The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 1438

INTRODUCER: Commerce and Tourism Committee and Senator Bean

SUBJECT: Qualified Television Loan Fund

DATE: March 25, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Askey	Hrdlicka	CM	**Fav/CS**
2.			ATD	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1438 creates the Qualified Television (QTV) Fund, an evergreen fund that is privately managed under state oversight to administer short-term loans for production of qualified television content. The purpose of the QTV Fund is to incentivize the use of the state as a location for television content production and to develop and sustain the workforce and infrastructure for television content production.

The bill appropriates $20 million from the General Revenue Fund for the program.

A competitively selected fund administrator will administer the QTV Fund and partner with a qualified lending partner to make loans to qualified television producers to fund production costs of qualified television content in Florida. The fund administrator may raise private investment capital for concurrent lending through the QTV Fund; state funds and private investment capital are subordinate debt to the qualified lending partner's investment. All state funds must be segregated from any private investment capital. The bill requires the fund administrator to submit annual reports to the Department of Economic Opportunity (DEO) and requires the Auditor General to conduct an operational audit of the QTV Fund and the fund administrator.

The program expires December 31, 2024, and all remaining funds in the QTV Fund will revert to the General Revenue Fund.

II. Present Situation:

There are no loan programs in current Florida law that pertain to the film and entertainment industry or television content production. Current law does provide for an incentive program that pertains to the film and entertainment industry. The DEO Office of Film and Entertainment's 5-year statewide strategic plan includes as a specific strategy to "expand opportunities for access to private capital for film, TV and digital media."[1]

Current law does provide for an incentive program and sales tax exemption certificate that pertain to the industry.

Entertainment Industry Financial Incentive Program[2]

The Entertainment Industry Financial Incentive Program (incentive program) was created in 2003 to:[3]

- Promote Florida as a site for filming, creating, or producing movies, television series, commercials, digital media and other types of entertainment productions; and
- Sustain and develop the state's entertainment workforce, studios, and other related infrastructure.

The incentive program is administered by the DEO's Office of Film and Entertainment (OFE). Currently the incentive program is a 6-year program, which began July 1, 2010, and sunsets June 30, 2016. The incentive program provides tax credits for qualified expenditures related to filming and production activities in Florida. The program has been allocated a total of $296 million through Fiscal Year 2015-16; however, all of the tax credits have already been awarded for all 6 years.

The incentive program specifically limits the amount of tax credits that can be allocated to a high-impact television series to only 45 percent of the tax credits in the general production queue. Further, first priority in the general production queue for tax credits not yet certified is given to high-impact television series and high-impact digital media projects, in alternating order, depending on the type of the first application received.

A qualified entertainment production company, including one involved in a television production, can obtain a certificate to avoid paying sales tax at the point of sale, rather than

[1] DEO, Office of Film and Entertainment, "Five-Year Strategic Plan for Economic Development 2013-2018," available at: http://filminflorida.com/about/OFE_Plan_V11.pdf (last visited March 21, 2014).
[2] Information about the incentive program is also available on OFE's website, available at: http://filminflorida.com/ifi/incentives.asp (last visited March 20, 2014).
[3] Section 288.1254, F.S. See ch. 2003-81, L.O.F. In 2010, the incentive program was changed from a cash reimbursement type program to the current form. See ch. 2010-147, L.O.F. Information about the incentive program is also available on OFE's website, available at: http://filminflorida.com/ifi/incentives.asp (last visited March 20, 2014).

claiming a refund after paying the tax.[4] A company may be exempt from paying tax for the following:

- *Lease or rental of real property* that is used as an integral part of an activity or service performed directly in connection with the production of a qualified motion picture (the term "activity or service" includes photography, casting, location scouting, and designing sets).[5]
- *Fabrication labor* when a producer uses his or her own equipment and personnel to produce a qualified motion picture.[6]
- *Purchase or lease of motion picture and video equipment and sound recording equipment* used in Florida for motion picture or television production or for the production of master tapes or master records.[7]
- *Sale, lease, storage, or use of blank master tapes, records, films, and video tapes*.[8]

The estimated cost of these exemptions is $36.2 million for Fiscal Year 2013-14.[9]

The OFE is directed to submit an annual report each November 1 to the Governor, the President of the Senate, and the Speaker of the House of Representatives, about the incentive program and sales tax exemptions.[10, 11]

The OFE's annual report for Fiscal Year 2012-13, reviewed the incentive program for the first 3 years of the 6-year program. As of November 1, 2013, there were 297 certified productions, 128 of which were television production (e.g. television series, television pilots, telenovelas, award shows). Outcomes for the television productions include the following estimates:

- Almost $1 billion in qualified expenditures in Florida;
- 147,481 positions with over $549 million in wages paid;[12] and
- 148,038 lodging/room nights.

Projected outcomes are based on information supplied with the applications. These outcomes are subject to change as some projects may withdraw or additional projects become certified.

Additionally, the annual report stated that 44 television series had applied for a sales tax exemption certificate.[13]

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[4] Section 288.1258, F.S. See also DOR, Film in Florida Sales Tax Exemption, available at http://dor.myflorida.com/dor/taxes/film_in_florida.html (last visited 2/25/2014).
[5] Section 212.031(1)(a)9., F.S.
[6] Section 212.06(1)(b), F.S. The term "qualified motion picture" is defined in the statute.
[7] Section 212.08(5)(f), F.S.
[8] Section 212.08(12), F.S.
[9] Florida Revenue Estimating Conference, 2013 Florida Tax Handbook.
[10] OFE, Fiscal Year 2013-2013 Annual Report (November 1, 2013), available at: http://www.filminflorida.com/ifi/PDFs/annualReports/Office%20of%20Film%20and%20Entertainment%20Annual%20Report%20FY2012-2013_Final%20Combined%20Draft.pdf (last visited 2/25/2014).
[11] Sections 288.1254(10), 288.1253, and 288.1258(5), F.S.
[12] Positions are individual positions, not FTEs. Positions may be permanent or temporary. Production cast, crew, extras, and stand-ins, etc., may work for multiple productions and fill multiple positions. The OFE was directed in the 2011 Regular Session to report positions as estimates of FTEs, but according to the annual report the OFE is still developing methodology to report the data. See ch. 2011-76, L.O.F.
[13] The annual report does not break down data about expenditures by type of production.

III. Effect of Proposed Changes:

Qualified Television Loan Fund

Section 1 creates s. 288.127, F.S., to create the Qualified Television Loan (QTV) Fund, a $20 million evergreen fund that is privately managed under state oversight to administer short-term loans for production of qualified television content. The purpose of the QTV Fund is to incentivize the use of the state as a location for television content production and to develop and sustain the workforce and infrastructure for television content production.

The bill appropriates $20 million in nonrecurring funds from the General Revenue Fund for the QTV Fund (**Section 2**).

State funds in the QTV Fund may be used only to enter into loan agreements and to pay any administrative costs or other authorized fees under the QTV Fund program. The principal and interest of the QTV Fund must be invested and reinvested in accordance with the Florida Uniform Prudent Management of Institutional Funds Act[14] so as not to subject the funds to state and federal taxes and must be consistent with the investment policy statement adopted by the fund administrator. The QTV Fund funds shall be disbursed by the fund administrator through a lending vehicle to make short-term loans for the production of qualified television content.

Fund Administrator

The DEO is required to competitively contract with a private-sector fund administrator by September 1, 2014. The fund administrator must show, at least:

- A demonstrated track record of managing private sector equity or debt funds in the entertainment and media industries; and
- The ability to demonstrate through a partnership agreement that a qualified lending partner[15] is in place, with the capability of leveraging a minimum of 2.5 times the capital amount of the QTV Fund, for financing the production cost of qualified television content in the form of senior debt.

Preference will be given to private entities whose headquarters are in Florida and further consideration will be given to entities that have experience managing economic development-or job creation-related funds. The fund administrator must maintain a registered office in Florida throughout the duration of the contract.

The fund administrator must maintain books and records relating to state funds according to generally accepted accounting principles in accordance with the requirements of the Florida Single Audit Act[16] and make those books and records available to the DEO for inspection upon

[14] Section 617.2104, F.S.

[15] The bill defines a "qualified lending partner" as a financial institution defined in s. 655.005, F.S., that is selected by a fund administrator with a demonstrated capability in providing financing to television production and specialized expertise in intellectual property, tax credit programs, customary broadcast license agreements, advertising inventories, and ancillary revenue sources, with a combined portfolio in film, television, and entertainment media of at least $500 million.

[16] Section 215.87(7), F.S.

reasonable notice. The books and records must be maintained with detailed records of the use of proceeds from loans to fund qualified television content.

The fund administrator must provide a conflict-of-interest statement from its governing board certifying that no member, director, employee, agent, or other person connected to or affiliated with the fund administrator is receiving or will receive any type of compensation or remuneration from a production company that has received or will receive funds from the QTV Fund or from a qualified lending partner. The DEO may waive this requirement for good cause shown.

The fund administrator may be removed for cause defined under contract between the DEO and the fund administrator, including the engagement in fraud or criminal acts by board members, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance.

Management Fee and Profit Distribution

For administering the QTV Fund, the fund administrator shall be paid an annual management fee paid in advance from state funds in equal quarterly installments, based on the amount of loans under management. For the first 5 years, the annual management fee will equal 5 percent of the loans under management, and then 3 percent of the loans under management for the remainder of the contract. After the first year of the QTV Fund, the annual management fee cannot exceed the investment proceeds earned from its completed investments. Any additional private investment capital[17] is responsible for its own management fees. Additionally, the fund administrator may receive an annual income or profit distribution equal to 20 percent of the net income of the QTV Fund. This distribution may not be made from any principal funds from the original appropriation.

Reporting Requirements

By February 28 each year the fund administrator must submit to the DEO an annual financial report that consists of audited financial statements for the preceding tax year that are audited by an independent certified public accountant. The audit must also provide a basis to verify the segregation of state funds from those of any private investment capital. An additional program report must be submitted by the same date that includes information on the loans made in the preceding calendar year and including:

- The name of the qualified television content;
- The names of the counties in which the production occurred;
- The number of jobs created and retained as a result of the production;
- The loan amounts, including the amount of private investment capital and funds provided by a qualified lending partner;
- The loan repayment status for each loan;
- The number and amounts of any loans with payments past due;
- The number and amounts of any loans in default;

[17] The bill defines "private investment capital" as capital from private, nongovernmental funding sources that will be co-invested with the QTV Fund in segregated accounts.

- A description of the assets securing the loans; and
- Any other information and documentation required by the DEO.

Additionally, the fund administrator must also submit an annual plan of accountability of economic development. The report must provide details of the job creation resulting from the QTV Fund loans made during the current year and cumulatively since the beginning of the program, and any additional information requested by the DEO pertaining to economic development and job creation in Florida.

Loan Administration

The QTV Fund may be used to make loans to production companies to fund production costs for qualified television content or to "provide improvement of the credit profile of a structured financial transaction for qualified television content" (see below *Qualified Television Content Criteria*). To make a loan, the fund administrator shall consider:

- The types of eligible collateral;
- The credit worthiness of the project;
- The producer's track record;
- The possibility that the project will encourage, enhance, or create economic benefits; and
- The extent to which assistance would foster innovative public-private partnerships and attract private debt or equity investments.

The QTV Fund loan package must be secured by contractual and predictable sources of repayment such as domestic and international broadcaster license agreements and other ancillary revenues that are derived from media content rights. The loans must be made on the basis of a second lien or primary security rights on the media assets aforementioned. Unsecured loans may not be made.

The fund administrator is authorized to enter into agreements with qualified lending partners for concurrent lending through the QTV Fund. The fund administrator may raise private investment capital for mezzanine and other equity or to make concurrent loans. Loans from private investment capital may not be made at more favorable terms and conditions than the terms and conditions of the state funds in the QTV Fund. The state appropriation must be maintained in a separate account from any private investment capital, made in segregated loans, and administered in a separate legal investment entity. Funds may not be comingled.

Loans may only be provided in conjunction with senior loans provided by a qualified lending partner. Loans from the QTV Fund, whether from state funds or private investment capital, may be subordinate to senior debt from the qualified lending partner and may not exceed 30 percent of the total production funding cost of any one project.

Repayment of any loan must be in accordance with the broadcast license agreement and the delivery of qualified television content to the major broadcaster. Repayment must be within 60 days after delivery of the content to the major broadcaster.[18] Loan terms may not exceed 36 months in duration. However, under extenuating circumstances, the fund administrator may grant an extension after providing the DEO written findings specifying conditions requiring the extension.

Excepting the funds appropriated to the QTV Fund program, the credit of the state may not be pledged. The state is not liable or obligated in any way for claims on the loan program or against the fund administrator or the DEO.

Qualified Television Content Criteria

The bill defines “qualified television content” as a series, miniseries, or made-for-TV content produced by a qualified production company that has in place a distribution contract with a major broadcaster, under a customary broadcast license agreement. The term excludes productions that contain obscene content, as defined in s. 847.001, F.S.

The bill requires the fund administrator to consider at a minimum, certain criteria for evaluating the qualifying television content for a loan. The criteria include:

- The content is intended for broadcast by a major broadcaster on a major network, cable, or streaming channel;
- The content is produced in this state, or a minimum of 80 percent of the production budget must be spent in this state. This requirement may be amended by the fund administrator upon written notice to the DEO, which has 10 business days to object to the change;
- For television series, there is a programming order for at least 13 episodes. This requirement may be amended by the fund administrator upon written notice to the DEO, which has 10 business days to object to the change;
- The producer must have a contract in place with a major broadcaster to acquire content programming under a customary broadcast license agreement and the contract must cover 60 percent of the budget;
- The producer must retain a foreign sales agent and be able to provide the administrator with the agent’s official foreign and ancillary sales estimate; and
- The project must be bonded and secured by an industry approved completion guarantor if the production cost per episode exceeds $1 million. This requirement may be waived if the loan applicant provides the fund administrator with evidence of adequate structure to protect state’s funds.

Audits

The bill requires the Auditor General to conduct an operational audit[19] of the QTV Fund and fund administrator. The scope of review must include, but is not limited to internal control evaluations, internal audit functions, reporting and performance requirements for the use of funds, and compliance with state and federal law.

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[18] The bill defines “major broadcaster” as a broadcasting organization including, but no limited to, television broadcasting networks, cable television, direct broadcast satellite, telecommunication companies, and internet streaming or other digital media platforms.

[19] See s. 11.45(1)(g), F.S.

The fund administrator must provide to the Auditor General any detail or supplemental data required.

Rulemaking

The bill authorizes the DEO to adopt rules to administer the bill and authorizes the DEO to adopt emergency rules to implement this bill. The emergency rules adopted remain in effect for 6 months after adoption and may be renewed. The subsection authorizing the DEO to adopt emergency rules expires October 1, 2015.

Expiration

The QTV Fund expires on December 31, 2024. All remaining funds in the QTV Fund revert to the General Revenue Fund.

Section 3 provides that the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill provides for a new loan program designed to be an evergreen fund with an initial appropriation of $20 million from the General Revenue Fund. The DEO is required to competitively contract with a fund administrator to administer the QTV Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 288.127 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on March 24, 2014:
The CS:
- Extends the deadline by which the DEO must contract with a fund administrator to September 1, 2014;
- Removes state tax credits as a means of collateral for securing program loans;
- Appropriates $20 million from the General Revenue Fund; and
- Removes a reference to the Economic Development Trust Fund.

B. Amendments:

None.