

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 and
8 imposing limitations on the corporation; providing
9 requirements for financing a production; requiring the
10 corporation to give preference to productions that
11 meet specified criteria; requiring that the board be
12 composed of certain members; providing for the
13 appointment of the board, terms for the board, and
14 guidelines for the board; prohibiting board members
15 from discussing certain pending applications with
16 applicants outside of a board meeting for a specified
17 period; requiring board members to serve without
18 compensation; authorizing board members to be
19 reimbursed for certain expenses; requiring the board
20 to adopt bylaws, rules, and policies before the
21 expenditure of funds; requiring the board of directors
22 to adopt specified criteria for evaluating
23 applications for financing; requiring the board to
24 hold regularly scheduled meetings; requiring the board
25 to create the Florida Motion Picture Capital Account
26 and maintain exclusive control of the account;
27 requiring that certain funds be deposited in the
28 account; authorizing the board to deposit funds with
29 certain institutions and to invest certain funds in

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30 permissible investments; requiring that certain
31 dividend payments be redeposited in the account for a
32 specified purpose; requiring that the corporation's
33 operating expenses be kept to a minimum and funded by
34 appropriations and certain net returns; requiring that
35 a claim against the account be solely paid from the
36 account; requiring the board to appoint a president
37 who meets specified criteria; limiting the salary and
38 benefits of the president; providing the powers and
39 duties of the president; requiring the corporation to
40 provide certain notice of financing contracts or
41 agreements to the Department of Economic Opportunity
42 and on the corporation's website for a specified
43 period of time; requiring that the notice include
44 specified information; requiring the corporation to
45 submit a supplemental report to the department which
46 contains certain information; requiring the Auditor
47 General to conduct an annual financial audit of the
48 corporation and the account; amending s. 20.60, F.S.;
49 conforming a provision to changes made by the act;
50 providing an effective date.

51
52 Be It Enacted by the Legislature of the State of Florida:

53
54 Section 1. Section 288.1259, Florida Statutes, is created
55 to read:

56 288.1259 Florida Motion Picture Capital Corporation.-

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

58 (a) "Account" means the Florida Motion Picture Capital

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59 Account.

60 (b) "Board" means the board of directors of the
61 corporation.

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

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

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

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

77 (g) "Scripted production" or "production" means any of the
78 following which is produced predominately from a written
79 screenplay or teleplay: a feature film at least 70 minutes in
80 length, whether produced for theatrical, television, or direct-
81 to-video release; a television series created to run multiple
82 seasons having an order for distribution of at least five
83 episodes; or a miniseries. The term does not include a
84 commercial, an infomercial, or a political advertisement; a
85 reality show; a game show; an awards show; a music video; an
86 industrial or educational film; a weather or market program; a
87 sporting event or sporting event broadcast; a gala; a production

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88 that solicits funds; a home shopping program; a political
89 program; a documentary; a gambling-related production; a concert
90 production; a local, regional, or Internet-distributed-only news
91 show or current-events show; a sports news or sports recap show;
92 a video game; a pornographic production; or any production
93 deemed obscene under chapter 847.

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

96 (2) FLORIDA MOTION PICTURE CAPITAL CORPORATION.—The Florida
97 Motion Picture Capital Corporation is created as a nonprofit
98 corporation, to be incorporated under chapter 617 and approved
99 by the Department of State. The corporation must be organized on
100 a nonstock basis. The purpose of the corporation is to encourage
101 the use of this state as a site for scripted productions by
102 providing financing to such productions. The corporation is
103 subject to the provisions of chapter 119 relating to public
104 records and the provisions of chapter 286 relating to public
105 meetings and records.

106 (3) POWERS AND LIMITATIONS.—

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

111 1. The corporation must provide financing to productions
112 that it estimates will generate the greatest economic impact to
113 this state.

114 2. The amount of financing provided to a production must
115 not exceed the amount of the production's in-state expenditures
116 for that production.

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

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

125 5. The amount of financing provided to any one production
126 may not exceed 12.5 percent of the sum of the remaining amount
127 of uncommitted funds in the account plus the amounts of all
128 outstanding investments in other productions.

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

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

141 8. The corporation must establish an application process
142 and conduct at least two application periods per fiscal year,
143 providing no more than 40 percent of the total funds in the
144 account for the fiscal year to productions in any one
145 application period.

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146 (b) The corporation shall give preference to:

147 1. Productions that will generate the greatest comparative
148 economic impact for this state. The corporation shall make a
149 determination of each project's comparative economic impact to
150 this state by comparing the project budgets submitted during the
151 application period and determining which projects create the
152 greatest number of high-wage jobs for state residents and
153 propose the most significant in-state expenditures as a
154 percentage of total production expenditures.

155 2. Productions in which the proposed financing by the
156 corporation is lowest as a percentage of the production's total
157 shares or other ownership interest.

158 3. Productions with the quickest deployment, in which the
159 production's in-state expenditures will begin soonest after the
160 corporation commits to financing.

161 4. Productions by companies with a verifiable track record
162 of producing successful productions.

163 5. Productions by production companies based in this state
164 or by producers, writers, or directors who are residents of this
165 state.

166 6. Productions expected to significantly increase tourism
167 to this state by using a screenplay or teleplay based on a
168 Florida story or including recognizable locations in this state.

169 7. Productions whose development demonstrates the
170 likelihood of success, including, but not limited to, having a
171 recognized director, actor, or other creative talent attached.

172 8. Productions in which the corporation's financing is
173 matched from local sources, including, but not limited to,
174 county or municipal agencies, local film commissions, or other

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175 community resources.

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

177 (a)1. The board must have seven members, each of whom is a
178 permanent resident of this state. Minority and gender
179 representation must be considered when making appointments to
180 the board. The board membership must include:

181 a. Two members who have experience in investment banking
182 and funds management focused on feature film and television
183 production.

184 b. Three members who have recent experience and are
185 recognized leaders in the production of feature films or
186 television in this state. Such members may include, but are not
187 limited to, producers, directors, production managers or
188 supervisors, or similar persons in positions of production
189 leadership.

190 c. One member who represents businesses that provide
191 supplies for feature film and television production in this
192 state, such as small businesses through which productions buy or
193 rent equipment, house and feed cast and crew, purchase supplies
194 and raw materials, or build production infrastructure.

195 d. One member who represents this state's feature film and
196 television workforce.

197 2. The initial board must be appointed as follows:

198 a. The Florida Venture Forum and the Florida Chamber of
199 Commerce shall each appoint one member as described in sub-
200 subparagraph 1.a.

201 b. The Governor, the President of the Senate, and the
202 Speaker of the House of Representatives shall each appoint one
203 member as described in sub-subparagraph 1.b.

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204 c. The department shall appoint one member as described in
205 sub-subparagraph 1.c.

206 d. The Congress of Motion Picture Associations of Florida
207 shall appoint one member as described in sub-subparagraph 1.d.

208 3. Board members shall serve for a term of 3 years;
209 however, to establish staggered terms, the initial members
210 appointed by the Florida Chamber of Commerce and the Congress of
211 Motion Picture Associations of Florida shall be appointed to 1-
212 year terms; the initial members appointed by the President of
213 the Senate and the Speaker of the House of Representatives shall
214 be appointed to 2-year terms; and the initial members appointed
215 by the Governor, the department, and the Florida Venture Forum
216 shall be appointed to 3-year terms. Board members are eligible
217 for reappointment. A vacancy must be filled by appointment in
218 the same manner as the member whose position is being filled
219 within 30 days after the vacancy occurs. A vacancy that occurs
220 before the scheduled expiration of the term of a member must be
221 filled for the remainder of the unexpired term.

222 (b) Board members are subject to the Code of Ethics for
223 Public Officers and Employees as set forth in part III of
224 chapter 112. A board member must abstain from voting and comply
225 with the disclosure requirements of s. 112.3143 if there appears
226 to be a possible conflict under s. 112.311, s. 112.313, or s.
227 112.3143. This paragraph does not prohibit any principal by whom
228 a board member is retained, as defined in s. 112.3143(1)(a),
229 from applying for or receiving financing under this section.

230 (c) With respect to an application for financing which is
231 currently pending before the corporation or which a board member
232 knows or reasonably expects will be submitted to the corporation

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233 within 180 days, the board member shall refrain from commenting
234 on or discussing the application outside of a board meeting with
235 the applicant or any person retained by the applicant.

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

240 (e) The board shall:

241 1. Before the expenditure of any funds from the account,
242 adopt bylaws, rules, and policies necessary to carry out the
243 corporation's responsibilities under this section.

244 2. Adopt objective criteria for evaluating applications for
245 financing scripted productions in this state. The criteria must
246 require that:

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

251 b. Presales or sales estimates be provided by a sales
252 agency that has sold at least \$50 million in feature films which
253 are based on the cast and script of the production and which
254 reflect a value of at least 1.5 times the exposure of the
255 corporation.

256 c. The production carry an insurance package from an
257 insurance company rated "A" or higher by A.M. Best Company which
258 includes general liability insurance, workers' compensation, and
259 key cast and director insurance that covers the costs of
260 disruption or replacement downtime in the event of illness or
261 other loss of services from such individuals. If at least 75

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262 percent of the production's filming schedule occurs after June 1
263 and before November 30, the production's insurance package must
264 include hurricane coverage.

265 d. The production provide proof of funds for the remaining
266 budget within 60 days after application approval and place the
267 remaining budget in escrow before the release of corporation
268 funds.

269 e. The lead producer or production company has completed,
270 sold, and delivered at least five feature films, or the
271 production must provide a completion bond.

272 f. The production's budget, script, and filming schedule
273 have been evaluated and approved by a production expert selected
274 by the board.

275 g. The production budget includes contingency funds in an
276 amount equal to at least 5 percent of the total budget. Up to 40
277 percent of the contingency funds may be expended during
278 production without the approval of the board. The remaining
279 contingency funds may only be expended with prior approval of
280 the board.

281 h. The board release corporation funds to a production in
282 the following manner:

283 (I) Fifty percent of corporation funds must be released on
284 the first day of principal photography.

285 (II) Twenty-five percent of corporation funds must be
286 released upon completion of principal photography.

287 (III) Twenty-five percent of corporation funds must be
288 released after final picture lock, as that term is generally
289 understood in the production industry.

290 i. The production company provide the board with the right

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291 to inspect and audit the weekly cost reports and general ledger
292 of the production throughout preproduction, production, and
293 postproduction.

294 3. Hold regularly scheduled meetings, at least once per
295 application period, in order to carry out the objectives and
296 responsibilities of the board.

297 (5) FLORIDA MOTION PICTURE CAPITAL ACCOUNT.-

298 (a) The board shall create the Florida Motion Picture
299 Capital Account for the purpose of receiving state, federal,
300 county, municipal, and private financial resources, and the
301 returns from productions financed by allocations from those
302 resources, and for the purposes of this section. The account
303 must be under the exclusive control of the board.

304 (b) Any funds provided to the corporation for financing
305 productions must be deposited into the account.

306 (c) The board may deposit the funds of the account with
307 state or federally chartered financial institutions in this
308 state and may invest any funds not allocated to a production
309 during a fiscal year in permissible investments as described in
310 s. 560.210(1).

311 (d) Dividend payments received from investments made by the
312 corporation must be redeposited into the account for use for the
313 purposes of this section.

314 (e) The board shall keep the corporation's operating
315 expenses to the minimum necessary to ensure its successful
316 operation. Such operating expenses must be paid from funds
317 provided for that purpose and from net returns from productions
318 financed under this section.

319 (f) Any claims against the account must be paid solely from

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320 the account. Under no circumstances may the credit of the state
321 be pledged on behalf of the corporation, and the state is not
322 liable for, and may not be obligated to pay, claims on the
323 account or against the corporation.

324 (6) PRESIDENT OF THE CORPORATION.—

325 (a) The board shall appoint the president of the
326 corporation, who must be knowledgeable about private and public
327 financing of feature film and television projects.

328 (b) The president shall serve at the pleasure of the board,
329 which shall determine his or her salary and benefits; however,
330 the president's salary and benefits may not exceed those
331 authorized to be paid to the Governor.

332 (c) The president is the administrative head of the
333 corporation and shall perform any duties delegated by the board.

334 (d) The president shall provide corporation support staff
335 to the board, as requested.

336 (e) The president shall submit an annual budget to the
337 board for its approval.

338 (7) PUBLIC NOTICE OF FINANCING; ANNUAL REPORT; AUDIT.—

339 (a) The corporation shall notify the department upon final
340 execution of each contract or agreement by which the corporation
341 provides financing to a production. The corporation shall also
342 publish and maintain a copy of the notice on the corporation's
343 website while the financing remains outstanding. To provide
344 adequate notice to the businesses and workforce that supply
345 feature film and television production in this state, the notice
346 must include, but need not be limited to, a brief description of
347 the production, the name of the production company, and, to the
348 extent available, the names of the director, cinematographer,

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349 production designer, costume designer, and transportation
350 coordinator.

351 (b) The corporation shall submit a report to the department
352 on all corporation activities during the previous fiscal year as
353 a supplement to the department's annual report required under s.
354 20.60. This supplemental report must include:

355 1. A status report on all projects currently being financed
356 through the corporation, the number of projects financed
357 pursuant to this section, the dollar amount of financing
358 provided to such projects, and the names of the recipients; and

359 2. Information on the economic impact of the projects
360 financed by the corporation.

361 (c) The Auditor General shall conduct an annual financial
362 audit, as defined in s. 11.45, of the corporation and the
363 account.

364 Section 2. Paragraph (b) of subsection (10) of section
365 20.60, Florida Statutes, is amended to read:

366 20.60 Department of Economic Opportunity; creation; powers
367 and duties.—

368 (10) The department, with assistance from Enterprise
369 Florida, Inc., shall, by November 1 of each year, submit an
370 annual report to the Governor, the President of the Senate, and
371 the Speaker of the House of Representatives on the condition of
372 the business climate and economic development in the state.

373 (b) The report must incorporate annual reports of other
374 programs and entities, including:

375 1. Information provided by the Department of Revenue under
376 s. 290.014.

377 2. Information provided by enterprise zone development

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378 agencies under s. 290.0056 and an analysis of the activities and
379 accomplishments of each enterprise zone.

380 3. The Economic Gardening Business Loan Pilot Program
381 established under s. 288.1081 and the Economic Gardening
382 Technical Assistance Pilot Program established under s.
383 288.1082.

384 4. A detailed report of the performance of the Black
385 Business Loan Program and a cumulative summary of quarterly
386 report data required under s. 288.714.

387 5. The Rural Economic Development Initiative established
388 under s. 288.0656.

389 6. The Florida Unique Abilities Partner Program.

390 7. The Florida Motion Picture Capital Corporation
391 established under s. 288.1259.

392 Section 3. This act shall take effect July 1, 2019.