

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 Committee on Commerce and Tourism

BILL: SB 1606

INTRODUCER: Senators Taddeo and Gibson

SUBJECT: Film and Television Production

DATE: February 19, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	McKay	CM	Pre-meeting
2.			ATD	
3.			AP	

I. Summary:

SB 1606 creates section 288.1259, F.S. establishing the Florida Motion Picture Capital Corporation (corporation) and the Florida Motion Picture Capital Account (account). The purpose of the corporation is to attract feature film and television productions to the state by using the account to assist with financing. The bill dictates the composition of the corporations' board, its financing application and approval process, formation and guidelines for the account, and production eligibility qualifications. The state cannot be held liable for any claims against the corporation or account.

The corporation is set up to receive both public and private funds, but there is no appropriation of state funds in this bill.

This bill has an effective date of July 1, 2018.

II. Present Situation:

Office of Film and Entertainment

The Office of Film and Entertainment (OFE) within the Department of Economic Opportunity (DEO) develops, markets, promotes, and provides services to Florida's entertainment industry, including serving as a liaison between the industry and government entities and facilitating access to filming locations. The Commissioner of Film and Entertainment must meet certain qualifications and is selected through a national search. 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.

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.

Entertainment Industry Incentive Programs

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program,¹ a 6-year program that began July 1, 2010, and sunset June 30, 2016. The program provided tax credits for qualified expenditures related to filming and production activities in Florida. These tax credits could be applied against the corporate income tax or sales and use taxes. Additionally these tax credits could be transferred or sold one time.²

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
- \$42 million in each Fiscal Year 2012-13, 2013-14, 2014-15, and 2015-16.³

The OFE reports that all of the tax credits authorized for the 6-year period have been certified (allocated to certified productions).⁴

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.⁵ 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).⁶
- *Fabrication labor* when a producer uses his or her own equipment and personnel to produce a qualified motion picture.⁷

¹ 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.

² Also, tax credits may be relinquished to the Department of Revenue for 90 percent of the amount of the relinquished tax credit.

³ 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.

⁴ Office of Economic and Demographic Research, The Florida Legislature, *Return on Investment for the Entertainment Industry Incentive Programs* (January, 2015).

⁵ 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 February 19, 2018).

⁶ Section 212.031(1)(a)9., F.S.

⁷ Section 212.06(1)(b), F.S., provides a definition of the term "qualified motion picture" for purposes of ch. 212, F.S.

- *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.*⁸
- *Sale, lease, storage, or use of blank master tapes, records, films, and video tapes.*⁹

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

III. Effect of Proposed Changes:

SB 1606 creates the Florida Motion Picture Capital Corporation (corporation) and the Florida Motion Picture Account (account). The corporation is set up to receive public and private funds, to be used to finance feature film and television productions in the state.

Board of Directors

The bill:

- Requires the formation of a board of directors, granting it powers and duties;
- Requires the board to be made up of seven members populated as follows;
 - Two members with experience in fund management of feature film and television production;
 - Three members that are recognized leaders in the production of feature film and television in the state;
 - One member representing the businesses that supply productions; and
 - One member representing the state's feature film and television workforce;
- Requires minority and gender representation to be considered in the board member appointment process;
- Requires that the initial board be nominated by the following entities:
 - The presidents of the Florida Venture Forum¹⁰ and the Florida Chamber of Commerce each shall nominate one member;
 - The Governor, President of the Senate, and Speaker of the House each shall nominate a member;
 - The DEO shall nominate a member; and
 - The chair of the Congress of Motion Picture Associations¹¹ of Florida shall nominate a member;
- Requires the three year terms of members to be staggered;
- Allows board members to be reappointed;
- Requires board vacancies to be filled within 30 days of the vacancy; and
- Holds board members responsible to the Code of Ethics for Public Officers and Employees as set forth in part III of chapter 112, F.S.

⁸ Section 212.08(5)(f), F.S.

⁹ Section 212.08(12), F.S.

¹⁰ The Florida Venture Forum is a membership organization that assists entrepreneurs with education, strategic planning, and networking in order to improve their fund raising. <http://www.flventure.org/> (last visited February 19, 2018).

¹¹ Congress of Motion Picture Associations represents individuals that work in the feature film and television industry. <http://compassflorida.org/> (last visited February 19, 2018).

Definitions and Exclusions

The bill:

- Defines high-wage jobs, in-state expenditures, television, and productions; and
- Excludes commercials, infomercials, political advertisements, reality shows, music videos, game shows, award shows, sporting events, educational programming, pornographic productions, and gambling-related productions from benefiting from the financing available through the corporation;

Board Bylaws Requirement

The bill authorizes the corporation to provide financing according to adopted bylaws that must:

- Favor applications that will generate the greatest economic impact to the state;
- Disallow financing to exceed the in-state expenditures of a production;
- Require that the corporation's investment in a production share the highest priority with other preferred shareholders;
- Require that financing must be less than one-half of the cost of the production's total shares;
- Limit financing for each accepted production to 12.5 percent of the total funds available in the account or less;
- Limit the corporation from having any creative and managerial rights over the productions it funds;
- Require the corporation to establish variable limits on returns, accounting for time value, and reduce returns in exchange for an early buyout;
- Require the corporation to establish an application process and have two application periods per fiscal year; and
- Limit funds for one production to 40 percent or less of the total funds available in the account, per application period.

Florida Motion Picture Capital Account

The Florida Motion Picture Capital Account shall be under the exclusive control of the board. The account is approved to accept state, federal, and local public funding as well as private funding. The account funds may be invested when not allocated and the dividends redeposited into the account. The corporation shall keep their operating expense as low as possible. Appropriations explicitly made for operating costs and net financial investment returns made be used to fund the corporation's operating costs.

The state cannot be held liable for any claims against the account or corporation.

The President of the Florida Motion Picture Capital Corporation

The President shall be appointed by the board and have financing of feature film and television experience. The president serves at the pleasure of the board, administering corporation programs and submitted annual budgets. The president may hire a staff. The president's salary and benefits will be determined by the board.

Funding Application Requirements

The bill requires productions applying for funding to have:

- A bonded third-party collection account management firm;
- A sales estimate from an established, qualified sales agency;
- An insurance package rated “A” or higher by A.M. Best Company;
- Proof of funds and their remaining budget in escrow;
- A lead producer with experience on five feature films, or a completion bond;
- A budget, script, and filming schedule approved by a production expert as selected by the board;
- Right of the board to inspect and audit weekly cost reports and general ledger; and
- Contingency funds of at least five percent of the productions total budget.

Funding Preferences and Release

The bill requires funding preference to be given to:

- Productions that will generate the greatest comparative economic impact for the state;
- Productions whose proposed financing has corporation funds as the smallest percentage of their overall financing;
- Productions that will have in-state expenditures begin the soonest;
- Productions by companies with a verifiable track record of success;
- Productions by companies based in this state or that are produced, written, or directed by a Florida resident;
- Productions that are expected to significantly increase tourism;
- Productions with recognized creative talent; and
- Productions that have local funding matches.

After funding of a production has been approved the corporation must release the funds in the following manner:

- Fifty percent of funds on the first day of principle photography;
- Twenty-five percent of funds upon completion of principal photography; and
- Twenty-five percent of funds after final picture lock, as the term is understood in the industry.

Public Notice of Financing

When the corporation executes a contract it must notify the department, unidentified in the bill, and maintain a copy of that notice on their website as long as the financing is outstanding. The notice must include a description of the production, name of the production company, names of the creative talent, and the transportation coordinator.

The bill takes effect July 1, 2018.

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:

None.

B. Private Sector Impact:

Indeterminate, depending on the availability of funds.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill details, in lines 260 – 279, how the initial board of directors are to be nominated. It does not then clarify if those specifications are to be followed continuously, and if not, what guidelines should be followed. It appears that lines 280-284 are intended to apply only to subsequent board appointments, but the language could be clearer.

There is no clear funding of the account. The account is not limited to receiving funds only from the private sector and the bill appears to anticipate receiving state appropriations.

There are no state audits required of the corporation or account.

The bill does not explicitly require the Public Records Act, in ch. 119, F.S., to apply to the corporation or account.

The board is given the ability to set the salary and benefits of the president without any standards or limits.

VIII. Statutes Affected:

This bill creates section 288.1259 of the Florida Statutes.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
