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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 369 and 370
5 insert:

6 Section 9. 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 10. 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
328 ===== T I T L E A M E N D M E N T =====

329 And the title is amended as follows:



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330 Delete lines 378 - 404
331 and insert:
332 An act relating to economic development; amending s.
333 202.12, F.S.; reducing the tax rate applied to the
334 sale of communications services; reducing the tax rate
335 applied to the retail sale of direct-to-home satellite
336 services; amending s. 202.12001, F.S.; conforming
337 rates to the reduction of the communications services
338 tax; amending s. 202.18, F.S.; revising the
339 distribution of tax revenues received; amending s.
340 203.001, F.S.; conforming rates to the reduction of
341 the communications services tax; amending s. 212.20,
342 F.S.; providing for a monthly distribution of a
343 specified amount of sales tax revenue to a complex
344 certified as a motorsports entertainment complex by
345 the Department of Economic Opportunity; amending s.
346 288.1171, F.S.; authorizing the department to certify
347 a single applicant as a motorsports entertainment
348 complex if it meets specified criteria; authorizing
349 the Auditor General to verify the expenditure of
350 specified distributions and to notify the Department
351 of Revenue of improperly expended funds so that it may
352 pursue recovery; specifying a period during which the
353 sale of clothing, wallets, bags, school supplies,
354 personal computers, and personal computer-related
355 accessories are exempt from the sales tax; providing
356 definitions; providing exceptions; authorizing the
357 Department of Revenue to adopt emergency rules;
358 providing an appropriation; creating s. 288.127, F.S.;



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359 providing definitions; providing a purpose; creating
360 the Qualified Television Loan Fund; requiring the
361 Department of Economic Opportunity to contract with a
362 fund administrator; providing fund administrator
363 qualifications; providing for the fund administrator's
364 compensation and removal; specifying the fund
365 administrator powers and duties; providing the
366 structure of the loans; providing qualified television
367 content criteria; permitting the Auditor General to
368 conduct an operational audit of the fund and the fund
369 administrator; authorizing the department to adopt
370 rules; providing for expiration of the act; providing
371 emergency rulemaking authority; amending s. 288.0001,
372 F.S.; requiring an analysis of the qualified
373 television loan fund in the Economic Development
374 Programs Evaluation; providing effective dates.