

Council Substitute for
Council Substitute for House Bill No. 1325

An act relating to the entertainment industry; amending s. 288.1254, F.S.; revising the entertainment industry financial incentive program; providing purpose of the program; providing for submittal and approval of an application under the program; providing for review by the Office of Film and Entertainment and the Office of Tourism, Trade, and Economic Development; providing standards for review; providing for verification of which expenditures concerning an entertainment production qualify for incentive funding under the program; requiring inclusion of marketing materials promoting this state as a condition of receiving incentive funding; establishing queues; specifying requirements concerning each queue; authorizing the Office of Tourism, Trade, and Economic Development to adopt rules, policies, and procedures; requiring an annual report to the Governor and the Legislature; creating a penalty for fraudulent applications and claims; providing an appropriation; repealing s. 288.1255, F.S., relating to obsolete provisions for an annual appropriation; providing for severability; providing an effective date.

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

Section 1. This act may be cited as the “Don Davis Entertainment Industry Economic Development Act.”

Section 2. Section 288.1254, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 288.1254, F.S., for present text.)

288.1254 Entertainment industry financial incentive program.—

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

(a) “Certified production” means a qualified production that has incentive funds allocated to it by the Office of Tourism, Trade, and Economic Development based on its estimated qualified expenditures. The term excludes a production if its first day of principal photography in this state occurred before the production is certified by the Office of Tourism, Trade, and Economic Development, unless the production spans more than 1 fiscal year, was a certified production on the first day of such photography, and is required to submit an application for continuing the same production in the subsequent year.

(b) “Digital media project” means a production of interactive entertainment which is produced for distribution in commercial or educational markets, including a video game, simulation, or animation, or a production intended for Internet or wireless distribution. The term excludes a production deemed by the Office of Film and Entertainment to contain obscene content as defined in s. 847.001(10).

(c) “High-impact television series” means a production created to run multiple production seasons having an estimated order of at least seven episodes per season and qualified expenditures of at least \$625,000 per episode.

(d) “Off-season certified production” means a production, other than a digital media project or an animated production, which films 75 percent or more of its principal photography days from June 1 through November 30.

(e) “Production” means a theatrical or direct-to-video motion picture, a made-for-television motion picture, a commercial, a music video, an industrial or educational film, an infomercial, a documentary film, a television pilot program, a presentation for a television pilot program, a television series, including, but not limited to, a drama, a reality show, a comedy, a soap opera, a telenovela, a game show, a miniseries production, or a digital media project by the entertainment industry. One season of a television series is considered one production. The term excludes a weather or market program, a sporting event, a sports show, a gala, a production that solicits funds, a home shopping program, a political program, a political documentary, political advertising, a gambling-related project or production, a concert production, a pornographic production, or a local, regional, or Internet-distributed-only news show, current-events show, a pornographic production, or a current-affairs show. A production may be produced on or by film, tape, or otherwise by means of a motion picture camera, electronic camera or device, tape device, computer, any combination of the foregoing, or any other means, method, or device now used or later adopted.

(f) “Production expenditures” means the costs of tangible and intangible property used and services performed primarily and customarily in the production, including preproduction and postproduction, excluding costs for development, marketing, and distribution. Production expenditures include, but are not limited to:

1. Wages, salaries, or other compensation, including amounts paid through payroll service companies, for technical and production crews, directors, producers, and performers.

2. Expenditures for sound stages, backlots, production editing, digital effects, sound recordings, sets, and set construction.

3. Expenditures for rental equipment, including, but not limited to, cameras and grip or electrical equipment.

4. Expenditures for meals, travel, and accommodations.

(g) “Qualified expenditures” means production expenditures incurred in this state by a qualified production for:

1. Goods purchased or leased from, or services provided by, a vendor or supplier in this state which is registered with the Department of State or the Department of Revenue and doing business in this state.

2. Payments to residents of this state in the form of salary, wages, or other compensation up to a maximum of \$400,000 per resident for the

general production queue and the independent Florida filmmaker queue and up to a maximum of \$200,000 for the digital media queue.

For a qualified production involving an event, such as an awards show, the term excludes expenditures solely associated with the event itself and not directly required by the production. The term excludes expenditures prior to certification, with the exception of those incurred for a commercial, a music video, or the pickup of additional episodes of a television series within a single season.

(h) “Qualified production” means a production in this state meeting the requirements of this section and the minimum qualified expenditures and requirements of its appropriate queue. The term excludes a production:

1. In which less than 50 percent of the positions that make up its production cast and below-the-line production crew are filled by residents of this state, whose residency is demonstrated by a valid Florida driver’s license or other state-issued identification confirming residency, or students enrolled full-time in a film-and-entertainment-related course of study at an institution of higher education in this state; or

2. That is deemed by the Office of Film and Entertainment to contain obscene content as defined in s. 847.001(10).

(i) “Qualified production company” means a corporation, limited liability company, partnership, or other legal entity engaged in producing a qualified production.

(2) CREATION AND PURPOSE OF PROGRAM.—The entertainment industry financial incentive program is created within the Office of Film and Entertainment. The purpose of this program is to encourage the use of this state as a site for filming and to develop and sustain the workforce and infrastructure for film and entertainment production.

(3) APPLICATION PROCEDURE; APPROVAL PROCESS.—

(a) A qualified production company in this state producing a qualified production may submit a program application to the Office of Film and Entertainment for the purpose of determining certification. The applicant shall provide the office 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 certification.

(b) The Office of Film and Entertainment shall develop an application form for use in qualifying an applicant as a qualified production. The form must include, but need not be limited to, production-related information concerning employment of residents in this state, a detailed budget of planned qualified expenditures, and the applicant’s signed affirmation that the information on the form has been verified and is correct. The Office of Film and Entertainment and local film commissions shall distribute the form.

(c) The Office of Film and Entertainment shall establish a process by which an application is accepted and reviewed for certification. The office may request assistance from a duly appointed local film commission in determining compliance with this section.

(d) The Office of Film and Entertainment shall review the application within 10 business days after receipt. Upon its determination that the application contains all the information required by this subsection and meets the criteria set out in this section, the office shall qualify the applicant and recommend to the Office of Tourism, Trade, and Economic Development that the applicant be certified for a maximum amount of available funds. Within 5 business days after receipt of the recommendation, the Office of Tourism, Trade, and Economic Development shall reject the recommendation or certify the applicant.

(e) The Office of Film and Entertainment shall deny an application if it determines that the application is not complete or the production does not meet the requirements of this section.

(f) The Office of Film and Entertainment shall develop a process to verify the actual qualified expenditures of a certified production. The process must require:

1. A certified production to submit, in a timely manner after production ends and after making all of its qualified expenditures, data substantiating each qualified expenditure to an independent certified public accountant licensed in this state;

2. Such accountant to conduct an audit, at the certified production's expense, to substantiate each qualified expenditure and submit the results as a report, along with all substantiating data, to the Office of Film and Entertainment; and

3. The Office of Film and Entertainment to review the accountant's submittal and report to the Office of Tourism, Trade, and Economic Development the final verified amount of actual qualified expenditures made by the certified production.

4. The Office of Tourism, Trade, and Economic Development shall determine and approve the incentive amount to each certified applicant.

(g) The Office of Film and Entertainment shall ensure that, as a condition of receiving incentive funding under this section, marketing materials promoting this state as a tourist destination or film and entertainment production destination are included, when appropriate, at no cost to the state, which must, at a minimum, include placement in the end credits of a "Filmed in Florida" logo with size and placement commensurate to other logos included in the end credits or, if no logos are used, the statement "Filmed in Florida using Florida's Entertainment Industry Financial Incentive," or a similar statement approved by the Office of Film and Entertainment before such placement. The Office of Film and Entertainment shall develop a "Filmed in Florida" logo and supply it for the purposes specified in this paragraph.

(4) PRIORITY FOR INCENTIVE FUNDING; WITHDRAWAL OF ELIGIBILITY; QUEUES.—

(a) The priority of a qualified production for incentive funding must be determined on a first-come, first-served basis within its appropriate queue. Each qualified production must be placed into the appropriate queue and is subject to the requirements of that queue.

(b) GENERAL PRODUCTION QUEUE.—Eighty-five percent of incentive funding appropriated in any state fiscal year must be dedicated to the general production queue. A production certified under this queue is eligible for a reimbursement equal to 15 percent of its actual qualified expenditures. Within this queue:

1. A qualified production, excluding commercials, music videos, and digital media projects, which demonstrates a minimum of \$625,000 in qualified expenditures is eligible for up to a maximum of \$8 million in incentive funding. A qualified production spanning multiple state fiscal years may combine qualified expenditures from such fiscal years to satisfy the threshold.

2. A qualified production company that produces national, international, or regional commercials, or music videos may be eligible for a maximum of \$500,000 in incentive funding if it demonstrates a minimum of \$100,000 in qualified expenditures per national, international, or regional commercial or music video and exceeds a combined threshold of \$500,000 after combining actual qualified expenditures from qualified commercials and music videos during a single state fiscal year. After a qualified production company that produces commercials, music videos, or both reaches the threshold of \$500,000, it is eligible to apply for certification for incentive funding.

3. An off-season certified production is eligible for an additional 5-percent incentive funding on actual qualified expenditures. An off-season certified production that does not complete 75 percent of principal photography due to disruption caused by a hurricane or tropical storm may not be disqualified from eligibility for the additional 5-percent incentive as a result of the disruption.

4. Each qualified production shall make a good faith effort to use existing providers of infrastructure or equipment in this state, including providers of camera gear, grip and lighting equipment, vehicle providers, and postproduction services when available in-state.

5. A qualified high-impact television series shall be allowed first position in this queue for incentive funding not yet certified.

(c) INDEPENDENT FLORIDA FILMMAKER QUEUE.—Five percent of incentive funding appropriated in any state fiscal year must be dedicated to the independent Florida filmmaker queue. A production certified under this queue is eligible for a reimbursement equal to 15 percent of its actual qualified expenditures. An independent Florida film that meets the criteria of this queue and demonstrates a minimum of \$100,000, but not more than

\$625,000, in total qualified expenditures is eligible for incentive funding. To qualify for this queue, a qualified production must:

1. Be planned as a feature film or documentary of no less than 70 minutes in length.

2. Provide evidence of 50 percent of the financing for its total budget in an escrow account or other form dedicated to the production.

3. Do all major postproduction in this state.

4. Employ Florida workers in at least six of the following key positions: writer, director, producer, director of photography, star or one of the lead actors, unit production manager, editor, or production designer. As used in this subparagraph, the term "Florida worker" means a person who has been a resident of this state for at least 1 year before a production's application under subsection (3) was submitted or a person who graduated from a film school, college, university, or community college in this state no more than 5 years before such submittal or who is enrolled full-time in such a school, college, or university.

(d) DIGITAL MEDIA PRODUCTS QUEUE.—Ten percent of incentive funding appropriated in any state fiscal year shall be dedicated to the digital media projects queue. A production certified under this queue is eligible for a reimbursement equal to 10 percent of its actual qualified expenditures. A qualified production that is a digital media project that demonstrates a minimum of \$300,000 in total qualified expenditures is eligible for a maximum of \$1 million in incentive funding. As used in this paragraph, the term "qualified expenditures" means the wages or salaries paid to a resident of this state for working on a single qualified digital media project, up to a maximum of \$200,000 in wages or salaries paid per resident. A qualified production company producing digital media projects may not qualify for more than three projects in any 1 fiscal year. Projects that extend beyond a fiscal year must reapply each fiscal year in order to be eligible for incentive funding for that year.

(e) Each qualified production or certified production shall continue on a reasonable schedule, which means beginning principal photography in this state no more than 45 calendar days before or after the date provided in the program's application under subsection (3). The Office of Tourism, Trade, and Economic Development shall withdraw the eligibility of a qualified production or a certified production for incentive funding if any such production does not continue on a reasonable schedule.

(f) A certified production determined by the Commissioner of Film and Entertainment, with the advice of the Florida Film and Entertainment Advisory Council, to be family friendly based on the review of the script and an interview with the director is eligible for an additional reimbursement equal to 2 percent of its actual qualified expenditures. Family friendly productions are those that have cross-generational appeal; would be considered suitable for viewing by children age 5 and older; are appropriate in theme, content, and language for a broad family audience; embody a responsible

resolution of issues; and do not exhibit any act of smoking, sex, nudity, or vulgar or profane language.

(5) RULES, POLICIES, AND PROCEDURES.—The Office of Tourism, Trade, and Economic Development may adopt rules under ss. 120.536(1) and 120.54 and develop policies and procedures to administer this section, including, but not limited to, rules specifying requirements for the application and approval process.

(6) ANNUAL REPORT.—Each October 1, the Office of Film and Entertainment shall provide an annual report for the previous fiscal year to the Governor, the President of the Senate, and the Speaker of the House of Representatives which outlines the return on investment and economic benefits to the state.

(7) FRAUD.—Any applicant that submits information under this section that includes fraudulent information is liable for reimbursement of the reasonable costs and fees associated with the review, processing, investigation, and prosecution of the fraudulent claim. An applicant that obtains an incentive payment under this section through a claim that is fraudulent is liable for reimbursement of the incentive payment plus a penalty in an amount double the incentive payment. The penalty is in addition to any criminal penalty to which the applicant is liable for the same acts. The applicant is also liable for costs and fees incurred by the state in investigating and prosecuting the fraudulent claim.

Section 3. For the 2007-2008 fiscal year, the sum of \$25 million is appropriated from the General Revenue Fund on a nonrecurring basis to the Office of Tourism, Trade, and Economic Development for the Office of Film and Entertainment for purposes of implementing s. 288.1254, Florida Statutes. Notwithstanding s. 216.301, Florida Statutes, to the contrary, the unexpended balance of this appropriation shall not revert until June 30, 2009.

Section 4. Section 288.1255, Florida Statutes, is repealed.

Section 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 6. This act shall take effect July 1, 2007.

Approved by the Governor June 12, 2007.

Filed in Office Secretary of State June 12, 2007.