

By Senator Bean

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1 A bill to be entitled
2 An act relating to the qualified television revolving
3 loan fund; creating s. 288.127, F.S.; defining terms;
4 providing a purpose; creating the qualified television
5 revolving loan fund; requiring the Department of
6 Economic Opportunity to contract with a fund
7 administrator; providing fund administrator
8 qualifications; providing for the fund administrator's
9 compensation and removal; specifying the fund
10 administrator's powers and duties; providing the
11 structure of the loans; providing qualified television
12 content criteria; authorizing the Auditor General to
13 conduct an operational audit of the fund and the fund
14 administrator; authorizing the department to adopt
15 rules; providing for expiration of the loan program;
16 providing emergency rulemaking authority; providing
17 for expiration of the emergency rulemaking authority;
18 amending s. 288.0001, F.S.; requiring an analysis of
19 the qualified television revolving loan fund in the
20 Economic Development Programs Evaluation; providing an
21 effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Section 288.127, Florida Statutes, is created to
26 read:

27 288.127 Qualified television revolving loan fund.—

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

29 (a) "Fund administrator" means a private sector

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30 organization under contract with the department to manage and
31 administer the qualified television revolving loan fund.

32 (b) "Major broadcaster" means broadcasting organizations
33 that include, but are not limited to, television broadcasting
34 networks, cable television, direct broadcast satellite,
35 telecommunications companies, and Internet streaming or other
36 digital media platforms.

37 (c) "Private investment capital" means capital from
38 private, nongovernmental funding sources which will be
39 coinvested with the QTV Fund in segregated accounts.

40 (d) "Qualified lending partner" means a financial
41 institution, as defined in s. 655.005, selected by a fund
42 administrator that has demonstrated capability in providing
43 financing to television production and specialized expertise in
44 intellectual property, tax credit programs, customary broadcast
45 license agreements, advertising inventories, and ancillary
46 revenue sources, and a combined portfolio in film, television,
47 and entertainment media of at least \$500 million.

48 (e) "Qualified television content" means series, mini-
49 series, or made-for-TV content produced by a qualified
50 production company that has in place a distribution contract
51 with a major broadcaster, under a customary broadcaster license
52 agreement. The term does not include a production that contains
53 content that is obscene, as defined in s. 847.001.

54 (f) "QTV Fund" means the qualified television revolving
55 loan fund.

56 (2) PURPOSE.—The purpose of the QTV Fund is to create a
57 public-private partnership in the form of a revolving loan fund
58 to administer a loan program for television production. The QTV

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59 Fund is privately managed under state oversight to incentivize
60 the use of this state as a site for producing qualified
61 television content and to develop and sustain the workforce and
62 infrastructure for television content production.

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

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

82 (b) Funds from the QTV Fund shall be disbursed by the fund
83 administrator through a lending vehicle to make short-term loans
84 pursuant to this section.

85 (4) FUND ADMINISTRATOR.—

86 (a) The department shall contract with a fund administrator
87 within 90 days after funds are appropriated for the loan program

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88 and shall award the contract in accordance with the competitive
89 bidding requirements in s. 287.057.

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

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

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

106 (c) For overseeing and administering the QTV Fund, the fund
107 administrator shall be reimbursed for the costs that the fund
108 administrator incurs in establishing and operating the fund
109 related to the state's investment, which shall be paid from
110 state funds in the QTV Fund. Any additional private investment
111 capital in the segregated accounts is responsible for its own
112 management fees. The fund administrator is entitled to a
113 reasonable profit, but such distribution may not be made from
114 the principal funds from the original appropriation.

115 (d) The fund administrator shall provide services defined
116 under this section for the duration of the QTV Fund term unless

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117 removed by the department. The contract between the department
118 and the fund administrator shall set forth the circumstances
119 under which the contract may be terminated.

120 (5) FUND ADMINISTRATOR POWERS AND DUTIES.—

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

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

138 1. Shall prudently manage the funds in the QTV Fund as a
139 revolving loan fund.

140 2. Shall contract with one or more qualified lending
141 partners.

142 3. Shall provide improvement of the credit profile of a
143 structured financial transaction for qualified production
144 companies that produce qualified television content meeting the
145 criteria in subsection (7).

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146 4. May raise additional private investment capital to be
147 held in separate accounts, in addition to the leverage provided
148 by the qualified lending partner.

149 5. Shall administer the QTV Fund in accordance with this
150 part.

151 6. Shall agree to maintain the recipient's books and
152 records relating to funds received from the department according
153 to generally accepted accounting principles and in accordance
154 with s. 215.97(7) and to make those books and records available
155 to the department for inspection upon reasonable notice. The
156 books and records must be maintained with detailed records
157 showing the use of proceeds from loans to fund qualified
158 television content.

159 7. Shall maintain its registered office in this state
160 throughout the duration of the contract.

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

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

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175 1. The name of the qualified television content.

176 2. The names of the counties in which the production
177 occurred.

178 3. The number of jobs created and retained as a result of
179 the production.

180 4. The loan amounts, including the amount of private
181 investment capital and funds provided by a qualified lending
182 partner.

183 5. The loan repayment status for each loan.

184 6. The number and amounts of any loans with payments past
185 due.

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

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

188 9. Other information and documentation required by the
189 department.

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

198 (f) Conflict-of-interest statement.—The fund administrator
199 shall provide a conflict-of-interest statement from its
200 governing board certifying that no board member, director,
201 employee, or agent, or immediate family member thereof, or other
202 person connected to or affiliated with the fund administrator is
203 receiving or will receive any type of compensation or

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204 remuneration from a production company that has received or will
205 receive funds from the loan program or from a qualified lending
206 partner. The department may waive this requirement for good
207 cause shown.

208 (6) LOAN STRUCTURE.—

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

220 (b) The QTV Fund loan package shall be secured by
221 contractual and predictable sources of repayment such as
222 domestic and international broadcaster license agreements and
223 other ancillary revenues that are derived from media content
224 rights. Unsecured loans may not be made.

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

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

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233 (e) The production company's repayment of a loan shall be
234 in accordance with the broadcast license agreement and the
235 delivery of qualified television content to the major
236 broadcaster and shall be within 60 days after such delivery.

237 (f) Loans made by the QTV Fund may not exceed 36 months in
238 duration, except for extenuating circumstances for which the
239 fund administrator may grant an extension upon making written
240 findings to the department specifying the conditions requiring
241 the extension.

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

252 (h) Except for funds appropriated to the department for the
253 loan program, the credit of the state may not be pledged. The
254 state is not liable or obligated in any way for claims against
255 the QTV Fund or against the fund administrator, the qualified
256 lending partner, or the department.

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

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

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262 (b) The content is produced in this state, or a minimum of
263 80 percent of the production budget must be spent in this state.
264 This requirement may be amended by the fund administrator upon
265 notice to the department. Such notice must include a specific
266 justification for the change and must be transmitted to the
267 department in writing. The department has 10 business days to
268 object to the change. If the department does not object within
269 10 business days, the change is deemed acceptable by the
270 department, and the fund administrator may grant the amendment.

271 (c) If the content is a series, there is a programming
272 order for at least 13 episodes. This requirement may be amended
273 by the fund administrator upon notice to the department. Such
274 notice must include a specific justification for the change and
275 must be transmitted to the department in writing. The department
276 has 10 business days to object to the change. If the department
277 does not object within 10 business days, the change is deemed
278 acceptable by the department, and the fund administrator may
279 grant the amendment.

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

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

287 (f) The project must be bonded and secured by an industry-
288 approved completion guarantor if the production cost per episode
289 exceeds \$1 million. This requirement may be waived if the loan
290 applicant provides the fund administrator with evidence of

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291 adequate structure to protect the state's funds.

292 (8) AUDITOR GENERAL AUDIT.—The Auditor General may conduct
293 operational audits, as defined in s. 11.45, of the QTV Fund and
294 fund administrator. The scope of the audit must include, but is
295 not limited to, internal controls evaluations, internal audit
296 functions, reporting and performance requirements for the use of
297 the funds, and compliance with state and federal law. The fund
298 administrator shall provide to the Auditor General any detail or
299 supplemental data required.

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

302 (10) EXPIRATION.—This section expires December 31, 2025, at
303 which point all funds remaining in the QTV Fund revert to the
304 General Revenue Fund.

305 (11) EMERGENCY RULES.—

306 (a) The executive director of the department is authorized,
307 and all conditions are deemed met, to adopt emergency rules
308 pursuant to ss. 120.536(1) and 120.54(4) for the purpose of
309 implementing this section.

310 (b) Notwithstanding any other law, the emergency rules
311 adopted pursuant to paragraph (a) remain in effect for 6 months
312 after adoption and may be renewed during the pendency of
313 procedures to adopt permanent rules addressing the subject of
314 the emergency rules.

315 (c) This subsection expires October 1, 2016.

316 Section 2. Paragraph (b) of subsection (2) of section
317 288.0001, Florida Statutes, is amended to read:

318 288.0001 Economic Development Programs Evaluation.—The
319 Office of Economic and Demographic Research and the Office of

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320 Program Policy Analysis and Government Accountability (OPPAGA)
321 shall develop and present to the Governor, the President of the
322 Senate, the Speaker of the House of Representatives, and the
323 chairs of the legislative appropriations committees the Economic
324 Development Programs Evaluation.

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

328 (b) By January 1, 2018 ~~2015~~, and every 3 years thereafter,
329 an analysis of the following:

330 1. The entertainment industry financial incentive program
331 established under s. 288.1254.

332 2. The entertainment industry sales tax exemption program
333 established under s. 288.1258.

334 3. The VISIT Florida Tourism Industry Marketing Corporation
335 and its programs established or funded under ss. 288.122,
336 288.1226, 288.12265, and 288.124.

337 4. The Florida Sports Foundation and related programs
338 established under ss. 288.1162, 288.11621, 288.1166, 288.1167,
339 288.1168, 288.1169, and 288.1171.

340 5. The qualified television revolving loan fund established
341 under s. 288.127.

342 Section 3. This act shall take effect July 1, 2015.