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LEGISLATIVE ACTION

Senate	.	House
Comm: RE	.	
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 315 and 316
5 insert:

6 Section 7. 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



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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 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



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40 incentivize the use of this state as a site for producing
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 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 that have experience in
75 the management of economic development or job creation-related
76 funds. The qualifications for the fund administrator must
77 include, but are not limited to:

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, which
82 has the capability of providing leverage of a minimum of 2.5
83 times the capital amount of the QTV Fund, for financing the
84 production cost of qualified television content in the form of
85 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 for cause. Cause shall be further defined under the



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98 contract with the fund administrator and must include, but is
99 not limited to, the engagement in fraud or other criminal acts
100 by board members, incapacity, unfitness, neglect of duty,
101 official incompetence and irresponsibility, misfeasance,
102 malfeasance, nonfeasance, or lack of performance.

103 (5) FUND ADMINISTRATOR POWERS AND DUTIES.-

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

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

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

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

125 3. Shall provide improvement of the credit profile of a
126 structured financial transaction for qualified production



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127 companies that produce qualified television content meeting the
128 criteria in subsection (7).

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

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

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

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

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

153 (d) *Program reporting.*—The fund administrator shall submit
154 a report to the department by February 28 after the end of each
155 year in which the fund administrator is under contract with the



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156 department. The report must include information on the loans
157 made in the preceding calendar year, including:

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 consider the types of eligible collateral, the credit worthiness
198 of the project, the producer's track record, the possibility
199 that the project will encourage, enhance, or create economic
200 benefits, and the extent to which assistance would foster
201 innovative public-private partnerships and attract private debt
202 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 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 a 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 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 other relative by blood, marriage,
233 or adoption, of a board member, employee, or agent of the loan
234 administrator.

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

240 (7) QUALIFIED TELEVISION CONTENT CRITERIA.—The fund
241 administrator must, at a minimum, consider the following
242 criteria 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 within
252 10 business days, the change is deemed acceptable by the
253 department, and the fund administrator may grant the amendment.

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

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

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

270 (f) The project must be bonded and secured by an industry-
271 approved completion guarantor if the production cost per episode



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272 exceeds \$1 million. This requirement may be waived if the loan
273 applicant provides the fund administrator with evidence of
274 adequate structure to protect the state's funds.

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

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

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

288 (11) EMERGENCY RULES.—

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

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

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

299 Section 10. Paragraph (b) of subsection (2) of section
300 288.0001, Florida Statutes, is amended to read:



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301 288.0001 Economic Development Programs Evaluation.—The
302 Office of Economic and Demographic Research and the Office of
303 Program Policy Analysis and Government Accountability (OPPAGA)
304 shall develop and present to the Governor, the President of the
305 Senate, the Speaker of the House of Representatives, and the
306 chairs of the legislative appropriations committees the Economic
307 Development Programs Evaluation.

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

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

313 1. The entertainment industry financial incentive program
314 established under s. 288.1254.

315 2. The entertainment industry sales tax exemption program
316 established under s. 288.1258.

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

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

323 5. The qualified television loan fund established under s.
324 288.127.

325
326 ===== T I T L E A M E N D M E N T =====

327 And the title is amended as follows:

328 Delete lines 378 - 398

329 and insert:



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330 An act relating to economic development; amending s.
331 202.12, F.S.; reducing the tax rate applied to the
332 sale of communications services; reducing the tax rate
333 applied to the retail sale of direct-to-home satellite
334 services; amending s. 202.12001, F.S.; conforming
335 rates to the reduction of the communications services
336 tax; amending s. 202.18, F.S.; revising the
337 distribution of tax revenues received; amending s.
338 203.001, F.S.; conforming rates to the reduction of
339 the communications services tax; amending s. 212.20,
340 F.S.; providing for a monthly distribution of a
341 specified amount of sales tax revenue to a complex
342 certified as a motorsports entertainment complex by
343 the Department of Economic Opportunity; amending s.
344 288.1171, F.S.; authorizing the department to certify
345 a single applicant as a motorsports entertainment
346 complex if it meets specified criteria; authorizing
347 the Auditor General to verify the expenditure of
348 specified distributions and to notify the Department
349 of Revenue of improperly expended funds so that it may
350 pursue recovery; creating s. 288.127, F.S.; providing
351 definitions; providing a purpose; creating the
352 qualified television loan fund; requiring the
353 Department of Economic Opportunity to contract with a
354 fund administrator; providing fund administrator
355 qualifications; providing for the fund administrator's
356 compensation and removal; specifying the fund
357 administrator powers and duties; providing the
358 structure of the loans; providing qualified television



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