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 946

INTRODUCER: Senator Gruters and others

SUBJECT: Entertainment Industry

DATE: January 7, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Renner	McKay	CM	**Favorable**
2.			FT	
3.			AP	

I. Summary:

SB 946 creates the Targeted High Wage Production Program (program) within the Department of Economic Opportunity (DEO) 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 tax credit awards 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 tax credit award after it has completed production and its expenditures have been verified by the DEO.

The Revenue Estimating Conference has not yet reviewed the economic impact of this bill.

The bill takes effect upon becoming law.

II. Present Situation:

The Florida Office of Film and Entertainment (OFE) within the 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]

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

[1] Section 288.1251, F.S.
[2] Section 288.1252, F.S.

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.[8] 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.[9]

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.[10] 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 20 percent of their qualified expenditures in tax credits, capped at $8 million in tax credits awarded per project.[11] Recipients were permitted to 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.[12]

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[3] Section 288.1258, F.S.
[4] Section 212.031(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] *Supra* note 3
[9] 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 Jan. 7, 2022).
[10] Section 288.1254(2), F.S.
[11] Section 288.1254(4)(b), F.S.
[12] *Supra* note 9, at 5 and 6.

The incentive program began on July 1, 2010, and sunset on June 30, 2016.[13]

Local Incentive Programs

Several local governments in Florida offer their own film and entertainment production incentives, including:[14]

- 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 percent 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 percent 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.[15] 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.[16]

III. Effect of Proposed Changes:

The bill creates the Targeted High Wage Production Program (program) within the DEO, to be supervised by the Commissioner of Film and Entertainment (commissioner). The program gives tax credit awards 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 tax credit award 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 tax credit award, and awards are subject to repayment if a project submits fraudulent information.

General Requirements

A project is eligible for a tax credit award under the program if it:

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[13] *Id.*
[14] Film Florida, *Local Incentive Programs, available at* https://filmflorida.org/state-resources/ (last visited Jan. 7, 2022).
[15] 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 Jan. 7, 2022).
[16] 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 Jan. 7, 2022).

- 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 tax credit award, an applicant must submit an application to the commissioner. There are two application windows for the tax credit award 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, director, 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 tax credit award program;
- Expected qualified expenditures;
- Maximum award amount;
- Status as a family friendly project;[17]
- Percent of production proposed to occur in an underutilized area,[18] if any; and
- Registration as a corporation in the state.

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.[19] The council may meet in person or by conference call.

[17] 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 manner.

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

[19] 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".

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 Tax Credit Awards 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 award it may receive.

The commissioner must also give the DEO a list of certified projects[20] and each project's maximum allowance in order for the DEO to set aside enough money to fund the total maximum tax credit awards 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 tax credit awards available for any fiscal year. Any tax credit award funds not set aside for the first application window roll over for use in the next application window. If all awards are set aside for certified projects, additional applications cannot be accepted until more funds become available. If only a partial amount of tax credit awards are available during the application period, the applicant must notify the commissioner in writing of its decision to either accept the partial award as the maximum certified tax credit award it would be eligible for or reject it and drop out of the program. The applicant is not eligible for any additional tax credit awards that may become available after the application period. Funds appropriated to the credit award program are not subject to reversion.

Tax Credit Award Allowances

Under the bill, certified projects may receive a tax credit award of up to 20 percent of its verified qualified expenditures. A project may receive an additional 3 percentage points if 60 percent of the project's production takes place in an underutilized area or if its content is deemed family friendly. A project may not receive more than one bonus, and tax credit awards 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; and
- Rented hotel rooms or other accommodations.

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[20] 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 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 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, including an affidavit signed by each resident;
- 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 total tax credit award owed to a project. The DEO must then determine and approve the final tax credit award amount based on the final verified amount of actual qualified expenditures; notify the DOR that the certified production has met the requirements and of the final amount of the tax credit award; and issue the award within a reasonable period of time.

Disqualification

A certified project may be disqualified and may not receive a tax credit award 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 tax credit award amount and any criminal penalty assessed.

Election and Transfer of Tax Credits

A certified production company receiving a tax credit award must, at the time the credit is awarded by the DEO, make an irrevocable election to apply the credit against income taxes due, against state sales taxes collected or accrued, or against a combination of the two taxes. The election is binding on any distribute, successor, transferee, or purchaser. The DEO must notify the DOR of any election made.

Tax credits awarded may not be claimed against sales and use tax liabilities or corporate income tax liabilities before July 1, 2022, regardless of when the credits are applied for or awarded.

A certified production company that files a consolidated return as a member of an affiliated group under s. 220.131(1), F.S., may use the credit on a consolidated return basis up to the amount of the tax imposed upon the consolidated group under ch. 220, F.S. Additionally, a certified production company that is not a corporation under s. 220.03(1)(e), F.S., can elect to distribute tax credits to its partners or members in proportion to their distributive income or loss in the taxable year in which the tax credits were awarded.

Tax credits may succeed to a surviving or acquiring entity; however, the tax credits cannot be transferred by the surviving or acquiring entity.

If a certified production company cannot use the entire tax credit in the taxable year or reporting period in which the credit is awarded, any excess amount may be carried forward to a succeeding taxable year or reporting period for a maximum of five years after the date the credit is awarded, after which the credit expires and may not be used again.

A certified production company, or a partner or member of a certified production company that has received a distribution may elect to transfer, in whole or in part, any unused credit amount it was granted. An election to transfer any unused income tax or state sales tax credit amount must be made no later than 5 years after the date the credit is awarded, after which period the credit expires and may not be used. The DEO must notify the DOR of the election and transfer.

The original transferee and any subsequent transferee must be either the certified company’s parent company, a subsidiary company, or certain businesses with a certain North American Industry Classification System code.

A certified production company that elects to apply a credit amount against state sales taxes is allowed a one-time transfer of unused credits to one transferee. A certified production company that elects to apply a credit amount against income taxes is allowed a one-time transfer of unused credits to no more than four transferees, and the transfers must occur on the same taxable year.

A transferee receiving the tax credit has the same rights and is subject to the same limitations as the certified production company that was awarded the tax credit, except that a transferee receiving the tax credit is prohibited from subsequently transferring the tax credit.

Relinquishment of Tax Credits

Starting July 1, 2022, a certified production company, or a person who has acquired a tax credit from a production company, can elect to relinquish the tax credit to the DOR in exchange for payment of 85 percent of the amount of the relinquished tax credit. The DOR is authorized to approve the payments.

The DOR is authorized to approve payments to entities relinquishing tax credits. Additionally, the DOR, subject to legislative appropriation, must request the Chief Financial Officer to issue warrants to entities relinquishing tax credits. Payments must be made from the funds from which the proceeds from the taxes against which the tax credits could have been applied according to the irrevocable election made by the certified production company.

Annual Allocation of Tax Credits

The aggregate amount of tax credits allocated to the program must equal, but not exceed, $20 million each fiscal year beginning in fiscal year 2022-2023 through fiscal year 2025-2026. Any portion of the maximum amount that is not certified by the end of that fiscal year must be carried forward and made available for certification during the following two fiscal years in addition to the amounts available for those fiscal years.

After approval of the final tax credit award amount, an amount equal to the difference between the maximum tax credit award amount previously certified and the approved final tax credit award amount will immediately be available for recertification during the current and following fiscal years, in addition to the amounts available for those fiscal years.

If the total amount of credits applied for during a fiscal year exceeds the amount of credits available for certification in that fiscal year, the excess will be treated as having been applied for on the first day of the next fiscal year in which credits remain available for certification.

Other Provisions

The DEO is granted rulemaking authority to administer the tax credit award program.

The DOR is authorized to conduct audits to verify that tax credits are received, transferred, and applied accordingly to the requirements under the program. If the DOR determines that tax credits are not received, transferred or applied as required, the DOR may pursue recovery of the funds. The DOR is granted rulemaking to administer this provision. Additionally, the DEO is authorized to revoke or modify any written decision qualifying, certifying, or otherwise granting eligibility for tax credits if an applicant submits false statements, records, reports, plans, or other documents. The DEO must immediately notify the DOR in such cases. Forfeited funds must be paid into the General Revenue Fund.

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 Targeted High Wage Production Program expires on June 30, 2026, 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, 2027.

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 determined a fiscal impact of the bill.

B. Private Sector Impact:

Qualified film, television, or digital media projects that make qualified expenditures under the program may have their expenses offset by a tax credit award 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.

C. Government Sector Impact:

According to the DOR, the bill will have a non-recurring negative fiscal impact in the amount of $39,662 for fiscal year 2021-2022 in order to make modifications to the DOR's software system.[21]

Additionally, the DOR may be required to undergo rulemaking to update Rule 12-29 of the Florida Administrative Code.

VI. Technical Deficiencies:

Line 568 of the bill refers to paragraph (4)(g), which does not exist. It is unclear if (4)(g) should be (12)(e).

VII. Related Issues:

The DOR has the following concerns with the bill:[22]

- The bill only provides rulemaking authority to the department for the audit verification in paragraph (17)(a); however the department needs broader rulemaking authority to administer other provisions in the bill, particularly the revoked or forfeited tax credits and the amendment of tax returns. Furthermore, the bill does not grant the department emergency rulemaking authority, which it would need since the bill takes effect upon becoming law.
- On lines 532-538, the bill provides that a credit may not be claimed for any tax period beginning before July 1, 2022. However, credits against corporate income/franchise tax do not usually start in the middle of a calendar year, as most corporate taxpayers operate on a calendar year basis. The department suggests changing the date from July 1, 2022 to January 1, 2023.

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.

[21] Florida Department of Revenue, SB 946 analysis (2022). On file with Senate Commerce & Tourism Committee.
[22] *Id.*