

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 526

INTRODUCER: Senator Gruters

SUBJECT: Entertainment Industry

DATE: February 18, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Pre-meeting
2.			IT	
3.			AP	

I. Summary:

SB 526 creates the Film, Television, and Digital Media Targeted Grant Program to encourage economic development related to the production of film, television, and digital media in Florida. The Program offers grants to certified film, television, and digital media projects that, among other requirements, employ Florida residents and spend at least 60 percent of their budgets in Florida. A certified project may only receive a grant after it has completed production, and its expenditures have been verified by the Office of Film and Entertainment (Office).

The Program is subject to legislative appropriation, but there is currently no appropriation of state funds in the bill.

The bill takes effect upon becoming law.

II. Present Situation:

The Office within the Department of Economic Opportunity (Department) develops, markets, promotes, and provides services to Florida’s entertainment industry.¹ Additionally, the Office administers two economic incentive programs that are available to film, television, digital production, and other similar projects that are produced in Florida: a tax credit incentive, and a tax exemption.

Entertainment Industry Financial Incentive Program

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program (incentive program). Originally, the incentive program offered a reimbursement for qualified

¹ Section 288.1251, F.S. See also, Florida Office of Film and Entertainment, *Fiscal Year 2017-2018 Annual Report*, 3 (Nov. 1, 2018), available at https://filminflorida.com/wp-content/uploads/2018/11/Office-of-Film-and-Entertainment-Annual-Report-FY-2017-2018_FINAL.pdf (last visited Feb. 18, 2019).

expenditures relating to entertainment industry productions in Florida.^{2,3} In its most recent iteration (from July 1, 2010 to June 30, 2016),⁴ the incentive program provided transferrable tax credits for qualified wage, equipment, rental, and other expenditures made to Florida vendors for qualified entertainment industry productions.⁵ A qualified production was defined as a motion picture, commercial, music video, industrial or educational film, infomercial, documentary film, television series, or digital media project. Those qualified productions that successfully completed their project and had their expenses verified by the Office could receive up to 30 percent of their qualified expenditures, or \$8 million, in tax credits—whichever is less.⁶ Recipients were permitted to apply their tax credits to their corporate income taxes, sales taxes, or both; alternately, the recipients could sell their tax credits on the market or back to the state at a reduced rate.⁷

During its 6-year lifetime, the tax credit incentive program was allocated \$296 million.⁸ The Office reports that it awarded \$288 million in tax credits to 299 certified productions by the end of the incentive program.⁹

The Entertainment Industry Sales Tax Exemption Program

The Entertainment Industry Sales Tax Exemption (tax exemption program) offers tax exemption certificates to companies that create qualified productions in Florida.¹⁰ This tax exemption program currently offers several exemptions from taxes under ch. 212, F.S., 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 (“activity or service” includes photography, casting, location scouting, and set design);¹¹
- *Fabrication labor* when a producer uses his or her own equipment and personnel to produce a qualified motion picture;¹²
- *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;¹³ and
- *Sale, lease, storage, or use of blank master tapes, records, films, and video tapes.*¹⁴

² Chapter 2003-81, Laws of Fla.

³ The reimbursement incentive program was subject to annual appropriation as follows: in FY 2004-2005, \$2.45 million; FY 2005-2006, \$10 million; FY 2006-2007, \$20 million; FY 2007-2008, \$25 million; FY 2008-2009, \$5 million; FY 2009-2010, \$10.8 million. Florida EDR, *Return on Investment for the Entertainment Industry Incentives Programs*, 4-5 (Jan. 1, 2018), available at, <http://edr.state.fl.us/content/returnoninvestment/EntertainmentIndustryIncentivePrograms2018.pdf> (last visited Feb. 18, 2019).

⁴ Section 288.1254(7), F.S. In 2012, the Legislature added an additional year to the program. See s. 15, ch. 2012-32, L.O.F.

⁵ Chapter 2010-147, L.O.F. See also, s. 288.1254, F.S.

⁶ Section 288.1254(4), F.S.

⁷ Sections 288.1254(5)-(6), F.S. See also, Florida EDR, *supra* note 3.

⁸ Section 288.1254(7), F.S.

⁹ Florida Office of Film and Entertainment, *supra* note 1, at 5.

¹⁰ Section 288.1258, F.S.

¹¹ Section 212.031(1)(a)9., F.S.

¹² Section 212.06(1)(b), F.S., provides a definition of the term “qualified motion picture” for purposes of ch. 212, F.S.

¹³ Section 212.08(5)(f), F.S.

¹⁴ Section 212.08(12), F.S.

To qualify for these tax exemptions, a company must submit an application to the Department of Revenue (DOR). This application must be approved by the Office.¹⁵ The Office approved 954 applications for the tax exemption program during Fiscal Year 2017-2018.¹⁶ Purchases under this tax exemption program are not subject to verification, but may be subject to audit by the DOR.

Other Film Incentives

*Florida Local Incentive Programs*¹⁷

Several of Florida's local governments offer production incentives.

- Miami-Dade County grants up to \$100,000 to productions that spend at least \$1 million in Miami-Dade, if at least 70 percent of the production takes place within the county.¹⁸
- Hillsborough County offers a 10 percent rebate for companies that spend at least \$100,000 on production in the county.¹⁹
- Jacksonville offers incentives ranging from 5 to 15 percent of a production's qualified expenditures; a production must spend at least \$500,000 to qualify.²⁰

*Other State's Programs*²¹

The popularity of entertainment industry incentives has decreased in state legislatures. In 2009, 44 states offered some form of entertainment industry incentive, but in 2018, only 31 states did so.²² However, Georgia bucks this trend; it continues to fund its film tax credit program at the level of demand by placing no cap on their program.²³ North Carolina reversed its 2014 decision to eliminate film tax credits, and offered \$34 million in available incentives for productions made in its state in 2017.²⁴

¹⁵ Section 288.1258(2), F.S.

¹⁶ Florida Office of Film and Entertainment, *supra* note 1, at 8.

¹⁷ *See*, Florida EDR, *supra* note 3, at 6-7.

¹⁸ Johnny Diaz, *Lights, Camera, Incentives! South Florida Looks to New Programs to Draw TV, Film Productions*, The Orlando Sun Sentinel, Nov. 30, 2017, available at <https://www.sun-sentinel.com/features/fl-fea-movie-productions-returning-to-south-florida-20171114-story.html> (last visited Feb. 18, 2019). *See also*, FilMiami, *Incentives*, <http://www.filmiami.org/incentives.asp> (last visited Feb. 18, 2019).

¹⁹ Paul Guzzo, *Hillsborough's Film Incentive has Attracted \$1.7 Million in Local Spending, Audits Show*, The Tampa Bay Times, May 28, 2018, available at https://www.tampabay.com/news/business/Hillsborough-s-film-incentive-has-attracted-1-17-million-in-local-spending-audits-show_168536945 (last visited Feb. 18, 2019).

²⁰ City of Jacksonville, *Jacksonville Film & TV Job & Business Creation Incentive Program*, <http://www.coj.net/departments/sports-and-entertainment/film-and-television/job-business-creation-incentive-program> (last visited Feb. 18, 2019).

²¹ *See, e.g., Florida Tax Watch, Is the Sun Setting on Film in Florida: An Analysis of the State's Film and Television Industry*, 4-6, 15 (Nov. 2018), available at <https://floridatxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/18645/Is-the-Sun-Setting-on-Film-in-Florida> (last visited Feb. 18, 2019).

²² National Conference of State Legislatures, *State Film Production Incentives and Programs* (Feb. 5, 2018), <http://www.ncsl.org/research/fiscal-policy/state-film-production-incentives-and-programs.aspx> (last visited Feb. 18, 2019).

²³ Georgia offers a 20 percent tax credit for productions that spend \$500,000 or more in the state, with an additional 10 percent tax credit if the project includes a Georgia promotional logo on its project. Georgia Dep't. of Economic Development, *Incentives and Applications*, <https://www.georgia.org/industries/film-entertainment/georgia-film-tv-production/production-incentives> (last visited Feb. 18, 2019).

²⁴ North Carolina Film Office, *Legislation*, <https://www.filmnc.com/new-25-tax-credit.html> (last visited Feb. 18, 2019). Richard Craver, *Revived N.C. Film Grant Program Lacking Takers Despite \$65 Million in Funding*, The Winston-Sale Journal, Mar. 11, 2018, available at https://www.journalnow.com/business/business_news/local/revived-n-c-film-grant-program-lacking-takers-despite-million/article_489bffb9-84ec-56be-af01-44153facba8d.html (last visited Feb. 18, 2019).

III. Effect of Proposed Changes:

The bill creates the Film, Television, and Digital Media Targeted Grant Program (grant program) within the Department, to be supervised by the Commissioner of Film and Entertainment (Commissioner). The grant program gives grants to qualified projects that engage in film, television, and digital media production in the state in order to expand the industry's impact on, and encourage more family-friendly productions in, Florida. After production has completed, each certified project is eligible to receive a grant for up to 15 percent of its qualified expenditures, or \$2 million, whichever is less. A project's qualified expenditures must be verified by the Office before the project may receive its grant payment and any such payment is subject to claw back if received as a result of fraudulent information.

General Project Requirements

A proposed project is eligible for a grant under the grant program if it:

- Is a film, television, or digital media project that is not obscene, as defined in s. 847.001, F.S., or pornographic;
- Has a proposed budget of qualified expenditures of at least;
 - \$1.5 million for a film project;
 - \$500,000 per episode for a television series;
 - \$1 million for a television pilot; or
 - \$1.5 million for a digital media project
- Projects to employ a crew, excluding extras, made up of at least 60 percent Florida residents;
- Proposes to spend at least 60 percent of its total budget in Florida;
- Does not use both the state sales tax exemption and a grant available under the grant program;
- Makes a good faith effort to use existing Florida providers of infrastructure or equipment, including providers of gear, grip and lighting equipment, vehicles, and postproduction services;
- Agrees to include marketing that promotes Florida tourism or Florida's film and entertainment industry on its project, e.g., a "Filmed in Florida" logo, local digital media office logo, or other statement that has been approved by the Commissioner;
- Permits the Commissioner or an affiliate to visit the project's production site, along with up to five guests; and
- Provides at least five photos of the production to the Commissioner for use in promoting Florida as a film, television, or digital media production location, or a tourist destination.

Grant Advisory Board

The bill creates the Grant Advisory Board (Board) within the Office. The Board must:

- Be formed and operate subject to the requirements of s. 20.052, F.S.;
- Consist of seven members who are currently members of the Florida Film and Entertainment Advisory Council,²⁵ three of whom were appointed by the Governor, two of whom were appointed by the President of the Senate, and two of whom were appointed by the Speaker of the House of Representatives;

²⁵ See, s. 288.1252, F.S.

- Assist the Commissioner with his or her determination of qualified projects, based on specific criteria as applied to timely received applications (see scoring criteria, discussed *infra*).

Application and Approval Process

To become a qualified project that is eligible to receive a grant under the grant program, an applicant must submit an application to the Office. The Commissioner and Board review the application, assign a score, and ultimately make a determination to certify or reject the project. This process is discussed in detail below.

Application

To qualify for the grant program, a film, television, or digital media project must submit an application that outlines the project's:

- Start date;
- Employment information, including how many Florida residents it intends to employ;
- Budget of planned qualified expenditures;
- Distribution plan for use in estimating the project's potential economic impact in Florida;
- Expected total qualified expenditures in Florida, including a specific amount for wages to be paid to Florida residents;
- Final script, production schedule, Day out of Days report, and list of expected shooting locations, if the project is a film or television project;
- Scripts for two episodes, if the project is a television project;
- Detailed game design document, if the project is a digital media project; and
- A signed affirmation that the information included in the application is correct.

An application may be submitted during one of two timeframes each year—the first 5 business days of July, or the first 5 business days of January. The proposed project must begin production within 6 months after the first day of the application window during which the application was submitted.

Additionally, an applicant is limited to one application per fiscal year, unless the application is for a television series project; these productions may apply for subsequent seasons of the series within the same fiscal year.

Scoring Criteria

The Board and Commissioner must develop a priority order and scoring system (scoring system) to apply to the applicants as part of the determination for certification for the grant program. The system must include consideration of the project's:

- Overall qualified expenditures;
- Employment of Florida residents, including their wages paid, benefits provided, and duration of employment;
- Full-time-equivalent jobs created;
- Economic impact on direct and indirect tourism based on its distribution plans;
- Production in an underutilized county;

- Corporate residency—especially if the applicant is a corporation registered in Florida;
- Status as a family friendly project, defined as a project that has cross-generational appeal, is appropriate in theme, content, and language for a broad audience, embodies a responsible resolution of issues, and does not contain smoking, illicit drug use, sex, nudity, gratuitous violence, or vulgar or profane language;
- Employment of a Florida resident as a writer, producer, or star;
- Employment of Florida film school graduates;
- Employment of veterans who are also residents of Florida;
- Use of a Florida film, television, or digital media school to assist with its production; and
- Leadership team’s track record.

The Commissioner and Board may use any other criteria they determine important, but they must be outlined as part of the scoring system before the first application window opens. Specifically, the highest scores must apply to the projects determined to provide the best economic impact and return on investment to Florida.

Review

Within 15 business days after the application window’s last day, the Commissioner must complete a review of the applications and submit an informational package detailing each applicant to the Board. The review and report must detail each applicant’s:

- Eligibility for the grant program;
- Maximum grant award;
- Status as a family friendly project; and
- Corporate residency, for the applicant or its parent company.

The Commissioner may contact an applicant and otherwise gather additional information necessary to ensure the completeness of his or her report.

After its receipt of the Commissioner’s initial report, the Board has 25 business days to meet and determine a score for each application’s project based on its scoring system, and make a recommendation for certification or rejection of each application to the Commissioner.

The Commissioner makes the final determination to certify or reject an application.

Award of Grants and Verification of Expenditures

The grant award starts at 12 percent of a project’s verified qualified expenditures; a project may earn one additional 3 percent bonus if either 75 percent of its production will occur in an underutilized county,²⁶ or its content is family friendly. Therefore, a project’s grant award is capped at 15 percent of its qualified expenditures, or \$2 million—whichever is less.

A qualified expenditure is a production expenditure made by a qualified project in Florida for:

²⁶ An underutilized county is defined in the bill as any county in Florida that is not Broward County, Miami-Dade County, Orange County, or Seminole County.

- Goods rented or leased from, or services provided by, a Florida vendor that is registered with the Department of State or the DOR, has a physical address, and employs one or more Florida residents in a full-time capacity;
- Salaries or wages paid to Florida residents, up to \$200,000 per resident; and
- Expenditures for car, truck, or trailer rental, if the vehicle is registered with the Department of Highway Safety and Motor Vehicles.

Qualified expenditures exclude internet transactions and purchases made before the project qualified for the grant program.

Award

Within 45 days after the last day of the relevant application window, the Commissioner must make a determination to certify or reject each applicant and send a notice of the decision to each applicant. If a project is certified, the Commissioner must include in the notice the project's maximum grant amount and the specific percent of qualified expenditures for which the applicant is eligible.

The Commissioner must also give the Department a list of certified projects and their maximum grant amounts. Based on this notice, the Department must set aside enough money to fund the grants. However, the number of grants awarded in the first application window is limited because the Department may only set aside up to 60 percent of the fiscal year appropriation or rolled-over grant funds for those applications. Any grant funds that are not set aside for the first application window roll over to be applied to the second application window. The Department cannot accept additional applications for the grant program if all of its grant funds are allocated to other projects. Additional applications may be processed after the grant program receives additional funds are received.

Verification

A certified project may not collect its grant until it has completed its production and its qualified expenditures have been verified by the Commissioner. The Commissioner must develop policies and procedures to implement this process, which must require all of the following:

- Submission by the Project within 90 days after making its final qualified expenditure, but no later than 1 year after its production start date, of:
 - Data that substantiates each qualified expenditure, which has been audited by an independent certified public account (CPA) who is licensed in Florida;
 - Documents that verify the Florida residency of the persons represented as such on the Project's application;
 - The project's final script;
 - The project's most recent production board and shooting schedule; and
 - The project's most recent credit list, which shows the required marketing logo or other approved statement.
- An affidavit or written declaration signed under the penalty of perjury by the qualified project that states that all of the salaries, wages, and other compensation submitted as a qualified expenditure to the Office comply with the requirements of the grant program; and
- A compliance audit, to be conducted by an independent CPA at the project's expense, to prove each qualified expenditure and a report of the audit's findings, including substantiating

data. The audit and report must be submitted to the Commissioner within 45 days after the Commissioner's initial receipt of records from the project.

The Commissioner must report the Project's actual qualified expenditures and the amount of grant due to the Project to the Department. The Department then must approve the project's final grant amount, and issue the grant within 30 days.

Disqualification and Reimbursement of Awards

Disqualification

A certified project may be disqualified from the grant program if it:

- Begins principal photography more than 6 weeks after the production start date listed on the project's application;
- Fails to abide by the policies, procedures, deadlines, or requirements of the grant program's verification process;
- Changes the project's production start date without also providing notice of the change to the Commissioner; or
- Submits fraudulent information.

In addition to disqualification, an applicant that submits fraudulent information is subject to repayment of costs and fees associated with the Department's investigation and prosecution of the project's fraudulent statements, reimbursement of any grant awards, and civil and penalties.

Miscellaneous

The Commissioner is granted rulemaking authority to administer the grant program.

The Department is required to deduct .5 percent of the project's total grant amount to offset its costs.

The Commissioner must provide an annual report to the Governor, President of the Senate, and Speaker of the House of Representatives by November 1 of each year. The report must identify the grant program's return on investment and resulting economic benefits from the previous fiscal year.

The grant program expires on June 30, 2020. Any funds that were appropriated to the grant program that have not been earmarked and set aside for qualified projects revert to the General Revenue Fund at the grant program's expiration. All remaining funds revert to the General Revenue Fund by October 31, 2022.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

It is unclear whether the .5 percent deduction from the project's total grant award for the purpose of offsetting the Department's cost of review constitutes a fee increase.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill.

B. Private Sector Impact:

Qualified film, television, or digital media projects that make qualified expenditures under the grant program may have their expenses offset by a grant from the grant program at the culmination of the project. Because qualified expenditures are required, to a certain extent, to be made to Florida vendors, businesses, and residents, these parties may see a positive financial impact. However, this impact depends on the availability of funds to the grant program.

C. Government Sector Impact:

The Department may incur additional administrative costs as a result of creating and administering the grant program. However, the bill does not provide an appropriation of state funds.

VI. Technical Deficiencies:

It is unclear whether a television project should submit a final script or scripts for two episodes with its application.

A film project is required to submit proof of all of its qualified expenditures to the Office no later than 1 year after it starts filming in Florida, but is permitted up to 2 years to make all of its qualified expenditures elsewhere in the bill. It may assist administration of the grant program to clarify what duration of time a film has to make all of its qualified expenditures.

It is unclear whether the Commissioner must review and report on all applications received, even if they are not complete or fail to meet basic eligibility requirements.

The timeframe provided for the Commissioner's determination of a project's qualified expenditures is unclear because it is required within 45 days of "initial receipt of records" from the project. It may be more clear to specify that the report is due within 45 days of the verification process.

There is no explicit timeframe for the Department's ultimate determination of the final grant amount.

It appears that the bill includes two repetitive bases for disqualification (failure to begin the project within 6 weeks of the production start date).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an unnumbered section 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.