



533118

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2018	.	
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The Committee on Commerce and Tourism (Taddeo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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.



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

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

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

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

25 (f) "President" means the chief executive officer of the
26 corporation.

27 (g) "Scripted production" or "production" means a feature
28 film at least 70 minutes in length, whether produced for
29 theatrical, television, or direct-to-video release; a television
30 series created to run multiple seasons having an order for
31 distribution of at least five episodes; or a miniseries, which
32 is produced predominately from a written screenplay or teleplay.
33 The term does not include a commercial, an infomercial, or a
34 political advertisement; a reality show; a game show; an awards
35 show; a music video; an industrial or educational film; a
36 weather or market program; a sporting event or sporting event
37 broadcast; a gala; a production that solicits funds; a home
38 shopping program; a political program; a documentary; a
39 gambling-related production; a concert production; a local,



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40 regional, or Internet-distributed-only news show or current-
41 events show; a sports news or sports recap show; a video game; a
42 pornographic production; or any production deemed obscene under
43 chapter 847.

44 (h) "Television" includes broadcast, cable, and Internet
45 television.

46 (2) CORPORATION.—The Florida Motion Picture Capital
47 Corporation is created as a nonprofit corporation, to be
48 incorporated under chapter 617 and approved by the Department of
49 State. The corporation shall be organized on a nonstock basis.
50 The purpose of the corporation is to encourage the use of this
51 state as a site for scripted productions by providing financing
52 to such productions. The corporation is subject to the
53 provisions of chapter 119 relating to public records and the
54 provisions of chapter 286 relating to public meetings and
55 records.

56 (3) POWERS AND LIMITATIONS.—

57 (a) The corporation is authorized to provide financing to
58 scripted productions in this state pursuant to the criteria,
59 bylaws, rules, and policies adopted by the board, which must
60 include the following:

61 1. The corporation shall provide financing to productions
62 that it estimates will generate the greatest economic impact to
63 this state.

64 2. The amount of financing provided to a production must
65 not exceed the amount of the production's in-state expenditures
66 for that production.

67 3. The financing provided to a production must rank and
68 remain pari passu with the highest class of ownership in the



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69 production, such that, in the event of liquidation or
70 bankruptcy, the corporation's investment shares the highest
71 priority with other preferred shareholders.

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

75 5. The amount of financing provided to any one production
76 must not exceed 12.5 percent of the sum of the remaining amount
77 of uncommitted funds in the account plus the amounts of all
78 outstanding investments in other productions.

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

82 7. The corporation shall limit the return on its
83 investments by establishing variable limits on returns that
84 account for time value and reduce returns in exchange for a
85 production's early buyout of financing positions. For a
86 production exercising an early buyout, the corporation shall
87 limit its return on investment to the minimum that is
88 actuarially measurable and credible and sufficiently related to
89 actual and expected losses to ensure the corporation's self-
90 sufficiency and preservation of the state appropriations
91 provided for the investment.

92 8. The corporation shall establish an application process
93 and conduct at least two application periods per fiscal year,
94 providing no more than 40 percent of the total funds in the
95 account for the fiscal year to productions in any one
96 application period.

97 (b) The board shall adopt objective criteria for evaluating



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98 applications for financing scripted productions in this state.

99 1. The criteria must require:

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

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

108 c. The production to carry an insurance package from an
109 insurance company rated "A" or higher by A.M. Best Company which
110 must include general liability insurance, workers' compensation,
111 and key cast and director insurance that covers the costs of
112 disruption or replacement downtime in the event of illness or
113 other loss of services from such individuals. If at least 75
114 percent of the production's filming schedule occurs after June 1
115 and before November 30, the production's insurance package must
116 include hurricane coverage.

117 d. The production to provide proof of funds for the
118 remaining budget within 60 days after application approval and
119 place the remaining budget in escrow before the release of
120 corporation funds.

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

124 f. That the production's budget, script, and filming
125 schedule have been evaluated and approved by a production expert
126 selected by the board.



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127 g. The production budget to include contingency funds in an
128 amount equal to at least 5 percent of the total budget. Up to 40
129 percent of the contingency funds may be expended during
130 production without the approval of the board. The remaining
131 contingency funds may only be expended with prior approval of
132 the board.

133 h. The board to release corporation funds to a production
134 in the following manner:

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

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

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

142 i. The production company to provide the board with the
143 right to inspect and audit the weekly cost reports and general
144 ledger of the production throughout preproduction, production,
145 and postproduction.

146 2. Preference shall be given to:

147 a. 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 b. Productions in which the proposed financing by the



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156 corporation is lowest as a percentage of the production's total
157 shares or other ownership interest.

158 c. 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 d. Productions by companies with a verifiable track record
162 in producing successful productions.

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

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

169 g. 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 to
172 the production.

173 h. 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 (c) The corporation may charge fees, including, but not
178 limited to, application fees from productions seeking financing
179 under this section, but such fees may not exceed the reasonable
180 estimated cost of the activity for which the fee is charged,
181 such as the cost of processing an application.

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

183 (a)1. The board shall consist of seven members who are
184 permanent residents of this state. Minority and gender



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185 representation must be considered when making appointments to
186 the board. The board shall be composed of the following:
187 a. Two members who have experience in investment banking
188 and funds management focused on feature film and television
189 production.
190 b. Three members who have recent experience and are
191 recognized leaders in the production of feature films or
192 television in this state. Such members may include, but are not
193 limited to, producers, directors, production managers or
194 supervisors, or similar persons in positions of production
195 leadership.
196 c. One member who represents businesses that provide
197 supplies for feature film and television production in this
198 state, such as small businesses through which productions buy or
199 rent equipment, house and feed cast and crew, purchase supplies
200 and raw materials, or build production infrastructure.
201 d. One member who represents this state's feature film and
202 television workforce.
203 2. The initial board shall be appointed as follows:
204 a. The Florida Venture Forum and the Florida Chamber of
205 Commerce shall each appoint one member pursuant to sub-
206 subparagraph 1.a.
207 b. The Governor, the President of the Senate, and the
208 Speaker of the House of Representatives shall each appoint one
209 member pursuant to sub-subparagraph 1.b.
210 c. The department shall appoint one member pursuant to sub-
211 subparagraph 1.c.
212 d. The Congress of Motion Picture Associations of Florida
213 shall appoint one member pursuant to sub-subparagraph 1.d.



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214
215 To establish staggered terms, the initial members appointed by
216 the Florida Chamber of Commerce and the Congress of Motion
217 Picture Associations of Florida shall be appointed to 1-year
218 terms; the initial members appointed by the President of the
219 Senate and the Speaker of the House of Representatives shall be
220 appointed to 2-year terms; and the initial members appointed by
221 the Governor, the department, and the Florida Venture Forum
222 shall be appointed to 3-year terms.

223 3. Board members shall serve for a term of 3 years and are
224 eligible for reappointment. Vacancies shall be filled by
225 appointment in the same manner as the member whose position is
226 being filled. Vacancies shall be filled within 30 days after the
227 date of the vacancy. A vacancy that occurs before the scheduled
228 expiration of the term of a member shall be filled for the
229 remainder of the unexpired term.

230 (b) Board members are subject to the Code of Ethics for
231 Public Officers and Employees as set forth in part III of
232 chapter 112. A board member must abstain from voting and comply
233 with the disclosure requirements of s. 112.3143 if there appears
234 to be a possible conflict under s. 112.311, s. 112.313, or s.
235 112.3143. This paragraph does not prohibit any principal by whom
236 a board member is retained, as defined in s. 112.3143(1)(a),
237 from applying for or receiving financing under this section.

238 (c) A board member must, with respect to an application for
239 financing which is currently pending before the corporation or
240 which the board member knows or reasonably expects will be
241 submitted to the corporation within 180 days, refrain from
242 commenting on or discussing the application outside of a board



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243 meeting with the applicant or any person retained by the
244 applicant.

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

249 (e) The board shall:

250 1. Before the expenditure of funds from the account, adopt
251 bylaws, rules, and policies that are necessary to carry out the
252 corporation's responsibilities under this section.

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

256 (5) ACCOUNT.—

257 (a) The board shall create the account for the purpose of
258 receiving state, federal, county, municipal, and private
259 financial resources, and the returns from productions financed
260 by allocations from those resources, and for the purposes of
261 this section. The account shall be under the exclusive control
262 of the board.

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

265 (c) The board may deposit the funds of the account with
266 state or federally chartered financial institutions in this
267 state and may invest any funds not allocated to a production
268 during a fiscal year in permissible securities as described in
269 s. 560.210(1).

270 (d) Dividend payments received from the investments made by
271 the corporation shall be redeposited into the account to be used



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272 for the purposes of this section.

273 (e) The corporation shall keep its operating expenses to
274 the minimum amount necessary. Such operating expenses shall be
275 funded by appropriations provided for that purpose and from net
276 returns from financing provided under this section.

277 (f) Any claims against the account shall be paid solely
278 from the account. Under no circumstances shall the credit of the
279 state be pledged other than funds appropriated by law to the
280 account, nor shall the state be liable or obligated in any way
281 for claims on the account or against the corporation.

282 (6) PRESIDENT OF THE CORPORATION.—

283 (a) The board shall appoint a president. The president must
284 be knowledgeable about private and public financing of feature
285 film and television projects.

286 (b) The president shall serve at the pleasure of the board
287 and shall receive a salary and benefits as fixed by the board.
288 The president's salary and benefits may not exceed the salary
289 and benefits authorized to be paid to the Governor.

290 (c) The president shall administer the programs of the
291 corporation and perform such duties as delegated by the board.

292 (d) The president shall provide support staff to the board
293 as requested.

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

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

297 (a) The corporation shall notify the department upon final
298 execution of each contract or agreement by which the corporation
299 provides financing to a production. The corporation shall also
300 publish and maintain a copy of the notice on the corporation's



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301 website while the financing remains outstanding. To provide
302 adequate notice to the businesses and workforce that supply
303 feature film and television production in this state, the notice
304 must include, but need not be limited to, a brief description of
305 the production, the name of the production company, and, to the
306 extent available, the names of the director, cinematographer,
307 production designer, costume designer, and transportation
308 coordinator.

309 (b) The corporation shall submit a report to the department
310 on all corporation activities for the previous fiscal year as a
311 supplement to the department's annual report required under s.
312 20.60. This supplemental report must include:

313 1. A status report on all projects currently being financed
314 through the corporation, the number of projects financed
315 pursuant to this section, the dollar amount of financing
316 provided to such projects, and the names of the recipients; and

317 2. Information as to the economic impact of the projects
318 financed by the corporation.

319 (c) The Auditor General shall annually conduct a financial
320 audit, as defined in s. 11.45, of the corporation and the
321 account.

322 Section 2. Paragraph (b) of subsection (10) of section
323 20.60, Florida Statutes, is amended to read

324 20.60 Department of Economic Opportunity; creation; powers
325 and duties.-

326 (10) The department, with assistance from Enterprise
327 Florida, Inc., shall, by November 1 of each year, submit an
328 annual report to the Governor, the President of the Senate, and
329 the Speaker of the House of Representatives on the condition of



330 the business climate and economic development in the state.

331 (b) The report must incorporate annual reports of other
332 programs, including:

333 1. Information provided by the Department of Revenue under
334 s. 290.014.

335 2. Information provided by enterprise zone development
336 agencies under s. 290.0056 and an analysis of the activities and
337 accomplishments of each enterprise zone.

338 3. The Economic Gardening Business Loan Pilot Program
339 established under s. 288.1081 and the Economic Gardening
340 Technical Assistance Pilot Program established under s.
341 288.1082.

342 4. A detailed report of the performance of the Black
343 Business Loan Program and a cumulative summary of quarterly
344 report data required under s. 288.714.

345 5. The Rural Economic Development Initiative established
346 under s. 288.0656.

347 6. The Florida Unique Abilities Partner Program.

348 7. The Florida Motion Picture Capital Corporation
349 established under s. 288.1259.

350 Section 3. This act shall take effect July 1, 2018.

351
352 ===== T I T L E A M E N D M E N T =====

353 And the title is amended as follows:

354 Delete everything before the enacting clause
355 and insert:

356 A bill to be entitled
357 An act relating to film and television production;
358 creating s. 288.1259, F.S.; defining terms;



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359 establishing the Florida Motion Picture Capital
360 Corporation to encourage the use of this state as a
361 site for scripted productions by providing financing
362 to certain productions; providing powers of and
363 imposing limitations on the corporation; requiring the
364 board of directors to adopt specified criteria for
365 evaluating applications for financing; requiring
366 productions to use a bonded third-party collection
367 account management firm; requiring that certain
368 presales or sales estimates meet a specified minimum
369 value; requiring productions to carry an insurance
370 package meeting certain standards; requiring
371 productions to provide certain proof of funds within a
372 specified period; requiring that the lead producer or
373 production company have a specified sales record or
374 provide a completion bond; requiring that certain
375 items be evaluated and approved by a production expert
376 selected by the board; requiring that the production
377 budget include a certain amount of contingency funds;
378 providing for the release of corporation funds
379 according to a specified schedule; requiring the board
380 to approve the expenditure of certain contingency
381 funds; requiring the board to release corporation
382 funds to a production in a specified manner; requiring
383 the production company to allow the board to inspect
384 and audit certain reports and ledgers within a certain
385 timeframe; requiring the board to give preference to
386 productions that meet specified criteria; authorizing
387 the corporation to charge certain fees; requiring the



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388 board to be composed of certain members; providing for
389 the appointment of the board, terms for the board, and
390 guidelines for the board; prohibiting board members
391 from discussing certain pending applications with
392 applicants outside of a board meeting for a specified
393 period; requiring board members to serve without
394 compensation; authorizing the board members to be
395 reimbursed for certain expenses; requiring the board
396 to adopt bylaws, rules, and policies before the
397 expenditure of funds; requiring the board to hold
398 regularly scheduled meetings; requiring the board to
399 create the Florida Motion Picture Capital Account and
400 maintain exclusive control of the account; authorizing
401 the board to deposit funds with certain institutions
402 and to invest certain funds in permissible securities;
403 requiring that certain dividend payments be
404 redeposited in the account for a specified purpose;
405 requiring that the corporation's operating expenses be
406 kept to a minimum and funded by appropriations and
407 certain net returns; requiring that a claim against
408 the account be solely paid from the account; requiring
409 the board to appoint a president who meets specified
410 criteria; limiting the salary and benefits of the
411 president; providing the powers and duties of the
412 president; requiring the corporation to provide
413 certain notice of financing contracts or agreements to
414 the Department of Economic Opportunity and on the
415 corporation's website for a specified period of time;
416 requiring that the notice include specified



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417 information; requiring the corporation to submit a
418 supplemental report to the department which contains
419 certain information; requiring the Auditor General to
420 conduct an annual financial audit of the corporation
421 and the account; amending s. 20.60, F.S.; conforming a
422 provision to changes made by the act; providing an
423 effective date.