

## ENROLLED

CS/CS/HB 1325, Engrossed 2

2007 Legislature

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

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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,

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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

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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

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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

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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

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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

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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



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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

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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,

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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

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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

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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.