

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB APC 23-05 Repeal of Entertainment Industry Qualified Production Companies Tax Exemptions

SPONSOR(S): Appropriations Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Appropriations Committee		Davis	Pridgeon

SUMMARY ANALYSIS

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

The bill repeals these exemptions and makes conforming changes to other sections that contain cross references.

The bill provides that it will take effect on the same date that HB 5 or similar legislation in the same legislative session is adopted and becomes law.

This bill raises a tax or fee requiring a two-thirds vote of the membership of the House. See Section III.A.2 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present 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.¹ 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 seventeen 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.²

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 five-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 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.³ 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).⁴
- *Fabrication labor* when a producer uses his or her own equipment and personnel to produce a qualified motion picture.⁵
- *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.⁶
- *Sale, lease, storage, or use of blank master tapes, records, films, and video tapes.*⁷

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

The bill eliminates the sales tax exemptions for qualified productions companies in ss. 288.1258, 212.031(1)(a)9., 212.06(1)(b), and 212.08(5)(f) and (12), F.S., and makes conforming changes to other sections to reflect these repeals.

The bill provides that it will take effect on the same date that HB 5 or similar legislation in the same legislative session is adopted and becomes law.

¹ S. 288.1251, F.S.; see also Florida Office of Film & Entertainment, <http://filminflorida.com/> (last visited Mar. 13, 2023).

² S. 288.1252, F.S.

³ S. 288.1258, F.S.

⁴ S. 212.031(1)(a)(9), F.S.

⁵ Section 212.06(1)(b), F.S., provides a definition of the term "qualified motion picture" for purposes of ch. 212, F.S.

⁶ S. 212.08(5)(f), F.S.

⁷ S. 212.08(12), F.S.

B. SECTION DIRECTORY:

- Section 1:** Repeals s. 288.1258, F.S., relating to the Entertainment industry qualified production companies tax exemption.
- Section 2:** Amends s. 166.231, F.S., to make conforming changes.
- Section 3:** Amends s. 212.02, F.S., to make conforming changes.
- Section 4:** Amends s. 212.031, F.S., to eliminate a tax exemption related to the program repealed in Section 1 of the bill.
- Section 5:** Amends s. 212.06, F.S., to eliminate a tax exemption for fabrication labor for a "qualified motion picture."
- Section 6:** Amends s. 212.0602, F.S., to make conforming changes to reflect the repeal of the exemptions in other sections of the bill.
- Section 7:** Amends s. 212.08, F.S., to eliminate sales and use tax exemptions on motion picture or video equipment used in a motion picture or television production; by updating cross reference; deleting provision relating to Enterprise Florida; deleting provision relating to Department of Economic Opportunity's Division of Strategic Business Development; eliminating partial tax exemption for master tapes, records, films, or video tapes.
- Section 8:** Amends s. 220.183, F.S., to make conforming changes to cross-references.
- Section 9:** Amends s. 288.001, F.S., to make conforming changes.
- Section 10:** Amends s. 290.0056, F.S., to make conforming changes to cross references.
- Section 11:** Amends s. 290.007, F.S., to make conforming changes to cross references.
- Section 12:** Amends s. 624.5105, F.S., to make conforming changes to cross references.
- Section 13:** Amends s. 1011.94, F.S., to make conforming changes to cross references.
- Section 14:** Provides construction for conflicting provisions.
- Section 15:** Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On March 24, 2023, the Revenue Estimating Conference estimated a positive first-year impact of \$18.9 million on General Revenue (\$20.6 million recurring) and an insignificant positive impact to state trust funds.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On March 24, 2023, the Revenue Estimating Conference estimated a positive first-year impact of \$5 million in local government revenue (\$5.5 million recurring).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Article VII, s. 19 of the Florida Constitution requires the imposition, authorization, or raising of a state tax or fee be contained in a separate bill that contains no other subject and be approved by two-thirds of the membership of each house of the Legislature. Article VII, s. 19(d) of the Florida Constitution provides that the term "raise" means, in pertinent part, "to decrease or eliminate a state tax or fee exemption or credit." As such, the bill appears to implicate Art. VII, s. 19 of the Florida Constitution because the bill "raises" a state tax or fee by eliminating state tax exemptions.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES