Tourism, Trade, and Economic Development (OTTED) *could require* a match by the county or local community grant applicants.³⁹ However, s. 288.980(2)(c)2., F.S., was added in 2004 to provide that OTTED *must require*, with one exception that a grant applicant agree to match at least 30 percent of any grant awarded.⁴⁰ This apparent conflict between the required grant match for DRG projects and permissive grant match for DIG projects has existed since 2004. According to EFI, in administering the two programs, the DEO and EFI require the 30 percent match for DRG projects only, and the 30 percent match requirement is appropriate for the DRG program, not the DIG program.

Effect of Proposed Changes

Section 39 of the bill amends s. 288.980, F.S., to remove the 30 percent match requirement for grants awarded under the Defense Infrastructure Grant Program. The bill clarifies that the 30 percent match requirement applies only to the Defense Reinvestment Grant Program for applicants that are defense-dependent counties and cities, and local economic development councils located in those communities.

Miscellaneous Changes

The bill repeals the following obsolete provisions:

- Provision in the CITC program allowing a waiver between July 1, 2011, and June 30, 2014, under certain circumstances (**Section 4**).
- Provision in the Sports Development program allowing an application for state funding for new facilities or projects commenced before July 1, 2014 (Section 17, amending s. 288.11625, F.S.).
- The International Game Fish Association World Center, as all distributions to the International Game Fish Association have been made (**Sections 3, 6, and 19, amending ss. 212.20(6)(d)6.d., s. 288.0001(2)(b)4., and 288.1169, F.S., respectively**).

³⁷ Section 288.980(4), F.S.

³⁸ Section 288.980(5), F.S.

³⁹ Chapter 2004-230, L.O.F.

⁴⁰ This 30 percent match requirement has remained in law since 2004, and is currently codified at s. 288.980(3)(c)2., F.S.

Additionally the bill makes clarifying, conforming, or technical changes in s. 288.076, F.S., related to the return on investment reporting for economic development programs (**Section 9**); s. 288.1089, F.S., related to the Innovation Incentive Program (**Section 15**); s. 288.11625, F.S., related to the sports development program (**Section 17**); and s. 288.11631, F.S., related to the Retention of MLB spring training baseball franchises program (**Section 18**).

Effective Date

The bill is effective upon becoming law, except as otherwise expressly provided for in the bill. The provisions related to the Florida Sports Foundation are effective July 1, 2016.

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:

Under CS/SB 1646, the extension of the Qualified Defense Contractor and Space Flight tax refund program to allow the Department of Economic Opportunity (DEO) to certify applications through June 30, 2018, will have a negative impact to state revenues. Funds to make payments for this refund program are appropriated in the General Appropriations Act each year.

B. Private Sector Impact:

The bill will have an indeterminate, but positive, fiscal impact to businesses that are certified to participate in the Qualified Defense Contractor and Space Flight tax refund program.

C. Government Sector Impact:

The bill does not provide an appropriation for the Entertainment Action Fund program. The DEO will not be able to implement the program unless funding is included in the Fiscal Year 2016-2017 General Appropriations Act.

The bill will have an indeterminate, but expected to be minimal, fiscal impact to the DEO and Enterprise Florida, Inc.; any additional costs are expected to be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.60, 196.012, 212.20, 220.191, 220.196, 288.0001, 288.005, 288.061, 288.076, 288.095, 288.1045, 288.106, 288.108, 288.1088, 288.1089, 288.11621, 288.11625, 288.11631, 288.125, 288.1254, 288.1258, 288.901, 288.9015, 288.907, 288.92, 288.980, 320.08058, and 477.0135.

This bill revives, reenacts, and amends section 288.1229 of the Florida Statutes.

This bill substantially amends and renumbers the following sections of the Florida Statutes: 288.1251 as 288.913; 288.1252 as 288.914; and 288.1253 as 288.915.

This bill creates section 288.1256 of the Florida Statutes.

This bill repeals section 288.1169 of the Florida Statutes.

IX. Additional Information:

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

CS by Commerce and Tourism on January 25, 2016:

- The CS renames the Quick Action Closing Fund as the “Florida Enterprise Fund,” and makes the following changes to the fund:
 - Lowers the required return on investment (ROI) from 5 to 1, to 3 to 1.
 - Requires that projects create at least 10 jobs.
 - Requires that 20 percent of the award comes from local financial support.
- The bill requires that all state funds used to benefit a business be included in the ROI for calculating projects’ economic benefits.
- For all incentive programs, the bill:
 - Clarifies that when calculating projects’ economic benefits a business’s capital investment does not include any public funds;
 - Requires capital investment made by a business to remain in the state for the duration of the incentives contract;
 - Limits the duration of contracts to 10 years; and

- Requires the DEO to provide a notice to the Legislature of executed contracts.
- The bill extends certification for the QDSC program to June 30, 2018 and allows for late filings in 2014 to be claimed under certain conditions. The bill clarifies that the “tax refund” program is not a repayment of taxes but taxes paid operate as a limitation on the incentive award amount.
- The bill requires that the incentive project reports by the DEO, and the annual incentives report by EFI, include data on the number of jobs created and retained and the number of jobs created and retained that provide health benefits.
- The bill updates the board requirements for the Florida Sports Foundation to reflect their current board. The bill also removes the requirement that the foundation use proceeds from the Florida Professional Sports Team license plate to promote and develop education programs in state schools.

B. Amendments:

None.