

By Senator Taddeo

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1 A bill to be entitled
2 An act relating to film and television production;
3 creating s. 288.1259, F.S.; defining terms;
4 establishing the Florida Motion Picture Capital
5 Corporation to encourage the use of this state as a
6 site for scripted productions by providing financing
7 to certain productions; providing powers of the
8 corporation; requiring the board of directors to adopt
9 specified criteria for evaluating a financing
10 application; requiring the production to use a bonded
11 third-party collection account management firm;
12 requiring that certain presales or sales estimates
13 meet a specified minimum value; requiring a production
14 to carry an insurance package meeting certain
15 standards; requiring a production to provide certain
16 proof of funds within a specified period; requiring
17 the lead producer or production company to have a
18 specified sales record or provide a completion bond;
19 requiring that certain items be evaluated and approved
20 by a production expert selected by the board;
21 requiring the production budget to include a certain
22 amount of contingency funds; providing for the release
23 of corporation funds according to a specified
24 schedule; requiring the board to approve the
25 expenditure of certain contingency funds; requiring
26 the board to release corporation funds to a production
27 in a specified manner; requiring the production
28 company to allow the board to inspect and audit
29 certain reports and ledgers within a certain

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30 timeframe; requiring the board to give preference to
31 productions that meet specified criteria; authorizing
32 the corporation to charge certain fees; requiring the
33 board to be composed of certain members; providing for
34 the appointment of the initial board, terms for the
35 board, and guidelines for the board; prohibiting a
36 board member from discussing certain pending
37 applications with applicants outside of a board
38 meeting for a specified period; requiring a board
39 member to serve without compensation; authorizing the
40 board members to be reimbursed for certain expenses;
41 requiring the board to adopt bylaws, rules, and
42 policies before the expenditure of funds; requiring
43 the board to hold regularly scheduled meetings;
44 requiring the board to create the Florida Motion
45 Picture Capital Account and maintain exclusive control
46 of the account; authorizing the board to deposit funds
47 with certain institutions and to invest certain funds
48 in permissible securities; requiring that certain
49 dividend payments be redeposited in the account for a
50 specified purpose; requiring that the corporation's
51 operating expenses be kept to a minimum and funded by
52 appropriations and certain net returns; requiring that
53 a claim against the account be solely paid from the
54 account; requiring the board to appoint a president
55 who meets specified criteria; providing the powers and
56 duties of the president; requiring the corporation to
57 provide certain notice of financing contracts or
58 agreements to the Department of Economic Opportunity

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59 and on the corporation's website for a specified
60 period of time; requiring that the notice include
61 specified information; providing an effective date.

62
63 Be It Enacted by the Legislature of the State of Florida:

64
65 Section 1. Section 288.1259, Florida Statutes, is created
66 to read:

67 288.1259 Florida Motion Picture Capital Corporation.-

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

69 (a) "Account" means the Florida Motion Picture Capital
70 Account.

71 (b) "Board" means the corporation's board of directors.

72 (c) "Corporation" means the Florida Motion Picture Capital
73 Corporation.

74 (d) "High-wage jobs" are jobs that pay at least 120 percent
75 of the median wage for the arts, design, entertainment, sports,
76 and media occupations category as determined by the most recent
77 State Occupational Employment and Wage Estimates for this state
78 published by the United States Department of Labor's Bureau of
79 Labor Statistics.

80 (e) "In-state expenditures" means the costs of tangible
81 property used in this state and services performed by residents
82 of this state for a scripted production, including preproduction
83 and postproduction, but excluding costs for development,
84 marketing, and distribution.

85 (f) "President" means the chief executive officer of the
86 corporation.

87 (g) "Scripted production" or "production" means a feature

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88 film at least 70 minutes in length, whether produced for
89 theatrical, television, or direct-to-video release; a television
90 series created to run multiple seasons having an order for
91 distribution of at least five episodes; or a miniseries, which
92 is produced predominately from a written screenplay or teleplay.
93 The term does not include a commercial, an infomercial, or a
94 political advertisement; a reality show; a game show; an awards
95 show; a music video; an industrial or educational film; a
96 weather or market program; a sporting event or sporting event
97 broadcast; a gala; a production that solicits funds; a home
98 shopping program; a political program; a documentary; a
99 gambling-related production; a concert production; a local,
100 regional, or Internet-distributed-only news show or current-
101 events show; a sports news or sports recap show; a video game; a
102 pornographic production; or any production deemed obscene under
103 chapter 847.

104 (h) "Television" includes broadcast, cable, and Internet
105 television.

106 (2) CORPORATION.—The Florida Motion Picture Capital
107 Corporation is created as a nonprofit corporation, to be
108 incorporated under chapter 617 and approved by the Department of
109 State. The corporation shall be organized on a nonstock basis.
110 The purpose of the corporation is to encourage the use of this
111 state as a site for scripted productions by providing financing
112 to such productions.

113 (3) POWERS AND LIMITATIONS.—

114 (a) The corporation is authorized to provide financing to
115 scripted productions in this state pursuant to the criteria,
116 bylaws, rules, and policies adopted by the board, which must

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117 include the following:

118 1. The corporation shall provide financing to productions
119 that it estimates will generate the greatest economic impact to
120 this state.

121 2. The amount of financing provided to a production must
122 not exceed the amount of the production's in-state expenditures
123 for that production.

124 3. The financing provided to a production must rank and
125 remain pari passu with the highest class of ownership in the
126 production, such that, in the event of liquidation or
127 bankruptcy, the corporation's investment shares the highest
128 priority with other preferred shareholders.

129 4. Any financing provided under this section must be less
130 than one-half of the cost of the production's total shares or
131 other ownership interest.

132 5. The amount of financing provided to any one production
133 must not exceed 12.5 percent of the sum of the remaining amount
134 of uncommitted funds in the account plus the amounts of all
135 outstanding investments in other productions.

136 6. The corporation may not have any voting rights, creative
137 control, or management authority over a production receiving
138 financing under this section.

139 7. The corporation shall limit the return on its
140 investments by establishing variable limits on returns that
141 account for time value and reduce returns in exchange for a
142 production's early buyout of financing positions. For a
143 production exercising an early buyout, the corporation shall
144 limit its return on investment to the minimum that is
145 actuarially measurable and credible and sufficiently related to

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146 actual and expected losses to ensure the corporation's self-
147 sufficiency and preservation of the state appropriations
148 provided for the investment.

149 8. The corporation shall establish an application process
150 and conduct at least two application periods per fiscal year,
151 providing no more than 40 percent of the total funds in the
152 Florida Motion Picture Capital Account for the fiscal year to
153 productions in any one application period.

154 (b) The board shall adopt objective criteria for evaluating
155 applications for financing scripted productions in this state.

156 1. The criteria must require:

157 a. The production to use a bonded third-party collection
158 account management firm to ensure that the corporation receives
159 all funds due from sales proceeds in accordance with a waterfall
160 agreement included in the corporation's investment terms.

161 b. Presales or sales estimates from a sales agency that has
162 sold at least \$50 million in feature films which are based on
163 the cast and script of the production and which reflect a value
164 of at least 1.5 times the exposure of the corporation.

165 c. The production to carry an insurance package from an
166 insurance company rated "A" or higher by A.M. Best Company which
167 must include general liability insurance, workers' compensation,
168 and key cast and director insurance that covers the costs of
169 disruption or replacement downtime in the event of illness or
170 other loss of services from such individuals. If at least 75
171 percent of the production's filming schedule occurs after June 1
172 and before November 30, the production's insurance package must
173 include hurricane coverage.

174 d. The production to provide proof of funds for the

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175 remaining budget within 60 days after application approval and
176 place the remaining budget in escrow before the release of
177 corporation funds.

178 e. That the lead producer or production company has
179 completed, sold, and delivered at least five feature films, or
180 the production must provide a completion bond.

181 f. That the production's budget, script, and filming
182 schedule have been evaluated and approved by a production expert
183 selected by the board.

184 g. The production budget to include contingency funds in an
185 amount equal to at least 5 percent of the total budget. Up to 40
186 percent of the contingency funds may be expended during
187 production without the approval of the board. The remaining
188 contingency funds may only be expended with prior approval of
189 the board.

190 h. The board to release corporation funds to a production
191 in the following manner:

192 (I) Fifty percent of corporation funds shall be released on
193 the first day of principal photography.

194 (II) Twenty-five percent of corporation funds shall be
195 released upon completion of principal photography.

196 (III) Twenty-five percent of corporation funds shall be
197 released after final picture lock, as that term is generally
198 understood in the production industry.

199 i. The production company to provide the board with the
200 right to inspect and audit the weekly cost reports and general
201 ledger of the production throughout preproduction, production,
202 and postproduction.

203 2. Preference shall be given to:

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204 a. Productions that will generate the greatest comparative
205 economic impact for this state. The corporation shall make a
206 determination of each project's comparative economic impact to
207 this state by comparing the project budgets submitted during the
208 application period and determining which projects create the
209 greatest number of high-wage jobs for state residents and
210 propose the most significant in-state expenditures as a
211 percentage of total production expenditures.

212 b. Productions in which the proposed financing by the
213 corporation is lowest as a percentage of the production's total
214 shares or other ownership interest.

215 c. Productions with the quickest deployment, in which the
216 production's in-state expenditures will begin soonest after the
217 corporation commits to financing.

218 d. Productions by companies with a verifiable track record
219 in producing successful productions.

220 e. Productions by production companies based in this state
221 or by producers, writers, or directors who are residents of this
222 state.

223 f. Productions expected to significantly increase tourism
224 to the state by using a screenplay or teleplay based on a
225 Florida story or including recognizable locations in this state.

226 g. Productions whose development demonstrates the
227 likelihood of success, including, but not limited to, having a
228 recognized director, actor, or other creative talent attached to
229 the production.

230 h. Productions in which the corporation's financing is
231 matched from local sources, including, but not limited to,
232 county or municipal agencies, local film commissions, or other

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233 community resources.

234 (c) The corporation may charge fees, including, but not
235 limited to, application fees from productions seeking financing
236 under this section, but such fees may not exceed the reasonable
237 estimated cost of the activity for which the fee is charged,
238 such as the cost of processing an application.

239 (4) BOARD OF DIRECTORS; POWERS AND DUTIES.-

240 (a)1. The board shall consist of seven members who are
241 permanent residents of this state. Minority and gender
242 representation must be considered when making appointments to
243 the board. The board shall be composed of the following:

244 a. Two members who have experience in investment banking
245 and funds management focused on feature film and television
246 production.

247 b. Three members who have recent experience and are
248 recognized leaders in the production of feature films or
249 television in this state. Such members may include, but are not
250 limited to, producers, directors, production managers or
251 supervisors, or similar persons in positions of production
252 leadership.

253 c. One member who represents businesses that provide
254 supplies for feature film and television production in this
255 state, such as small businesses through which productions buy or
256 rent equipment, house and feed cast and crew, purchase supplies
257 and raw materials, or build production infrastructure.

258 d. One member who represents this state's feature film and
259 television workforce.

260 2. The initial board shall be appointed as follows:

261 a. The Florida Venture Forum and the Florida Chamber of

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262 Commerce shall each appoint one member pursuant to sub-
263 subparagraph 1.a.

264 b. The Governor, the President of the Senate, and the
265 Speaker of the House of Representatives shall each appoint one
266 member pursuant to sub-subparagraph 1.b.

267 c. The department shall appoint one member pursuant to sub-
268 subparagraph 1.c.

269 d. The Congress of Motion Picture Associations of Florida
270 shall appoint one member pursuant to sub-subparagraph 1.d.

271
272 To establish staggered terms, the initial members appointed by
273 the Florida Chamber of Commerce and the Congress of Motion
274 Picture Associations of Florida shall be appointed to 1-year
275 terms; the initial members appointed by the President of the
276 Senate and the Speaker of the House of Representatives shall be
277 appointed to 2-year terms; and the initial members appointed by
278 the Governor, the department, and the Florida Venture Forum
279 shall be appointed to 3-year terms.

280 3. Board members shall serve for a term of 3 years and are
281 eligible for reappointment. Vacancies shall be filled by the
282 board within 30 days after the date of the vacancy. A vacancy
283 that occurs before the scheduled expiration of the term of a
284 member shall be filled for the remainder of the unexpired term.

285 (b) Board members are subject to the Code of Ethics for
286 Public Officers and Employees as set forth in part III of
287 chapter 112. A board member must abstain from voting and comply
288 with the disclosure requirements of s. 112.3143 if there appears
289 to be a possible conflict under s. 112.311, s. 112.313, or s.
290 112.3143. This paragraph does not prohibit any principal by whom

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291 a board member is retained, as defined in s. 112.3143(1) (a),
292 from applying for or receiving financing under this section.

293 (c) A board member must, with respect to an application for
294 financing which is currently pending before the corporation or
295 which the board member knows or reasonably expects will be
296 submitted to the corporation within 180 days, refrain from
297 commenting on or discussing the application outside of a board
298 meeting with the applicant or any person retained by the
299 applicant.

300 (d) Board members shall serve without compensation but may
301 be reimbursed in accordance with s. 112.061 for all necessary
302 expenses in the performance of their duties, including attending
303 board meetings and conducting board business.

304 (e) The board shall:

305 1. Before the expenditure of funds from the Florida Motion
306 Picture Capital Account, adopt bylaws, rules, and policies that
307 are necessary to carry out the corporation's responsibilities
308 under this section.

309 2. Hold regularly scheduled meetings, at least once per
310 application period, in order to carry out the objectives and
311 responsibilities of the board.

312 (5) ACCOUNT.—

313 (a) The board shall create the Florida Motion Picture
314 Capital Account for the purpose of receiving state, federal,
315 county, municipal, and private financial resources, and the
316 returns from productions financed by allocations from those
317 resources, and for the purposes of this section. The account
318 shall be under the exclusive control of the board.

319 (b) Appropriations provided to the corporation for

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320 financing productions shall be deposited into the account.

321 (c) The board may deposit the funds of the account with
322 state or federally chartered financial institutions in this
323 state and may invest any funds not allocated to a production
324 during a fiscal year in permissible securities as described in
325 s. 560.210(1).

326 (d) Dividend payments received from the investments made by
327 the corporation shall be redeposited into the account to be used
328 for the purposes of this section.

329 (e) The corporation shall keep its operating expenses to
330 the minimum amount necessary. Such operating expenses shall be
331 funded by appropriations provided for that purpose and from net
332 returns from financing provided under this section.

333 (f) Any claims against the account shall be paid solely
334 from the account. Under no circumstances shall the credit of the
335 state be pledged other than funds appropriated by law to the
336 account, nor shall the state be liable or obligated in any way
337 for claims on the account or against the corporation.

338 (6) PRESIDENT OF THE CORPORATION.—

339 (a) The board shall appoint a president. The president must
340 be knowledgeable about private and public financing of feature
341 film and television projects.

342 (b) The president shall serve at the pleasure of the board
343 and shall receive a salary and benefits as fixed by the board.

344 (c) The president shall administer the programs of the
345 corporation and perform such duties as delegated by the board.

346 (d) The president shall provide support staff to the board
347 as requested.

348 (e) The president shall submit an annual budget to be

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349 approved by the board.

350 (7) PUBLIC NOTICE OF FINANCING.—The corporation shall
351 notify the department upon final execution of each contract or
352 agreement by which the corporation provides financing to a
353 production. The corporation shall also publish and maintain a
354 copy of the notice on the corporation's website while the
355 financing remains outstanding. To provide adequate notice to the
356 businesses and workforce that supply feature film and television
357 production in this state, the notice must include, but need not
358 be limited to, a brief description of the production, the name
359 of the production company, and, to the extent available, the
360 names of the director, cinematographer, production designer,
361 costume designer, and transportation coordinator.

362 Section 2. This act shall take effect July 1, 2018.