

By the Committee on Commerce and Tourism; and Senators Taddeo and Gibson

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1 A bill to be entitled
2 An act relating to film and television production;
3 creating s. 288.1259, F.S.; defining terms;
4 establishing the Florida Motion Picture Capital
5 Corporation to encourage the use of this state as a
6 site for scripted productions by providing financing
7 to certain productions; providing powers of and
8 imposing limitations on the corporation; requiring the
9 board of directors to adopt specified criteria for
10 evaluating applications for financing; requiring
11 productions to use a bonded third-party collection
12 account management firm; requiring that certain
13 presales or sales estimates meet a specified minimum
14 value; requiring productions to carry an insurance
15 package meeting certain standards; requiring
16 productions to provide certain proof of funds within a
17 specified period; requiring that the lead producer or
18 production company have a specified sales record or
19 provide a completion bond; requiring that certain
20 items be evaluated and approved by a production expert
21 selected by the board; requiring that the production
22 budget include a certain amount of contingency funds;
23 providing for the release of corporation funds
24 according to a specified schedule; requiring the board
25 to approve the expenditure of certain contingency
26 funds; requiring the board to release corporation
27 funds to a production in a specified manner; requiring
28 the production company to allow the board to inspect
29 and audit certain reports and ledgers within a certain

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30 timeframe; requiring the board to give preference to
31 productions that meet specified criteria; authorizing
32 the corporation to charge certain fees; requiring the
33 board to be composed of certain members; providing for
34 the appointment of the board, terms for the board, and
35 guidelines for the board; prohibiting board members
36 from discussing certain pending applications with
37 applicants outside of a board meeting for a specified
38 period; requiring board members to serve without
39 compensation; authorizing the board members to be
40 reimbursed for certain expenses; requiring the board
41 to adopt bylaws, rules, and policies before the
42 expenditure of funds; requiring the board to hold
43 regularly scheduled meetings; requiring the board to
44 create the Florida Motion Picture Capital Account and
45 maintain exclusive control of the account; authorizing
46 the board to deposit funds with certain institutions
47 and to invest certain funds in permissible securities;
48 requiring that certain dividend payments be
49 redeposited in the account for a specified purpose;
50 requiring that the corporation's operating expenses be
51 kept to a minimum and funded by appropriations and
52 certain net returns; requiring that a claim against
53 the account be solely paid from the account; requiring
54 the board to appoint a president who meets specified
55 criteria; limiting the salary and benefits of the
56 president; providing the powers and duties of the
57 president; requiring the corporation to provide
58 certain notice of financing contracts or agreements to

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59 the Department of Economic Opportunity and on the
 60 corporation's website for a specified period of time;
 61 requiring that the notice include specified
 62 information; requiring the corporation to submit a
 63 supplemental report to the department which contains
 64 certain information; requiring the Auditor General to
 65 conduct an annual financial audit of the corporation
 66 and the account; amending s. 20.60, F.S.; conforming a
 67 provision to changes made by the act; providing an
 68 effective date.

69
 70 Be It Enacted by the Legislature of the State of Florida:

71
 72 Section 1. Section 288.1259, Florida Statutes, is created
 73 to read:

74 288.1259 Florida Motion Picture Capital Corporation.-

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

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

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

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

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

87 (e) "In-state expenditures" means the costs of tangible

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88 property used in this state and services performed by residents
89 of this state for a scripted production, including preproduction
90 and postproduction, but excluding costs for development,
91 marketing, and distribution.

92 (f) "President" means the chief executive officer of the
93 corporation.

94 (g) "Scripted production" or "production" means a feature
95 film at least 70 minutes in length, whether produced for
96 theatrical, television, or direct-to-video release; a television
97 series created to run multiple seasons having an order for
98 distribution of at least five episodes; or a miniseries, which
99 is produced predominately from a written screenplay or teleplay.

100 The term does not include a commercial, an infomercial, or a
101 political advertisement; a reality show; a game show; an awards
102 show; a music video; an industrial or educational film; a
103 weather or market program; a sporting event or sporting event
104 broadcast; a gala; a production that solicits funds; a home
105 shopping program; a political program; a documentary; a
106 gambling-related production; a concert production; a local,
107 regional, or Internet-distributed-only news show or current-
108 events show; a sports news or sports recap show; a video game; a
109 pornographic production; or any production deemed obscene under
110 chapter 847.

111 (h) "Television" includes broadcast, cable, and Internet
112 television.

113 (2) CORPORATION.—The Florida Motion Picture Capital
114 Corporation is created as a nonprofit corporation, to be
115 incorporated under chapter 617 and approved by the Department of
116 State. The corporation shall be organized on a nonstock basis.

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117 The purpose of the corporation is to encourage the use of this
118 state as a site for scripted productions by providing financing
119 to such productions. The corporation is subject to the
120 provisions of chapter 119 relating to public records and the
121 provisions of chapter 286 relating to public meetings and
122 records.

123 (3) POWERS AND LIMITATIONS.-

124 (a) The corporation is authorized to provide financing to
125 scripted productions in this state pursuant to the criteria,
126 bylaws, rules, and policies adopted by the board, which must
127 include the following:

128 1. The corporation shall provide financing to productions
129 that it estimates will generate the greatest economic impact to
130 this state.

131 2. The amount of financing provided to a production must
132 not exceed the amount of the production's in-state expenditures
133 for that production.

134 3. The financing provided to a production must rank and
135 remain pari passu with the highest class of ownership in the
136 production, such that, in the event of liquidation or
137 bankruptcy, the corporation's investment shares the highest
138 priority with other preferred shareholders.

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

142 5. The amount of financing provided to any one production
143 must not exceed 12.5 percent of the sum of the remaining amount
144 of uncommitted funds in the account plus the amounts of all
145 outstanding investments in other productions.

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

149 7. The corporation shall limit the return on its
150 investments by establishing variable limits on returns that
151 account for time value and reduce returns in exchange for a
152 production's early buyout of financing positions. For a
153 production exercising an early buyout, the corporation shall
154 limit its return on investment to the minimum that is
155 actuarially measurable and credible and sufficiently related to
156 actual and expected losses to ensure the corporation's self-
157 sufficiency and preservation of the state appropriations
158 provided for the investment.

159 8. The corporation shall establish an application process
160 and conduct at least two application periods per fiscal year,
161 providing no more than 40 percent of the total funds in the
162 account for the fiscal year to productions in any one
163 application period.

164 (b) The board shall adopt objective criteria for evaluating
165 applications for financing scripted productions in this state.

166 1. The criteria must require:

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

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

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175 c. The production to carry an insurance package from an
176 insurance company rated "A" or higher by A.M. Best Company which
177 must include general liability insurance, workers' compensation,
178 and key cast and director insurance that covers the costs of
179 disruption or replacement downtime in the event of illness or
180 other loss of services from such individuals. If at least 75
181 percent of the production's filming schedule occurs after June 1
182 and before November 30, the production's insurance package must
183 include hurricane coverage.

184 d. The production to provide proof of funds for the
185 remaining budget within 60 days after application approval and
186 place the remaining budget in escrow before the release of
187 corporation funds.

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

191 f. That the production's budget, script, and filming
192 schedule have been evaluated and approved by a production expert
193 selected by the board.

194 g. The production budget to include contingency funds in an
195 amount equal to at least 5 percent of the total budget. Up to 40
196 percent of the contingency funds may be expended during
197 production without the approval of the board. The remaining
198 contingency funds may only be expended with prior approval of
199 the board.

200 h. The board to release corporation funds to a production
201 in the following manner:

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

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

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

209 i. The production company to provide the board with the
210 right to inspect and audit the weekly cost reports and general
211 ledger of the production throughout preproduction, production,
212 and postproduction.

213 2. Preference shall be given to:

214 a. Productions that will generate the greatest comparative
215 economic impact for this state. The corporation shall make a
216 determination of each project's comparative economic impact to
217 this state by comparing the project budgets submitted during the
218 application period and determining which projects create the
219 greatest number of high-wage jobs for state residents and
220 propose the most significant in-state expenditures as a
221 percentage of total production expenditures.

222 b. Productions in which the proposed financing by the
223 corporation is lowest as a percentage of the production's total
224 shares or other ownership interest.

225 c. Productions with the quickest deployment, in which the
226 production's in-state expenditures will begin soonest after the
227 corporation commits to financing.

228 d. Productions by companies with a verifiable track record
229 in producing successful productions.

230 e. Productions by production companies based in this state
231 or by producers, writers, or directors who are residents of this
232 state.

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

236 g. Productions whose development demonstrates the
237 likelihood of success, including, but not limited to, having a
238 recognized director, actor, or other creative talent attached to
239 the production.

240 h. Productions in which the corporation's financing is
241 matched from local sources, including, but not limited to,
242 county or municipal agencies, local film commissions, or other
243 community resources.

244 (c) The corporation may charge fees, including, but not
245 limited to, application fees from productions seeking financing
246 under this section, but such fees may not exceed the reasonable
247 estimated cost of the activity for which the fee is charged,
248 such as the cost of processing an application.

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

250 (a)1. The board shall consist of seven members who are
251 permanent residents of this state. Minority and gender
252 representation must be considered when making appointments to
253 the board. The board shall be composed of the following:

254 a. Two members who have experience in investment banking
255 and funds management focused on feature film and television
256 production.

257 b. Three members who have recent experience and are
258 recognized leaders in the production of feature films or
259 television in this state. Such members may include, but are not
260 limited to, producers, directors, production managers or
261 supervisors, or similar persons in positions of production

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262 leadership.

263 c. One member who represents businesses that provide
264 supplies for feature film and television production in this
265 state, such as small businesses through which productions buy or
266 rent equipment, house and feed cast and crew, purchase supplies
267 and raw materials, or build production infrastructure.

268 d. One member who represents this state's feature film and
269 television workforce.

270 2. The initial board shall be appointed as follows:

271 a. The Florida Venture Forum and the Florida Chamber of
272 Commerce shall each appoint one member pursuant to sub-
273 paragraph 1.a.

274 b. The Governor, the President of the Senate, and the
275 Speaker of the House of Representatives shall each appoint one
276 member pursuant to sub-subparagraph 1.b.

277 c. The department shall appoint one member pursuant to sub-
278 paragraph 1.c.

279 d. The Congress of Motion Picture Associations of Florida
280 shall appoint one member pursuant to sub-subparagraph 1.d.

281
282 To establish staggered terms, the initial members appointed by
283 the Florida Chamber of Commerce and the Congress of Motion
284 Picture Associations of Florida shall be appointed to 1-year
285 terms; the initial members appointed by the President of the
286 Senate and the Speaker of the House of Representatives shall be
287 appointed to 2-year terms; and the initial members appointed by
288 the Governor, the department, and the Florida Venture Forum
289 shall be appointed to 3-year terms.

290 3. Board members shall serve for a term of 3 years and are

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291 eligible for reappointment. Vacancies shall be filled by
292 appointment in the same manner as the member whose position is
293 being filled. Vacancies shall be filled within 30 days after the
294 date of the vacancy. A vacancy that occurs before the scheduled
295 expiration of the term of a member shall be filled for the
296 remainder of the unexpired term.

297 (b) Board members are subject to the Code of Ethics for
298 Public Officers and Employees as set forth in part III of
299 chapter 112. A board member must abstain from voting and comply
300 with the disclosure requirements of s. 112.3143 if there appears
301 to be a possible conflict under s. 112.311, s. 112.313, or s.
302 112.3143. This paragraph does not prohibit any principal by whom
303 a board member is retained, as defined in s. 112.3143(1)(a),
304 from applying for or receiving financing under this section.

305 (c) A board member must, with respect to an application for
306 financing which is currently pending before the corporation or
307 which the board member knows or reasonably expects will be
308 submitted to the corporation within 180 days, refrain from
309 commenting on or discussing the application outside of a board
310 meeting with the applicant or any person retained by the
311 applicant.

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

316 (e) The board shall:

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

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

323 (5) ACCOUNT.—

324 (a) The board shall create the account for the purpose of
325 receiving state, federal, county, municipal, and private
326 financial resources, and the returns from productions financed
327 by allocations from those resources, and for the purposes of
328 this section. The account shall be under the exclusive control
329 of the board.

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

332 (c) The board may deposit the funds of the account with
333 state or federally chartered financial institutions in this
334 state and may invest any funds not allocated to a production
335 during a fiscal year in permissible securities as described in
336 s. 560.210(1).

337 (d) Dividend payments received from the investments made by
338 the corporation shall be redeposited into the account to be used
339 for the purposes of this section.

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

344 (f) Any claims against the account shall be paid solely
345 from the account. Under no circumstances shall the credit of the
346 state be pledged other than funds appropriated by law to the
347 account, nor shall the state be liable or obligated in any way
348 for claims on the account or against the corporation.

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349 (6) PRESIDENT OF THE CORPORATION.—

350 (a) The board shall appoint a president. The president must
351 be knowledgeable about private and public financing of feature
352 film and television projects.

353 (b) The president shall serve at the pleasure of the board
354 and shall receive a salary and benefits as fixed by the board.
355 The president's salary and benefits may not exceed the salary
356 and benefits authorized to be paid to the Governor.

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

359 (d) The president shall provide support staff to the board
360 as requested.

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

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

364 (a) The corporation shall notify the department upon final
365 execution of each contract or agreement by which the corporation
366 provides financing to a production. The corporation shall also
367 publish and maintain a copy of the notice on the corporation's
368 website while the financing remains outstanding. To provide
369 adequate notice to the businesses and workforce that supply
370 feature film and television production in this state, the notice
371 must include, but need not be limited to, a brief description of
372 the production, the name of the production company, and, to the
373 extent available, the names of the director, cinematographer,
374 production designer, costume designer, and transportation
375 coordinator.

376 (b) The corporation shall submit a report to the department
377 on all corporation activities for the previous fiscal year as a

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378 supplement to the department's annual report required under s.
379 20.60. This supplemental report must include:

380 1. A status report on all projects currently being financed
381 through the corporation, the number of projects financed
382 pursuant to this section, the dollar amount of financing
383 provided to such projects, and the names of the recipients; and

384 2. Information as to the economic impact of the projects
385 financed by the corporation.

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

389 Section 2. Paragraph (b) of subsection (10) of section
390 20.60, Florida Statutes, is amended to read

391 20.60 Department of Economic Opportunity; creation; powers
392 and duties.—

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

398 (b) The report must incorporate annual reports of other
399 programs, including:

400 1. Information provided by the Department of Revenue under
401 s. 290.014.

402 2. Information provided by enterprise zone development
403 agencies under s. 290.0056 and an analysis of the activities and
404 accomplishments of each enterprise zone.

405 3. The Economic Gardening Business Loan Pilot Program
406 established under s. 288.1081 and the Economic Gardening

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407 Technical Assistance Pilot Program established under s.
408 288.1082.

409 4. A detailed report of the performance of the Black
410 Business Loan Program and a cumulative summary of quarterly
411 report data required under s. 288.714.

412 5. The Rural Economic Development Initiative established
413 under s. 288.0656.

414 6. The Florida Unique Abilities Partner Program.

415 7. The Florida Motion Picture Capital Corporation
416 established under s. 288.1259.

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