

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 704

INTRODUCER: Senator Gruters and others

SUBJECT: Entertainment Industry

DATE: February 12, 2021

REVISED: _____

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

I. Summary:

SB 704 creates the Film, Television, and Digital Media Targeted Rebate Program (program) within the Department of Economic Opportunity in order to broaden the entertainment industry's impact, enhance tourism, and encourage more family-friendly productions to be produced in Florida.

The program gives rebates on qualified expenditures to film, television, and digital media production projects that, among other requirements, employ a crew of which at least 60 percent are Florida residents and spend at least 70 percent of their production days in Florida. A project may only receive a rebate after it has completed production and its expenditures have been verified by the Office of Film and Entertainment.

The program is subject to legislative appropriation, but the bill does not contain any appropriation of state funds.

The bill takes effect upon becoming law.

II. Present Situation:

The Florida Office of Film and Entertainment (OFE) within the Department of Economic Opportunity (DEO) develops, markets, promotes, and provides services to the state's entertainment industry.¹ The Florida Film and Entertainment Advisory Council (council) serves as an advisory body to the DEO and OFE to provide industry insight and expertise related to the state's entertainment industry.²

¹ Section 288.1251, F.S.

² Section 288.1252, F.S.

Entertainment Industry Sales Tax Exemption

The Entertainment Industry Sales Tax Exemption (tax exemption program), administered by the OFE, offers a sales and use tax certificate of exemption to production companies that create qualified productions in Florida.³ The tax exemption program offers exemptions from taxes levied under ch. 212, F.S., for the following:

- Lease or rental of real property used as an integral part of the performance of qualified production services, including photography, casting, location scouting, stage support, and wardrobe;⁴
- Fabrication labor when a producer is using his or her own equipment and personnel to produce a qualified motion picture;⁵
- Purchase or lease of motion picture or video equipment and sound recording equipment used in Florida for motion picture or television production or for the production of master tapes and master records;⁶ and
- Purchase, lease, storage, or use of blank master tapes, records, films, or video tapes.⁷

To qualify for these tax exemptions, production companies must submit an application to the Department of Revenue (DOR) which must then be approved by the OFE. If a company has operated a business in Florida at a permanent address for at least 12 consecutive months, it is eligible for a one-year certificate of exemption. Companies that do not qualify for a one-year certificate are eligible for a 90-day certificate of exemption.

The OFE has estimated that qualified production companies have received \$46.3 million in exemptions between Fiscal Years 2016-2017 and 2018-2019.⁸

Entertainment Industry Financial Incentive Program

The Entertainment Industry Financial Incentive Program (incentive program) was created to encourage the use of Florida as a site for filming, for the digital production of films, and to develop and sustain the workforce and infrastructure for film, digital media, and entertainment production.⁹ The incentive program offered transferrable tax credits for qualified expenditures relating to filming and media production activities in Florida, including wages, equipment, rentals, and other expenditures made to Florida vendors for qualified entertainment industry productions. Qualified productions that completed their projects and had their expenses verified by the OFE could receive between 20 and 30 percent of their qualified expenditures in tax credits, capped at \$8 million in tax credits awarded per project.¹⁰ Recipients were permitted to

³ Section 288.1258, F.S.

⁴ Section 212.039(1)(a)9., F.S.

⁵ Section 212.06(1)(b), F.S.

⁶ Section 212.08(5)(f), F.S.

⁷ Section 212.08(12)(a), F.S.

⁸ Office of Economic and Demographic Research, *Return on Investment for the Entertainment Industry Incentive Programs*, 7 (2021), available at <http://edr.state.fl.us/Content/returnoninvestment/EntertainmentIndustryIncentivePrograms2021.pdf> (last visited Feb. 12, 2021).

⁹ Section 288.1254(2), F.S.

¹⁰ Florida Office of Film and Entertainment, *Fiscal Year 2017-2018 Annual Report 5* (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. 12, 2021).

apply their tax credits to their corporate income taxes, sales taxes, or both; alternately, recipients could sell their tax credits on the market or back to the state at a reduced rate.¹¹

The incentive program began on July 1, 2010, and sunset on June 30, 2016.¹²

Local Incentive Programs

Several local governments in Florida offer their own film and entertainment production incentives, including:¹³

- Miami-Dade County's TV, Film, and Entertainment Production Incentive, a performance-based program that grants up to \$100,000 to productions that spend at least \$1 million in the county if at least 70 percent of the hired vendors are county registered businesses;
- Hillsborough County's rebate program, which offers a rebate of up to 10% on expenditures within the county in excess of \$100,000; and
- Duval County's Jacksonville Film and Television Job and Business Creation Program, a performance-based program that offers a 10% rebate upon spending at least \$50,000 on qualified expenditures and hiring Duval County residents.

Other States' Incentives

The popularity of entertainment industry incentives has decreased among state legislatures. In 2009, 44 states offered some form of incentive, compared to only 31 states that offered an incentive in 2018.¹⁴ Of states considered competitive to Florida, Georgia offers one of the most generous incentive programs; the state continues to fund its tax credit program at the level of demand by placing no cap on tax credits that can be earned.¹⁵

III. Effect of Proposed Changes:

The bill creates the Film, Television, and Digital Media Targeted Rebate Program (program) within the DEO, to be supervised by the Commissioner of Film and Entertainment (commissioner). The program gives rebates to film, television, and digital media production projects that provide high returns on investment and economic benefit to the state in order to broaden the entertainment industry's impact, enhance tourism, and encourage more family-friendly productions to be produced in Florida.

Upon completion, a project is eligible to receive a rebate of up to 23 percent of its qualified expenditures, or \$2 million, whichever is less. A project's qualified expenditures must be verified before the project may receive a rebate, and rebates are subject to repayment if a project submits fraudulent information.

¹¹ *Supra* note 8, at 5 and 6.

¹² *Id.*

¹³ Film Florida, *Local Incentive Programs*, available at <https://filmflorida.org/state-resources/> (last visited Feb. 12, 2021).

¹⁴ National Conference of State Legislatures, *State Film Production Incentives and Programs* (February 2018), available at <https://www.ncsl.org/research/fiscal-policy/state-film-production-incentives-and-programs.aspx> (last visited Feb. 12, 2021).

¹⁵ Georgia Department of Economic Development, *Film, Television, and Digital Entertainment Tax Credit*, available at <https://www.georgia.org/industries/film-entertainment/georgia-film-tv-production/production-incentives> (last visited Feb. 12, 2021).

General Requirements

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

- Is a film, television, or digital media project that is not obscene, as defined in s. 847.001, F.S.;
- Has projected qualified expenditures of at least \$1.5 million if the project is a film or digital media project, or at least \$500,000 per episode if the project is a television show;
- Employs a crew of which at least 60 percent are Florida residents and at least one is a military veteran;
- Is projected to spend at least 70 percent of its total production days in the state;
- Will not receive a sales tax exemption through the Florida entertainment sales tax exemption established under s. 288.1258, F.S.;
- Makes a good faith effort to use existing Florida providers of infrastructure or equipment and to employ cast and crew who are Florida residents;
- Agrees to include marketing that promotes Florida tourism or Florida's film and entertainment industry on its project, including, at minimum, placing a "Filmed in Florida" or "Produced in Florida" logo in its end credits;
- Permits the commissioner or an affiliate and at least two guests to visit the project's production site; 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 tourist destination.

Application Process

To become a qualified project that is eligible to receive a rebate, an applicant must submit an application to the commissioner. There are two application windows for the rebate program per fiscal year, the start date of which will be determined by the commissioner. The first window may begin before, and must end no later than 5 business days after, July 1. The second window must end no later than 5 business days after December 1.

An applicant may submit an application for no more than five projects in any one fiscal year. Except in the case of a television pilot and the television series the pilot is based on being certified in the same fiscal year, however, only one project per applicant may be certified within a fiscal year. A proposed project must begin production within 6 months of July 1 if applying in the first application window, or within 6 months of January 1, if applying in the second window.

Application

In addition to an affidavit signed by the applicant that the information on the application is correct and the applicant's Florida tax identification number, applications must include a film, television, or digital media project's:

- Proof of funding;
- Employment information, including employment numbers for Florida residents;
- Line-item budget and detailed qualified expenditures budget;
- Distribution plan to assist in determining the project's potential economic impact in the state;
- Expected total qualified expenditures for wages paid to Florida residents;
- Expected total qualified and nonqualified expenditures in the state;

- Latest script, a production schedule, a Day Out of Days report, and a list of the expected shooting locations, if the project is a film or a pilot episode of a television project;
- Latest scripts for at least two episodes, a production schedule, a Day Out of Days report, and a list of the expected shooting locations, if the project is a television project; and
- Game design document, including a production schedule, if the project is a digital media project.

Scoring Criteria

The commissioner and the council must devise, before the first application window opens, a priority order and scoring system that qualified projects will be evaluated based on. In addition to other criteria the council may deem necessary, the scoring system must include consideration of a project's:

- Overall qualified expenditures;
- Full-time equivalent jobs created;
- Length of employment and wages paid to Florida residents, in addition to pension, health, and welfare benefits;
- Estimated direct and indirect tourism benefit;
- Production in an underutilized area;
- Status as a family-friendly production;
- Employment of a Florida resident as a writer, producer, or star;
- Use of a Florida film, television, or digital media school's assistance;
- Leadership team's track record;
- Employment of veterans who are residents of Florida; and
- Employment of graduates of Florida film schools.

Review

Within a reasonable period of time after an application window's last day, the commissioner must complete a review of the applications. The commissioner must then submit to the council a package detailing each applicant's:

- Eligibility for the rebate program;
- Expected qualified expenditures;
- Maximum rebate amount;
- Status as a family friendly project;¹⁶
- Percent of production proposed to occur in an underutilized area,¹⁷ if any; and
- Registration as a corporation in the state.

¹⁶ The bill defines "family friendly" as having cross-generational appeal; being appropriate in theme, content, and language for a broad family audience; embodying a responsible resolution of issues; not containing any act of drunkenness, illicit drug use, sex, nudity, gratuitous violence, or vulgar or profane language; and not portraying smoking any substance in a positive light.

¹⁷ The bill defines "underutilized area" as any county within the state other than Broward, Miami-Dade, Orange, or Seminole County.

The commissioner may contact each applicant with questions and gather any additional information as necessary and must notify the council of the date and time the council must convene to score each qualified project.¹⁸ The council may meet in person or by conference call.

Using its scoring system, the council will determine a score for each qualified project; the highest scores must be applied to projects determined to provide the best economic impact and return on investment to the state. The commissioner makes the final decision on certifying or rejecting each qualified project.

Award of Rebates and Verification of Expenditures

After the council scores a project, the commissioner must make a determination on whether to certify or reject each project and send a notice of the decision to each applicant. The commissioner must include in a certified project's notice the specific percentage of qualified expenditures for which it is eligible and the maximum rebate it may receive.

The commissioner must also give the DEO a list of certified projects¹⁹ and each project's maximum allowance in order for the DEO to set aside enough money to fund the total maximum rebates that may be awarded. However, when setting aside funds for applications submitted and certified during the first application window, the DEO may not use more than 60 percent of the funds appropriated to the program or rolled-over from any fiscal year. Any funds not set aside for the first application window roll over for use in the next application window. If all funds are set aside for certified projects, additional applications cannot be accepted until more funds become available. Funds appropriated to the rebate program are not subject to reversion.

Rebate Allowances

Under the bill, qualified projects may receive a rebate of up to 20 percent of its verified qualified expenditures. A project may receive an additional 3 percent rebate if 75 percent of the project's production takes place in an underutilized area or of its content is deemed family friendly. A project may not receive more than one bonus, and rebates may not exceed \$2 million.

The bill defines "qualified expenditures" to mean expenditures made in the state made solely for preproduction, production, or postproduction of a qualified project, including:

- Rented or leased goods or services provided by a vendor that is registered with the Department of State or the Department of Revenue, has a physical address in the state other than a post office box, and employs one or more Florida residents on a full-time basis;
- Salaries and wages of up to \$200,000 for Florida residents;
- Rented or leased cars, trucks, and trailers;
- Catered meals and on-set craft service supplies;
- Personal protective equipment from in-state vendors for use on set in order to mitigate the transmission of viruses, including masks, gloves, test kits, and hand sanitizer; and
- Rented hotel rooms or other accommodations.

¹⁸ A film, television, or media project for which a complete application has been submitted to the commissioner and accepted for consideration and scoring is considered a "qualified project"

¹⁹ A qualified project is considered to be a "certified project" after it has been scored, has been determined to meet or exceed the desired criteria, and has rebate funds allocated to it based on its estimated qualified expenditures.

Qualified expenditures exclude expenditures made before a qualification for the program; expenditures made via Internet transaction; expenditures for airfare; or any costs related to development, marketing, or distribution.

Verification

The commissioner must develop a process to verify a certified project's actual qualified expenditures and rebate bonus eligibility after a certified project has completed its work in the state. The process must require the submission by a project within 120 days after making its last qualified expenditure, but no later than 1 year after its production start date, of:

- Data substantiating each qualified expenditure, as verified by an independent certified public accountant (CPA) licensed by the state;
- Documents verifying the Florida residency of persons represented as such;
- The project's final script;
- The project's most recent production board and shooting schedule;
- The project's most recent credit list, which shows where the required marketing logo will appear;
- The project's cast list and final crew list with contact information;
- Verification that at least one person employed by the project is a military veteran; and
- An affidavit or written declaration signed under the penalty of perjury that states that all salaries, wages, and other compensation submitted as qualified expenditures are in compliance with the program's requirements.

The verification process must also require a compliance audit, conducted by an independent CPA at the project's expense, to substantiate a project's qualified expenditures. The audit and a report of the audit's findings must be submitted to the commissioner within a reasonable period of time after the commissioner's initial receipt of records from the project.

The commissioner must report to the DEO the final verified amount of actual qualified expenditures a project made and the amount of the rebate, including any bonus, owed to a project. The DEO must then approve the final rebate amount and issue the rebate within a reasonable period of time.

Disqualification

A certified project may be disqualified and may not receive a rebate if it:

- Does not begin principal photography within 30 days before or 90 days after the project's start date;
- Does not abide by the policies, procedures, deadlines, or requirements of the program's verification process;
- Changes the project's start date without notifying the commissioner;
- Submits fraudulent information; or
- Uses the entertainment industry sales tax exemption established under s. 288.1258, F.S.

Applicants that submit fraudulent information are liable for reimbursement of the costs associated with the review, processing, investigation, and prosecution of the fraudulent submission, in addition to a penalty double the rebate amount and any criminal penalty assessed.

Other Provisions

The DEO is granted rulemaking authority to administer the rebate program.

The commissioner must provide an annual report on the program each November 1 identifying the return on investment and economic benefits attributable to the program for the previous fiscal year.

The Film, Television, and Digital Media Rebate Program expires on June 30, 2025, at which point any funds appropriated to the program not earmarked and set aside for certified projects will revert back to the General Revenue Fund. All other remaining funds must revert back to the General Revenue Fund no later than October 31, 2026.

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:

None.

E. Other Constitutional Issues:

None.

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

The Revenue Estimating Conference has not yet met regarding the bill.

B. Private Sector Impact:

Qualified film, television, or digital media projects that make qualified expenditures under the rebate program may have their expenses offset by a rebate 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 appropriated to the program.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated 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.