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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2014	.	
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The Committee on Appropriations (Bean) recommended the following:

1           **Senate Amendment to Amendment (477076) (with title**  
2 **amendment)**

3  
4           Between lines 219 and 220  
5 insert:

6           Section 6. Section 288.127, Florida Statutes, is created to  
7 read:

8           288.127 Qualified Television Loan Fund (QTV Fund).—

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

10           (a) "Fund administrator" means a private sector



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11 organization under contract with the department to manage and  
12 administer the QTV Fund.

13 (b) "Major broadcaster" means broadcasting organizations  
14 that include, but are not limited to, television broadcasting  
15 networks, cable television, direct broadcast satellite,  
16 telecommunications companies, and internet streaming or other  
17 digital media platforms.

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

21 (d) "Qualified lending partner" means a financial  
22 institution, as defined in s. 655.005, selected by a fund  
23 administrator with demonstrated capability in providing  
24 financing to television production and specialized expertise in  
25 intellectual property, tax credit programs, customary broadcast  
26 license agreements, advertising inventories, and ancillary  
27 revenue sources, with a combined portfolio in film, television,  
28 and entertainment media of at least \$500 million.

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

35 (2) PURPOSE.—The purpose of the QTV Fund is to create a  
36 public-private partnership in the form of a revolving loan fund  
37 to administer a loan program for television production. The QTV  
38 Fund shall be privately managed under state oversight to  
39 incentivize the use of this state as a site for producing



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40 qualified television content and to develop and sustain the  
41 workforce and infrastructure for television content production.

42 (3) CREATION.—The Qualified Television Loan Fund is created  
43 within the department. The QTV Fund shall be a public fund that  
44 is privately managed by the fund administrator under contract  
45 entered into with the department. The department shall disburse  
46 the funds appropriated for this program to the fund  
47 administrator to invest in the QTV Fund during the existence of  
48 the program pursuant to this section and the contract entered  
49 into between the fund administrator and the department. State  
50 funds in the QTV Fund may be used only to enter into loan  
51 agreements and to pay any administrative costs or other  
52 authorized fees under this section.

53 (a) The QTV Fund shall be a revolving loan fund that shall  
54 invest and reinvest the principal and interest of the fund in  
55 accordance with s. 617.2104, in such a manner as to not subject  
56 the funds to state or federal taxes and to be consistent with  
57 the investment policy statement adopted by the fund  
58 administrator. As the production companies repay the principal  
59 and interest for the QTV Fund, the state funds shall be  
60 returned, less any QTV Fund expenses, to the account to be lent  
61 to subsequent borrowers.

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

65 (4) FUND ADMINISTRATOR.—

66 (a) The department shall contract with a fund administrator  
67 by September 1, 2014, and award the contract in accordance with  
68 the competitive bidding requirements in s. 287.057.



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69           (b) The department shall select as fund administrator a  
70 private sector entity that demonstrates the ability to implement  
71 the program under this section and that meets the requirements  
72 set forth in this section. Preference shall be given to  
73 applicants that are headquartered in this state. Additional  
74 consideration may be given to applicants with experience in the  
75 management of economic development or job creation-related  
76 funds. The qualifications for the fund administrator must  
77 include, but are not limited to, the following:

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

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

85           (c) For overseeing and administering the QTV Fund, the fund  
86 administrator shall be reimbursed for the portion of costs the  
87 fund administrator incurs in establishing and operating the  
88 Fund related to the state's investment, which shall be paid from  
89 state funds in the QTV Fund. Any additional private investment  
90 capital in the segregated accounts is responsible for its own  
91 management fees. The fund administrator shall be entitled to a  
92 reasonable profit, but such distribution may not be made from  
93 any principal funds from the original appropriation.

94           (d) The fund administrator shall provide services defined  
95 under this section for the duration of the QTV Fund term unless  
96 removed for cause. Cause shall be further defined under the  
97 contract with the fund administrator and must include, but is



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98 not limited to, the engagement in fraud or other criminal acts  
99 by board members, incapacity, unfitness, neglect of duty,  
100 official incompetence and irresponsibility, misfeasance,  
101 malfeasance, nonfeasance, or lack of performance.

102 (5) FUND ADMINISTRATOR POWERS AND DUTIES.—

103 (a) Authority to contract.—The fund administrator may enter  
104 into agreements with qualified lending partners for concurrent  
105 lending through the QTV Fund. A loan made by the qualified  
106 lending partner must be accounted for separately from the state  
107 funds or any other private investment capital. Such loan shall  
108 be made as senior debt. The fund administrator may raise private  
109 investment capital for mezzanine equity and other equity or  
110 raise junior capital for concurrent lending through the QTV  
111 Fund. However, loans from private investment capital may not be  
112 made at more favorable terms and conditions than the terms and  
113 conditions of the state funds in the QTV Fund. The state  
114 appropriation must be maintained in a separate account from any  
115 private investment capital and administered in a separate legal  
116 investment entity or entities. Private investment capital and  
117 loans shall be segregated from each other, and funds may not be  
118 commingled.

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

120 1. Shall prudently manage the funds in the QTV Fund as a  
121 revolving loan fund.

122 2. Shall contract with one or more qualified lending  
123 partners.

124 3. Shall provide improvement of the credit profile of a  
125 structured financial transaction for qualified production  
126 companies that produce qualified television content meeting the



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127 criteria in subsection (7).

128 4. May raise additional private investment capital to be  
129 held in separate accounts, in addition to the leverage provided  
130 by the qualified lending partner.

131 5. Shall administer the QTV Fund in accordance with this  
132 part.

133 6. Shall agree to maintain the recipient's books and  
134 records relating to funds received from the department according  
135 to generally accepted accounting principles and in accordance  
136 with the requirements of s. 215.97(7) and to make those books  
137 and records available to the department for inspection upon  
138 reasonable notice. The books and records must be maintained with  
139 detailed records showing the use of proceeds from loans to fund  
140 qualified television content.

141 7. Shall maintain its registered office in this state  
142 throughout the duration of the contract.

143 (c) Financial reporting.—The fund administrator shall  
144 submit to the department by February 28 each year audited  
145 financial statements for the preceding tax year which are  
146 audited by an independent certified public accountant after the  
147 end of each year in which the fund administrator is under  
148 contract with the department. In addition to providing an  
149 independent opinion on the annual financial statements, such  
150 audit provides a basis to verify the segregation of state funds  
151 from those of any private investment capital.

152 (d) Program reporting.—The fund administrator shall submit  
153 an annual report to the department by February 28 after the end  
154 of each year in which the fund administrator is under contract  
155 with the department. The report must include information on the



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156 loans made in the preceding calendar year and must include, but  
157 need not be limited to, the following:

158 1. The name of the qualified television content.

159 2. The names of the counties in which the production  
160 occurred.

161 3. The number of jobs created and retained as a result of  
162 the production.

163 4. The loan amounts, including the amount of private  
164 investment capital and funds provided by a qualified lending  
165 partner.

166 5. The loan repayment status for each loan.

167 6. The number, and amounts, of any loans with payments past  
168 due.

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

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

171 9. Other information and documentation required by the  
172 department.

173 (e) Plan of accountability.—The fund administrator shall  
174 submit an annual plan of accountability of economic development,  
175 including a report detailing the job creation resulting from the  
176 QTV Fund loans made during the current year and cumulatively  
177 since the inception of the program. The fund administrator shall  
178 also provide any additional information requested by the  
179 department pertaining to economic development and job creation  
180 in the state.

181 (f) Conflict-of-interest statement.—The fund administrator  
182 shall provide a conflict-of-interest statement from its  
183 governing board certifying that no board member, director,  
184 employee, agent, immediate family member thereof, or other



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185 person connected to or affiliated with the fund administrator is  
186 receiving or will receive any type of compensation or  
187 remuneration from a production company that has received or will  
188 receive funds from the loan program or from a qualified lending  
189 partner. The department may waive this requirement for good  
190 cause shown.

191 (6) LOAN STRUCTURE.—

192 (a) The QTV Fund may make loans to production companies to  
193 fund production costs or provide improvement of the credit  
194 profile of a structured financial transaction for qualified  
195 television content that meets the criteria requirements of  
196 subsection (7). To make a loan, the fund administrator shall  
197 take into consideration the types of eligible collateral, the  
198 credit worthiness of the project, the producer's track record,  
199 the possibility that the project will encourage, enhance, or  
200 create economic benefits, and the extent to which assistance  
201 would foster innovative public-private partnerships and attract  
202 private debt or equity investment.

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

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

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





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

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

220 (f) Loans made by the QTV Fund may not exceed 36 months in  
221 duration, except for extenuating circumstances for which the  
222 fund administrator may grant an extension upon making written  
223 findings to the department specifying the conditions requiring  
224 the extension.

225 (g) The fund administrator or a board member, employee, or  
226 agent thereof, or an immediate family member of a board member,  
227 employee, or agent, may not have a financial interest in an  
228 entity that is awarded a loan under a loan program and may not  
229 benefit directly or indirectly from the making of such a loan. A  
230 loan may not be made to a person if it violates this paragraph.  
231 As used in this section, the term "immediate family" means a  
232 parent, child, or spouse, or any other relative by blood,  
233 marriage, or adoption, of a board member, employee, or agent of  
234 the loan administrator.

235 (h) With the exception of funds appropriated to the  
236 department for the loan program, the credit of the state may not  
237 be pledged. The state is not liable or obligated in any way for  
238 claims against the QTV Fund or against the fund administrator,  
239 the qualified lending partner, or the department.

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



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

245 (b) The content is produced in this state, or a minimum of  
246 80 percent of the production budget must be spent in this state.

247 This requirement may be amended by the fund administrator upon  
248 notice to the department. Such notice must include a specific  
249 justification for the change and must be transmitted to the  
250 department in writing. The department has 10 business days to  
251 object to the change. If the department does not object to the  
252 change within 10 business days, the change is deemed acceptable  
253 by the department, and the fund administrator may grant the  
254 amendment to the requirement in this paragraph.

255 (c) If the content is a series, there is a programming  
256 order for at least 13 episodes. This requirement may be amended  
257 by the fund administrator upon notice to the department. Such  
258 notice must include a specific justification for the change and  
259 must be transmitted to the department in writing. The department  
260 has 10 business days to object to the change. If the department  
261 does not object to the change within 10 business days, the  
262 change is deemed acceptable by the department, and the fund  
263 administrator may grant the amendment to the requirement in this  
264 paragraph.

265 (d) The producer must have a contract in place with a major  
266 broadcaster to acquire content programming under a customary  
267 broadcast license agreement and the contract must cover at least  
268 60 percent of the budget.

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



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

277 (8) AUDITOR GENERAL AUDIT.—The Auditor General is  
278 authorized to conduct operational audits, as defined in s.  
279 11.45, of the QTV Fund and fund administrator. The scope of  
280 audit must include, but is not limited to, internal controls  
281 evaluations, internal audit functions, reporting and performance  
282 requirements for the use of the funds, and compliance with state  
283 and federal law. The fund administrator shall provide to the  
284 Auditor General any detail or supplemental data required.

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

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

290 (11) EMERGENCY RULES.—

291 (a) The executive director of the department is authorized,  
292 and all conditions are deemed met, to adopt emergency rules  
293 pursuant to ss. 120.536(1) and 120.54(4) for the purpose of  
294 implementing this section.

295 (b) Notwithstanding any other law, the emergency rules  
296 adopted pursuant to paragraph (a) remain in effect for 6 months  
297 after adoption and may be renewed during the pendency of  
298 procedures to adopt permanent rules addressing the subject of  
299 the emergency rules.

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



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301 Section 7. Paragraph (b) of subsection (2) of section  
302 288.0001, Florida Statutes, is amended to read:

303 288.0001 Economic Development Programs Evaluation.—The  
304 Office of Economic and Demographic Research and the Office of  
305 Program Policy Analysis and Government Accountability (OPPAGA)  
306 shall develop and present to the Governor, the President of the  
307 Senate, the Speaker of the House of Representatives, and the  
308 chairs of the legislative appropriations committees the Economic  
309 Development Programs Evaluation.

310 (2) The Office of Economic and Demographic Research and  
311 OPPAGA shall provide a detailed analysis of economic development  
312 programs as provided in the following schedule:

313 (b) By January 1, 2015, and every 3 years thereafter, an  
314 analysis of the following:

315 1. The entertainment industry financial incentive program  
316 established under s. 288.1254.

317 2. The entertainment industry sales tax exemption program  
318 established under s. 288.1258.

319 3. The ~~VISIT~~ Florida Tourism Industry Marketing Corporation  
320 and its programs established or funded under ss. 288.122,  
321 288.1226, 288.12265, and 288.124.

322 4. The Florida Sports Foundation and related programs  
323 established under ss. 288.1162, 288.11621, 288.1166, 288.1167,  
324 288.1168, 288.1169, and 288.1171.

325 5. The qualified television loan fund established under s.  
326 288.127.

327 Section 8. For fiscal year 2014-2015, the sum of \$20  
328 million of nonrecurring funds is appropriated from the General  
329 Revenue Fund to the Economic Development Trust Fund of the



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330 Department of Economic Opportunity for the purpose of making  
331 disbursements in accordance with s. 288.127(3), Florida  
332 Statutes.

333  
334 ===== T I T L E A M E N D M E N T =====

335 And the title is amended as follows:

336 Delete lines 378 - 391

337 and insert:

338 An act relating to economic development; amending s.  
339 202.12, F.S.; reducing the tax rate applied to the  
340 sale of communications services; reducing the tax rate  
341 applied to the retail sale of direct-to-home satellite  
342 services; amending s. 202.12001, F.S.; conforming  
343 rates to the reduction of the communications services  
344 tax; amending s. 202.18, F.S.; revising the  
345 distribution of tax revenues received; amending s.  
346 203.001, F.S.; conforming rates to the reduction of  
347 the communications services tax; amending s. 212.20,  
348 F.S.; providing for a monthly distribution of a  
349 specified amount of sales tax revenue to a complex  
350 certified as a motorsports entertainment complex by  
351 the Department of Economic Opportunity; creating s.  
352 288.127, F.S.; providing definitions; providing a  
353 purpose; creating the Qualified Television Loan Fund;  
354 requiring the Department of Economic Opportunity to  
355 contract with a fund administrator; providing fund  
356 administrator qualifications; providing for the fund  
357 administrator's compensation and removal; specifying  
358 the fund administrator powers and duties; providing



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359 the structure of the loans; providing qualified  
360 television content criteria; permitting the Auditor  
361 General to conduct an operational audit of the fund  
362 and the fund administrator; authorizing the department  
363 to adopt rules; providing for expiration of the act;  
364 providing emergency rulemaking authority; amending s.  
365 288.0001, F.S.; requiring an analysis of the qualified  
366 television loan fund in the Economic Development  
367 Programs Evaluation; providing an appropriation;  
368 amending s.