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2005 Legislature

1                                   A bill to be entitled  
 2           An act relating to economic development; amending s.  
 3           288.125, F.S.; changing the term "television series" to  
 4           "television programming" for purposes of the definition of  
 5           the term "entertainment industry" in provisions  
 6           establishing the Office of Film and Entertainment within  
 7           the Office of Tourism, Trade, and Economic Development;  
 8           amending s. 288.1254, F.S.; revising a program under which  
 9           certain persons producing, or providing services for the  
 10          production of, filmed entertainment are eligible for state  
 11          financial incentives for activities in or relocated to  
 12          this state; revising definitions; revising application  
 13          procedures and requirements; revising application approval  
 14          provisions; revising reimbursement eligibility criteria  
 15          and requirements; revising limits on reimbursement;  
 16          revising the due date for the annual report to be  
 17          submitted to the Governor and the Legislature; providing  
 18          an effective date.

19  
 20   Be It Enacted by the Legislature of the State of Florida:

21  
 22           Section 1.   Section 288.125, Florida Statutes, is amended  
 23   to read:  
 24           288.125   Definition of "entertainment industry".--For the  
 25   purposes of ss. 288.1251-288.1258, the term "entertainment  
 26   industry" means those persons or entities engaged in the  
 27   operation of motion picture or television studios or recording  
 28   studios; those persons or entities engaged in the preproduction,

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29 | production, or postproduction of motion pictures, made-for-  
 30 | television movies ~~made for TV motion pictures~~, television  
 31 | programming series, commercial advertising, music videos, or  
 32 | sound recordings; and those persons or entities providing  
 33 | products or services directly related to the preproduction,  
 34 | production, or postproduction of motion pictures, made-for-  
 35 | television movies ~~made for TV motion pictures~~, television  
 36 | programming series, commercial advertising, music videos, or  
 37 | sound recordings, including, but not limited to, the broadcast  
 38 | industry.

39 |       Section 2. Subsections (1), (2), (3), (4), and (7) of  
 40 | section 288.1254, Florida Statutes, are amended to read:

41 |       288.1254 Entertainment industry financial incentive  
 42 | program; creation; purpose; definitions; application procedure;  
 43 | approval process; reimbursement eligibility; submission of  
 44 | required documentation; recommendations for payment; policies  
 45 | and procedures; fraudulent claims.--

46 |       (1) CREATION AND PURPOSE OF PROGRAM.--Subject to specific  
 47 | appropriation, there is created within the Office of Film and  
 48 | Entertainment an entertainment industry financial incentive  
 49 | program. The purpose of this program is to encourage the use of  
 50 | this state as a site for filming, and ~~for~~ providing production  
 51 | services for filmed entertainment, ~~motion pictures, made for-~~  
 52 | ~~television movies, commercials, music videos, industrial and~~  
 53 | ~~educational films, and television programs by the entertainment~~  
 54 | ~~industry.~~

55 |       (2) DEFINITIONS.--As used in this section, the term:

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56 (a) "Filmed entertainment" means a theatrical or direct-  
57 to-video motion picture, a made-for-television motion picture  
58 ~~teleproduction~~, a commercial, a music video, an industrial or  
59 educational film, a promotional video or film, a documentary  
60 film, a television pilot, a presentation for a television pilot,  
61 a television series, including, but not limited to, a drama, a  
62 reality, a comedy, a soap opera, a telenovella, a game show, and  
63 a miniseries production, or a digital-media-effects production  
64 by the entertainment industry to be sold or displayed in an  
65 electronic medium. As used in this paragraph, the term "motion  
66 picture" means a motion picture made on or by film, tape, or  
67 otherwise and produced by means of a motion picture camera,  
68 electronic camera or device, tape device, any combination of the  
69 foregoing, or any other means, method, or device now used or  
70 which may hereafter be adopted. As used in this paragraph, the  
71 term "digital-media-effects" means visual elements created  
72 through the modification of already existing or newly created  
73 visual elements for film, video, or animated media through the  
74 use of digital 2D/3D animation or painting, motion capture, or  
75 compositing technologies. For purposes of this section, the term  
76 "filmed entertainment" does not include the electronic gaming  
77 industry or sporting events.

78 (b) "Production costs" means the costs of real, tangible,  
79 and intangible property used and services performed in the  
80 production, including preproduction and postproduction, of  
81 qualified filmed entertainment. Production costs generally  
82 include, but are not limited to:

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83        1. Wages, salaries, or other compensation for technical  
 84 and production crews, directors, producers, and performers who  
 85 are residents of this state.

86        2. Expenditures for sound stages, backlots, production  
 87 editing, digital effects, sound recordings, sets, and set  
 88 construction.

89        3. Expenditures for rental equipment, including, but not  
 90 limited to, cameras and grip or electrical equipment.

91        4. Expenditures for meals, travel, accommodations, and  
 92 goods used in producing filmed entertainment that is located and  
 93 doing business in this state ~~total cost of producing filmed~~  
 94 ~~entertainment.~~

95        (c) "Qualified expenditures" means production costs for  
 96 goods purchased or leased or services purchased, leased, or  
 97 employed from a resident of this state or a vendor or supplier  
 98 who is located and doing business in this state, but excluding  
 99 wages, salaries, or other compensation paid to the two highest-  
 100 paid employees.

101        (d) "Qualified production" means filmed entertainment that  
 102 makes expenditures in this state for the total or partial  
 103 production of filmed entertainment ~~a motion picture, made for~~  
 104 ~~television movie with a running time of 90 minutes or more,~~  
 105 ~~commercial, music video, industrial and educational film,~~  
 106 ~~television series pilot, or television episode.~~ Productions that  
 107 are deemed by the Office of Film and Entertainment to contain  
 108 obscene content, as defined by the United States Supreme Court,  
 109 are shall not be considered qualified productions. Also, a  
 110 production is not a qualified production if it is determined

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111 | that the first day of principal photography in this state  
 112 | occurred on or before the date of submitting its application to  
 113 | the Office of Film and Entertainment or prior to certification  
 114 | by the Office of Tourism, Trade, and Economic Development.

115 |       (e) "Qualified relocation project" means a corporation,  
 116 | limited liability company, partnership, corporate headquarters,  
 117 | or other private entity that is domiciled in another state or  
 118 | country and relocates its operations to this state, is organized  
 119 | under the laws of this or any other state or country, and  
 120 | includes as one of its primary purposes digital-media-effects or  
 121 | motion picture and television production, or postproduction.

122 |       (3) APPLICATION PROCEDURE; APPROVAL PROCESS.--

123 |       (a) Any company engaged in this state in producing filmed  
 124 | entertainment may submit an application to the Office of Film  
 125 | and Entertainment for the purpose of determining qualification  
 126 | for receipt of reimbursement provided in this section. The  
 127 | office must be provided information required to determine if the  
 128 | production is a qualified production and to determine the  
 129 | qualified expenditures, production costs, and other information  
 130 | necessary for the office to determine both eligibility for and  
 131 | level of reimbursement.

132 |       (b) A digital-media-effects company in the state which  
 133 | furnishes digital material to filmed entertainment ~~a qualified~~  
 134 | ~~production that is certified by the Office of Film and~~  
 135 | ~~Entertainment~~ may submit an application to the Office of Film  
 136 | and Entertainment for the purpose of determining qualification  
 137 | for receipt of reimbursement authorized by this section. The  
 138 | office must be provided information required to determine if the

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139 | company is qualified and to determine the amount of  
 140 | reimbursement.

141 |       (c) Any corporation, limited liability company,  
 142 | partnership, corporate headquarters, or other private entity  
 143 | domiciled in another state which includes as one of its primary  
 144 | purposes digital-media-effects or motion picture and television  
 145 | production and which is considering relocation to this state may  
 146 | submit an application to the Office of Film and Entertainment  
 147 | for the purpose of determining qualification for reimbursement  
 148 | under this section.

149 |       (d)1. The Office of Film and Entertainment shall establish  
 150 | a process by which an application is accepted and reviewed and  
 151 | reimbursement eligibility and reimbursement amount are  
 152 | determined. The Office of Film and Entertainment may request  
 153 | assistance from a duly appointed local film commission in  
 154 | determining qualifications for reimbursement and compliance.

155 |       2. The Office of Film and Entertainment shall develop a  
 156 | standardized application form for use in approving a qualified  
 157 | production, a qualified relocation project, or a company  
 158 | qualifying under paragraph (a), paragraph (b), or paragraph (c).  
 159 | The application form must include, but need not be limited to,  
 160 | production-related information on employment, proposed total  
 161 | production budgets, planned expenditures in this state which are  
 162 | intended for use exclusively as an integral part of  
 163 | preproduction, production, or postproduction activities engaged  
 164 | primarily in this state, and a signed affirmation from the  
 165 | Office of Film and Entertainment that the information on the  
 166 | application form has been verified and is correct. The

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167 application form shall be distributed to applicants by the  
 168 Office of Film and Entertainment or local film commissions.

169 3. The Office of Film and Entertainment must complete its  
 170 review of each application within 5 days after receipt of the  
 171 completed application, including all required information, and  
 172 it must notify the applicant of its determination within 10  
 173 business days after receipt of the completed application and  
 174 required information.

175 4.2- Upon determination that all criteria are met for  
 176 qualification for reimbursement, the Office of Film and  
 177 Entertainment shall notify the applicant of such approval. The  
 178 office shall also notify the Office of Tourism, Trade, and  
 179 Economic Development of the applicant approval and amount of  
 180 reimbursement required. The Office of Tourism, Trade, and  
 181 Economic Development shall make final determination for actual  
 182 reimbursement.

183 5.3- The Office of Film and Entertainment shall deny an  
 184 application if it determines that:

- 185 a. The application is not complete or does not meet the
- 186 requirements of this section; or
- 187 b. The reimbursement sought does not meet the requirements
- 188 of this section for such reimbursement.

189 ~~(c) The Office of Film and Entertainment shall develop a~~  
 190 ~~standardized application form for use in approving a qualified~~  
 191 ~~production, a qualified relocation project, or a company~~  
 192 ~~qualifying under paragraph (b). The application form must~~  
 193 ~~include, but is not limited to, production-related information~~  
 194 ~~on employment, proposed total production budgets, planned~~

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195 ~~expenditures in this state which are intended for use~~  
 196 ~~exclusively as an integral part of preproduction, production, or~~  
 197 ~~postproduction activities engaged in primarily in this state,~~  
 198 ~~and a signed affirmation from the Office of Film and~~  
 199 ~~Entertainment that the information on the application form has~~  
 200 ~~been verified and is correct. The application form shall be~~  
 201 ~~distributed to applicants by the Office of Film and~~  
 202 ~~Entertainment or local film commissions.~~

203 ~~(f) The Office of Film and Entertainment must complete its~~  
 204 ~~review of each application within 5 days after receipt of the~~  
 205 ~~completed application, including all required information, and~~  
 206 ~~it must notify the applicant of its determination within 10~~  
 207 ~~business days after receipt of the completed application and~~  
 208 ~~required information.~~

209 (4) REIMBURSEMENT ELIGIBILITY; SUBMISSION OF REQUIRED  
 210 DOCUMENTATION; RECOMMENDATIONS FOR PAYMENT.--

211 (a) A ~~qualified~~ production that is qualified ~~certified~~ by  
 212 the Office of Film and Entertainment and is certified by the  
 213 Office of Tourism, Trade, and Economic Development is eligible  
 214 for the following financial incentives from the state:

215 ~~1-~~ a reimbursement of up to 15 percent of its qualifying  
 216 expenditures in this state on a filmed entertainment program  
 217 ~~that motion picture, made for television movie with a running~~  
 218 ~~time of 90 minutes or more, commercial, music video, industrial~~  
 219 ~~film, educational film, television series pilot, or television~~  
 220 ~~episode that demonstrates a minimum of \$850,000 in total~~  
 221 ~~qualified expenditures for the entire run of the project, versus~~  
 222 the budget on a single episode, within the fiscal year from July



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223 1 to June 30. However, the maximum reimbursement that may be  
 224 made with respect to any filmed entertainment program ~~a motion~~  
 225 ~~picture is \$2 million, the maximum reimbursement that may be~~  
 226 ~~made with respect to a made for television movie or television~~  
 227 ~~series pilot with a running time of 90 minutes or more is~~  
 228 ~~\$450,000, the maximum reimbursement that may be made with~~  
 229 ~~respect to any single television series pilot or television~~  
 230 ~~episode is \$150,000, the maximum reimbursement that may be made~~  
 231 ~~with respect to a music video or commercial is \$25,000, and the~~  
 232 ~~maximum reimbursement that may be made with respect to an~~  
 233 ~~industrial film or an educational film is \$15,000.~~ All noted  
 234 reimbursements under this section are subject to appropriation.  
 235 Payments under this section in a fiscal year shall be made to  
 236 qualified productions according to a production's principal  
 237 photography start date, for those qualified productions having  
 238 entered into the first queue as cited in subparagraph 1. or the  
 239 second queue cited in subparagraph 2. within the first 2 weeks  
 240 after the queue's opening. All other qualified productions  
 241 entering into either queue after the initial 2-week openings  
 242 shall be on a first-come, first-served basis until the  
 243 appropriation for that fiscal year is exhausted. On February 1  
 244 of each year, the remaining funds within both queues shall be  
 245 combined into a single queue and distributed based on a  
 246 project's principal photography start date. Subject to  
 247 ~~subsequent appropriations,~~ The eligibility of qualified  
 248 productions may not shall carry over from year to year but such  
 249 productions may reapply for eligibility under the guidelines  
 250 established for doing so. The Office of Film and Entertainment

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251 shall develop a procedure to ensure that qualified productions  
 252 continue on a reasonable schedule until completion. If a  
 253 qualified production is not continued according to a reasonable  
 254 schedule, the office shall withdraw its eligibility and  
 255 reallocate the funds to the next ~~other~~ qualified productions  
 256 already in the queue that have yet to receive their full maximum  
 257 or 15-percent financial reimbursement, if they have not started  
 258 principal photography by the time the funds become available.

259 1. Theatrical or direct-to-video motion pictures, made-  
 260 for-television movies, commercials, music videos, industrial and  
 261 educational films, promotional videos or films, documentary  
 262 films, television specials, and digital-media-effects  
 263 productions by the entertainment industry to be sold or  
 264 displayed in an electronic medium shall have their own separate  
 265 queue established, and such queue shall have dedicated to it 60  
 266 percent of all of the state incentive money.

267 2. Television pilots, presentations for television pilots,  
 268 or television series, including, but not limited to, drama,  
 269 reality, comedy, soap opera, telenovella, game show, or  
 270 miniseries productions, by the entertainment industry to be sold  
 271 or displayed in an electronic medium shall have their own  
 272 separate queue established, and such queue shall have dedicated  
 273 to it 40 percent of all of the state incentive money. ~~Qualified~~  
 274 ~~expenditures for which reimbursement shall be made include~~  
 275 ~~salaries and employment benefits paid for services rendered in~~  
 276 ~~this state; rents for real and personal property used in the~~  
 277 ~~production; payments for preproduction, production,~~  
 278 ~~postproduction, and digital media effects services rendered in~~

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279 ~~this state; and cost of set construction. Reimbursement may not~~  
 280 ~~be authorized for salaries of the two highest paid actors.~~  
 281 ~~Salaries of other actors are reimbursable.~~

282 (b) A digital-media-effects company in the state which  
 283 furnishes digital material to filmed entertainment ~~a qualified~~  
 284 ~~production that is certified by the Office of Film and~~  
 285 ~~Entertainment~~ may be eligible for a payment in an amount not to  
 286 exceed 5 percent of its annual gross revenues on qualified  
 287 expenditures as defined listed ~~in~~ paragraph (2)(c)  
 288 ~~subparagraph (a)2.~~ before taxes or \$100,000, whichever is less. A  
 289 company applying for payment must submit documentation annually  
 290 as required by the Office of Film and Entertainment for  
 291 determination of eligibility of claimed billing and  
 292 determination of the amount of payment for which the company is  
 293 eligible.

294 (c) A qualified relocation project that is certified by  
 295 the Office of Film and Entertainment is eligible for a one-time  
 296 incentive payment in an amount equal to 5 percent of its annual  
 297 gross revenues before taxes for the first 12 months of  
 298 conducting business in its Florida domicile or \$200,000,  
 299 whichever is less. A company applying for payment must submit  
 300 documentation as required by the Office of Film and  
 301 Entertainment for determination of eligibility of claimed  
 302 billing and determination of the amount of payment for which the  
 303 company is eligible.

304 (d) A qualified production, a digital-media-effects  
 305 company, or a qualified relocation project applying for a

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306 | payment under this section must submit documentation for claimed  
307 | qualified expenditures to the Office of Film and Entertainment.

308 |       (e) The Office of Film and Entertainment shall notify the  
309 | Office of Tourism, Trade, and Economic Development whether an  
310 | applicant meets the criteria for reimbursement and shall  
311 | recommend the reimbursement amount. The Office of Tourism,  
312 | Trade, and Economic Development shall make the final  
313 | determination for actual reimbursement.

314 |       (7) ANNUAL REPORT.--The Office of Film and Entertainment  
315 | shall provide an annual report for the previous fiscal year, due  
316 | October ~~January~~ 1, to the Governor, the President of the Senate,  
317 | and the Speaker of the House of Representatives outlining the  
318 | return on investment to the state on funds expended pursuant to  
319 | this section.

320 |       Section 3. This act shall take effect July 1, 2005.