

1 A bill to be entitled

2 An act relating to the entertainment industry; amending s.
3 288.1254, F.S.; revising the entertainment industry
4 financial incentive program; providing purpose of the
5 program; providing for submittal and approval of an
6 application under the program; providing for review by the
7 Office of Film and Entertainment and the Office of
8 Tourism, Trade, and Economic Development; providing
9 standards for review; providing for verification of which
10 expenditures concerning an entertainment production
11 qualify for incentive funding under the program; requiring
12 inclusion of marketing materials promoting this state as a
13 condition of receiving incentive funding; establishing
14 queues; specifying requirements concerning each queue;
15 authorizing the Office of Tourism, Trade, and Economic
16 Development to adopt rules, policies, and procedures;
17 requiring an annual report to the Governor and the
18 Legislature; creating a penalty for fraudulent
19 applications and claims; providing an appropriation;
20 repealing s. 288.1255, F.S., relating to obsolete
21 provisions for an annual appropriation; providing for
22 severability; providing an effective date.

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

25
26 Section 1. This act may be cited as the "Don Davis
27 Entertainment Industry Economic Development Act."

28 Section 2. Section 288.1254, Florida Statutes, is amended

29 to read:

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

32 288.1254 Entertainment industry financial incentive
33 program.--

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

35 (a) "Certified production" means a qualified production
36 that has incentive funds allocated to it by the Office of
37 Tourism, Trade, and Economic Development based on its estimated
38 qualified expenditures. The term excludes a production if its
39 first day of principal photography in this state occurred before
40 the production is certified by the Office of Tourism, Trade, and
41 Economic Development, unless the production spans more than 1
42 fiscal year, was a certified production on the first day of such
43 photography, and is required to submit an application for
44 continuing the same production in the subsequent year.

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

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

56 (d) "Off-season certified production" means a production,

57 other than a digital media project or an animated production,
58 which films 75 percent or more of its principal photography days
59 from June 1 through November 30.

60 (e) "Production" means a theatrical or direct-to-video
61 motion picture, a made-for-television motion picture, a
62 commercial, a music video, an industrial or educational film, an
63 infomercial, a documentary film, a television pilot program, a
64 presentation for a television pilot program, a television
65 series, including, but not limited to, a drama, a reality show,
66 a comedy, a soap opera, a telenovela, a game show, a miniseries
67 production, or a digital media project by the entertainment
68 industry. One season of a television series is considered one
69 production. The term excludes a weather or market program, a
70 sporting event, a sports show, a gala, a production that
71 solicits funds, a home shopping program, a political program, a
72 political documentary, political advertising, a gambling-related
73 project or production, a concert production, a pornographic
74 production, or a local, regional, or Internet-distributed-only
75 news show, current-events show, a pornographic production, or a
76 current-affairs show. A production may be produced on or by
77 film, tape, or otherwise by means of a motion picture camera,
78 electronic camera or device, tape device, computer, any
79 combination of the foregoing, or any other means, method, or
80 device now used or later adopted.

81 (f) "Production expenditures" means the costs of tangible
82 and intangible property used and services performed primarily
83 and customarily in the production, including preproduction and
84 postproduction, excluding costs for development, marketing, and

85 distribution. Production expenditures include, but are not
86 limited to:

87 1. Wages, salaries, or other compensation, including
88 amounts paid through payroll service companies, for technical
89 and production crews, directors, producers, and performers.

90 2. Expenditures for sound stages, backlots, production
91 editing, digital effects, sound recordings, sets, and set
92 construction.

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

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

96 (g) "Qualified expenditures" means production expenditures
97 incurred in this state by a qualified production for:

98 1. Goods purchased or leased from, or services provided
99 by, a vendor or supplier in this state which is registered with
100 the Department of State or the Department of Revenue and doing
101 business in this state.

102 2. Payments to residents of this state in the form of
103 salary, wages, or other compensation up to a maximum of \$400,000
104 per resident for the general production queue and the
105 independent Florida filmmaker queue and up to a maximum of
106 \$200,000 for the digital media queue.

107
108 For a qualified production involving an event, such as an awards
109 show, the term excludes expenditures solely associated with the
110 event itself and not directly required by the production. The
111 term excludes expenditures prior to certification, with the
112 exception of those incurred for a commercial, a music video, or

113 the pickup of additional episodes of a television series within
114 a single season.

115 (h) "Qualified production" means a production in this
116 state meeting the requirements of this section and the minimum
117 qualified expenditures and requirements of its appropriate
118 queue. The term excludes a production:

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

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

128 (i) "Qualified production company" means a corporation,
129 limited liability company, partnership, or other legal entity
130 engaged in producing a qualified production.

131 (2) CREATION AND PURPOSE OF PROGRAM.--The entertainment
132 industry financial incentive program is created within the
133 Office of Film and Entertainment. The purpose of this program is
134 to encourage the use of this state as a site for filming and to
135 develop and sustain the workforce and infrastructure for film
136 and entertainment production.

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

138 (a) A qualified production company in this state producing
139 a qualified production may submit a program application to the
140 Office of Film and Entertainment for the purpose of determining

141 certification. The applicant shall provide the office with
142 information required to determine whether the production is a
143 qualified production and to determine the qualified expenditures
144 and other information necessary for the office to determine
145 certification.

146 (b) The Office of Film and Entertainment shall develop an
147 application form for use in qualifying an applicant as a
148 qualified production. The form must include, but need not be
149 limited to, production-related information concerning employment
150 of residents in this state, a detailed budget of planned
151 qualified expenditures, and the applicant's signed affirmation
152 that the information on the form has been verified and is
153 correct. The Office of Film and Entertainment and local film
154 commissions shall distribute the form.

155 (c) The Office of Film and Entertainment shall establish a
156 process by which an application is accepted and reviewed for
157 certification. The office may request assistance from a duly
158 appointed local film commission in determining compliance with
159 this section.

160 (d) The Office of Film and Entertainment shall review the
161 application within 10 business days after receipt. Upon its
162 determination that the application contains all the information
163 required by this subsection and meets the criteria set out in
164 this section, the office shall qualify the applicant and
165 recommend to the Office of Tourism, Trade, and Economic
166 Development that the applicant be certified for a maximum amount
167 of available funds. Within 5 business days after receipt of the
168 recommendation, the Office of Tourism, Trade, and Economic

169 Development shall reject the recommendation or certify the
170 applicant.

171 (e) The Office of Film and Entertainment shall deny an
172 application if it determines that the application is not
173 complete or the production does not meet the requirements of
174 this section.

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

178 1. A certified production to submit, in a timely manner
179 after production ends and after making all of its qualified
180 expenditures, data substantiating each qualified expenditure to
181 an independent certified public accountant licensed in this
182 state;

183 2. Such accountant to conduct an audit, at the certified
184 production's expense, to substantiate each qualified expenditure
185 and submit the results as a report, along with all
186 substantiating data, to the Office of Film and Entertainment;
187 and

188 3. The Office of Film and Entertainment to review the
189 accountant's submittal and report to the Office of Tourism,
190 Trade, and Economic Development the final verified amount of
191 actual qualified expenditures made by the certified production.

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

195 (g) The Office of Film and Entertainment shall ensure
196 that, as a condition of receiving incentive funding under this

197 section, marketing materials promoting this state as a tourist
198 destination or film and entertainment production destination are
199 included, when appropriate, at no cost to the state, which must,
200 at a minimum, include placement in the end credits of a "Filmed
201 in Florida" logo with size and placement commensurate to other
202 logos included in the end credits or, if no logos are used, the
203 statement "Filmed in Florida using Florida's Entertainment
204 Industry Financial Incentive," or a similar statement approved
205 by the Office of Film and Entertainment before such placement.
206 The Office of Film and Entertainment shall develop a "Filmed in
207 Florida" logo and supply it for the purposes specified in this
208 paragraph.

209 (4) PRIORITY FOR INCENTIVE FUNDING; WITHDRAWAL OF
210 ELIGIBILITY; QUEUES.--

211 (a) The priority of a qualified production for incentive
212 funding must be determined on a first-come, first-served basis
213 within its appropriate queue. Each qualified production must be
214 placed into the appropriate queue and is subject to the
215 requirements of that queue.

216 (b) GENERAL PRODUCTION QUEUE.--Eighty-five percent of
217 incentive funding appropriated in any state fiscal year must be
218 dedicated to the general production queue. A production
219 certified under this queue is eligible for a reimbursement equal
220 to 15 percent of its actual qualified expenditures. Within this
221 queue:

222 1. A qualified production, excluding commercials, music
223 videos, and digital media projects, which demonstrates a minimum
224 of \$625,000 in qualified expenditures is eligible for up to a

225 maximum of \$8 million in incentive funding. A qualified
226 production spanning multiple state fiscal years may combine
227 qualified expenditures from such fiscal years to satisfy the
228 threshold.

229 2. A qualified production company that produces national,
230 international, or regional commercials, or music videos may be
231 eligible for a maximum of \$500,000 in incentive funding if it
232 demonstrates a minimum of \$100,000 in qualified expenditures per
233 national, international, or regional commercial or music video
234 and exceeds a combined threshold of \$500,000 after combining
235 actual qualified expenditures from qualified commercials and
236 music videos during a single state fiscal year. After a
237 qualified production company that produces commercials, music
238 videos, or both reaches the threshold of \$500,000, it is
239 eligible to apply for certification for incentive funding.

240 3. An off-season certified production is eligible for an
241 additional 5-percent incentive funding on actual qualified
242 expenditures. An off-season certified production that does not
243 complete 75 percent of principal photography due to disruption
244 caused by a hurricane or tropical storm may not be disqualified
245 from eligibility for the additional 5-percent incentive as a
246 result of the disruption.

247 4. Each qualified production shall make a good faith
248 effort to use existing providers of infrastructure or equipment
249 in this state, including providers of camera gear, grip and
250 lighting equipment, vehicle providers, and postproduction
251 services when available in-state.

252 5. A qualified high-impact television series shall be

253 allowed first position in this queue for incentive funding not
 254 yet certified.

255 (c) INDEPENDENT FLORIDA FILMMAKER QUEUE.--Five percent of
 256 incentive funding appropriated in any state fiscal year must be
 257 dedicated to the independent Florida filmmaker queue. A
 258 production certified under this queue is eligible for a
 259 reimbursement equal to 15 percent of its actual qualified
 260 expenditures. An independent Florida film that meets the
 261 criteria of this queue and demonstrates a minimum of \$100,000,
 262 but not more than \$625,000, in total qualified expenditures is
 263 eligible for incentive funding. To qualify for this queue, a
 264 qualified production must:

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

267 2. Provide evidence of 50 percent of the financing for its
 268 total budget in an escrow account or other form dedicated to the
 269 production.

270 3. Do all major postproduction in this state.

271 4. Employ Florida workers in at least six of the following
 272 key positions: writer, director, producer, director of
 273 photography, star or one of the lead actors, unit production
 274 manager, editor, or production designer. As used in this
 275 subparagraph, the term "Florida worker" means a person who has
 276 been a resident of this state for at least 1 year before a
 277 production's application under subsection (3) was submitted or a
 278 person who graduated from a film school, college, university, or
 279 community college in this state no more than 5 years before such
 280 submittal or who is enrolled full-time in such a school,

281 college, or university.

282 (d) DIGITAL MEDIA PRODUCTS QUEUE.--Ten percent of
283 incentive funding appropriated in any state fiscal year shall be
284 dedicated to the digital media projects queue. A production
285 certified under this queue is eligible for a reimbursement equal
286 to 10 percent if its actual qualified expenditures. A qualified
287 production that is a digital media project that demonstrates a
288 minimum of \$300,000 in total qualified expenditures is eligible
289 for a maximum of \$1 million in incentive funding. As used in
290 this paragraph, the term "qualified expenditures" means the
291 wages or salaries paid to a resident of this state for working
292 on a single qualified digital media project, up to a maximum of
293 \$200,000 in wages or salaries paid per resident. A qualified
294 production company producing digital media projects may not
295 qualify for more than three projects in any 1 fiscal year.
296 Projects that extend beyond a fiscal year must reapply each
297 fiscal year in order to be eligible for incentive funding for
298 that year.

299 (e) Each qualified production or certified production
300 shall continue on a reasonable schedule, which means beginning
301 principal photography in this state no more than 45 calendar
302 days before or after the date provided in the program's
303 application under subsection (3). The Office of Tourism, Trade,
304 and Economic Development shall withdraw the eligibility of a
305 qualified production or a certified production for incentive
306 funding if any such production does not continue on a reasonable
307 schedule.

308 (f) A certified production determined by the Commissioner

309 of Film and Entertainment, with the advice of the Florida Film
310 and Entertainment Advisory Council, to be family friendly based
311 on the review of the script and an interview with the director
312 is eligible for an additional reimbursement equal to 2 percent
313 of its actual qualified expenditures. Family friendly
314 productions are those that have cross-generational appeal; would
315 be considered suitable for viewing by children age 5 and older;
316 are appropriate in theme, content, and language for a broad
317 family audience; embody a responsible resolution of issues; and
318 do not exhibit any act of smoking, sex, nudity, or vulgar or
319 profane language.

320 (5) RULES, POLICIES, AND PROCEDURES.--The Office of
321 Tourism, Trade, and Economic Development may adopt rules under
322 ss. 120.536(1) and 120.54 and develop policies and procedures to
323 administer this section, including, but not limited to, rules
324 specifying requirements for the application and approval
325 process.

326 (6) ANNUAL REPORT.--Each October 1, the Office of Film and
327 Entertainment shall provide an annual report for the previous
328 fiscal year to the Governor, the President of the Senate, and
329 the Speaker of the House of Representatives which outlines the
330 return on investment and economic benefits to the state.

331 (7) FRAUD.--Any applicant that submits information under
332 this section that includes fraudulent information is liable for
333 reimbursement of the reasonable costs and fees associated with
334 the review, processing, investigation, and prosecution of the
335 fraudulent claim. An applicant that obtains an incentive payment
336 under this section through a claim that is fraudulent is liable

337 for reimbursement of the incentive payment plus a penalty in an
338 amount double the incentive payment. The penalty is in addition
339 to any criminal penalty to which the applicant is liable for the
340 same acts. The applicant is also liable for costs and fees
341 incurred by the state in investigating and prosecuting the
342 fraudulent claim.

343 Section 3. For the 2007-2008 fiscal year, the sum of \$25
344 million is appropriated from the General Revenue Fund on a
345 nonrecurring basis to the Office of Tourism, Trade, and Economic
346 Development for the Office of Film and Entertainment for
347 purposes of implementing s. 288.1254, Florida Statutes.
348 Notwithstanding s. 216.301, Florida Statutes, to the contrary,
349 the unexpended balance of this appropriation shall not revert
350 until June 30, 2009.

351 Section 4. Section 288.1255, Florida Statutes, is
352 repealed.

353 Section 5. If any provision of this act or the application
354 thereof to any person or circumstance is held invalid, the
355 invalidity shall not affect other provisions or applications of
356 the act which can be given effect without the invalid provision
357 or application, and to this end the provisions of this act are
358 declared severable.

359 Section 6. This act shall take effect July 1, 2007.