

1 A bill to be entitled
2 An act relating to film and television production;
3 creating s. 288.1259, F.S.; providing definitions;
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 to adopt specified
9 criteria for evaluating financing applications;
10 requiring the use of a bonded third-party collection
11 account management firm; requiring a certain value in
12 presale or sales estimates; requiring a production to
13 carry an insurance package meeting certain standards;
14 requiring a production to provide proof of funds
15 within a specified period; requiring a specified sales
16 record; requiring specified evaluations by a
17 production expert; requiring a production budget to
18 include a certain amount of contingency funds;
19 providing for the release of corporation funds
20 according to a specified schedule; requiring the right
21 of the board to inspect and audit specified production
22 reports; requiring the board to give preference to
23 productions that meet specified criteria; authorizing
24 the corporation to charge certain fees; specifying the
25 composition of the corporation's board of directors;

26 providing for the appointment of the initial board;
27 providing that board members are eligible for
28 reappointment; providing that board members are
29 subject to a specified code of ethics; prohibiting
30 board members from discussing pending applications
31 with applicants outside of a board meeting for a
32 specified period; providing that board members shall
33 serve without compensation but may be reimbursed for
34 certain expenses; requiring the board to adopt bylaws,
35 rules, and policies; requiring the board to hold
36 regularly scheduled meetings; authorizing the creation
37 of the Florida Motion Picture Capital Account;
38 authorizing the board to deposit funds with certain
39 institutions and to invest in permissible securities;
40 requiring the deposit of any dividend payments in the
41 account; requiring that the corporation's operating
42 expenses be kept to a minimum and funded by
43 appropriations and net returns on investments;
44 providing that any claims against the account may only
45 be paid from the account; providing for appointment of
46 the corporation's president; providing powers and
47 duties of the president; requiring the corporation to
48 provide certain notice of financing contracts or
49 agreements to the Department of Economic Opportunity
50 and on the corporation's website for a specified

51 period; requiring the notice to include specified
 52 information; providing an effective date.

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54 Be It Enacted by the Legislature of the State of Florida:

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56 Section 1. Section 288.1259, Florida Statutes, is created
 57 to read:

58 288.1259 Florida Motion Picture Capital Corporation.-

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

60 (a) "Account" means the Florida Motion Picture Capital
 61 Account.

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

63 (c) "Corporation" means the Florida Motion Picture Capital
 64 Corporation.

65 (d) "High-wage jobs" are jobs that pay at least 120
 66 percent of the median wage for the arts, design, entertainment,
 67 sports, and media occupations category as determined by the most
 68 recent United States Department of Labor, Bureau of Labor
 69 Statistics State Occupational Employment and Wage Estimates
 70 Florida.

71 (e) "In-state expenditures" means the costs of tangible
 72 property used in this state, and services performed by residents
 73 of this state, for scripted production, including preproduction
 74 and postproduction, but excluding costs for development,
 75 marketing, and distribution.

76 (f) "President" means the chief executive officer of the
77 corporation.

78 (g) "Scripted production" or "production" means a feature
79 film of at least 70 minutes, whether produced for theatrical,
80 television, or direct-to-video release; a television series
81 created to run multiple seasons having an order for distribution
82 of at least five episodes; or a miniseries, which is produced
83 predominately from a written screenplay or teleplay. The term
84 does not include a commercial, an infomercial, or political
85 advertising; a reality show; a game show; an awards show; a
86 music video; an industrial or educational film; a weather or
87 market program; a sporting event or sporting event broadcast; a
88 gala; a production that solicits funds; a home shopping program;
89 a political program; a documentary; a gambling-related
90 production; a concert production; a local, regional, or
91 Internet-distributed-only news show or current-events show; a
92 sports news or sports recap show; a video game; a pornographic
93 production; or any production deemed obscene under chapter 847.

94 (h) "Television" includes broadcast, cable, and Internet
95 television.

96 (2) CORPORATION.—The Florida Motion Picture Capital
97 Corporation is created as a corporation not for profit, to be
98 incorporated under chapter 617 and approved by the Department of
99 State. The corporation shall be organized on a nonstock basis.
100 The purpose of the corporation is to encourage this state to be

101 used as a site for scripted productions by providing financing
102 to such productions.

103 (3) POWERS AND LIMITATIONS.—

104 (a) The corporation is authorized to provide financing to
105 scripted productions in this state pursuant to the criteria,
106 bylaws, rules, and policies adopted by the board, which must
107 include the following:

108 1. The corporation shall provide financing to productions
109 that it estimates will generate the greatest economic impact to
110 the state.

111 2. The amount of financing provided to a production must
112 not exceed the amount of the production's in-state expenditures
113 for that production.

114 3. The financing provided to a production must rank and
115 remain pari passu with the highest class of ownership in the
116 production, such that, in the event of liquidation or
117 bankruptcy, the corporation's investment shares the highest
118 priority with other preferred shareholders.

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

122 5. The amount of financing provided to any one production
123 must not exceed 12.5 percent of the sum of the remaining amount
124 of uncommitted funds in the account plus the amounts of all
125 outstanding investments in other productions.

126 6. The corporation must not have any voting rights,
127 creative control, or management authority over a production
128 receiving financing under this section.

129 7. The corporation shall limit the return on its
130 investments by establishing variable limits on returns that
131 account for time value and reduce returns in exchange for a
132 production's early buyout of financing positions. For a
133 production exercising an early buyout, the corporation shall
134 limit its return on investment to the minimum that is
135 actuarially measurable and credible and sufficiently related to
136 actual and expected losses to ensure the corporation's self-
137 sufficiency and preservation of the state appropriations
138 provided for investment.

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

144 (b) The board shall adopt objective criteria for
145 evaluating applications for financing scripted productions in
146 this state.

147 1. The criteria must require:

148 a. The production to use a bonded third-party collection
149 account management firm to ensure that the corporation receives
150 all funds due from sales proceeds in accordance with a waterfall

151 agreement included in the corporation's investment terms.

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

156 c. The production to carry an insurance package from an
157 insurance company rated "A" or higher by A.M. Best Company which
158 must include general liability insurance, workers' compensation,
159 and key cast and director insurance that covers the costs of
160 disruption or replacement downtime in the event of illness or
161 other loss of services from such individuals. If at least 75
162 percent of the production's filming schedule occurs after June 1
163 and before November 30, the production's insurance package must
164 include hurricane coverage.

165 d. The production to provide proof of funds for the
166 remaining budget within 60 days after application approval and
167 place the remaining budget in escrow before the release of
168 corporation funds.

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

172 f. That the production's budget, script, and filming
173 schedule have been evaluated and approved by a production expert
174 selected by the board.

175 g. The production budget to include contingency funds in

176 an amount equal to at least 5 percent of the total budget. Up to
177 40 percent of the contingency funds may be expended during
178 production without the approval of the board. The remaining
179 contingency funds may only be expended with prior approval of
180 the board.

181 h. The board to release corporation funds to a production
182 in the following manner:

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

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

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

190 i. The production company to provide the board with the
191 right to inspect and audit the weekly cost reports and general
192 ledger of the production throughout preproduction, production,
193 and postproduction.

194 2. Preference shall be given to:

195 a. Productions that will generate the greatest comparative
196 economic impact for the state. The corporation shall make a
197 determination of each project's comparative economic impact to
198 the state by comparing the project budgets submitted during the
199 application period and determining which projects create the
200 greatest number of high-wage jobs for state residents and

201 propose the most significant in-state expenditures as a
202 percentage of total production expenditures.

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

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

209 d. Productions by companies with a verifiable track record
210 in producing successful productions.

211 e. Productions by state-based production companies or by
212 producers, writers, or directors who are state residents.

213 f. Productions expected to significantly increase tourism
214 to the state by using a screenplay or teleplay based on a
215 Florida story or including recognizable state locations.

216 g. Productions whose development demonstrates the
217 likelihood of their success, including, but not limited to,
218 having a recognized director, actor, or other creative talent
219 attached to the production.

220 h. Productions in which the corporation's financing is
221 matched from local sources, including, but not limited to,
222 county or municipal agencies, local film commissions, or other
223 community resources.

224 (c) The corporation may charge fees, including, but not
225 limited to, application fees from productions seeking financing

226 under this section, but such fees may not exceed the reasonable
227 estimated cost of the activity for which the fee is charged,
228 such as the cost of processing an application.

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

230 (a)1. The board of directors of the corporation shall
231 consist of seven members who are permanent residents of the
232 state. Minority and gender representation must be considered
233 when making appointments to the board. The board shall be
234 composed of the following:

235 a. Two members who have experience in investment banking
236 and funds management focused on feature film and television
237 production.

238 b. Three members who have recent experience and are
239 recognized leaders in the production of feature films or
240 television in this state. Such members may include, but are not
241 limited to, producers, directors, production managers or
242 supervisors, or similar persons in positions of production
243 leadership.

244 c. One member who represents businesses that provide
245 supplies for feature film and television production in the
246 state, such as small businesses through which productions buy or
247 rent equipment, house and feed cast and crew, purchase supplies
248 and raw materials, or build production infrastructure.

249 d. One member who represents the state's feature film and
250 television workforce.

251 2. The initial board of directors shall be appointed as
252 follows:

253 a. The Florida Venture Forum and the Florida Chamber of
254 Commerce shall each appoint one member pursuant to sub-
255 subparagraph 1.a.

256 b. The Governor, the President of the Florida Senate, and
257 the Speaker of the Florida House of Representatives shall each
258 appoint one member pursuant to sub-subparagraph 1.b.

259 c. The Florida Department of Economic Opportunity shall
260 appoint one member pursuant to sub-subparagraph 1.c.

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

263
264 To establish staggered terms, the initial members appointed by
265 the Florida Chamber of Commerce and the Congress of Motion
266 Picture Associations of Florida shall be appointed to 1-year
267 terms; the initial members appointed by the Florida Speaker of
268 the House and the President of the Florida Senate shall be
269 appointed to 2-year terms; and the initial members appointed by
270 the Florida Governor, the Florida Department of Economic
271 Opportunity, and the Florida Venture Forum shall be appointed to
272 3-year terms.

273 3. Board members shall serve for a term of 3 years and be
274 eligible for reappointment. Vacancies shall be filled by the
275 board within 30 days after the date of the vacancy. A vacancy

276 that occurs before the scheduled expiration of the term of the
277 member shall be filled for the remainder of the unexpired term.

278 (b) Board members are subject to the code of ethics for
279 public officers and employees as set forth in part III of
280 chapter 112. A board member must abstain from voting and comply
281 with the disclosure requirements of s. 112.3143 if there appears
282 to be a possible conflict under s. 112.311, s. 112.313, or s.
283 112.3143. This paragraph does not prohibit any principal by whom
284 a board member is retained, as defined in s. 112.3143(1)(a),
285 from applying for or receiving financing under this section.

286 (c) A board member must, with respect to an application
287 for financing which is currently pending before the corporation
288 or which the board member knows or reasonably expects will be
289 submitted to the corporation within 180 days, refrain from
290 commenting on or discussing the application outside of a board
291 meeting with the applicant or any person retained by the
292 applicant.

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

297 (e) The board shall:

298 1. Before the expenditure of funds from the Florida Motion
299 Picture Capital Account, adopt bylaws, rules, and policies that
300 are necessary to carry out the corporation's responsibilities

301 under this section.

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

305 (5) ACCOUNT.—

306 (a) The board shall create the Florida Motion Picture
307 Capital Account for the purpose of receiving state, federal,
308 county, municipal, and private financial resources, and the
309 returns from productions financed by allocations from those
310 resources, and for the purposes of this section. The account
311 shall be under the exclusive control of the board.

312 (b) Appropriations provided to the corporation for
313 financing productions shall be deposited into the account.

314 (c) The board may deposit the funds of the account with
315 state or federally chartered financial institutions in this
316 state and may invest any funds not allocated to a production
317 during a fiscal year in permissible securities as described in
318 s. 560.210(1).

319 (d) Dividend payments received from the investments made
320 by the corporation shall be redeposited in the account to be
321 used for the purposes of this section.

322 (e) The corporation shall keep its operating expenses to
323 the minimum necessary. Such operating expenses shall be funded
324 by appropriations provided for that purpose and from net returns
325 from financing provided under this section.

326 (f) Any claims against the account shall be paid solely
327 from the account. Under no circumstances shall the credit of the
328 state be pledged other than funds appropriated by law to the
329 account, nor shall the state be liable or obligated in any way
330 for claims on the account or against the corporation.

331 (6) PRESIDENT OF THE CORPORATION.—

332 (a) The board shall appoint a president. The president
333 shall be knowledgeable about private and public financing of
334 feature film and television projects.

335 (b) The president shall serve at the pleasure of the board
336 and shall receive a salary and benefits as shall be fixed by the
337 board.

338 (c) The president shall administer the programs of the
339 corporation and perform such duties as shall be delegated by the
340 board.

341 (d) The president shall provide staff to the board as
342 requested.

343 (e) The president shall submit an annual budget to be
344 approved by the board.

345 (7) PUBLIC NOTICE OF FINANCING.—The corporation shall
346 notify the Department of Economic Opportunity upon final
347 execution of each contract or agreement by which the corporation
348 provides financing to a production. The corporation shall also
349 publish and maintain a copy of the notice on the corporation's
350 website while the financing remains outstanding. To provide

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351 adequate notice to the businesses and workforce that supply
352 feature film and television production in the state, the notice
353 shall include, but need not be limited to, a brief description
354 of the production, the name of the production company, and, to
355 the extent available, the names of the director,
356 cinematographer, production designer, costume designer, and
357 transportation coordinator.

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