

By Senator Bean

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1 A bill to be entitled
2 An act relating to economic development; creating s.
3 288.127, F.S.; defining terms; providing a purpose;
4 creating the qualified television revolving 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's powers and duties; providing
10 the structure of the loans; providing qualified
11 television content criteria; authorizing 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 loan
15 program; providing emergency rulemaking authority;
16 providing for expiration of the emergency rulemaking
17 authority; amending s. 288.0001, F.S.; revising the
18 initial date by which the Office of Economic and
19 Demographic Research and the Office of Program Policy
20 Analysis and Government Accountability must provide a
21 detailed analysis on specified programs; making
22 technical changes; requiring an analysis of the
23 qualified television revolving loan fund in the
24 Economic Development Programs Evaluation; providing an
25 effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Section 288.127, Florida Statutes, is created to

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30 read:

31 288.127 Qualified television revolving loan fund.—32 (1) DEFINITIONS.—As used in this section, the term:33 (a) "Fund administrator" means a private sector
34 organization under contract with the department to manage and
35 administer the qualified television revolving loan fund.36 (b) "Major broadcaster" means broadcasting organizations
37 that include, but are not limited to, television broadcasting
38 networks, cable television, direct broadcast satellite,
39 telecommunications companies, and Internet streaming or other
40 digital media platforms.41 (c) "Private investment capital" means capital from
42 private, nongovernmental funding sources which will be
43 coinvested with the QTV Fund in segregated accounts.44 (d) "QTV Fund" means the qualified television revolving
45 loan fund.46 (e) "Qualified lending partner" means a financial
47 institution, as defined in s. 655.005, selected by a fund
48 administrator which has demonstrated capability in providing
49 financing to television production and specialized expertise in
50 intellectual property, tax credit programs, customary broadcast
51 license agreements, advertising inventories, and ancillary
52 revenue sources, and a combined portfolio in film, television,
53 and entertainment media of at least \$500 million.54 (f) "Qualified television content" means series,
55 miniseries, or made-for-TV content produced by a qualified
56 production company that has in place a distribution contract
57 with a major broadcaster, under a customary broadcaster license
58 agreement, and meets the criteria provided in subsection (7).

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59 The term does not include a production that contains content
60 that is obscene, as defined in s. 847.001.

61 (2) PURPOSE.—The purpose of the QTV Fund is to create a
62 public-private partnership in the form of a revolving loan fund
63 to administer a loan program for television production. The QTV
64 Fund is privately managed under state oversight to incentivize
65 the use of this state as a site for producing qualified
66 television content and to develop and sustain the workforce and
67 infrastructure for television content production.

68 (3) CREATION.—The qualified television revolving loan fund
69 is created within the department. The QTV Fund shall be a public
70 fund that is privately managed by the fund administrator. The
71 department shall disburse the funds appropriated for this loan
72 program to the fund administrator to invest in the QTV Fund
73 during the existence of the program pursuant to this section and
74 the contract between the fund administrator and the department.
75 State funds in the QTV Fund may be used only to enter into loan
76 agreements and to pay any administrative costs or other
77 authorized fees under this section.

78 (a) The QTV Fund is a revolving loan fund that must invest
79 and reinvest the principal and interest of the fund in
80 accordance with s. 617.2104 in a manner so as not to subject the
81 funds to state or federal taxes and to be consistent with the
82 investment policy statement adopted by the fund administrator.
83 As production companies repay the principal and interest to the
84 QTV Fund, state funds, less any QTV Fund expenses, shall be
85 returned to the account to be lent to subsequent borrowers.

86 (b) The fund administrator shall disburse funds from the
87 QTV Fund through a lending vehicle to make loans not to exceed

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88 36 months in duration pursuant to this section.

89 (4) FUND ADMINISTRATOR.—

90 (a) The department shall contract with a fund administrator
91 within 90 days after funds are appropriated for the loan program
92 and shall award the contract in accordance with the competitive
93 bidding requirements in s. 287.057.

94 (b) The department shall select as fund administrator a
95 private sector entity that demonstrates the ability to implement
96 the program under this section and that meets the requirements
97 set forth in this section. Preference shall be given to
98 applicants that are headquartered in this state. Additional
99 consideration may be given to applicants that have experience in
100 the management of economic development or job creation-related
101 funds. The qualifications for the fund administrator must
102 include, but are not limited to:

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

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

110 (c) For overseeing and administering the QTV Fund, the fund
111 administrator shall be reimbursed for the costs that the fund
112 administrator incurs in establishing and operating the fund
113 related to the state's investment, which shall be paid from
114 state funds in the QTV Fund. Any additional private investment
115 capital in the segregated accounts is responsible for its own
116 management fees. The fund administrator is entitled to a

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117 reasonable profit, but such distribution may not be made from
118 the principal funds from the original appropriation.

119 (d) The fund administrator shall provide services defined
120 under this section for the duration of the QTV Fund term unless
121 removed by the department. The contract between the department
122 and the fund administrator shall set forth the circumstances
123 under which the contract may be terminated.

124 (5) FUND ADMINISTRATOR POWERS AND DUTIES.—

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

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

143 1. Shall prudently manage the funds in the QTV Fund as a
144 revolving loan fund.

145 2. Shall contract with one or more qualified lending

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146 partners.

147 3. Shall provide improvement of the credit profile of a
148 structured financial transaction for qualified production
149 companies that produce qualified television content meeting the
150 criteria in subsection (7).

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

154 5. Shall administer the QTV Fund in accordance with this
155 part.

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

164 7. Shall maintain its registered office in this state
165 throughout the duration of the contract.

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

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

180 1. The name of the qualified television content.

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

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

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

188 5. The loan repayment status for each loan.

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

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

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

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

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

203 (f) Conflict-of-interest statement.—The fund administrator

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

213 (6) LOAN STRUCTURE.—

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

225 (b) The QTV Fund loan package shall be secured by
226 anticipated receivables from domestic and international
227 broadcaster license agreements and other ancillary revenues that
228 are derived from media content rights. Unsecured loans may not
229 be made.

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

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

238 (e) The production company's repayment of a loan shall be
239 in accordance with the license fee payment schedule agreement
240 and the delivery of qualified television content to the major
241 broadcaster and shall be within 60 days after such delivery.

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

247 (g) The fund administrator, or a board member, employee, or
248 agent thereof, or an immediate family member of a board member,
249 employee, or agent, may not have a financial interest in an
250 entity that is awarded a loan under the loan program and may not
251 benefit directly or indirectly from the making of such loan. A
252 loan may not be made to a person if it violates this paragraph.
253 As used in this section, the term "immediate family" means a
254 parent, child, or spouse, or other relative by blood, marriage,
255 or adoption, of the fund administrator, or a board member,
256 employee, or agent thereof.

257 (h) Except for funds appropriated to the department for the
258 loan program, the credit of the state may not be pledged. The
259 state is not liable or obligated in any way for claims against
260 the QTV Fund or against the fund administrator, the qualified
261 lending partner, or the department.

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

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

267 (b) The content is produced in this state, or a minimum of
268 80 percent of the production budget must be spent in this state.
269 This requirement may be amended by the fund administrator upon
270 notice to the department. Such notice must include a specific
271 justification for the change and must be transmitted to the
272 department in writing. The department has 10 business days to
273 object to the change. If the department does not object within
274 10 business days, the change is deemed acceptable by the
275 department, and the fund administrator may grant the amendment.

276 (c) If the content is a series, the series is:

277 1. A production created to run multiple seasons which has
278 an estimated order of at least seven episodes per season and
279 qualified expenditures of at least \$1 million per episode; or

280 2. A telenovela that has qualified expenditures of more
281 than \$6 million; a minimum of 45 principal photography days
282 filmed in this state; and a production cast, including
283 background production, occurring in this state.

284
285 These requirements may be amended by the fund administrator upon
286 notice to the department. Such notice must include a specific
287 justification for the change and must be transmitted to the
288 department in writing. The department has 10 business days to
289 object to the change. If the department does not object within
290 10 business days, the change is deemed acceptable by the

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291 department, and the fund administrator may grant the amendment.

292 (d) The producer must have a contract in place with a major
293 broadcaster to acquire content programming under a customary
294 broadcast license agreement, and the contract must cover at
295 least 60 percent of the budget.

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

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

304 (8) AUDITOR GENERAL AUDIT.—The Auditor General may conduct
305 operational audits, as defined in s. 11.45, of the QTV Fund and
306 fund administrator. The scope of the audit must include, but is
307 not limited to, internal controls evaluations, internal audit
308 functions, reporting and performance requirements for the use of
309 the funds, and compliance with state and federal law. The fund
310 administrator shall provide to the Auditor General any detail or
311 supplemental data required.

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

314 (10) EXPIRATION.—This section expires December 31, 2026, at
315 which point all funds remaining in the QTV Fund revert to the
316 General Revenue Fund.

317 (11) EMERGENCY RULES.—

318 (a) The executive director of the department is authorized,
319 and all conditions are deemed met, to adopt emergency rules

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320 pursuant to ss. 120.536(1) and 120.54(4) for the purpose of
321 implementing this section.

322 (b) Notwithstanding any other law, the emergency rules
323 adopted pursuant to paragraph (a) remain in effect for 6 months
324 after adoption and may be renewed during the pendency of
325 procedures to adopt permanent rules addressing the subject of
326 the emergency rules.

327 (c) This subsection expires October 1, 2017.

328 Section 2. Paragraph (b) of subsection (2) of section
329 288.0001, Florida Statutes, is amended to read:

330 288.0001 Economic Development Programs Evaluation.—The
331 Office of Economic and Demographic Research and the Office of
332 Program Policy Analysis and Government Accountability (OPPAGA)
333 shall develop and present to the Governor, the President of the
334 Senate, the Speaker of the House of Representatives, and the
335 chairs of the legislative appropriations committees the Economic
336 Development Programs Evaluation.

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

340 (b) By January 1, 2019 ~~2015~~, and every 3 years thereafter,
341 an analysis of the following:

342 1. The entertainment industry financial incentive program
343 established under s. 288.1254.

344 2. The entertainment industry sales tax exemption program
345 established under s. 288.1258.

346 3. The VISIT Florida Tourism Industry Marketing Corporation
347 and its programs established or funded under ss. 288.122,
348 288.1226, 288.12265, and 288.124.

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349 4. The Florida Sports Foundation and related programs
350 established under ss. 288.1162, 288.11621, 288.1166, 288.1167,
351 288.1168, 288.1169, and 288.1171.

352 5. The qualified television revolving loan fund established
353 under s. 288.127.

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