

By the Committee on Commerce and Tourism; and Senator Bean

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1 A bill to be entitled

2 An act relating to the Qualified Television Loan Fund;
3 creating s. 288.127, F.S.; defining terms; providing a
4 purpose; creating the Qualified Television Loan Fund;
5 requiring the Department of Economic Opportunity to
6 contract with a fund administrator; providing fund
7 administrator qualifications; providing for the fund
8 administrator's compensation and removal; specifying
9 the fund administrator powers and duties; providing
10 the structure of the loans; providing qualified
11 television content criteria; requiring the Auditor
12 General to conduct an operational audit of the fund
13 and the fund administrator; authorizing the department
14 to adopt rules; providing for expiration of the act;
15 providing emergency rulemaking authority; providing an
16 appropriation; providing an effective date.

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

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

22 288.127 Qualified Television Loan Fund (QTV Fund).—

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

24 (a) "Fund administrator" means a private sector
25 organization under contract with the department to manage and
26 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,

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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 created
57 within the department. The QTV Fund shall be a public fund that
58 is privately managed by the fund administrator under contract

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59 entered into with the department. The department shall disburse
60 the funds appropriated for this program to the fund
61 administrator to invest in the QTV Fund during the existence of
62 the program pursuant to this section and the contract entered
63 into between the fund administrator and the department. State
64 funds in the QTV Fund may be used only to enter into loan
65 agreements and to pay any administrative costs or other
66 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 administrator
81 by September 1, 2014, and award the contract in accordance with
82 the competitive bidding requirements in s. 287.057.

83 (b) The department shall select as fund administrator a
84 private sector entity that demonstrates the ability to implement
85 the program under this section and that meets the requirements
86 set forth in this section. Preference shall be given to
87 applicants that are headquartered in this state. Additional

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88 consideration may be given to applicants with experience in the
89 management of economic development or job creation-related
90 funds. The qualifications for the fund administrator must
91 include, but are not limited to, the following:

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

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

99 (c) For overseeing and administering the QTV Fund, the fund
100 administrator shall be paid an annual management fee equal to 5
101 percent of the loans under management during the first 5 years
102 and 3 percent of the loans under management after the fifth year
103 and for the remaining duration of the contract. However, after
104 the first year of the QTV Fund, the annual management fee may
105 not exceed the investment proceeds earned from its completed
106 investments. The annual management fee shall be paid from state
107 funds in the QTV Fund and shall be paid in advance, in equal
108 quarterly installments. Any additional private investment
109 capital in the segregated accounts is responsible for its own
110 management fees. In addition, the fund administrator may receive
111 income or profit distribution equal to 20 percent of the net
112 income of the QTV Fund on an annual basis. Such distribution may
113 not be made from any principal funds from the original
114 appropriation.

115 (d) The fund administrator shall provide services defined
116 under this section for the duration of the QTV Fund term unless

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117 removed for cause. Cause shall be further defined under the
118 contract with the fund administrator and must include, but is
119 not limited to, the engagement in fraud or other criminal acts
120 by board members, incapacity, unfitness, neglect of duty,
121 official incompetence and irresponsibility, misfeasance,
122 malfeasance, nonfeasance, or lack of performance.

123 (5) FUND ADMINISTRATOR POWERS AND DUTIES.-

124 (a) Authority to contract.-The fund administrator may enter
125 into agreements with qualified lending partners for concurrent
126 lending through the QTV Fund. A loan made by the qualified
127 lending partner must be accounted for separately from the state
128 funds or any other private investment capital. Such loan shall
129 be made as senior debt. The fund administrator may raise private
130 investment capital for mezzanine equity and other equity or
131 raise junior capital for concurrent lending through the QTV
132 Fund. However, loans from private investment capital may not be
133 made at more favorable terms and conditions than the terms and
134 conditions of the state funds in the QTV Fund. The state
135 appropriation must be maintained in a separate account from any
136 private investment capital and administered in a separate legal
137 investment entity or entities. Private investment capital and
138 loans shall be segregated from each other, and funds may not be
139 commingled.

140 (b) General duties.-The fund administrator:

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

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

145 3. Shall provide improvement of the credit profile of a

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146 structured financial transaction for qualified production
147 companies that produce qualified television content meeting the
148 criteria in subsection (7).

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

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

154 6. Shall agree to maintain the recipient's books and
155 records relating to funds received from the department according
156 to generally accepted accounting principles and in accordance
157 with the requirements of s. 215.97(7) and to make those books
158 and records available to the department for inspection upon
159 reasonable notice. The books and records must be maintained with
160 detailed records showing the use of proceeds from loans to fund
161 qualified television content.

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

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

173 (d) Program reporting.—The fund administrator shall submit
174 an annual report to the department by February 28 after the end

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175 of each year in which the fund administrator is under contract
176 with the department. The report must include information on the
177 loans made in the preceding calendar year and must include, but
178 need not be limited to, the following:

179 1. The name of the qualified television content.

180 2. The names of the counties in which the production
181 occurred.

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

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

187 5. The loan repayment status for each loan.

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

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

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

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

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

202 (f) *Conflict-of-interest statement.*—The fund administrator
203 shall provide a conflict-of-interest statement from its

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204 governing board certifying that no board member, director,
205 employee, agent, or other person connected to or affiliated with
206 the fund administrator is receiving or will receive any type of
207 compensation or remuneration from a production company that has
208 received or will receive funds from the loan program or from a
209 qualified lending partner. The department may waive this
210 requirement for good cause shown.

211 (6) LOAN STRUCTURE.—

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

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

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

231 (d) The QTV Fund shall provide funding only in conjunction
232 with senior loans provided by a qualified lending partner. Loans

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233 from the QTV Fund may be subordinated to senior debt from the
234 qualified lending partner and may not exceed 30 percent of the
235 total production funding cost of any particular project.

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

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

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

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

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

255 (b) The content is produced in this state, or a minimum of
256 80 percent of the production budget must be spent in this state.
257 This requirement may be amended by the fund administrator upon
258 notice to the department. Such notice must include a specific
259 justification for the change and must be transmitted to the
260 department in writing. The department has 10 business days to
261 object to the change. If the department does not object to the

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262 change within 10 business days, the change is deemed acceptable
263 by the department, and the fund administrator may grant the
264 amendment to the requirement in this paragraph.

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

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

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

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

287 (8) AUDITOR GENERAL REPORT.—The Auditor General shall
288 conduct an operational audit, as defined in s. 11.45, of the QTV
289 Fund and fund administrator. The scope of review must include,
290 but is not limited to, internal controls evaluations, internal

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291 audit functions, reporting and performance requirements for the
292 use of the funds, and compliance with state and federal law. The
293 fund administrator shall provide to the Auditor General any
294 detail or supplemental data required.

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

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

300 (11) EMERGENCY RULES.—

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

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

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

311 Section 2. The sum of \$20,000,000 is appropriated to the
312 Department of Economic Opportunity from nonrecurring funds from
313 the General Revenue Fund for the 2014-2015 fiscal year. These
314 funds shall be used for the Qualified Television Loan Fund in s.
315 288.127, Florida Statutes, as created by this act.

316 Section 3. This act shall take effect upon becoming a law.