

FL S 530, Prefiled

Florida

Legislative History and Analysis

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added ~~Text Vetoed~~

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Gruters

Florida Senate - 2020

SB 530

By Senator Gruters

A bill to be entitled

An act relating to the entertainment industry; creating the Film, Television, and Digital Media Targeted Rebate Program within the Department of Economic Opportunity under the supervision of the Commissioner of Film and Entertainment; providing purposes for the program; defining terms; requiring that film, television, and digital media projects being produced in this state meet specified criteria for rebate eligibility; authorizing applicants to receive rebates up to a specified amount, including bonuses; requiring an applicant that receives funding to make a good faith effort to use existing providers of infrastructure or equipment in this state and to employ residents of this state; requiring the commissioner to set application windows for the rebate; providing requirements for the department relating to earmarking and setting aside rebate funds; providing procedures and requirements for applicants applying for the rebate; requiring the commissioner to take specified action within a reasonable period of time; requiring the Florida Film and Entertainment Advisory Council to determine a score for each qualified project using specified criteria; requiring the commissioner to determine the priority order and scoring system of the specified criteria with assistance from the council and certain other persons; requiring the council to use certain criteria; requiring the commissioner to take certain actions relating to the certification or rejection of qualified projects in a timely manner; requiring the department to earmark and set aside funding necessary to fund the total maximum that may be awarded to the certified projects, if funds are available; requiring the commissioner to develop a process to verify the actual qualified expenditures of a certified project after the project's work in this state is complete; providing requirements for the verification process; requiring that the rebate be issued within a reasonable period of time upon approval of the final rebate amount by the department; requiring that unallocated rebate funds and rebate funds allocated but not awarded during a fiscal year roll over to the next fiscal year; requiring that certain marketing be included with a project; requiring certified projects to allow certain persons to visit the production site upon request of the commissioner and after providing the commissioner with reasonable notice; specifying that the commissioner or his or her affiliate is not required to visit the production site; requiring the department to disqualify a project under certain circumstances; providing for liability and imposing civil penalties for an applicant that submits fraudulent information; providing for rulemaking; requiring the commissioner to provide an annual report to the Governor and the Legislature on a specified date; providing for the expiration of the program; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. *Film, Television, and Digital Media Targeted Rebate Program.* --

(1) **CREATION AND PURPOSES OF PROGRAM.** --*The Film, Television, and Digital Media Targeted Rebate Program is created within the Department of Economic Opportunity under the supervision of the Commissioner of Film and Entertainment.*

(a) *The purpose of the program is to boost this state's economic prosperity by:*

- 1. Creating high-paying jobs;*
- 2. Broadening the film, television, and digital media industry's impact on the state by giving a modest bonus for projects that take place in underutilized areas;*
- 3. Enhancing tourism by choosing projects that encourage tourists to visit this state; and*
- 4. Encouraging more family-friendly productions to be produced in this state.*

(b) *This purpose shall be accomplished by providing a limited rebate to projects that provide the highest return on investment and economic benefit to the state, as determined after a project has made its expenditures in the state.*

(2) **DEFINITIONS.** --*As used in this act, unless the context otherwise requires, the term:*

(a) *“Certified project” means a qualified project that has been scored by the council, has been determined by the commissioner to meet or exceed the desired economic impact and other criteria of the program, and has rebate funds allocated to it based on the project's estimated qualified expenditures.*

(b) *“Commissioner” means the Commissioner of Film and Entertainment as described in s. 288.1251(1)(b), Florida Statutes.*

(c) *“Council” means the Florida Film and Entertainment Advisory Council.*

(d) *“Department” means the Department of Economic Opportunity.*

(e) *“Digital media project” means a commercial video game, including an educational video game, which includes at least 30 minutes of game play time. The term does not include a project that may be considered obscene, as defined in s. 847.001, Florida Statutes.*

(f) *“Family friendly” means 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.*

(g) *“Film project” means a theatrical, direct-to-video, television, cable, Internet, streaming service, or animated narrative motion picture at least 75 minutes in length. The term does not include a project deemed by the office to have content that is obscene, as defined in s. 847.001, Florida Statutes.*

(h) *“Florida resident” means a person who has a valid Florida driver license or Florida identification card issued under s. 322.051, Florida Statutes, and has signed an*

affidavit confirming residency. (i) "Office" means the Office of Film and Entertainment within the department.

(j) "Principal photography" means, for a film project or television project, the filming of major or significant components of the project which involve lead actors, or, for a digital media project, the period of time during which the work of the majority of the crew is dedicated solely to the project.

(k) "Production start date" means:

1. For film and television projects, the start date of principal photography, as listed in the project's application.
2. For digital media projects, the start date of final storyboards or a later date as specified in the project's application.

(l)1. "Qualified expenditures" means expenditures made in this state and paid to residents of this state or to businesses registered in this state and made solely for preproduction, production, or postproduction of the qualified project, including the following:

a. Rented or leased goods or services provided by a vendor or supplier in this state which is registered with the Department of State or the Department of Revenue; which has a physical address in this state other than a post office box; and which employs one or more Florida residents on a full-time basis. The term does not include rebilled goods or services provided by an in-state company from out-of-state vendors or suppliers. When services provided by the vendor or supplier include personal services or labor, only personal services or labor provided by Florida residents qualifies.

b. Payments to Florida residents in the form of salary or wages up to a maximum of \$200,000 per resident, including amounts paid per diem to a worker who is a Florida resident and amounts paid through payroll service companies, and benefits such as pension, health, and welfare payments for technical and production crews, directors, producers, and performers. For purposes of this sub subparagraph, payments do not include wages for executives, legal staff, or other corporate staff who are not employed to work solely on the project.

c. Rented or leased cars, trucks, and trailers if the vehicles or trailers are registered with the Florida Department of Highway Safety and Motor Vehicles.

d. Purchases of catered meals and on-set craft service supplies.

e. Rented hotel rooms or other accommodations for cast or crew.

2. The term does not include expenditures not expressly identified in subparagraph 1., expenditures made before qualification for the program, expenditures made via Internet transactions, expenditures for airfare, or any costs associated with development, marketing, or distribution.

3. For the purposes of a digital media project, the term includes only those qualified expenditures made within 9 months after the project's first qualified expenditure.

(m) *“Qualified project” means a film project, television project, or digital media project that meets the application requirements and for which a complete application for the program has been submitted to the commissioner and accepted for consideration by the office. The term does not include a weather or market program; a sporting event or a sporting event broadcast; a gala; an awards show; a production that solicits funds; a home shopping program; a political program; a gambling related project or production; a concert production; a news or current events show; a sports or sports recap show; a pornographic production; or any production deemed obscene under chapter 847, Florida Statutes.*

(n) *“Television project” means a television pilot program or a television series that:*

- 1. Is a scripted drama, comedy, animation, or reality show;*
- 2. Has a runtime of at least 30 minutes but not more than 60 minutes; and*
- 3. If the television project is a television series, has a minimum of 7 episodes; or, if the television project is a reality program or series, at least 10 episodes.*

The term does not include a project deemed by the office to have content that is obscene, as defined in s. 847.001, Florida Statutes.

(o) *“Underutilized area” means any county in this state other than Broward County, Miami-Dade County, Orange County, or Seminole County.*

(3) REBATE ELIGIBILITY. --

(a) *To be eligible for a rebate, an applicant must be registered to do business in this state and must be producing a project that:*

- 1. Has projected qualified expenditures of:*
 - a. For a film project, at least \$1.5 million;*
 - b. For a television series, at least \$500,000 per episode; or*
 - c. For a digital media project, at least \$1.5 million;*
- 2. Is projected to employ a crew, including cast and stand ins, but not including extras, also known as background performers, of which at least 60 percent will be residents of this state and at least one member will be a military veteran;*
- 3. Is projected to spend at least 70 percent of its total production days in this state; and*
- 4. Will not receive a sales tax certificate of exemption pursuant to s. 288.1258, Florida Statutes, for the project.*

(b) *A project may receive a rebate in the amount of up to 20 percent of its verified qualified expenditures. A bonus may be earned in the amount of an additional 3 percentage points if 75 percent of the project's production in this state will take place in an underutilized area or if its content is deemed family friendly. A certified project may not receive more than one bonus, and the total that may be awarded under any rebate may not exceed 23 percent of its verified qualified expenditures or \$2 million, whichever is less.*

(c) *A certified project must make a good faith effort to use existing providers of infrastructure or equipment in this state, when available, including providers of camera gear, grip and lighting equipment, vehicles, and postproduction services, and to employ cast and crew who are residents of this state.*

(4) **APPLICATION WINDOWS.** --*Applications must be accepted for the program during two application windows each fiscal year. The commissioner shall set a start date for both application windows. However, the first application window may begin before the start of the fiscal year and must end no later than 5 business days after July 1, and the second must end no later than 5 business days after December 1.*

(a) *The department may not earmark or set aside more than 60 percent of any appropriated or rolled-over rebate funds for any given fiscal year for applications submitted during the first application window. Rebate funds not earmarked and set aside for applicants applying during one application window roll over for use in the next application window.*

(b) *If all rebate funds are earmarked and set aside for certified projects, additional applications may not be accepted until more funds become available for the program.*

(5) **APPLICATION PROCESS.** --

(a) *A company that plans to produce a film, television, or digital project in this state may submit an application to the commissioner during one of the two application windows. Each fiscal year, a project must have a production start date that is within 6 months after July 1 if applying in the first window or within 6 months after January 1 if applying in the second window.*

(b) *An applicant or its parent company may submit an application for no more than five projects in any single fiscal year. However, except in the case of a TV pilot and the television series the pilot is based on being certified within the same fiscal year, only one project per applicant may be certified within a fiscal year.*

(c) *The application must include:*

- 1. Proof of funding;*
- 2. Project-related employment information, including employment numbers for residents of this state;*
- 3. A full line-item budget and a detailed qualified expenditures budget;*
- 4. A detailed distribution plan to assist with determining the potential economic impact of the project in this state;*
- 5. The applicant's expected total qualified expenditures for wages paid to residents of this state;*
- 6. The applicant's expected total qualified expenditures and nonqualified expenditures in this state;*
- 7. For a film project, the latest script, a production schedule, a Day Out of Days report, and a list of the expected shooting locations;*
- 8. For a digital media project, a detailed game design document, including a production schedule;*

9. *An affirmation signed by the applicant that the information on the application is correct; and*

10. *The applicant's Florida tax identification number.*

(d) Within a reasonable period of time after the last business day of each application window, the commissioner shall:

1. *Review all applications submitted during the application window and determine the eligibility of each applicant;*

2. *Determine each applicant's expected qualified expenditures;*

3. *Determine the maximum rebate amount that each eligible applicant may be awarded;*

4. *Determine whether an eligible applicant's project is deemed family friendly;*

5. *Determine the percentage of the applicant's production, if any, which is proposed to occur in an underutilized area;*

6. *Determine whether each eligible applicant is a corporation registered in this state;*

7. *Contact each applicant with any questions, as necessary;*

8. *Gather any additional information needed to address the criteria specified under subsection (6);*

9. *Assemble a package containing the details of each eligible applicant's project and deliver it to each council member; and*

10. *Give notice to the council of the date and time when the council must convene to assess each qualified project. The council may meet in person or by conference call.*

(e) The council shall determine a score for each qualified project using the criteria specified under subsection (6), with the highest scores going to projects determined to provide the best economic impact and return on investment to this state.

(6) CRITERIA FOR DETERMINING PROJECT SCORES. --

(a) The priority order and scoring system of the criteria specified in paragraph (b) must be determined by the commissioner, with assistance from the council and other persons, as determined by the commissioner, before the first application window.

(b) The council shall use, at a minimum, the following criteria in determining a qualified project's score:

1. *The amount of the project's overall qualified expenditures.*

2. *The amount of the project's Florida-resident wages.*

3. *The number of full-time-equivalent jobs created by the project.*

4. *Whether the project provides pension, health, and welfare benefits to its workforce in this state.*
5. *The estimated direct and indirect tourism benefit of the project, based on the submitted distribution plan.*
6. *The duration of Florida-resident employment for the project.*
7. *What percentage of the project, if any, is being made in an underutilized area.*
8. *Whether the project is family friendly.*
9. *Whether the project has a Florida-resident writer, producer, or star.*
10. *Whether a Florida film, television, or digital media school will assist with the production of the project.*
11. *Whether the project leadership team has a successful track record.*
12. *The number of Florida-resident veterans the project will hire.*
13. *The number of Florida film school graduates the project will hire as cast or crew.*

(7) NOTIFICATION OF DECISION. --

(a) After the council determines a project's score, the commissioner shall, in a timely manner:

1. *Make a final determination on certifying or rejecting each qualified project, giving consideration to the council's scoring.*
2. *Provide a list of certified projects to the department which includes the associated maximum rebate amounts that the respective applicants may receive.*
3. *Notify each certified project of the specified percentage of qualified expenditures for which it is eligible and the maximum rebate amount that it may receive.*
4. *Provide a notice of rejection to each rejected applicant; however, the failure to notify an applicant of its rejection does not deem the applicant's project a certified project.*

(b) Based on the final determination of the commissioner, the department shall earmark and set aside the amount necessary to fund the total maximum that may be awarded for the certified projects, if funds are available.

(8)(a) VERIFICATION PROCESS. --The commissioner shall develop a process to verify the actual qualified expenditures of a certified project after the project's work in this state is complete. The process must require all of the following:

1. *Submission to the commissioner of at least all of the following information, electronically or in hard copy, or both, by each certified project:*

- a. *Data substantiating each qualified expenditure, which has been audited by an independent certified public accountant licensed in this state, as required under subparagraph 4.;*
 - b. *Copies of documents verifying residency of persons represented as being residents of this state;*
 - c. *The final script;*
 - d. *The most recent production board and shooting schedule;*
 - e. *The most recent credit list showing where the credits required under subsection (9) will appear;*
 - f. *A cast list and a final crew list with contact information;*
 - g. *For any veterans employed by the project, a copy of at least one of the veterans' DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs; and*
 - h. *Any other information determined necessary by the commissioner.*
2. *Signing, and submission to the commissioner, by the lead producer or studio executive in charge of the certified project, of an affidavit or written declaration signed under the penalty of perjury as specified in s. 92.525, Florida Statutes, stating that all salaries, wages, and other compensation submitted as qualified expenditures are in compliance with this section.*
 3. *The information and affidavit required by subparagraphs 1. and 2. must be received by the commissioner within 120 days after the certified project has made its last qualified expenditure, but no later than 1 year after its production start date. Pursuant to the rules adopted by the department, the commissioner may, upon a showing of good cause, grant a one-time extension of this deadline.*
 4. *The conducting of a compliance audit, at the certified project's expense, by an independent certified public accountant who is a resident of this state to substantiate the qualified expenditures, and submission of a report of the audit findings, including substantiating data, to the commissioner within a reasonable period of time after the initial receipt of records from the certified project.*
- (b) *The commissioner shall review the report and data submitted by the certified public accountant within a reasonable period of time after receipt of the report and data and shall report to the department the final verified amount of actual qualified expenditures the certified project made and the amount of the rebate due to the project.*
 - (c) *Upon approval by the department of the final rebate amount, which may not exceed the maximum specified in the notice provided under subparagraph (7)(a)3., the rebate must be issued within a reasonable period of time.*
 - (d) *At the end of the fiscal year, rebate funds that are not allocated to a certified project, and rebate funds allocated but not awarded to a certified project, roll over to the next fiscal year.*

(9) MARKETING AND TOURISM REQUIREMENT. --

- (a) The commissioner shall ensure, as a condition of receiving a rebate under this section, that a certified project include marketing promoting this state as a tourist destination or film and entertainment production destination. At a minimum, the marketing must include placement in the end credits of a “Filmed in Florida” or “Produced in Florida” logo with size and placement commensurate to other logos included in the end credits or, if no logos are used, the statement “Filmed in Florida” or “Produced in Florida” or a similar statement approved by the commissioner and the logo of the local film office, if applicable. A digital media project must also supply a 5-second or longer animated logo with “Produced in Florida” or other text, including the logo of the local digital media office, if applicable, as preapproved by the commissioner, in a manner easily seen by a consumer of the digital media project. The commissioner shall provide the logos for the purposes specified in this paragraph, not including the logo for a local office, which must be provided by the applicable office.*
- (b) A certified project must allow the commissioner, or an affiliate, and a minimum of two guests to visit the production site upon the request of the commissioner. Upon such request, the certified project must give the commissioner reasonable notice of a visit date and time that is acceptable to the production. The commissioner or an affiliate is not required to make a visit to the set.*
- (c) A certified project must provide at least five preapproved photos of the production to the commissioner and grant the commissioner free use of the photos in promoting this state as a film, television, or digital media production location or tourist destination.*

(10) DISQUALIFICATION. --The department shall disqualify a certified project and may not issue a rebate to the project if the project:

- (a) Does not begin principal photography in this state within the period beginning 30 days before and ending 90 days after the project's listed production start date. Pursuant to department rule, the commissioner may, upon a showing of good cause, grant a one-time extension of this deadline;*
- (b) Does not abide by the policies, procedures, deadlines, or requirements of the application verification process;*
- (c) Does not notify the commissioner of any change in the production start date before commencing production;*
- (d) Submits fraudulent information; or*
- (e) Uses the state sales tax exemption.*

(11) FRAUD. --An applicant that submits fraudulent information under this section is liable for reimbursement of the reasonable costs and fees associated with the review, processing, investigation, and prosecution of the fraudulent submission. An applicant that obtains a rebate under this section through a claim that is fraudulent shall reimburse the program for the rebate awarded and reasonable costs and fees associated with the review, processing, investigation, and prosecution of the fraudulent claim and shall pay a civil penalty in an amount equal to double the rebate amount and any criminal penalty to which the applicant may be subject.

- (12) RULES; POLICIES; PROCEDURES.** --*The commissioner may adopt rules and shall develop policies and procedures to administer this section, including, but not limited to, rules specifying requirements for the application and approval process and the determination of qualified expenditures.*
- (13) ANNUAL REPORT.** --*Each November 1, the commissioner shall provide an annual report on the program for the previous fiscal year to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must identify the return on investment associated with, and economic benefits to this state attributable to, the program.*
- (14) EXPIRATION.** --*The Film, Television, and Digital Media Targeted Rebate Program expires June 30, 2023, at which point all remaining appropriated funds not earmarked and set aside for certified projects must revert to the General Revenue Fund. All remaining appropriated funds must revert to the General Revenue Fund no later than October 31, 2024.*

Section 2. This act shall take effect upon becoming a law.