

A bill to be entitled

An act relating to the Qualified Television Loan Fund; creating s. 288.127, F.S.; defining terms; providing a purpose; creating the Qualified Television Loan Fund; requiring the Department of Economic Opportunity to contract with a fund administrator; providing fund administrator qualifications; providing for the fund administrator's compensation and removal; specifying the fund administrator powers and duties; providing the structure of the loans; providing qualified television content criteria; requiring the Auditor General to conduct an operational audit of the fund and the fund administrator; authorizing the department to adopt rules; providing for expiration of the act; providing emergency rulemaking authority; providing an effective date.

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

Section 1. Section 288.127, Florida Statutes, is created to read:

288.127 Qualified Television Loan Fund (QTV Fund).—

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

(a) "Fund administrator" means a private sector organization under contract with the department to manage and administer the QTV Fund.

27 (b) "Major broadcaster" means broadcasting organizations
28 that include, but are not limited to, television broadcasting
29 networks, cable television, direct broadcast satellite,
30 telecommunications companies, and internet streaming or other
31 digital media platforms.

32 (c) "Private investment capital" means capital from
33 private, nongovernmental funding sources that will be coinvested
34 with the QTV Fund in segregated accounts.

35 (d) "Qualified lending partner" means a financial
36 institution, as defined in s. 655.005, selected by a fund
37 administrator with demonstrated capability in providing
38 financing to television production and specialized expertise in
39 intellectual property, tax credit programs, customary broadcast
40 license agreements, advertising inventories, and ancillary
41 revenue sources, with a combined portfolio in film, television,
42 and entertainment media of at least \$500 million.

43 (e) "Qualified television content" means series, mini-
44 series, or made-for-TV content produced by a qualified
45 production company that has in place a distribution contract
46 with a major broadcaster, under a customary broadcast license
47 agreement. The term does not include a production that contains
48 content that is obscene, as defined in s. 847.001.

49 (2) PURPOSE.—The purpose of the QTV Fund is to create a
50 public-private partnership in the form of an evergreen fund to
51 administer a loan program for television production. The QTV
52 Fund shall be privately managed under state oversight to

53 incentivize the use of this state as a site for producing
54 qualified television content and to develop and sustain the
55 workforce and infrastructure for television content production.

56 (3) CREATION.—The Qualified Television Loan Fund is
57 created within the department. The QTV Fund shall be a public
58 fund that is privately managed by the fund administrator under
59 contract entered into with the department. The department shall
60 disburse \$20 million from the Economic Development Trust Fund to
61 the fund administrator to invest in the QTV Fund during the
62 existence of the program pursuant to this section and the
63 contract entered into between the fund administrator and the
64 department. State funds in the QTV Fund may be used only to
65 enter into loan agreements and to pay any administrative costs
66 or other authorized fees under this section.

67 (a) The QTV Fund shall be an evergreen fund that shall
68 invest and reinvest the principal and interest of the fund in
69 accordance with s. 617.2104, in such a manner as to not subject
70 the funds to state or federal taxes and to be consistent with
71 the investment policy statement adopted by the fund
72 administrator. As the production companies repay the principal
73 and interest for the QTV Fund, the state funds shall be
74 returned, less any QTV Fund expenses, to the account to be lent
75 to subsequent borrowers.

76 (b) Funds from the QTV Fund shall be disbursed by the fund
77 administrator through a lending vehicle to make short-term loans
78 pursuant to this section.

79 (4) FUND ADMINISTRATOR.—

80 (a) The department shall contract with a fund
81 administrator by July 1, 2014, and award the contract in
82 accordance with the competitive bidding requirements in s.
83 287.057.

84 (b) The department shall select as fund administrator a
85 private sector entity that demonstrates the ability to implement
86 the program under this section and that meets the requirements
87 set forth in this section. Preference shall be given to
88 applicants that are headquartered in this state. Additional
89 consideration may be given to applicants with experience in the
90 management of economic development or job creation-related
91 funds. The qualifications for the fund administrator must
92 include, but are not limited to, the following:

93 1. A demonstrated track record of managing private sector
94 equity or debt funds in the entertainment and media industries.

95 2. The ability to demonstrate through a partnership
96 agreement that a qualified lending partner is in place, with the
97 capability of providing leverage of a minimum of 2.5 times the
98 capital amount of the QTV Fund, for financing the production
99 cost of qualified television content in the form of senior debt.

100 (c) For overseeing and administering the QTV Fund, the
101 fund administrator shall be paid an annual management fee equal
102 to 5 percent of the loans under management during the first 5
103 years and 3 percent of the loans under management after the
104 fifth year and for the remaining duration of the contract.

105 However, after the first year of the QTV Fund, the annual
106 management fee may not exceed the investment proceeds earned
107 from its completed investments. The annual management fee shall
108 be paid from state funds in the QTV Fund and shall be paid in
109 advance, in equal quarterly installments. Any additional private
110 investment capital in the segregated accounts is responsible for
111 its own management fees. In addition, the fund administrator may
112 receive income or profit distribution equal to 20 percent of the
113 net income of the QTV Fund on an annual basis. Such distribution
114 may not be made from any principal funds from the original
115 appropriation.

116 (d) The fund administrator shall provide services defined
117 under this section for the duration of the QTV Fund term unless
118 removed for cause. Cause shall be further defined under the
119 contract with the fund administrator and must include, but is
120 not limited to, the engagement in fraud or other criminal acts
121 by board members, incapacity, unfitness, neglect of duty,
122 official incompetence and irresponsibility, misfeasance,
123 malfeasance, nonfeasance, or lack of performance.

124 (5) FUND ADMINISTRATOR POWERS AND DUTIES.—

125 (a) Authority to contract.—The fund administrator may
126 enter into agreements with qualified lending partners for
127 concurrent lending through the QTV Fund. A loan made by the
128 qualified lending partner must be accounted for separately from
129 the state funds or any other private investment capital. Such
130 loan shall be made as senior debt. The fund administrator may

131 raise private investment capital for mezzanine equity and other
132 equity or raise junior capital for concurrent lending through
133 the QTV Fund. However, loans from private investment capital may
134 not be made at more favorable terms and conditions than the
135 terms and conditions of the state funds in the QTV Fund. The
136 state appropriation must be maintained in a separate account
137 from any private investment capital and administered in a
138 separate legal investment entity or entities. Private investment
139 capital and loans shall be segregated from each other, and funds
140 may not be commingled.

141 (b) General duties.—The fund administrator:

142 1. Shall prudently manage the funds in the QTV Fund as an
143 evergreen fund.

144 2. Shall contract with one or more qualified lending
145 partners.

146 3. Shall provide improvement of the credit profile of a
147 structured financial transaction for qualified production
148 companies that produce qualified television content meeting the
149 criteria in subsection (7).

150 4. May raise additional private investment capital to be
151 held in separate accounts, in addition to the leverage provided
152 by the qualified lending partner.

153 5. Shall administer the QTV Fund in accordance with this
154 part.

155 6. Shall agree to maintain the recipient's books and
156 records relating to funds received from the department according

157 to generally accepted accounting principles and in accordance
158 with the requirements of s. 215.97(7) and to make those books
159 and records available to the department for inspection upon
160 reasonable notice. The books and records must be maintained with
161 detailed records showing the use of proceeds from loans to fund
162 qualified television content.

163 7. Shall maintain its registered office in this state
164 throughout the duration of the contract.

165 (c) Financial reporting.—The fund administrator shall
166 submit to the department by February 28 each year audited
167 financial statements for the preceding tax year which are
168 audited by an independent certified public accountant after the
169 end of each year in which the fund administrator is under
170 contract with the department. In addition to providing an
171 independent opinion on the annual financial statements, such
172 audit provides a basis to verify the segregation of state funds
173 from those of any private investment capital.

174 (d) Program reporting.—The fund administrator shall submit
175 an annual report to the department by February 28 after the end
176 of each year in which the fund administrator is under contract
177 with the department. The report must include information on the
178 loans made in the preceding calendar year and must include, but
179 need not be limited to, the following:

- 180 1. The name of the qualified television content.
- 181 2. The names of the counties in which the production
182 occurred.

183 3. The number of jobs created and retained as a result of
184 the production.

185 4. The loan amounts, including the amount of private
186 investment capital and funds provided by a qualified lending
187 partner.

188 5. The loan repayment status for each loan.

189 6. The number, and amounts, of any loans with payments
190 past due.

191 7. The number, and amounts, of any loans in default.

192 8. A description of the assets securing the loans.

193 9. Other information and documentation required by the
194 department.

195 (e) Plan of accountability.—The fund administrator shall
196 submit an annual plan of accountability of economic development,
197 including a report detailing the job creation resulting from the
198 QTV Fund loans made during the current year and cumulatively
199 since the inception of the program. The fund administrator shall
200 also provide any additional information requested by the
201 department pertaining to economic development and job creation
202 in the state.

203 (f) Conflict-of-interest statement.—The fund administrator
204 shall provide a conflict-of-interest statement from its
205 governing board certifying that no board member, director,
206 employee, agent, or other person connected to or affiliated with
207 the fund administrator is receiving or will receive any type of
208 compensation or remuneration from a production company that has

209 received or will receive funds from the loan program or from a
 210 qualified lending partner. The department may waive this
 211 requirement for good cause shown.

212 (6) LOAN STRUCTURE.—

213 (a) The QTV Fund may make loans to production companies to
 214 fund production costs or provide improvement of the credit
 215 profile of a structured financial transaction for qualified
 216 television content that meets the criteria requirements of
 217 subsection (7). To make a loan, the fund administrator shall
 218 take into consideration the types of eligible collateral, the
 219 credit worthiness of the project, the producer's track record,
 220 the possibility that the project will encourage, enhance, or
 221 create economic benefits, and the extent to which assistance
 222 would foster innovative public-private partnerships and attract
 223 private debt or equity investment.

224 (b) The QTV Fund loan package shall be secured by
 225 contractual and predictable sources of repayment such as
 226 domestic and international broadcaster license agreements, tax
 227 credits, and other ancillary revenues that are derived from
 228 media content rights. Unsecured loans may not be made.

229 (c) The loans shall be made on the basis of a second lien
 230 or primary security rights on the media assets listed in
 231 paragraph (b).

232 (d) The QTV Fund shall provide funding only in conjunction
 233 with senior loans provided by a qualified lending partner. Loans
 234 from the QTV Fund may be subordinated to senior debt from the

235 qualified lending partner and may not exceed 30 percent of the
236 total production funding cost of any particular project.

237 (e) The production company's repayment of any loan shall
238 be in accordance with the broadcast license agreement and the
239 delivery of qualified television content to the major
240 broadcaster and shall be within 60 days after such delivery.

241 (f) Loans made by the QTV Fund may not exceed 36 months in
242 duration, except for extenuating circumstances for which the
243 fund administrator may grant an extension upon making written
244 findings to the department specifying the conditions requiring
245 the extension.

246 (g) With the exception of funds appropriated to the loan
247 program by the Legislature, the credit of the state may not be
248 pledged. The state is not liable or obligated in any way for
249 claims on the loan program or against the lender or the
250 department.

251 (7) QUALIFIED TELEVISION CONTENT CRITERIA.—The fund
252 administrator must consider at a minimum the following criteria
253 for evaluating the qualifying television content:

254 (a) The content is intended for broadcast by a major
255 broadcaster on a major network, cable, or streaming channel.

256 (b) The content is produced in this state, or a minimum of
257 80 percent of the production budget must be spent in this state.
258 This requirement may be amended by the fund administrator upon
259 notice to the department. Such notice must include a specific
260 justification for the change and must be transmitted to the

261 department in writing. The department has 10 business days to
262 object to the change. If the department does not object to the
263 change within 10 business days, the change is deemed acceptable
264 by the department, and the fund administrator may grant the
265 amendment to the requirement in this paragraph.

266 (c) If the content is a series, there is a programming
267 order for at least 13 episodes. This requirement may be amended
268 by the fund administrator upon notice to the department. Such
269 notice must include a specific justification for the change and
270 must be transmitted to the department in writing. The department
271 has 10 business days to object to the change. If the department
272 does not object to the change within 10 business days, the
273 change is deemed acceptable by the department, and the fund
274 administrator may grant the amendment to the requirement in this
275 paragraph.

276 (d) The producer must have a contract in place with a
277 major broadcaster to acquire content programming under a
278 customary broadcast license agreement and the contract must
279 cover 60 percent of the budget.

280 (e) The producer must retain a foreign sales agent and
281 must be able to provide the fund administrator with the foreign
282 sales agent's official estimates of foreign and ancillary sales.

283 (f) The project must be bonded and secured by an industry-
284 approved completion guarantor if the production cost per episode
285 exceeds \$1 million. This requirement may be waived if the loan
286 applicant provides the fund administrator with evidence of

287 adequate structure to protect the state's funds.

288 (8) AUDITOR GENERAL REPORT.—The Auditor General shall
 289 conduct an operational audit, as defined in s. 11.45, of the QTV
 290 Fund and fund administrator. The scope of review must include,
 291 but is not limited to, internal controls evaluations, internal
 292 audit functions, reporting and performance requirements for the
 293 use of the funds, and compliance with state and federal law. The
 294 fund administrator shall provide to the Auditor General any
 295 detail or supplemental data required.

296 (9) RULEMAKING AUTHORITY.—The department may adopt rules
 297 to administer this section.

298 (10) EXPIRATION.—This section expires December 31, 2024,
 299 at which point all funds remaining in the QTV Fund shall revert
 300 to the General Revenue Fund.

301 (11) EMERGENCY RULES.—

302 (a) The executive director of the department is
 303 authorized, and all conditions are deemed met, to adopt
 304 emergency rules pursuant to ss. 120.536(1) and 120.54(4) for the
 305 purpose of implementing this act.

306 (b) Notwithstanding any other law, the emergency rules
 307 adopted pursuant to paragraph (a) remain in effect for 6 months
 308 after adoption and may be renewed during the pendency of
 309 procedures to adopt permanent rules addressing the subject of
 310 the emergency rules.

311 (c) This subsection expires October 1, 2015.

312 Section 2. This act shall take effect upon becoming a law.