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LEGISLATIVE ACTION

Senate

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House

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Floor: WD

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05/01/2014 03:29 PM

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Senator Bean moved the following:

1 **Senate Amendment to Amendment (526842) (with title**
2 **amendment)**

3
4 Before line 6

5 insert:

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

8 288.127 Qualified television loan fund.-

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

10 (a) "Fund administrator" means a private sector
11 organization under contract with the department to manage and



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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 that has 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, and 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 (f) "QTV Fund" means the qualified television loan fund.

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



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

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

54 (a) The QTV Fund shall be a revolving loan fund that
55 invests and reinvests the principal and interest of the fund in
56 accordance with s. 617.2104 in a manner so as to not subject the
57 funds to state or federal taxes and to be consistent with the
58 investment policy statement adopted by the fund administrator.
59 As production companies repay the principal and interest to the
60 QTV Fund, state funds, less any QTV Fund expenses, shall be
61 returned to the account to be lent 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 90 days after funds are appropriated for the program, and
68 award the contract in accordance with the competitive bidding
69 requirements in s. 287.057.



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

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

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

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

95 (d) The fund administrator shall provide services defined
96 under this section for the duration of the QTV Fund term unless
97 removed by the department. The contract between the department
98 and the fund administrator shall set forth the circumstances



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99 under which the contract may be terminated.

100 (5) FUND ADMINISTRATOR POWERS AND DUTIES.—

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

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

118 1. Shall prudently manage the funds in the QTV Fund as a
119 revolving loan fund.

120 2. Shall contract with one or more qualified lending
121 partners.

122 3. Shall provide improvement of the credit profile of a
123 structured financial transaction for qualified production
124 companies that produce qualified television content meeting the
125 criteria in subsection (7).

126 4. May raise additional private investment capital to be
127 held in separate accounts, in addition to the leverage provided



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128 by the qualified lending partner.

129 5. Shall administer the QTV Fund in accordance with this
130 part.

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

139 7. Shall maintain its registered office in this state
140 throughout the duration of the contract.

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

150 (d) Program reporting.—The fund administrator shall submit
151 a report to the department by February 28 after the end of each
152 year in which the fund administrator is under contract with the
153 department. The report must include information on the loans
154 made in the preceding calendar year, including:

155 1. The name of the qualified television content.

156 2. The names of the counties in which the production



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157 occurred.

158 3. The number of jobs created and retained as a result of
159 the production.

160 4. The loan amounts, including the amount of private
161 investment capital and funds provided by a qualified lending
162 partner.

163 5. The loan repayment status for each loan.

164 6. The number and amounts of any loans with payments past
165 due.

166 7. The number and amounts of any loans in default.

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

168 9. Other information and documentation required by the
169 department.

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

178 (f) Conflict-of-interest statement.—The fund administrator
179 shall provide a conflict-of-interest statement from its
180 governing board certifying that no board member, director,
181 employee, agent, immediate family member thereof, or other
182 person connected to or affiliated with the fund administrator is
183 receiving or will receive any type of compensation or
184 remuneration from a production company that has received or will
185 receive funds from the loan program or from a qualified lending



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186 partner. The department may waive this requirement for good
187 cause shown.

188 (6) LOAN STRUCTURE.—

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

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

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

208 (d) The QTV Fund shall provide funding only in conjunction
209 with senior loans provided by a qualified lending partner. Loans
210 from the fund may be subordinated to senior debt from the
211 qualified lending partner and may not exceed 30 percent of the
212 total production funding cost of any particular project.

213 (e) The production company's repayment of a loan shall be
214 in accordance with the broadcast license agreement and the



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215 delivery of qualified television content to the major
216 broadcaster and shall be within 60 days after such delivery.

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

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

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

237 (7) QUALIFIED TELEVISION CONTENT CRITERIA.—The fund
238 administrator must, at a minimum, consider the following
239 criteria for evaluating the qualifying television content:

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

242 (b) The content is produced in this state, or a minimum of
243 80 percent of the production budget must be spent in this state.



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

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

260 (d) The producer must have a contract in place with a major
261 broadcaster to acquire content programming under a customary
262 broadcast license agreement and the contract must cover at least
263 60 percent of the budget.

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

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

272 (8) AUDITOR GENERAL AUDIT.—The Auditor General may conduct



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273 operational audits, as defined in s. 11.45, of the QTV Fund and
274 fund administrator. The scope of audit must include, but is not
275 limited to, internal controls evaluations, internal audit
276 functions, reporting and performance requirements for the use of
277 the funds, and compliance with state and federal law. The fund
278 administrator shall provide to the Auditor General any detail or
279 supplemental data required.

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

282 (10) EXPIRATION.—This section expires December 31, 2024, at
283 which point all funds remaining in the QTV Fund revert to the
284 General Revenue Fund.

285 (11) EMERGENCY RULES.—

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

290 (b) Notwithstanding any other law, the emergency rules
291 adopted pursuant to paragraph (a) remain in effect for 6 months
292 after adoption and may be renewed during the pendency of
293 procedures to adopt permanent rules addressing the subject of
294 the emergency rules.

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

296 Section 2. Effective July 1, 2015, paragraph (b) of
297 subsection (2) of section 288.0001, Florida Statutes, is amended
298 to read:

299 288.0001 Economic Development Programs Evaluation.—The
300 Office of Economic and Demographic Research and the Office of
301 Program Policy Analysis and Government Accountability (OPPAGA)



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302 shall develop and present to the Governor, the President of the
303 Senate, the Speaker of the House of Representatives, and the
304 chairs of the legislative appropriations committees the Economic
305 Development Programs Evaluation.

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

309 (b) By January 1, 2018 ~~2015~~, and every 3 years thereafter,
310 an analysis of the following:

311 1. The entertainment industry financial incentive program
312 established under s. 288.1254.

313 2. The entertainment industry sales tax exemption program
314 established under s. 288.1258.

315 3. ~~The VISIT~~ Florida Tourism Industry Marketing Corporation
316 and its programs established or funded under ss. 288.122,
317 288.1226, 288.12265, and 288.124.

318 4. The Florida Sports Foundation and related programs
319 established under ss. 288.1162, 288.11621, 288.1166, 288.1167,
320 288.1168, 288.1169, and 288.1171.

321 5. The qualified television loan fund established under s.
322 288.127.

323
324 ===== T I T L E A M E N D M E N T =====

325 And the title is amended as follows:

326 Delete line 1394

327 and insert:

328 An act relating to economic development; creating s.

329 288.127, F.S.; providing definitions; providing a

330 purpose; creating the qualified television loan fund;



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331 requiring the Department of Economic Opportunity to
332 contract with a fund administrator; providing fund
333 administrator qualifications; providing for the fund
334 administrator's compensation and removal; specifying
335 the fund administrator powers and duties; providing
336 the structure of the loans; providing qualified
337 television content criteria; permitting the Auditor
338 General to conduct an operational audit of the fund
339 and the fund administrator; authorizing the Department
340 of Economic Opportunity to adopt rules; providing for
341 expiration of the act; providing emergency rulemaking
342 authority; providing for expiration of the emergency
343 rulemaking authority; amending s. 288.0001, F.S.;
344 requiring an analysis of the qualified television loan
345 fund in the Economic Development Programs Evaluation;
346 amending s. 202.11, F.S.;