

Bill No. CS for SB 96

Barcode 634712

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

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05/02/2007 11:29 AM

11 Senator Saunders moved the following amendment:

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13 **Senate Amendment (with title amendment)**

14 On page 3, line 23, through page 21, line 15, delete

15 those lines

16

17 and insert:

18 Section 1. This act may be cited as the "Don Davis

19 Entertainment Industry Economic Development Act."

20 Section 2. Section 288.1254, Florida Statutes, is

21 amended to read:

22 (Substantial rewording of section. See

23 s. 288.1254, F.S., for present text.)

24 288.1254 Entertainment industry financial incentive

25 program.--

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

27 (a) "Certified production" means a qualified

28 production that has incentive funds allocated to it by the

29 Office of Tourism, Trade, and Economic Development based on

30 its estimated qualified expenditures. The term excludes a

31 production if its first day of principal photography in this

Barcode 634712

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

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

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

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

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

Bill No. CS for SB 96

Barcode 634712

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

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

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

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

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

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

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

30 1. Goods purchased or leased from, or services
 31 provided by, a vendor or supplier in this state which is

Barcode 634712

1 registered with the Department of State or the Department of
2 Revenue and doing business in this state.

3 2. Payments to residents of this state in the form of
4 salary, wages, or other compensation up to a maximum of
5 \$400,000 per resident for the general production queue and the
6 independent Florida filmmaker queue and up to a maximum of
7 \$200,000 for the digital media queue.

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

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

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

28 2. That is deemed by the Office of Film and
29 Entertainment to contain obscene content as defined in s.
30 847.001(10).

31 (i) "Qualified production company" means a

Barcode 634712

1 corporation, limited liability company, partnership, or other
2 legal entity engaged in producing a qualified production.

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

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

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

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

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

Bill No. CS for SB 96

Barcode 634712

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

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

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

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

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

29 3. The Office of Film and Entertainment to review the
30 accountant's submittal and report to the Office of Tourism,
31 Trade, and Economic Development the final verified amount of

Barcode 634712

1 actual qualified expenditures made by the certified
2 production.

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

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

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

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

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

Bill No. CS for SB 96

Barcode 634712

1 Within this queue:

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

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

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

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

Barcode 634712

1 postproduction services when available in-state.

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

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

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

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

20 3. Do all major postproduction in this state.

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

Bill No. CS for SB 96

Barcode 634712

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

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

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

Barcode 634712

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

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

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

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

Bill No. CS for SB 96

Barcode 634712

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

2 And the title is amended as follows:

3 On page 1, line 3, through page 3, line 5, delete those
4 lines

5

6 and insert:

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;

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