

Bill No. CS/CS/HB 1325, 1st Eng.

Barcode 245728

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Floor: 1/RE/2R
05/02/2007 07:23 PM

.
. .
. .
. .
. .
. .

Senator Saunders moved the following amendment:

Senate Amendment (with title amendment)

Line 59, through line 597, delete those lines

and insert:

Section 1. This act may be cited as the "Don Davis Entertainment Industry Economic Development Act."

Section 2. Section 288.1254, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 288.1254, F.S., for present text.)

288.1254 Entertainment industry financial incentive program.--

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

(a) "Certified production" means a qualified production that has incentive funds allocated to it by the Office of Tourism, Trade, and Economic Development based on its estimated qualified expenditures. The term excludes a production if its first day of principal photography in this state occurred before the production is certified by the

Bill No. CS/CS/HB 1325, 1st Eng.

Barcode 245728

1 Office of Tourism, Trade, and Economic Development, unless the
 2 production spans more than 1 fiscal year, was a certified
 3 production on the first day of such photography, and is
 4 required to submit an application for continuing the same
 5 production in the subsequent year.

6 (b) "Digital media project" means a production of
 7 interactive entertainment which is produced for distribution
 8 in commercial or educational markets, including a video game,
 9 simulation, or animation, or a production intended for
 10 Internet or wireless distribution. The term excludes a
 11 production deemed by the Office of Film and Entertainment to
 12 contain obscene content as defined in s. 847.001(10).

13 (c) "High-impact television series" means a production
 14 created to run multiple production seasons having an estimated
 15 order of at least seven episodes per season and qualified
 16 expenditures of at least \$625,000 per episode.

17 (d) "Off-season certified production" means a
 18 production, other than a digital media project or an animated
 19 production, which films 75 percent or more of its principal
 20 photography days from June 1 through November 30.

21 (e) "Production" means a theatrical or direct-to-video
 22 motion picture, a made-for-television motion picture, a
 23 commercial, a music video, an industrial or educational film,
 24 an infomercial, a documentary film, a television pilot
 25 program, a presentation for a television pilot program, a
 26 television series, including, but not limited to, a drama, a
 27 reality show, a comedy, a soap opera, a telenovela, a game
 28 show, a miniseries production, or a digital media project by
 29 the entertainment industry. One season of a television series
 30 is considered one production. The term excludes a weather or
 31 market program, a sporting event, a sports show, a gala, a

Bill No. CS/CS/HB 1325, 1st Eng.

Barcode 245728

1 production that solicits funds, a home shopping program, a
 2 political program, a political documentary, political
 3 advertising, a gambling-related project or production, a
 4 concert production, or a local, regional, or
 5 Internet-distributed-only news show, current-events show, or a
 6 current-affairs show. A production may be produced on or by
 7 film, tape, or otherwise by means of a motion picture camera,
 8 electronic camera or device, tape device, computer, any
 9 combination of the foregoing, or any other means, method, or
 10 device now used or later adopted.

11 (f) "Production expenditures" means the costs of
 12 tangible and intangible property used and services performed
 13 primarily and customarily in the production, including
 14 preproduction and postproduction, excluding costs for
 15 development, marketing, and distribution. Production
 16 expenditures include, but are not limited to:

17 1. Wages, salaries, or other compensation, including
 18 amounts paid through payroll service companies, for technical
 19 and production crews, directors, producers, and performers.

20 2. Expenditures for sound stages, backlots, production
 21 editing, digital effects, sound recordings, sets, and set
 22 construction.

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

25 4. Expenditures for meals, travel, and accommodations.

26 (g) "Qualified expenditures" means production
 27 expenditures incurred in this state by a qualified production
 28 for:

29 1. Goods purchased or leased from, or services
 30 provided by, a vendor or supplier in this state which is
 31 registered with the Department of State or the Department of

Bill No. CS/CS/HB 1325, 1st Eng.

Barcode 245728

1 Revenue and doing business in this state.

2 2. Payments to residents of this state in the form of
3 salary, wages, or other compensation up to a maximum of
4 \$400,000 per resident for the general production queue and the
5 independent Florida filmmaker queue and up to a maximum of
6 \$200,000 for the digital media queue.

7
8 For a qualified production involving an event, such as an
9 awards show, the term excludes expenditures solely associated
10 with the event itself and not directly required by the
11 production. The term excludes expenditures prior to
12 certification, with the exception of those incurred for a
13 commercial, a music video, or the pickup of additional
14 episodes of a television series within a single season.

15 (h) "Qualified production" means a production in this
16 state meeting the requirements of this section and the minimum
17 qualified expenditures and requirements of its appropriate
18 queue. The term excludes a production:

19 1. In which less than 50 percent of the positions that
20 make up its production cast and below-the-line production crew
21 are filled by residents of this state, whose residency is
22 demonstrated by a valid Florida driver's license or other
23 state-issued identification confirming residency, or students
24 enrolled full-time in a film-and-entertainment-related course
25 of study at an institution of higher education in this state;
26 or

27 2. That is deemed by the Office of Film and
28 Entertainment to contain obscene content as defined in s.
29 847.001(10).

30 (i) "Qualified production company" means a
31 corporation, limited liability company, partnership, or other

1 legal entity engaged in producing a qualified production.

2 (2) CREATION AND PURPOSE OF PROGRAM.--The
3 entertainment industry financial incentive program is created
4 within the Office of Film and Entertainment. The purpose of
5 this program is to encourage the use of this state as a site
6 for filming and to develop and sustain the workforce and
7 infrastructure for film and entertainment production.

8 (3) APPLICATION PROCEDURE; APPROVAL PROCESS.--

9 (a) A qualified production company in this state
10 producing a qualified production may submit a program
11 application to the Office of Film and Entertainment for the
12 purpose of determining certification. The applicant shall
13 provide the office with information required to determine
14 whether the production is a qualified production and to
15 determine the qualified expenditures and other information
16 necessary for the office to determine certification.

17 (b) The Office of Film and Entertainment shall develop
18 an application form for use in qualifying an applicant as a
19 qualified production. The form must include, but need not be
20 limited to, production-related information concerning
21 employment of residents in this state, a detailed budget of
22 planned qualified expenditures, and the applicant's signed
23 affirmation that the information on the form has been verified
24 and is correct. The Office of Film and Entertainment and local
25 film commissions shall distribute the form.

26 (c) The Office of Film and Entertainment shall
27 establish a process by which an application is accepted and
28 reviewed for certification. The office may request assistance
29 from a duly appointed local film commission in determining
30 compliance with this section.

31 (d) The Office of Film and Entertainment shall review

1 the application within 10 business days after receipt. Upon
 2 its determination that the application contains all the
 3 information required by this subsection and meets the criteria
 4 set out in this section, the office shall qualify the
 5 applicant and recommend to the Office of Tourism, Trade, and
 6 Economic Development that the applicant be certified for a
 7 maximum amount of available funds. Within 5 business days
 8 after receipt of the recommendation, the Office of Tourism,
 9 Trade, and Economic Development shall reject the
 10 recommendation or certify the applicant.

11 (e) The Office of Film and Entertainment shall deny an
 12 application if it determines that the application is not
 13 complete or the production does not meet the requirements of
 14 this section.

15 (f) The Office of Film and Entertainment shall develop
 16 a process to verify the actual qualified expenditures of a
 17 certified production. The process must require:

18 1. A certified production to submit, in a timely
 19 manner after production ends and after making all of its
 20 qualified expenditures, data substantiating each qualified
 21 expenditure to an independent certified public accountant
 22 licensed in this state;

23 2. Such accountant to conduct an audit, at the
 24 certified production's expense, to substantiate each qualified
 25 expenditure and submit the results as a report, along with all
 26 substantiating data, to the Office of Film and Entertainment;
 27 and

28 3. The Office of Film and Entertainment to review the
 29 accountant's submittal and report to the Office of Tourism,
 30 Trade, and Economic Development the final verified amount of
 31 actual qualified expenditures made by the certified

1 production.

2 4. The Office of Tourism, Trade, and Economic
3 Development shall determine and approve the incentive amount
4 to each certified applicant.

5 (g) The Office of Film and Entertainment shall ensure
6 that, as a condition of receiving incentive funding under this
7 section, marketing materials promoting this state as a tourist
8 destination or film and entertainment production destination
9 are included, when appropriate, at no cost to the state, which
10 must, at a minimum, include placement in the end credits of a
11 "Filmed in Florida" logo with size and placement commensurate
12 to other logos included in the end credits or, if no logos are
13 used, the statement "Filmed in Florida using Florida's
14 Entertainment Industry Financial Incentive," or a similar
15 statement approved by the Office of Film and Entertainment
16 before such placement. The Office of Film and Entertainment
17 shall develop a "Filmed in Florida" logo and supply it for the
18 purposes specified in this paragraph.

19 (4) PRIORITY FOR INCENTIVE FUNDING; WITHDRAWAL OF
20 ELIGIBILITY; QUEUES.--

21 (a) The priority of a qualified production for
22 incentive funding must be determined on a first-come,
23 first-served basis within its appropriate queue. Each
24 qualified production must be placed into the appropriate queue
25 and is subject to the requirements of that queue.

26 (b) GENERAL PRODUCTION QUEUE.--Eighty-five percent of
27 incentive funding appropriated in any state fiscal year must
28 be dedicated to the general production queue. A production
29 certified under this queue is eligible for a reimbursement
30 equal to 15 percent of its actual qualified expenditures.

31 Within this queue:

Barcode 245728

1 1. A qualified production, excluding commercials,
 2 music videos, and digital media projects, which demonstrates a
 3 minimum of \$625,000 in qualified expenditures is eligible for
 4 up to a maximum of \$8 million in incentive funding. A
 5 qualified production spanning multiple state fiscal years may
 6 combine qualified expenditures from such fiscal years to
 7 satisfy the threshold.

8 2. A qualified production company that produces
 9 national, international, or regional commercials, or music
 10 videos may be eligible for a maximum of \$500,000 in incentive
 11 funding if it demonstrates a minimum of \$100,000 in qualified
 12 expenditures per national, international, or regional
 13 commercial or music video and exceeds a combined threshold of
 14 \$500,000 after combining actual qualified expenditures from
 15 qualified commercials and music videos during a single state
 16 fiscal year. After a qualified production company that
 17 produces commercials, music videos, or both reaches the
 18 threshold of \$500,000, it is eligible to apply for
 19 certification for incentive funding.

20 3. An off-season certified production is eligible for
 21 an additional 5-percent incentive funding on actual qualified
 22 expenditures. An off-season certified production that does not
 23 complete 75 percent of principal photography due to disruption
 24 caused by a hurricane or tropical storm may not be
 25 disqualified from eligibility for the additional 5-percent
 26 incentive as a result of the disruption.

27 4. Each qualified production shall make a good faith
 28 effort to use existing providers of infrastructure or
 29 equipment in this state, including providers of camera gear,
 30 grip and lighting equipment, vehicle providers, and
 31 postproduction services when available in-state.

1 5. A qualified high-impact television series shall be
2 allowed first position in this queue for incentive funding not
3 yet certified.

4 (c) INDEPENDENT FLORIDA FILMMAKER QUEUE.--Five percent
5 of incentive funding appropriated in any state fiscal year
6 must be dedicated to the independent Florida filmmaker queue.
7 A production certified under this queue is eligible for a
8 reimbursement equal to 15 percent of its actual qualified
9 expenditures. An independent Florida film that meets the
10 criteria of this queue and demonstrates a minimum of \$100,000,
11 but not more than \$625,000, in total qualified expenditures is
12 eligible for incentive funding. To qualify for this queue, a
13 qualified production must:

14 1. Be planned as a feature film or documentary of no
15 less than 70 minutes in length.

16 2. Provide evidence of 50 percent of the financing for
17 its total budget in an escrow account or other form dedicated
18 to the production.

19 3. Do all major postproduction in this state.

20 4. Employ Florida workers in at least six of the
21 following key positions: writer, director, producer, director
22 of photography, star or one of the lead actors, unit
23 production manager, editor, or production designer. As used in
24 this subparagraph, the term "Florida worker" means a person
25 who has been a resident of this state for at least 1 year
26 before a production's application under subsection (3) was
27 submitted or a person who graduated from a film school,
28 college, university, or community college in this state no
29 more than 5 years before such submittal or who is enrolled
30 full-time in such a school, college, or university.

31 (d) DIGITAL MEDIA PRODUCTS QUEUE.--Ten percent of

Bill No. CS/CS/HB 1325, 1st Eng.

Barcode 245728

1 incentive funding appropriated in any state fiscal year shall
2 be dedicated to the digital media projects queue. A production
3 certified under this queue is eligible for a reimbursement
4 equal to 10 percent of its actual qualified expenditures. A
5 qualified production that is a digital media project that
6 demonstrates a minimum of \$300,000 in total qualified
7 expenditures is eligible for a maximum of \$1 million in
8 incentive funding. As used in this paragraph, the term
9 "qualified expenditures" means the wages or salaries paid to a
10 resident of this state for working on a single qualified
11 digital media project, up to a maximum of \$200,000 in wages or
12 salaries paid per resident. A qualified production company
13 producing digital media projects may not qualify for more than
14 three projects in any 1 fiscal year. Projects that extend
15 beyond a fiscal year must reapply each fiscal year in order to
16 be eligible for incentive funding for that year.

17 (e) Each qualified production or certified production
18 shall continue on a reasonable schedule, which means beginning
19 principal photography in this state no more than 45 calendar
20 days before or after the date provided in the program's
21 application under subsection (3). The Office of Tourism,
22 Trade, and Economic Development shall withdraw the eligibility
23 of a qualified production or a certified production for
24 incentive funding if any such production does not continue on
25 a reasonable schedule.

26 (f) A certified production determined by the
27 Commissioner of Film and Entertainment, with the advice of the
28 Florida Film and Entertainment Advisory Council, to be family
29 friendly based on the review of the script and an interview
30 with the director is eligible for an additional reimbursement
31 equal to 2 percent of its actual qualified expenditures.

1 Family friendly productions are those that have
 2 cross-generational appeal; would be considered suitable for
 3 viewing by children age 5 and older; are appropriate in theme,
 4 content, and language for a broad family audience; embody a
 5 responsible resolution of issues; and do not exhibit any act
 6 of smoking, sex, nudity, or vulgar or profane language.

7 (5) RULES, POLICIES, AND PROCEDURES.--The Office of
 8 Tourism, Trade, and Economic Development may adopt rules under
 9 ss. 120.536(1) and 120.54 and develop policies and procedures
 10 to administer this section, including, but not limited to,
 11 rules specifying requirements for the application and approval
 12 process.

13 (6) ANNUAL REPORT.--Each October 1, the Office of Film
 14 and Entertainment shall provide an annual report for the
 15 previous fiscal year to the Governor, the President of the
 16 Senate, and the Speaker of the House of Representatives which
 17 outlines the return on investment and economic benefits to the
 18 state.

19 (7) FRAUD.--Any applicant that submits information
 20 under this section that includes fraudulent information is
 21 liable for reimbursement of the reasonable costs and fees
 22 associated with the review, processing, investigation, and
 23 prosecution of the fraudulent claim. An applicant that obtains
 24 an incentive payment under this section through a claim that
 25 is fraudulent is liable for reimbursement of the incentive
 26 payment plus a penalty in an amount double the incentive
 27 payment. The penalty is in addition to any criminal penalty to
 28 which the applicant is liable for the same acts. The applicant
 29 is also liable for costs and fees incurred by the state in
 30 investigating and prosecuting the fraudulent claim.

31

Bill No. CS/CS/HB 1325, 1st Eng.

Barcode 245728

1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 Line 2, through line 39, delete those lines

4

5 and insert:

6 An act relating to the entertainment industry;

7 amending s. 288.1254, F.S.; revising the

8 entertainment industry financial incentive

9 program; providing purpose of the program;

10 providing for submittal and approval of an

11 application under the program; providing for

12 review by the Office of Film and Entertainment

13 and the Office of Tourism, Trade, and Economic

14 Development; providing standards for review;

15 providing for verification of which

16 expenditures concerning an entertainment

17 production qualify for incentive funding under

18 the program; requiring inclusion of marketing

19 materials promoting this state as a condition

20 of receiving incentive funding; establishing

21 queues; specifying requirements concerning each

22 queue; authorizing the Office of Tourism,

23 Trade, and Economic Development to adopt rules,

24 policies, and procedures; requiring an annual

25 report to the Governor and the Legislature;

26 creating a penalty for fraudulent applications

27 and claims;

28

29

30

31