

1 A bill to be entitled

2 An act relating to the qualified television revolving
3 loan fund; creating s. 288.127, F.S.; defining terms;
4 providing a purpose; creating the qualified television
5 revolving loan fund; requiring the Department of
6 Economic Opportunity to contract with a fund
7 administrator; providing fund administrator
8 qualifications; providing for the fund administrator's
9 compensation and removal; specifying the fund
10 administrator's powers and duties; providing the
11 structure of the loans; providing qualified television
12 content criteria; authorizing the Auditor General to
13 conduct an operational audit of the fund and the fund
14 administrator; authorizing the department to adopt
15 rules; providing for expiration of the loan program;
16 providing emergency rulemaking authority; providing
17 for expiration of the emergency rulemaking authority;
18 amending s. 288.0001, F.S.; requiring an analysis of
19 the qualified television revolving loan fund in the
20 Economic Development Programs Evaluation; providing an
21 effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Section 288.127, Florida Statutes, is created
26 to read:

27 288.127 Qualified television revolving loan fund.-
 28 (1) DEFINITIONS.-As used in this section, the term:
 29 (a) "Fund administrator" means a private sector
 30 organization under contract with the department to manage and
 31 administer the qualified television revolving loan fund.
 32 (b) "Major broadcaster" means broadcasting organizations
 33 that include, but are not limited to, television broadcasting
 34 networks, cable television, direct broadcast satellite,
 35 telecommunications companies, and Internet streaming or other
 36 digital media platforms.
 37 (c) "Private investment capital" means capital from
 38 private, nongovernmental funding sources which will be
 39 coinvested with the QTV Fund in segregated accounts.
 40 (d) "Qualified lending partner" means a financial
 41 institution, as defined in s. 655.005, selected by a fund
 42 administrator that has demonstrated capability in providing
 43 financing to television production and specialized expertise in
 44 intellectual property, tax credit programs, customary broadcast
 45 license agreements, advertising inventories, and ancillary
 46 revenue sources, and a combined portfolio in film, television,
 47 and entertainment media of at least \$500 million.
 48 (e) "Qualified television content" means series, mini-
 49 series, or made-for-TV content produced by a qualified
 50 production company that has in place a distribution contract
 51 with a major broadcaster, under a customary broadcaster license
 52 agreement, and meets the criteria provided in subsection (7).

53 The term does not include a production that contains content
54 that is obscene, as defined in s. 847.001.

55 (f) "QTV Fund" means the qualified television revolving
56 loan fund.

57 (2) PURPOSE.—The purpose of the QTV Fund is to create a
58 public-private partnership in the form of a revolving loan fund
59 to administer a loan program for television production. The QTV
60 Fund is privately managed under state oversight to incentivize
61 the use of this state as a site for producing qualified
62 television content and to develop and sustain the workforce and
63 infrastructure for television content production.

64 (3) CREATION.—The qualified television revolving loan fund
65 is created within the department. The QTV Fund shall be a public
66 fund that is privately managed by the fund administrator under
67 contract with the department. The department shall disburse the
68 funds appropriated for this loan program to the fund
69 administrator to invest in the QTV Fund during the existence of
70 the program pursuant to this section and the contract between
71 the fund administrator and the department. State funds in the
72 QTV Fund may be used only to enter into loan agreements and to
73 pay any administrative costs or other authorized fees under this
74 section.

75 (a) The QTV Fund shall be a revolving loan fund that
76 invests and reinvests the principal and interest of the fund in
77 accordance with s. 617.2104 in a manner so as not to subject the
78 funds to state or federal taxes and to be consistent with the

79 investment policy statement adopted by the fund administrator.
 80 As production companies repay the principal and interest to the
 81 QTV Fund, state funds, less any QTV Fund expenses, shall be
 82 returned to the account to be lent to subsequent borrowers.

83 (b) Funds from the QTV Fund shall be disbursed by the fund
 84 administrator through a lending vehicle to make loans not to
 85 exceed 36 months in duration pursuant to this section.

86 (4) FUND ADMINISTRATOR.—

87 (a) The department shall contract with a fund
 88 administrator within 90 days after funds are appropriated for
 89 the loan program and shall award the contract in accordance with
 90 the competitive bidding requirements in s. 287.057.

91 (b) The department shall select as fund administrator a
 92 private sector entity that demonstrates the ability to implement
 93 the program under this section and that meets the requirements
 94 set forth in this section. Preference shall be given to
 95 applicants that are headquartered in this state. Additional
 96 consideration may be given to applicants that have experience in
 97 the management of economic development or job creation-related
 98 funds. The qualifications for the fund administrator must
 99 include, but are not limited to:

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

102 2. The ability to demonstrate through a partnership
 103 agreement that a qualified lending partner is in place which has
 104 the capability of providing leverage of a minimum of 2.5 times

105 the capital amount of the QTV Fund, for financing the production
106 cost of qualified television content in the form of senior debt.

107 (c) For overseeing and administering the QTV Fund, the
108 fund administrator shall be reimbursed for the costs that the
109 fund administrator incurs in establishing and operating the fund
110 related to the state's investment, which shall be paid from
111 state funds in the QTV Fund. Any additional private investment
112 capital in the segregated accounts is responsible for its own
113 management fees. The fund administrator is entitled to a
114 reasonable profit, but such distribution may not be made from
115 the principal funds from the original appropriation.

116 (d) The fund administrator shall provide services defined
117 under this section for the duration of the QTV Fund term unless
118 removed by the department. The contract between the department
119 and the fund administrator shall set forth the circumstances
120 under which the contract may be terminated.

121 (5) FUND ADMINISTRATOR POWERS AND DUTIES.—

122 (a) Authority to contract.—The fund administrator may
123 enter into agreements with qualified lending partners for
124 concurrent lending through the QTV Fund. A loan made by the
125 qualified lending partner must be accounted for separately from
126 the state funds or other private investment capital. Such loan
127 shall be made as senior debt. The fund administrator may raise
128 private investment capital for mezzanine equity and other equity
129 or raise junior capital for concurrent lending through the QTV
130 Fund. However, loans from private investment capital, which is

131 invested at the same risk profile as the QTV Fund, may not be
132 made at more favorable terms and conditions than the terms and
133 conditions of the state funds in the QTV Fund. The state
134 appropriation must be maintained in a separate account from
135 private investment capital and administered in a separate legal
136 investment entity or entities. Private investment capital and
137 loans shall be segregated from each other, and funds may not be
138 commingled.

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

140 1. Shall prudently manage the funds in the QTV Fund as a
141 revolving loan fund.

142 2. Shall contract with one or more qualified lending
143 partners.

144 3. Shall provide improvement of the credit profile of a
145 structured financial transaction for qualified production
146 companies that produce qualified television content meeting the
147 criteria in subsection (7).

148 4. May raise additional private investment capital to be
149 held in separate accounts, in addition to the leverage provided
150 by the qualified lending partner.

151 5. Shall administer the QTV Fund in accordance with this
152 part.

153 6. Shall agree to verify that the recipient's books and
154 records relating to funds received from the department are
155 maintained according to generally accepted accounting principles
156 and in accordance with s. 215.97(7) and to ensure that those

157 books and records will be available to the department for
158 inspection upon reasonable notice. The books and records must be
159 maintained with detailed records showing the use of proceeds
160 from loans to fund qualified television content.

161 7. Shall maintain its registered office in this state
162 throughout the duration of the contract.

163 (c) Financial reporting.—By February 28 of each year, the
164 fund administrator shall submit to the department financial
165 statements for the preceding tax year which are audited by an
166 independent certified public accountant after the end of each
167 year in which the fund administrator is under contract with the
168 department. In addition to providing an independent opinion on
169 the annual financial statements, such audit provides a basis for
170 verifying the segregation of state funds from those of any
171 private investment capital.

172 (d) Program reporting.—The fund administrator shall submit
173 a report to the department by February 28 after the end of each
174 year in which the fund administrator is under contract with the
175 department. The report must include information on the loans
176 made in the preceding calendar year, including:

177 1. The name of the qualified television content.

178 2. The names of the counties in which the production
179 occurred.

180 3. The number of jobs created and retained as a result of
181 the production.

182 4. The loan amounts, including the amount of private

183 investment capital and funds provided by a qualified lending
 184 partner.

185 5. The loan repayment status for each loan.

186 6. The number and amounts of any loans with payments past
 187 due.

188 7. The number and amounts of any loans in default.

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

190 9. Other information and documentation required by the
 191 department.

192 (e) Plan of accountability.—The fund administrator shall
 193 submit an annual plan of accountability of economic development,
 194 including a report detailing the job creation resulting from the
 195 QTV Fund loans made during the current year and cumulatively
 196 since the inception of the program. The fund administrator shall
 197 also provide any additional information requested by the
 198 department pertaining to economic development and job creation
 199 in the state.

200 (f) Conflict-of-interest statement.—The fund administrator
 201 shall provide a conflict-of-interest statement from its
 202 governing board certifying that no board member, director,
 203 employee, or agent, or immediate family member thereof, or other
 204 person connected to or affiliated with the fund administrator is
 205 receiving or will receive any type of compensation or
 206 remuneration from a production company that has received or will
 207 receive funds from the loan program or from a qualified lending
 208 partner. The department may waive this requirement for good

209 cause shown.

210 (6) LOAN STRUCTURE.—

211 (a) The QTV Fund may be used to make loans to production
212 companies to fund production costs or provide improvement of the
213 credit profile of a structured financial transaction for
214 qualified television content that meets the criteria
215 requirements of subsection (7). To make a loan, the fund
216 administrator shall consider the types of eligible collateral,
217 the credit worthiness of the project, the producer's track
218 record, the possibility that the project will encourage,
219 enhance, or create economic benefits, and the extent to which
220 assistance would foster innovative public-private partnerships
221 and attract private debt or equity investment.

222 (b) The QTV Fund loan package shall be secured by
223 anticipated receivables from domestic and international
224 broadcaster license agreements and other ancillary revenues that
225 are derived from media content rights. Unsecured loans may not
226 be made.

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

230 (d) The QTV Fund shall provide funding only in conjunction
231 with senior loans provided by a qualified lending partner. Loans
232 from the fund may be subordinated to senior debt from the
233 qualified lending partner and may not exceed 30 percent of the
234 total production funding cost of any particular project.

235 (e) The production company's repayment of a loan shall be
236 in accordance with the license fee payment schedule agreement
237 and the delivery of qualified television content to the major
238 broadcaster and shall be within 60 days after such delivery.

239 (f) Loans made by the QTV Fund may not exceed 36 months in
240 duration, except for extenuating circumstances for which the
241 fund administrator may grant an extension upon making written
242 findings to the department specifying the conditions requiring
243 the extension.

244 (g) The fund administrator, or a board member, employee,
245 or agent thereof, or an immediate family member of a board
246 member, employee, or agent, may not have a financial interest in
247 an entity that is awarded a loan under the loan program and may
248 not benefit directly or indirectly from the making of such loan.
249 A loan may not be made to a person if it violates this
250 paragraph. As used in this section, the term "immediate family"
251 means a parent, child, or spouse, or other relative by blood,
252 marriage, or adoption, of the fund administrator, or a board
253 member, employee, or agent thereof.

254 (h) Except for funds appropriated to the department for
255 the loan program, the credit of the state may not be pledged.
256 The state is not liable or obligated in any way for claims
257 against the QTV Fund or against the fund administrator, the
258 qualified lending partner, or the department.

259 (7) QUALIFIED TELEVISION CONTENT CRITERIA.—The fund
260 administrator must, at a minimum, consider the following

261 criteria for evaluating the qualifying television content:

262 (a) The content is intended for broadcast by a major
263 broadcaster on a major network, cable, or streaming channel.

264 (b) The content is produced in this state, or a minimum of
265 80 percent of the production budget must be spent in this state.
266 This requirement may be amended by the fund administrator upon
267 notice to the department. Such notice must include a specific
268 justification for the change and must be transmitted to the
269 department in writing. The department has 10 business days to
270 object to the change. If the department does not object within
271 10 business days, the change is deemed acceptable by the
272 department, and the fund administrator may grant the amendment.

273 (c) If the content is a series, there is a programming
274 order for at least 13 episodes. This requirement may be amended
275 by the fund administrator upon notice to the department. Such
276 notice must include a specific justification for the change and
277 must be transmitted to the department in writing. The department
278 has 10 business days to object to the change. If the department
279 does not object within 10 business days, the change is deemed
280 acceptable by the department, and the fund administrator may
281 grant the amendment.

282 (d) The producer must have a contract in place with a
283 major broadcaster to acquire content programming under a
284 customary broadcast license agreement, and the contract must
285 cover at least 60 percent of the budget.

286 (e) The producer must retain a foreign sales agent and

287 must be able to provide the fund administrator with the foreign
288 sales agent's official estimates of foreign and ancillary sales.

289 (f) The project must be bonded and secured by an industry-
290 approved completion guarantor if the production cost per episode
291 exceeds \$1 million. This requirement may be waived if the loan
292 applicant provides the fund administrator with evidence of
293 adequate structure to protect the state's funds.

294 (8) AUDITOR GENERAL AUDIT.—The Auditor General may conduct
295 operational audits, as defined in s. 11.45, of the QTV Fund and
296 fund administrator. The scope of the audit must include, but is
297 not limited to, internal controls evaluations, internal audit
298 functions, reporting and performance requirements for the use of
299 the funds, and compliance with state and federal law. The fund
300 administrator shall provide to the Auditor General any detail or
301 supplemental data required.

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

304 (10) EXPIRATION.—This section expires December 31, 2025,
305 at which point all funds remaining in the QTV Fund revert to the
306 General Revenue Fund.

307 (11) EMERGENCY RULES.—

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

312 (b) Notwithstanding any other law, the emergency rules

313 adopted pursuant to paragraph (a) remain in effect for 6 months
 314 after adoption and may be renewed during the pendency of
 315 procedures to adopt permanent rules addressing the subject of
 316 the emergency rules.

317 (c) This subsection expires October 1, 2016.

318 Section 2. Paragraph (b) of subsection (2) of section
 319 288.0001, Florida Statutes, is amended to read:

320 288.0001 Economic Development Programs Evaluation.—The
 321 Office of Economic and Demographic Research and the Office of
 322 Program Policy Analysis and Government Accountability (OPPAGA)
 323 shall develop and present to the Governor, the President of the
 324 Senate, the Speaker of the House of Representatives, and the
 325 chairs of the legislative appropriations committees the Economic
 326 Development Programs Evaluation.

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

330 (b) By January 1, 2018 ~~2015~~, and every 3 years thereafter,
 331 an analysis of the following:

332 1. The entertainment industry financial incentive program
 333 established under s. 288.1254.

334 2. The entertainment industry sales tax exemption program
 335 established under s. 288.1258.

336 3. The VISIT ~~Florida~~ Tourism Industry Marketing
 337 Corporation and its programs established or funded under ss.
 338 288.122, 288.1226, 288.12265, and 288.124.

HB 237

2015

339 4. The Florida Sports Foundation and related programs
340 established under ss. 288.1162, 288.11621, 288.1166, 288.1167,
341 288.1168, 288.1169, and 288.1171.

342 5. The qualified television revolving loan fund
343 established under s. 288.127.

344 Section 3. This act shall take effect upon becoming a law.