A bill to be entitled

An act relating to Florida's digital economy; creating s. 288.127, F.S.; defining terms; providing a purpose; creating the Qualified Television Loan Fund; requiring the Department of Economic Opportunity to contract with a fund administrator; providing fund administrator qualifications; providing for the fund administrator's compensation and removal; specifying the fund administrator powers and duties; providing the structure of the loans; providing qualified television content criteria; requiring the Auditor General to conduct an operational audit of the fund and the fund administrator; authorizing the department to adopt rules; providing for expiration of the act; providing emergency rulemaking authority; providing an effective date.

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

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

288.127 Qualified Television Loan Fund (QTV Fund).—

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

(a) "Fund administrator" means a private sector organization under contract with the department to manage and administer the QTV Fund.

(b) "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.

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

(d) "Qualified lending partner" means a financial institution, as defined in s. 655.005, selected by a fund administrator with 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, with a combined portfolio in film, television, and entertainment media of at least $500 million.

(e) "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 broadcast license agreement. The term does not include a production that contains content that is obscene, as defined in s. 847.001.

(2) PURPOSE.—The purpose of the QTV Fund is to create a public-private partnership in the form of an evergreen fund to administer a loan program for television production. The QTV Fund shall be privately managed under state oversight to

incentivize the use of this state as a site for producing qualified television content and to develop and sustain the workforce and infrastructure for television content production.

(3) CREATION.—The Qualified Television Loan Fund is created within the department. The QTV Fund shall be a public fund that is privately managed by the fund administrator under contract entered into with the department. The department shall disburse $20 million from the Economic Development Trust Fund to the fund administrator to invest in the QTV Fund during the existence of the program pursuant to this section and the contract entered into between the fund administrator and the department. State funds in the QTV Fund may be used only to enter into loan agreements and to pay any administrative costs or other authorized fees under this section.

(a) The QTV Fund shall be an evergreen fund that shall invest and reinvest the principal and interest of the fund in accordance with s. 617.2104, in such a manner as to not subject the funds to state or federal taxes and to be consistent with the investment policy statement adopted by the fund administrator. As the production companies repay the principal and interest for the QTV Fund, the state funds shall be returned, less any QTV Fund expenses, to the account to be lent to subsequent borrowers.

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

(4) FUND ADMINISTRATOR.—

(a) The department shall contract with a fund administrator by July 1, 2014, and award the contract in accordance with the competitive bidding requirements in s. 287.057.

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

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

2. The ability to demonstrate through a partnership agreement that a qualified lending partner is in place, with the capability 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.

(c) For overseeing and administering the QTV Fund, the fund administrator shall be paid an annual management fee equal to 5 percent of the loans under management during the first 5 years and 3 percent of the loans under management after the fifth year and for the remaining duration of the contract.

However, after the first year of the QTV Fund, the annual management fee may not exceed the investment proceeds earned from its completed investments. The annual management fee shall be paid from state funds in the QTV Fund and shall be paid in advance, in equal quarterly installments. Any additional private investment capital in the segregated accounts is responsible for its own management fees. In addition, the fund administrator may receive income or profit distribution equal to 20 percent of the net income of the QTV Fund on an annual basis. Such distribution may not be made from any principal funds from the original appropriation.

(d) The fund administrator shall provide services defined under this section for the duration of the QTV Fund term unless removed for cause. Cause shall be further defined under the contract with the fund administrator and must include, but is not limited to, the engagement in fraud or other criminal acts by board members, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance.

(5) FUND ADMINISTRATOR POWERS AND DUTIES.—

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

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

1. Shall prudently manage the funds in the QTV Fund as an evergreen fund.

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

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

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

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

6. Shall agree to maintain the recipient's books and records relating to funds received from the department according

to generally accepted accounting principles and in accordance with the requirements of s. 215.97(7) and to make those books and records available to the department for inspection upon reasonable notice. The books and records must be maintained with detailed records showing the use of proceeds from loans to fund qualified television content.

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

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

(d) *Program reporting.*—The fund administrator shall submit an annual report to the department by February 28 after the end of each year in which the fund administrator is under contract with the department. The report must include information on the loans made in the preceding calendar year and must include, but need not be limited to, the following:

1. The name of the qualified television content.

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

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

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

5. The loan repayment status for each loan.

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

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

8. A description of the assets securing the loans.

9. Other information and documentation required by the department.

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

(f) *Conflict-of-interest statement.*—The fund administrator shall provide a conflict-of-interest statement from its governing board certifying that no board member, director, employee, agent, or other 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. The department may waive this requirement for good cause shown.

(6) LOAN STRUCTURE.—

(a) The QTV Fund may 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 that meets the criteria requirements of subsection (7). To make a loan, the fund administrator shall take into consideration the types of eligible collateral, the credit worthiness of the project, the producer's track record, the possibility that the project will encourage, enhance, or create economic benefits, and the extent to which assistance would foster innovative public-private partnerships and attract private debt or equity investment.

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

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

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

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

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

(g) With the exception of funds appropriated to the loan program by the Legislature, the credit of the state may not be pledged. The state is not liable or obligated in any way for claims on the loan program or against the lender or the department.

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

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

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

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

(d) 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 60 percent of the budget.

(e) 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.

(f) The project must be bonded and secured by an industry-approved completion guarantor if the production cost per episode exceeds $1 million. This requirement may be waived if the loan applicant provides the fund administrator with evidence of adequate structure to protect the state's funds.

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

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

(10) EXPIRATION.—This section expires December 31, 2024, at which point all funds remaining in the QTV Fund shall revert to the General Revenue Fund.

(11) EMERGENCY RULES.—

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

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

(c) This subsection expires October 1, 2015.

Section 2. This act shall take effect upon becoming a law.