HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 237 Qualified Television Revolving Loan Fund
SPONSOR(S): Economic Affairs Committee; Latvala and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 196

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	11 Y, 0 N	Lukis	Duncan
2) Transportation & Economic Development Appropriations Subcommittee	13 Y, 0 N	Proctor	Davis
3) Economic Affairs Committee	14 Y, 2 N, As CS	Lukis	Creamer

SUMMARY ANALYSIS

The bill creates a qualified television revolving loan fund ("QTV Fund") - an "evergreen" fund privately managed under state oversight, which offers loans for qualified television content production throughout the state.

As production companies repay the principal and interest to the QTV Fund, state funds, less any QTV Fund expenses, are returned to the account to be lent to subsequent borrowers. Loans will not exceed 36 months in duration, and the fund administrator must invest and reinvest funds in a manner so as to not subject the funds to state or federal taxes.

The bill provides for the QTV Fund to expire on December 31, 2025. Any remaining funds in the QTV Fund at such time will revert to the General Revenue Fund.

The bill may have a negative fiscal impact on the workload of the Department of Economic Opportunity. See the fiscal analysis section for additional detail.

The bill provides for an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background

Florida has a long history in hosting film and television productions—from film productions like *Where the Boys Are, Tarzan*, *Days of Thunder, The Truman Show*, *Scarface*, *Caddyshack, Indiana Jones and the Temple of Doom, Armageddon, The Birdcage,* and *2 Fast 2 Furious*, to television productions like *Miami Vice*, *Flipper*, *CSI: Miami, Dexter, Miami Ink, Burn Notice, 8th and Ocean, Kourtney & Kim Take Miami, The Real Housewives of Miami,* and *The Glades.*[1] Florida has also hosted the production of various television episodes, commericals, telenovelas, and award shows.

In addition, Florida is host to many Univision and Telemundo studios and production facilities.[2] Univision is the largest Spanish-speaking television network in the world, and Telemundo is one of the nation's fastest growing Spanish-language broadcast networks. Telemundo also produces original theatrical motion pictures, news and sports broadcasts.[3]

Further, Florida is home to numerous digital media developers and publishers, including Electronic Arts (EA) Tiburon, a major studio for the world's largest video game developer, as well as 360ed, n-SPACE, and Firebrand Games.[4] Many digital media developers and publishers occupy Florida's "high-tech corridor," which comprises of 23 counties and is connected by research universities, economic development organizations, educational institutions, workforce boards, industry groups, and innovative gaming companies.[5] Notably, the corridor is home to the University of Central Florida's graduate video game design school.[6]

Presently, Florida ranks third in the nation for its number of film and television productions.[7] Additionally, in 2013, the Department of Economic Opportunity's ("department" or "DEO") Bureau of Labor Market Statistics collected the following employment information about Florida's film and entertainment industry:[8]

- In 2013, there were 4,446 established businesses in Florida's film and entertainment industry employing 22,545 individuals.
- The average wage of such employees was $70,996, which exceeds the state's annual average wage for all industries of $43,651 by 62.6 percent.
- The largest sector of the film and entertainment industry was television broadcasting with 8,212 Floridians employed.
- The sector of the film and entertainment industry with the highest annual average wage ($98,764) was motion picture and video distribution.

Florida's Office of Film and Entertainment

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[1] Motion Picture Association of America, *Economic and Social Impacts of the Florida Film and Entertainment Industry Financial Incentive Program* at 11. March 2013. On file with staff.
[2] *Id.*
[3] *Id.*
[4] *Id*. (For more information on Florida's high-tech corridor, visit: www.floridahightech.com.
[5] *Id.*
[6] *Id.*
[7] Office of Economic and Demographic Research, *Return on Investment for the Entertainment Industry Incentive Programs*, at 4. (January 2015). On file with staff.
[8] Florida Office of Film and Entertainment, Fiscal Year 2013-2014 Annual Report, at 3. (November 1, 2014). On file with staff.

The Florida Office of Film and Entertainment (“OFE”), which is administratively housed in DEO, is the state’s official mechanism for the development and expansion of the motion picture, television, and entertainment industries.[9] OFE staff members facilitate access to filming locations, serve as liaisons between the industry and government entities, administer incentive programs, and market the state as a world-class production center.[10]

OFE has an operating budget of $400,000 and employs five full-time staff members (including one Los Angeles-based liaison).[11]

Florida’s Entertainment Industry Financial Incentive Program Overview[12]

Florida’s Entertainment Industry Financial Incentive Program (“FTC program” or “program”), which is administered by OFE, provides tax credits for qualified expenditures related to filming and production activities in Florida. The Florida Legislature created the program to encourage the use of Florida “as a site for filming, for the digital production of films, and to develop and sustain the workforce and infrastructure for film, digital media, and entertainment production.”[13]

The program began as a cash refund incentive subject to an annual appropriation,[14] but in 2010 the Legislature replaced the refund incentive with a transferable tax credit program, available as an offset against any liability for the sales and use tax and corporate income tax.[15] These tax credits provide a reduction in taxes due, after verification that statutory or contractual terms have been met.

However, if the activity of the recipients of the credits results in no tax obligation, such recipients are unable to benefit from the credits. To overcome this limitation, incentive recipients have the option to monetize the credits by selling them to an entity that has a tax obligation, either directly or through an intermediary (tax broker), and typically at a discount.[16] The statutes also authorize the transfer of the credit back to the state for 90 percent of the credit’s face value (though this option is currently unavailable as no state funds have been appropriated for this purpose).[17]

Annual credit caps were initially set for five years, from FY 2010-11 through 2014-15, for a total of $242 million. In 2011, the Legislature increased the total to $254 million.[18] In 2012, the Legislature extended the program through FY 2015-16 and authorized an additional $42 million in credits, for a total of $296 million for the six-year period.[19] OFE reports that all of the credits have been certified (or allocated to certified productions), and as of September 30, 2014, $119 million of the $296 million have been awarded.[20]

FTC Program Process

Generally, a production company producing a qualified production in this state may submit an application to OFE for a certification of tax credits based upon estimated qualified expenditures.

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[9] *Id.*
[10] *Id.*
[11] Department of Economic Opportunity Office of Film and Entertainment, *Five-Year Strategic Plan for Economic Development, 2013-2018*, at 10. On file with staff.
[12] Information about the incentive program is also available on OFE’s website, available at: http://filminflorida.com/ifi/incentives.asp (last visited March 5, 2015).
[13] Section 288.1254, F.S.
[14] Section 2, Ch. 2003-81, L.O.F.
[15] Section 28, Ch. 2010-147, L.O.F.
[16] Section 288.1254(5), F.S.
[17] Section 288.1254(6)(a), F.S.
[18] Section 26, Ch. 2011-76, L.O.F.
[19] Section 15, Ch. 2012-32, L.O.F.
[20] Office of Economic and Demographic Research, *Return on Investment for the Entertainment Industry Incentive Programs*, at 5. (January 2015). On file with staff.

Qualified productions are productions that meet the Florida residency requirements provided in s. 288.1251(1)(j), F.S., and do not contain obscene content as defined in s. 847.001(10), F.S. Such productions may include, but are not limited to, the following:

- motion pictures;
- commercials;
- music videos;
- industrial or educational films;
- infomercials;
- documentary films;
- television series; and
- digital media projects (interactive games, digital animation and visual effects).[21]

Qualified expenditures include production expenditures[22] incurred by a qualified production in Florida for goods purchased or leased from, or services provided by, a vendor or supplier in Florida that is registered with the Department of State ("DOS") or the Department of Revenue ("DOR") and is doing business in Florida.[23] The vendor or supplier must also have a physical location in the state and employ one or more legal residents of the state. Qualified expenditures also include payments to legal residents of the state in the form of salary, wages, or other compensation up to $400,000 per resident (with certain exceptions). [24]

The applicant for an award of tax credits may not submit its application earlier than 180 days before the first day of principal photography or project start date.[25] The applicant must provide OFE with information required to determine whether the production is a qualified production and to determine the qualified expenditures and other information necessary for the office to determine eligibility for the tax credit.[26] OFE must review the application within 15 days after receipt, and upon determining the application contains all required information, OFE must then qualify the applicant and recommend to the department that the applicant be certified for the maximum tax credit award amount. Within five business days after receiving such recommendation, the department must either reject the recommendation or certify the tax credit award to the applicant and to submit the certification to the executive director of DOR.[27]

In addition, current law directs OFE to ensure, as a condition for receiving tax credits, that applicants include in their applications, when appropriate and at no cost to the state, marketing proposals to promote Florida as a tourist destination and entertainment production destination.[28]

Florida law does not provide for any *loan* programs that pertain to the film and entertainment industry or television production. However, the Department of Economic Opportunity's ("department" or "DEO") Office of Film and Entertainment recently published its five-year strategic plan, which includes as a specific strategy to "[e]stablish, grow and sustain an entertainment infrastructure bank to provide low- and no- interest loans for infrastructure development for the film, multi-media and entertainment industry."[29]

Effect of Proposed Changes

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[21] Section 288.1254(1), F.S.
[22] Section 288.1254, F.S. defines "production expenditures," which may or may not be "qualified."
[23] *Id.*
[24] Section 288.1254(1)(i)2., F.S.
[25] Section 288.1254(3), F.S.
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] Department of Economic Opportunity Office of Film and Entertainment, *Five-Year Strategic Plan for Economic Development, 2013-2018*, at 13. On file with staff.

QTV Fund Creation

The bill creates the qualified television revolving loan fund ("QTV Fund" or "Fund") - an "evergreen" fund privately managed under state oversight, which offers loans for qualified television content production throughout the state.

As production companies repay the principal and interest to the QTV Fund, state funds, less any QTV Fund expenses, are returned to the account to be lent to subsequent borrowers. Loans will not exceed 36 months in duration, and the fund administrator must invest and reinvest funds in a manner so as to not subject the funds to state or federal taxes.

The bill states the purpose of the Fund is to create a public-private partnership to incentivize the growth of television productions in Florida and to develop and sustain the workforce and infrastructure for such television production. The following sub-headings and explanations summarize the bill's primary components.

Definitions

The bill creates the following definitions for terminology used throughout the bill:

- "Fund administrator" means a private sector organization under contract with DEO to manage and administer the qualified television revolving loan fund.

- "Major broadcaster" means broadcasting organizations that include, but are not limited to, television broadcasting networks, cable television, direct broadcast satellite, telecommunications companies, and Internet streaming or other digital media platforms.

- "Private investment capital" means capital from private, nongovernmental funding sources, which will be co-invested with the QTV Fund in segregated accounts.

- "Qualified lending partner" means a financial institution, as defined in s. 655.005, F.S., selected by a fund administrator that has demonstrated capability in providing financing to television production and specialized expertise in intellectual property, tax credit programs, customary broadcast license agreements, advertising inventories, and ancillary revenue sources, and a combined portfolio in film, television, and entertainment media of at least $500 million.

- "Qualified television content" means series, mini-series, or made-for-TV content produced by a qualified production company that has in place a distribution contract with a major broadcaster, under a customary broadcaster license agreement, and meets other criteria described below. The term does not include a production that contains content that is obscene, as defined in s. 847.001, F.S.

Fund Administrator - General Provisions

DEO must contract with a fund administrator within 90 days after funds are appropriated to the QTV Fund and must award such contract in accordance with the competitive bidding requirements in s. 287.057, F.S.

The department must give preference to applicants that are headquartered in the state, and, at a minimum, the fund administrator's qualifications must include the following:

- a demonstrated track record of managing private sector equity or debt funds in the entertainment and media industry; and

- the ability to demonstrate through a partnership agreement that a qualified lending partner is in place, which is capable of providing leverage of a minimum of 2.5 times the capital amount of the QTV Fund, for financing the production cost of qualified television content in the form of senior debt.

In addition, the bill provides that the fund administrator must be reimbursed for the costs that the fund administrator incurs in establishing and operating the Fund, which must be paid from the state funds in the QTV Fund. The fund administrator is entitled to a reasonable profit, but such distribution may not be made from the principal funds from the original appropriation.

The contract between the fund administrator and DEO must set forth the circumstances under which the contract may be terminated.

Fund Administrator - Powers and Duties

The bill provides for the following powers and duties for the fund administrator:

- Subject to certain limitations, the fund administrator may enter into agreements with qualified lending partners for concurrent lending through the QTV Fund.
- The fund administrator must prudently manage the funds in the QTV Fund as a revolving loan fund.
- The fund administrator must contract with one or more qualified lending partners.
- The fund administrator must provide improvement of the credit profile of a structured financial transaction for qualified production companies that produce qualified television content.
- In addition to the leverage provided by the qualified lending partner, the fund administer may raise private investment capital to be held in separate accounts.
- The fund administer must agree to verify that the recipient's books and records relating to funds received from the department are detailed, maintained according to generally accepted accounting principles, and will be available for the department's review upon reasonable notice.
- The fund administrator must maintain its registered office in the state throughout the duration of its contract with the department.
- By February 28 of each year, the fund administrator must submit to the department financial statements for the preceding tax year, which among other requirements, demonstrate proper segregation of state funds from private funds.
- By February 28 after the end of each year in which the fund administrator is under contract with the department, the fund administrator must submit a report to the department including certain information about the progress and status of the QTV Fund program.
- The fund administrator must submit an annual plan of accountability of economic development, including among other information, a report detailing the job creation resulting from the QTV Fund loans.
- The fund administrator must provide a conflict-of-interest statement from its governing board certifying that no person connected to or affiliated with the fund administrator is receiving or will receive any type of compensation or remuneration from a production company that has received or will receive funds from the loan program or from a qualified lending partner (though the department is free to waive this requirement for good cause).

Loan Structure

The bill provides that the QTV Fund may be used to make loans to production companies to fund production costs or provide improvement of the credit profile of a structured financial transaction for qualified television content. To make a loan, the fund administrator must consider the types of eligible collateral, the credit worthiness of a project, the producer's track record, the possibility that the project will encourage, enhance, or create economic benefits, and the extent to which financial assistance would foster innovative public-private partnerships and attract private debt or equity investment.

Other loan requirements include the following:

- the QTV Fund loan package must be secured by anticipated receivables from domestic and international broadcaster license agreements and other ancillary revenues that are derived from media content rights;
- the QTV Fund can only provide funding in conjunction with senior loans provided by a qualified lending partner;
- the production company's repayment of a loan must be in accordance with the license fee payment schedule agreement and the delivery of qualified television content to the major broadcaster and shall be within 60 days after such delivery;
- loans cannot exceed 36 months (though, the fund administrator may grant an extension for extenuating circumstances upon making written findings to the department specifying the conditions requiring the extension);
- the fund administrator, or board member, employee, or agent thereof, or an immediate family member of a board member, employee, or agent, may not have a financial interest in an entity that is awarded a loan under the loan program and may not benefit directly or indirectly from the making of such loan; and
- except for the funds appropriated to the department for the loan program, the credit of the state may not be pledged.

Qualified Television Content Criteria

The fund administrator must, at a minimum, consider the following criteria for evaluating the qualifying television content:

- The content is intended for broadcast by a major broadcaster.
- The content is produced in the state, or a minimum of 80 percent of the production budget must be spent in the state (though the fund administrator may amend this requirement if the department does not object to the amendment).
- If the content is a series, the series is either a production created to run multiple seasons which has an estimated order of at least seven episodes per season and qualified expenditures of at least $1 million per episode, or a telenovela that has qualified expenditures of more than $6 million, a minimum of 45 principal photography days filmed in the state and a production cast occurring in the state (again, the fund administrator may amend this requirement if the department does not object to the amendment).
- The producer must have a contract in place with a major broadcaster to acquire content programming under a customary broadcast license agreement, and the contract must cover at least 60 percent of the budget.
- The producer must retain a foreign sales agent and must be able to provide the fund administrator with the foreign sales agent's official estimates of foreign and ancillary sales.
- The project must be bonded and secured by an industry-approved completion guarantor if the production cost per episode exceeds $1 million (though this requirement may be waived if the loan applicant provides the fund administrator with evidence of adequate structure to protect the state's funds).

Audits

The bill provides that the Auditor General may conduct operational audits of the QTV Fund and fund administrator. The fund administrator must provide any required information for such audit.

Office of Economic and Demographic Research ("EDR") and Office of Program Policy and Government Accountability ("OPPAGA") Analyses

The bill directs EDR and OPPAGA to analyze the QTV Fund every three years and provide a report on their findings to the Governor, the President of the Senate, the Speaker of the Florida House of Representatives, and the chairs of the legislative appropriations committees.

Expiration

The bill provides for the QTV Fund to expire on December 31, 2025. Any remaining funds in the QTV Fund at such time will revert to the General Revenue Fund.

Effective Date

The bill provides for an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Creates s. 288.127, F.S., creating the QTV Fund, including definitions, its purpose, administration, and expiration.

Section 2: Amends s. 288.0001, F.S., requiring EDR and OPPAGA to submit a report every three years on the QTV Fund.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DEO advised that it may need an additional FTE and/or OPS authority to implement the requirements in the bill. DEO states that this could result in an annual recurring cost of $125,000. [30]

   The bill does not provide an appropriation, nor is funding provided in the proposed House budget, HB 5001. The bill establishes the structure for a loan program which would require a state appropriation to implement.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will likely have an indeterminate positive impact on the television industry in Florida as the QTV Fund will provide access to funds for certain television production companies that may otherwise have not been available.

[30] Department of Economic Opportunity, 2015 Agency Legislative Bill Analysis on HB 237 on file with staff.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The department may adopt rules to administer the bill. Also, the executive director of the department is authorized to adopt emergency rules until October 1, 2016 pursuant to ss. 120.536(1) and 120.54(4) for the purpose of implementing the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 14, 2015, the Economic Affairs Committee adopted one amendment to the bill. The amendment specifies that the fund administer must consider whether qualifying television content is a “series,” which includes either of the following:

- a production created to run multiple seasons which has an estimated order of at least seven episodes per season and qualified expenditures of at least $1 million per episode; or
- a telenovela that has qualified expenditures of more than $6 million; a minimum of 45 principal photography days filmed in this state; and a production cast, including background production, occurring in this state.

The amendment also provides that the fund administrator may amend such requirements upon notice to the Department of Economic Opportunity.

This analysis is drafted to the bill as passed by the Economic Affairs Committee.