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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/09/2014	.	
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The Committee on Appropriations (Bean) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 798 - 1089

and insert:

Section 14. Effective upon becoming law, section 288.127, Florida Statutes, is created to read:

288.127 Qualified Television Loan Fund (QTV Fund).—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Fund administrator" means a private sector

organization under contract with the department to manage and



306866

11 administer the QTV Fund.

12 (b) "Major broadcaster" means broadcasting organizations  
13 that include, but are not limited to, television broadcasting  
14 networks, cable television, direct broadcast satellite,  
15 telecommunications companies, and internet streaming or other  
16 digital media platforms.

17 (c) "Private investment capital" means capital from  
18 private, nongovernmental funding sources that will be coinvested  
19 with the QTV Fund in segregated accounts.

20 (d) "Qualified lending partner" means a financial  
21 institution, as defined in s. 655.005, selected by a fund  
22 administrator with demonstrated capability in providing  
23 financing to television production and specialized expertise in  
24 intellectual property, tax credit programs, customary broadcast  
25 license agreements, advertising inventories, and ancillary  
26 revenue sources, with a combined portfolio in film, television,  
27 and entertainment media of at least \$500 million.

28 (e) "Qualified television content" means series, mini-  
29 series, or made-for-TV content produced by a qualified  
30 production company that has in place a distribution contract  
31 with a major broadcaster, under a customary broadcast license  
32 agreement. The term does not include a production that contains  
33 content that is obscene, as defined in s. 847.001.

34 (2) PURPOSE.—The purpose of the QTV Fund is to create a  
35 public-private partnership in the form of a revolving loan fund  
36 to administer a loan program for television production. The QTV  
37 Fund shall be privately managed under state oversight to  
38 incentivize the use of this state as a site for producing  
39 qualified television content and to develop and sustain the



306866

40 workforce and infrastructure for television content production.

41 (3) CREATION.—The Qualified Television Loan Fund is created  
42 within the department. The QTV Fund shall be a public fund that  
43 is privately managed by the fund administrator under contract  
44 entered into with the department. The department shall disburse  
45 the funds appropriated for this program to the fund  
46 administrator to invest in the QTV Fund during the existence of  
47 the program pursuant to this section and the contract entered  
48 into between the fund administrator and the department. State  
49 funds in the QTV Fund may be used only to enter into loan  
50 agreements and to pay any administrative costs or other  
51 authorized fees under this section.

52 (a) The QTV Fund shall be a revolving loan fund that shall  
53 invest and reinvest the principal and interest of the fund in  
54 accordance with s. 617.2104, in such a manner as to not subject  
55 the funds to state or federal taxes and to be consistent with  
56 the investment policy statement adopted by the fund  
57 administrator. As the production companies repay the principal  
58 and interest for the QTV Fund, the state funds shall be  
59 returned, less any QTV Fund expenses, to the account to be lent  
60 to subsequent borrowers.

61 (b) Funds from the QTV Fund shall be disbursed by the fund  
62 administrator through a lending vehicle to make short-term loans  
63 pursuant to this section.

64 (4) FUND ADMINISTRATOR.—

65 (a) The department shall contract with a fund administrator  
66 by September 1, 2014, and award the contract in accordance with  
67 the competitive bidding requirements in s. 287.057.

68 (b) The department shall select as fund administrator a



306866

69 private sector entity that demonstrates the ability to implement  
70 the program under this section and that meets the requirements  
71 set forth in this section. Preference shall be given to  
72 applicants that are headquartered in this state. Additional  
73 consideration may be given to applicants with experience in the  
74 management of economic development or job creation-related  
75 funds. The qualifications for the fund administrator must  
76 include, but are not limited to, the following:

77 1. A demonstrated track record of managing private sector  
78 equity or debt funds in the entertainment and media industries.

79 2. The ability to demonstrate through a partnership  
80 agreement that a qualified lending partner is in place, with the  
81 capability of providing leverage of a minimum of 2.5 times the  
82 capital amount of the QTV Fund, for financing the production  
83 cost of qualified television content in the form of senior debt.

84 (c) For overseeing and administering the QTV Fund, the fund  
85 administrator shall be reimbursed for the portion of costs the  
86 fund administrator incurs in establishing and operating the  
87 Fund related to the state's investment, which shall be paid from  
88 state funds in the QTV Fund. Any additional private investment  
89 capital in the segregated accounts is responsible for its own  
90 management fees. The fund administrator shall be entitled to a  
91 reasonable profit, but such distribution may not be made from  
92 any principal funds from the original appropriation.

93 (d) The fund administrator shall provide services defined  
94 under this section for the duration of the QTV Fund term unless  
95 removed for cause. Cause shall be further defined under the  
96 contract with the fund administrator and must include, but is  
97 not limited to, the engagement in fraud or other criminal acts



306866

98 by board members, incapacity, unfitness, neglect of duty,  
99 official incompetence and irresponsibility, misfeasance,  
100 malfeasance, nonfeasance, or lack of performance.

101 (5) FUND ADMINISTRATOR POWERS AND DUTIES.—

102 (a) Authority to contract.—The fund administrator may enter  
103 into agreements with qualified lending partners for concurrent  
104 lending through the QTV Fund. A loan made by the qualified  
105 lending partner must be accounted for separately from the state  
106 funds or any other private investment capital. Such loan shall  
107 be made as senior debt. The fund administrator may raise private  
108 investment capital for mezzanine equity and other equity or  
109 raise junior capital for concurrent lending through the QTV  
110 Fund. However, loans from private investment capital may not be  
111 made at more favorable terms and conditions than the terms and  
112 conditions of the state funds in the QTV Fund. The state  
113 appropriation must be maintained in a separate account from any  
114 private investment capital and administered in a separate legal  
115 investment entity or entities. Private investment capital and  
116 loans shall be segregated from each other, and funds may not be  
117 commingled.

118 (b) General duties.—The fund administrator:

119 1. Shall prudently manage the funds in the QTV Fund as a  
120 revolving loan fund.

121 2. Shall contract with one or more qualified lending  
122 partners.

123 3. Shall provide improvement of the credit profile of a  
124 structured financial transaction for qualified production  
125 companies that produce qualified television content meeting the  
126 criteria in subsection (7).



306866

127 4. May raise additional private investment capital to be  
128 held in separate accounts, in addition to the leverage provided  
129 by the qualified lending partner.

130 5. Shall administer the QTV Fund in accordance with this  
131 part.

132 6. Shall agree to maintain the recipient's books and  
133 records relating to funds received from the department according  
134 to generally accepted accounting principles and in accordance  
135 with the requirements of s. 215.97(7) and to make those books  
136 and records available to the department for inspection upon  
137 reasonable notice. The books and records must be maintained with  
138 detailed records showing the use of proceeds from loans to fund  
139 qualified television content.

140 7. Shall maintain its registered office in this state  
141 throughout the duration of the contract.

142 (c) *Financial reporting.*—The fund administrator shall  
143 submit to the department by February 28 each year audited  
144 financial statements for the preceding tax year which are  
145 audited by an independent certified public accountant after the  
146 end of each year in which the fund administrator is under  
147 contract with the department. In addition to providing an  
148 independent opinion on the annual financial statements, such  
149 audit provides a basis to verify the segregation of state funds  
150 from those of any private investment capital.

151 (d) *Program reporting.*—The fund administrator shall submit  
152 an annual report to the department by February 28 after the end  
153 of each year in which the fund administrator is under contract  
154 with the department. The report must include information on the  
155 loans made in the preceding calendar year and must include, but



306866

156 need not be limited to, the following:

157 1. The name of the qualified television content.

158 2. The names of the counties in which the production  
159 occurred.

160 3. The number of jobs created and retained as a result of  
161 the production.

162 4. The loan amounts, including the amount of private  
163 investment capital and funds provided by a qualified lending  
164 partner.

165 5. The loan repayment status for each loan.

166 6. The number, and amounts, of any loans with payments past  
167 due.

168 7. The number, and amounts, of any loans in default.

169 8. A description of the assets securing the loans.

170 9. Other information and documentation required by the  
171 department.

172 (e) Plan of accountability.—The fund administrator shall  
173 submit an annual plan of accountability of economic development,  
174 including a report detailing the job creation resulting from the  
175 QTV Fund loans made during the current year and cumulatively  
176 since the inception of the program. The fund administrator shall  
177 also provide any additional information requested by the  
178 department pertaining to economic development and job creation  
179 in the state.

180 (f) Conflict-of-interest statement.—The fund administrator  
181 shall provide a conflict-of-interest statement from its  
182 governing board certifying that no board member, director,  
183 employee, agent, immediate family member thereof, or other  
184 person connected to or affiliated with the fund administrator is



306866

185 receiving or will receive any type of compensation or  
186 remuneration from a production company that has received or will  
187 receive funds from the loan program or from a qualified lending  
188 partner. The department may waive this requirement for good  
189 cause shown.

190 (6) LOAN STRUCTURE.—

191 (a) The QTV Fund may make loans to production companies to  
192 fund production costs or provide improvement of the credit  
193 profile of a structured financial transaction for qualified  
194 television content that meets the criteria requirements of  
195 subsection (7). To make a loan, the fund administrator shall  
196 take into consideration the types of eligible collateral, the  
197 credit worthiness of the project, the producer's track record,  
198 the possibility that the project will encourage, enhance, or  
199 create economic benefits, and the extent to which assistance  
200 would foster innovative public-private partnerships and attract  
201 private debt or equity investment.

202 (b) The QTV Fund loan package shall be secured by  
203 contractual and predictable sources of repayment such as  
204 domestic and international broadcaster license agreements and  
205 other ancillary revenues that are derived from media content  
206 rights. Unsecured loans may not be made.

207 (c) The loans shall be made on the basis of a second lien  
208 or primary security rights on the media assets listed in  
209 paragraph (b).

210 (d) The QTV Fund shall provide funding only in conjunction  
211 with senior loans provided by a qualified lending partner. Loans  
212 from the QTV Fund may be subordinated to senior debt from the  
213 qualified lending partner and may not exceed 30 percent of the





306866

214 total production funding cost of any particular project.

215 (e) The production company's repayment of any loan shall be  
216 in accordance with the broadcast license agreement and the  
217 delivery of qualified television content to the major  
218 broadcaster and shall be within 60 days after such delivery.

219 (f) Loans made by the QTV Fund may not exceed 36 months in  
220 duration, except for extenuating circumstances for which the  
221 fund administrator may grant an extension upon making written  
222 findings to the department specifying the conditions requiring  
223 the extension.

224 (g) The fund administrator or a board member, employee, or  
225 agent thereof, or an immediate family member of a board member,  
226 employee, or agent, may not have a financial interest in an  
227 entity that is awarded a loan under a loan program and may not  
228 benefit directly or indirectly from the making of such a loan. A  
229 loan may not be made to a person if it violates this paragraph.  
230 As used in this section, the term "immediate family" means a  
231 parent, child, or spouse, or any other relative by blood,  
232 marriage, or adoption, of a board member, employee, or agent of  
233 the loan administrator.

234 (h) With the exception of funds appropriated to the  
235 department for the loan program, the credit of the state may not  
236 be pledged. The state is not liable or obligated in any way for  
237 claims against the QTV Fund or against the fund administrator,  
238 the qualified lending partner, or the department.

239 (7) QUALIFIED TELEVISION CONTENT CRITERIA.—The fund  
240 administrator must consider at a minimum the following criteria  
241 for evaluating the qualifying television content:

242 (a) The content is intended for broadcast by a major



306866

243 broadcaster on a major network, cable, or streaming channel.

244 (b) The content is produced in this state, or a minimum of  
245 80 percent of the production budget must be spent in this state.  
246 This requirement may be amended by the fund administrator upon  
247 notice to the department. Such notice must include a specific  
248 justification for the change and must be transmitted to the  
249 department in writing. The department has 10 business days to  
250 object to the change. If the department does not object to the  
251 change within 10 business days, the change is deemed acceptable  
252 by the department, and the fund administrator may grant the  
253 amendment to the requirement in this paragraph.

254 (c) If the content is a series, there is a programming  
255 order for at least 13 episodes. This requirement may be amended  
256 by the fund administrator upon notice to the department. Such  
257 notice must include a specific justification for the change and  
258 must be transmitted to the department in writing. The department  
259 has 10 business days to object to the change. If the department  
260 does not object to the change within 10 business days, the  
261 change is deemed acceptable by the department, and the fund  
262 administrator may grant the amendment to the requirement in this  
263 paragraph.

264 (d) The producer must have a contract in place with a major  
265 broadcaster to acquire content programming under a customary  
266 broadcast license agreement and the contract must cover at least  
267 60 percent of the budget.

268 (e) The producer must retain a foreign sales agent and must  
269 be able to provide the fund administrator with the foreign sales  
270 agent's official estimates of foreign and ancillary sales.

271 (f) The project must be bonded and secured by an industry-



306866

272 approved completion guarantor if the production cost per episode  
273 exceeds \$1 million. This requirement may be waived if the loan  
274 applicant provides the fund administrator with evidence of  
275 adequate structure to protect the state's funds.

276 (8) AUDITOR GENERAL AUDIT.—The Auditor General is  
277 authorized to conduct operational audits, as defined in s.  
278 11.45, of the QTV Fund and fund administrator. The scope of  
279 audit must include, but is not limited to, internal controls  
280 evaluations, internal audit functions, reporting and performance  
281 requirements for the use of the funds, and compliance with state  
282 and federal law. The fund administrator shall provide to the  
283 Auditor General any detail or supplemental data required.

284 (9) RULEMAKING AUTHORITY.—The department may adopt rules to  
285 administer this section.

286 (10) EXPIRATION.—This section expires December 31, 2024, at  
287 which point all funds remaining in the QTV Fund shall revert to  
288 the General Revenue Fund.

289 (11) EMERGENCY RULES.—

290 (a) The executive director of the department is authorized,  
291 and all conditions are deemed met, to adopt emergency rules  
292 pursuant to ss. 120.536(1) and 120.54(4) for the purpose of  
293 implementing this section.

294 (b) Notwithstanding any other law, the emergency rules  
295 adopted pursuant to paragraph (a) remain in effect for 6 months  
296 after adoption and may be renewed during the pendency of  
297 procedures to adopt permanent rules addressing the subject of  
298 the emergency rules.

299 (c) This subsection expires October 1, 2015.

300 Section 15. Effective upon becoming law, paragraph (b) of



306866

301 subsection (2) of section 288.0001, Florida Statutes, is amended  
302 to read:

303       288.0001 Economic Development Programs Evaluation.—The  
304 Office of Economic and Demographic Research and the Office of  
305 Program Policy Analysis and Government Accountability (OPPAGA)  
306 shall develop and present to the Governor, the President of the  
307 Senate, the Speaker of the House of Representatives, and the  
308 chairs of the legislative appropriations committees the Economic  
309 Development Programs Evaluation.

310       (2) The Office of Economic and Demographic Research and  
311 OPPAGA shall provide a detailed analysis of economic development  
312 programs as provided in the following schedule:

313       (b) By January 1, 2015, and every 3 years thereafter, an  
314 analysis of the following:

315       1. The entertainment industry financial incentive program  
316 established under s. 288.1254.

317       2. The entertainment industry sales tax exemption program  
318 established under s. 288.1258.

319       3. The ~~VISIT~~ Florida Tourism Industry Marketing Corporation  
320 and its programs established or funded under ss. 288.122,  
321 288.1226, 288.12265, and 288.124.

322       4. The Florida Sports Foundation and related programs  
323 established under ss. 288.1162, 288.11621, 288.1166, 288.1167,  
324 288.1168, 288.1169, and 288.1171.

325       5. The qualified television loan fund established under s.  
326 288.127.

327  
328 ===== T I T L E   A M E N D M E N T =====

329 And the title is amended as follows:



306866

330 Delete lines 57 - 61  
331 and insert:  
332 television content criteria; permitting the Auditor  
333 General to conduct an operational audit of the fund  
334 and the fund administrator; authorizing the department  
335 to adopt rules; providing for expiration of the act;  
336 providing emergency rulemaking authority; amending s.  
337 288.0001, F.S.; requiring an analysis of the qualified  
338 television loan fund in the Economic Development  
339 Programs Evaluation; amending s.