

# FL H 497, Prefiled

Florida

Legislative History and Analysis Changes in Bill text reflected as:

~~Text Deleted~~

*Text Added*

~~Text Vetoed~~

session: Florida 122nd Regular Session cite: 2020 FL H 497

Prefiled

October 30, 2019 Buchanan

HB 497

2020

A bill to be entitled

An act relating to the entertainment industry; creating s. 288.1259, F.S.; creating the Film, Television, and Digital Media Targeted Rebate Program within the Department of Economic Opportunity; providing definitions; providing the purpose of the program; providing requirements for rebate eligibility; authorizing rebates up to

a specified amount; authorizing a bonus rebate amount if certain requirements are met; requiring a certified project to make a good faith effort to use providers of infrastructure and equipment in, and employee residents of, the state; providing application periods; providing limits on the amount of rebate funds that may be earmarked during each application period; prohibiting the acceptance of applications when rebate funds are not available; providing that certain companies may submit program applications during certain application periods; providing limits on the amount of applications that may be submitted by and certified for a company in a fiscal year; requiring applications to include specified information; requiring the Commissioner of Film and Entertainment

to review applications and make certain determinations; requiring the Florida Film and Entertainment Advisory Council to meet when directed by the commissioner to score applicants based on specified criteria; providing criteria for such scoring; requiring the commissioner to make certification determinations and notify applicants of such determinations; requiring the department to earmark and set aside certain rebate funds; requiring the commissioner to develop a process to verify qualified expenditures; providing requirements for the verification process, including a compliance audit performed by an independent certified public accountant; providing for the issuance of rebates; providing for the rollover of unawarded funds at the end of the fiscal year; requiring a project that receives rebate funds to include certain marketing materials; requiring the project to allow a visit to the production site by certain individuals; requiring the department to disqualify a certified project from the

program in certain circumstances; providing that an applicant that submits fraudulent information is liable for the reimbursement of certain costs and fees and civil penalties; authorizing the commissioner to adopt rules and develop policies and procedures to administer the program; requiring an annual report to the

Governor and the Legislature; providing for expiration of the program and reversion of certain funds to the General Revenue Fund; providing an effective date.

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

Section 1. Section 288.1259, Florida Statutes, is created to read:

**288.1259 Film, Television, and Digital Media Targeted Rebate Program.--**

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

- (a) “Certified project” means a qualified project that has been scored by the council, determined by the commissioner to meet or exceed the desired economic impact and other criteria of the program, and has been allocated rebate funds based on the project’s estimated qualified expenditures.**
- (b) “Commissioner” means the Commissioner of Film and Entertainment.**
- (c) “Council” means the Florida Film and Entertainment Advisory Council.**
- (d) “Digital media project” means a commercial video game, including an educational video game, that includes at least 30 minutes of game play time. The term does not include a project that contains content that is obscene as defined in s. 847.001.**
- (e) “Family friendly” means the content of a project has cross-generational appeal; is appropriate in theme, content, and language for a broad family audience; embodies a responsible resolution of issues; does not contain any act of drunkenness, illicit drug use, sex, nudity, gratuitous violence, or vulgar or profane language; and does not portray smoking any substance in a positive manner.**
- (f) “Film project” means a theatrical, direct-to-video, television, cable, internet, streaming service, or animated narrative motion picture that is at least 75 minutes long. The term does not include a project that contains content that is obscene as defined in s. 847.001.**
- (g) “Office” means the Office of Film and Entertainment within the department.**
- (h) “Principal photography” means:**
  - 1. For a film or television project, the filming of major or significant components of the project which involve lead actors.**
  - 2. For a digital media project, the time period during which the majority of the crew is dedicated solely to the qualified project.**
- (i) “Production start date” means:**
  - 1. For a film or television project, the start date of principal photography, as listed on the application.**
  - 2. For a digital media project, the start date of storyboards or a later date, as listed on the application.**
- (j) “Qualified expenditures” means expenditures incurred in the state and paid to residents or Florida- registered businesses for preproduction, production, or postproduction of a qualified project for:**

1. *Goods rented or leased from, or services provided by, a vendor or supplier in the state which is registered with the Department of State or the Department of Revenue, has a physical address in the state, and employs one or more residents on a full-time basis. When services provided by the vendor or supplier include personal services or labor, only personal services or labor provided by residents are qualified expenditures.*
2. *Payments in the form of salary, wages, or other compensation, including amounts paid through payroll service companies, any benefits including pension, health, and welfare payments for technical and production crews, directors, producers, and performers, and per diem, up to a maximum of \$200,000 per resident. The term does not include salary, wages, or other compensation for executives, legal staff, or other individuals who are employed by the company producing the project or its parent or an affiliate company unless such individuals are employed solely to work on the project.*
3. *The rental of cars, trucks, or trailers if such car, truck, or trailer is registered with the Department of Highway Safety and Motor Vehicles.*
4. *The purchase of catering meals and on-set craft service supplies.*
5. *The rental of accommodations for the project's cast and crew.*

*The term does not include expenditures for airfare; expenditures made before qualification for the program; expenditures for items purchased or rented on the Internet; expenditures for rebilled goods or services provided by an in-state company from out-of-state vendors or suppliers; or, for a digital media project, expenditures made more than 9 months after the project's first qualified expenditure.*

*(k) "Qualified project" means a film, television, or digital media project that meets all of the following criteria:*

1. *A complete application to the program for the project has been submitted by a company registered to do business in the state to the commissioner and been accepted for consideration.*
2. *The project is not a weather or market program, a sporting event or 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 that contains content that is obscene as defined in s. 847.001.*

*(l) "Resident" means a person who has a valid Florida driver license or Florida identification card issued under s. 322.051 and has signed an affidavit confirming Florida residency.*

*(m) "Television project" means a 30- to 60-minute television pilot or television series with at least seven episodes, except that a reality series must have at least ten episodes. The term includes a scripted drama, comedy, animation, or reality series. The term does not include a project that contains content that is obscene as defined in s. 847.001.*

*(n) "Underutilized area" means any county in Florida, excluding Broward, Miami-Dade, Orange, and Seminole Counties.*

*(2) CREATION AND PURPOSE OF PROGRAM.--The Film, Television, and Digital Media Targeted Rebate Program is created within the department under the supervision of the commissioner.*

*The purpose of the program is to boost Florida's economic prosperity by creating high-paying jobs, widening the film industry's impact on the state by giving a modest bonus for production in underutilized areas, enhancing tourism by selecting projects that encourage visiting the state, and encouraging more family- friendly projects in the state by providing a limited rebate to projects that provide the greatest return-on- investment and economic benefit to the state.*

**(3) REBATE ELIGIBILITY.--**

**(a) To be eligible for a rebate, an applicant must:**

**1. Be producing a project that:**

**a. Has projected qualified expenditures of:**

**(I) For a film project, at least \$1.5 million.**

**(II) For a television project, including a television pilot, at least \$500,000 per episode.**

**(III) For a digital media project, at least \$1,500,000.**

**b. Has a projected crew, including cast and stand-ins, but excluding extras or background performers, that is comprised of at least 60 percent residents and one military veteran.**

**c. Is projected to spend 70 percent of its total production days in the state.**

**2. Not use the sales and use tax certificate of exemption authorized under s. 288.1258 for the project.**

**(b) An applicant may receive a rebate in an amount up to 20 percent or, if eligible for a bonus, 23 percent of its verified qualified expenditures for a certified project, up to a maximum of \$2,000,000. An applicant is eligible for a bonus in the amount of 3 percent of its verified qualified expenditures if:**

**1. Seventy-five percent of its production takes place in an underutilized area; or**

**2. Its content is family friendly.**

**(c) A certified project must make a good faith effort to use existing providers of infrastructure or equipment in the 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.**

**(4) APPLICATION PERIODS.--**

**(a) The commissioner may only accept applications for the rebate program during application periods. There shall be two application periods each fiscal year. The start date of each application period shall be determined by the commissioner, within the following constraints:**

**1. The first application period may begin before the start of the fiscal year and shall end by the fifth business day after July 1.**

**2. The second application period shall end by the fifth business day after December 1.**

- (b) The department may not earmark or set aside more than 60 percent of any appropriated or rolled-over rebate funds during the first application period of each fiscal year. Remaining funds may be earmarked and set aside during the second application period of each fiscal year.*
- (c) If all rebate funds are earmarked and set aside for certified projects, applications may not be accepted in any application period until additional funds become available for the program.*

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

*(a) A company that plans to produce a film, television, or digital project in the state may submit an application for the program to the commissioner during an application period as follows:*

- 1. For a project with a production start date that is within 6 months after July 1, the company may submit an application during the first application period.*
- 2. For a project with a production start date that is within 6 months after January 1, the company may submit an application during the second application period.*

*(b) A company, including its parent company, may submit applications for up to five projects in a fiscal year but only one project may be certified, except that a television pilot and a television series based on such pilot may both be certified in the same fiscal year.*

*(c) The application must include, at a minimum, the following:*

- 1. Proof of funding.*
- 2. Project-related employment information, including information on the total number of residents to be employed.*
- 3. A full line-item budget and detailed budget of planned qualified expenditures, including:
  - a. The expected total resident-wage qualified expenditures.*
  - b. The expected total state nonwage qualified expenditures.*
  - c. The expected total state nonqualified expenditures.**
- 4. A detailed distribution plan for use in determining the potential economic impact of the project on the state.*
- 5.a. For a film or television project, the latest script, a production schedule that includes the production start date, a day out of days report, and a list of expected shooting locations.*  
*b. For a digital media project, a detailed game design document, including a production schedule that includes the production start date.*
- 6. The applicant's signed affirmation that the information on the application is correct.*
- 7. The company's Florida tax identification number.*

*(d) Within a reasonable period of time after the last business day of each application period, the commissioner shall review all applications submitted during the application period and, for each applicant:*

1. *Determine if the applicant is eligible for the program.*
  2. *Determine the expected qualified expenditures.*
  3. *Determine the maximum rebate amount for which the applicant may be eligible.*
  4. *Determine if the applicant's project is family friendly.*
  5. *Determine what percentage of the applicant's project is proposed to occur in an underutilized area.*
  6. *Determine if the applicant is a Florida registered corporation.*
  7. *Contact the applicant with any questions that the commissioner determines are necessary.*
  8. *Gather any additional information needed to address the criteria specified in subsection (6).*
- (e) *The commissioner shall assemble a project package containing the details of each eligible application for each council member.*
- (f) *The commissioner shall set, and provide notice to the council of, the date and time of a council meeting for the purpose of assessing each qualified project. The council may meet in person or by conference call and shall use the criteria specified in subsection (6) to determine a score for each applicant, with the highest scores going to projects determined to provide the greatest economic impact and return-on-investment to the 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, before the first application period for the program.*
- (b) *The criteria used by the council to determine the score for each applicant shall include, at a minimum, the following:*
1. *The amount of the project's overall expected qualified expenditures.*
  2. *The amount of wages expected to be paid to residents.*
  3. *The number of full-time equivalent jobs that will be created.*
  4. *Whether the project will provide its resident workforce with pension, health, and welfare benefits.*
  5. *The estimated direct and indirect tourism benefits of the project, based on submitted distribution plans.*
  6. *The expected duration of the resident employment.*
  7. *What percentage of the project will be produced in an underutilized area.*
  8. *Whether the project is family friendly.*

9. *Whether the project has a resident writer, producer, or star.*
10. *Whether a film, television, or digital media school in the state will assist with production of the project.*
11. *Whether the leadership team of the project has a successful project history.*
12. *The number of resident veterans who will be hired.*
13. *The number of graduates of a film school in the state who will be hired as crew or cast.*

**(7) NOTIFICATION OF DECISION.--**

*(a) After the council delivers its final scores to the commissioner, the commissioner shall, in a timely manner:*

1. *Make a final determination on whether to certify each qualified project, giving consideration to the score determined by the council.*
2. *Provide to the department a list of the certified projects and the rebate amount that each respective applicant may receive.*
3. *Notify each applicant with a project that has been certified of the specified percentage of its qualified expenditures for which it is eligible to receive a rebate and the maximum rebate amount that it may receive.*
4. *Provide a notice of rejection to each rejected applicant. Failure to notify an applicant of its rejection does not deem the applicant's project a certified project.*

*(b) Based on the final determinations 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) VERIFICATION PROCESS; REBATE ISSUANCE.--**

*(a) The commissioner shall develop a process to verify the actual qualified expenditures of a certified project after the project's work in the state is complete. The verification process shall require all of the following:*

1. *A certified project must submit to the commissioner, electronically or as hard copies, all of the following:*
  - a. *Data substantiating each qualified expenditure which has been audited by an independent certified public accountant licensed in the state in accordance with subparagraph 4.*
  - b. *Copies of documents verifying residency of residents hired by the project.*
  - 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. Final cast and crew lists with contact information.*

*g. For each veteran employed by the project, a copy of the veteran's 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.*

*h. Any additional information determined to be necessary by the commissioner.*

*2. The lead producer or studio executive in charge of the certified project must sign and submit to the commissioner a written declaration under penalty of perjury as provided in s. 92.525 stating that all salaries, wages, and other compensation submitted as qualified expenditures are in compliance with this section.*

*3. The information and written declaration 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. Under rules adopted by the department, the commissioner may, upon a showing of good cause, grant a one-time extension of this deadline.*

*4. An independent certified public accountant in the state must conduct a compliance audit, at the certified project's expense, to substantiate each qualified expenditure and submit the results of the audit to the commissioner as a report, along with all substantiating data, within a reasonable period of time after receipt of records from the certified project.*

*(b)The commissioner must review the accountant's submitted report and data within a reasonable period of time after receipt and report to the department the final verified amount of actual qualified expenditures made by the certified project and the rebate amount due to such project.*

*(c)After approval by the department of the rebate amount due to the certified project, which may not exceed the maximum rebate amount specified in the notice required under subparagraph (7)(a)3., the rebate shall 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 shall roll over to the next fiscal year.*

**(9) MARKETING AND TOURISM REQUIREMENT.--**

*(a) The commissioner shall ensure that, as a condition of receiving a rebate under this section, marketing materials promoting the state as a tourist destination or film and entertainment production destination are included in the certified project. If logos are used in the end credits of the project, the project must include a "Filmed in Florida" or "Produced in Florida" logo and, if applicable, the local film office logo in the end credits. The size and placement of such logos shall be commensurate to other logos included in the end credits. If logos are not used, the statement "Filmed in Florida," "Produced in Florida," or a similar statement approved by the commissioner must be included in the end credits. digital media project must also create and include a 5-second or longer animated logo with the words "Produced in Florida" or a similar statement approved by the commissioner and, if applicable, the name of the local digital media office in a manner easily seen by a consumer of the digital media project. The commissioner shall provide the logos required in this paragraph, except that any local office logo shall be provided by the applicable local office.*

*(b)The certified project must allow the commissioner, or his or her designee, and at least two*



*guests to visit the production site upon the request of the commissioner. Upon such request, the certified project must provide the commissioner with reasonable notice of a date and time for such visit. The commissioner or his or her designee is not required to visit the production site.*

*(c) A certified project must provide to the commissioner at least five preapproved photos of the production and free use of such photos in promoting the state as a film, television, and digital media location or tourist destination.*

*(10) DISQUALIFICATION.--The department shall disqualify a certified project from the program and not issue a rebate if the company producing the project:*

*(a) Does not begin principal photography in the state within a period beginning 30 days before and ending 90 days after the project's listed production start date. The commissioner may, pursuant to department rule, grant a one-time extension of this period upon a showing of good cause.*

*(b) Does not abide by the verification process policies, procedures, deadlines, or requirements.*

*(c) Does not notify the commissioner of a change in the production start date before beginning production.*

*(d) Submits fraudulent information.*

*(e) Uses the sales and use tax certificate of exemption in violation of the restriction provided in subparagraph (3)(a)2.*

*(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. In addition, an applicant that obtains a rebate under this section through the submission of fraudulent information is liable for reimbursement of the rebate and a civil penalty in an amount equal to double the amount of the grant. Such penalty is in addition to any criminal penalty for which the applicant is liable for the same acts.*

*(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 processes and the determination of qualified expenditures.*

*(13) ANNUAL REPORT.--Each November 1, the commissioner shall provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives an annual report on the program for the previous fiscal year which identifies the rebate program's return on investment and any economic benefits to the state attributable to the program.*

*(14) EXPIRATION.--The Film, Television, and Digital Media Targeted Rebate Program expires June 30, 2023, on which date all remaining appropriated funds not earmarked and set aside for certified projects shall revert to the General Revenue Fund. Any appropriated funds remaining after disbursement of rebate amounts to qualified projects shall revert to the General Revenue fund no later than October 31, 2024.*

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