

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
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.

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

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

288.1259 Florida Motion Picture Capital Corporation.—

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

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

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

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

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

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

(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
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
97 Florida Motion Picture Capital Corporation is created as a
98 nonprofit corporation, to be incorporated under chapter 617 and
99 approved by the Department of State. The corporation must be
100 organized on a nonstock basis. The purpose of the corporation is

101 to encourage the use of this state as a site for scripted
102 productions by providing financing to such productions. The
103 corporation is subject to the provisions of chapter 119 relating
104 to public records and the provisions of chapter 286 relating to
105 public 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.

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,
130 creative control, or management authority over a production
131 receiving financing under this section.

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

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

147 (b) The corporation shall give preference to:

148 1. Productions that will generate the greatest comparative
149 economic impact for this state. The corporation shall make a
150 determination of each project's comparative economic impact to

151 this state by comparing the project budgets submitted during the
152 application period and determining which projects create the
153 greatest number of high-wage jobs for state residents and
154 propose the most significant in-state expenditures as a
155 percentage of total production expenditures.

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

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

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

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

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

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

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

176 community resources.

177 (4) BOARD OF DIRECTORS; POWERS AND DUTIES.—

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

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

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

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

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

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

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

201 subparagraph 1.a.

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

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

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

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

223 (b) Board members are subject to the Code of Ethics for
224 Public Officers and Employees as set forth in part III of
225 chapter 112. A board member must abstain from voting and comply

226 with the disclosure requirements of s. 112.3143 if there appears
227 to be a possible conflict under s. 112.311, s. 112.313, or s.
228 112.3143. This paragraph does not prohibit any principal by whom
229 a board member is retained, as defined in s. 112.3143(1)(a),
230 from applying for or receiving financing under this section.

231 (c) With respect to an application for financing which is
232 currently pending before the corporation or which a board member
233 knows or reasonably expects will be submitted to the corporation
234 within 180 days, the board member shall refrain from commenting
235 on or discussing the application outside of a board meeting with
236 the applicant or any person retained by the applicant.

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

241 (e) The board shall:

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

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

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

251 agreement included in the corporation's investment terms.

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

257 c. The production carry an insurance package from an
258 insurance company rated "A" or higher by A.M. Best Company which
259 includes general liability insurance, workers' compensation, and
260 key cast and director insurance that covers the costs of
261 disruption or replacement downtime in the event of illness or
262 other loss of services from such individuals. If at least 75
263 percent of the production's filming schedule occurs after June 1
264 and before November 30, the production's insurance package must
265 include hurricane coverage.

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

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

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

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

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

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

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

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

291 i. The production company provide the board with the right
292 to inspect and audit the weekly cost reports and general ledger
293 of the production throughout preproduction, production, and
294 postproduction.

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

298 (5) FLORIDA MOTION PICTURE CAPITAL ACCOUNT.—

299 (a) The board shall create the Florida Motion Picture
300 Capital Account for the purpose of receiving state, federal,

301 county, municipal, and private financial resources, and the
302 returns from productions financed by allocations from those
303 resources, and for the purposes of this section. The account
304 must be under the exclusive control of the board.

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

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

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

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

320 (f) Any claims against the account must be paid solely
321 from the account. Under no circumstances may the credit of the
322 state be pledged on behalf of the corporation, and the state is
323 not liable for, and may not be obligated to pay, claims on the
324 account or against the corporation.

325 (6) PRESIDENT OF THE CORPORATION.—

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

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

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

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

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

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

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

351 coordinator.

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

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

361 2. Information on the economic impact of the projects
362 financed by the corporation.

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

366 Section 2. Paragraph (b) of subsection (10) of section
367 20.60, Florida Statutes, is amended to read

368 20.60 Department of Economic Opportunity; creation; powers
369 and duties.—

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

375 (b) The report must incorporate annual reports of other

376 | programs and entities, including:

377 | 1. Information provided by the Department of Revenue under
378 | s. 290.014.

379 | 2. Information provided by enterprise zone development
380 | agencies under s. 290.0056 and an analysis of the activities and
381 | accomplishments of each enterprise zone.

382 | 3. The Economic Gardening Business Loan Pilot Program
383 | established under s. 288.1081 and the Economic Gardening
384 | Technical Assistance Pilot Program established under s.
385 | 288.1082.

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

389 | 5. The Rural Economic Development Initiative established
390 | under s. 288.0656.

391 | 6. The Florida Unique Abilities Partner Program.

392 | 7. The Florida Motion Picture Capital Corporation
393 | established under s. 288.1259.

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