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SENATE DRS35057-MC-54B* (02/05)

Short Title: Modify Film Grant Fund.

(Public)

Sponsors: Senators Lee and Rabon (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE FILM AND ENTERTAINMENT GRANT FUND.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. G.S. 143B-437.02A reads as rewritten:
5 "§ 143B-437.02A. The Film and Entertainment Grant Fund.

6 (a) Creation and Purpose of Fund. – There is created in the Department of Commerce a
7 special, nonreverting account to be known as the Film and Entertainment Grant Fund to
8 provide funds to encourage the production of motion pictures, television shows, and
9 commercials and to develop the filmmaking industry within the State. The Department of
10 Commerce shall adopt guidelines providing for the administration of the program. Those
11 guidelines may provide for the Secretary to award the grant proceeds over a period of time, not
12 to exceed three years. Those guidelines shall include the following provisions, which shall
13 apply to each grant from the account:

- 14 (1) The funds are reserved for a production on which the production company
15 has qualifying expenses of at least the following:
16 a. For a feature-length film, ~~five~~ one million dollars
17 ~~(\$5,000,000)~~ (\$1,000,000).
18 b. For a video or television series, ~~two hundred fifty thousand~~ dollars
19 ~~(\$250,000)~~ one million dollars (\$1,000,000) per episode.
20 c. For a commercial for theatrical or television viewing, two hundred
21 fifty thousand dollars (\$250,000).
22 (2) The funds are not used to provide a grant in excess of any of the following:
23 a. An amount more than twenty-five percent (25%) of the qualifying
24 expenses for the production.
25 b. An amount more than ~~five~~ ten million dollars
26 ~~(\$5,000,000)~~ (\$10,000,000) for a feature-length ~~film~~ film for
27 theatrical viewing, more than ~~five~~ two million dollars
28 ~~(\$5,000,000)~~ (\$2,000,000) for a feature-length film for television
29 viewing or a television or video pilot or episode for a television or
30 video series, or two hundred fifty thousand dollars (\$250,000) for a
31 commercial for theatrical or television viewing.
32 (3) The funds are not used to provide a grant to more than one production
33 company for a single production.
34 (4) The funds are not used to provide a grant for a production that meets one or
35 more of the following:



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- 1 a. It contains material that is "obscene," as defined in ~~G.S. 14-190.1, or~~
2 ~~that is "harmful to minors," as defined in~~
3 ~~G.S. 14-190.13.~~ G.S. 14-190.1.
- 4 b. It has the primary purpose of political advertising, fundraising, or
5 marketing, other than by commercial, a product, or service.
- 6 c. News programming, including weather, financial market, and current
7 events reporting.
- 8 d. Live sporting event programming, including pre-event and post-event
9 coverage and scripted sports entertainment. For purposes of this
10 exception, a live sporting event is a scheduled sporting competition,
11 game, or race that is originated solely by an amateur, collegiate, or
12 professional organization, institution, or association for live or
13 tape-delayed television or satellite broadcast. The term does not
14 include commercial advertising, an episodic television series, a
15 television pilot, a music video, a motion picture, or a documentary
16 production in which sporting events are presented through archived
17 historical footage or similar footage taken at least 30 days before it is
18 used.
- 19 e. Radio productions.
- 20 f. It is a talk, game, or awards show or other gala event. For purposes
21 of this exception, an awards show is television programming
22 involving the filming of a ceremony in which individuals, groups, or
23 organizations are given an award.
- 24 g. It fails to contain, in the end credits of the production, a statement
25 that the production was "Filmed in North Carolina," a logo provided
26 by the North Carolina Film Office, and an acknowledgement of the
27 regional film office responsible for the geographic area in which the
28 filming of the production occurred. Additionally, the production
29 company will offer marketing opportunities to be evaluated by the
30 North Carolina Film Office to ensure that they offer promotional
31 value to the State.
- 32 (5) Priority for the use of funds shall be given to productions that are reasonably
33 anticipated to maximize the benefit to the State, in consideration of at least
34 the following factors:
- 35 a. Percentage of employees that are permanent residents in the State.
- 36 b. The extent to which the production features identifiable attractions or
37 State locales in a manner that would be reasonably expected to
38 induce visitation by nonresidents of the State to the attraction or
39 locale.
- 40 c. The extent to which the production invests in permanent
41 improvements to open public spaces, commercial districts, traditional
42 downtown areas, public landmarks, residential areas, or similar
43 properties or areas.
- 44 d. The extent to which the production will be filmed in an economically
45 distressed county or area of the State.
- 46 e. The duration of production activities in the State.
- 47 (b) Definitions. – The following definitions apply in this section:
- 48 (1) Department. – The Department of Commerce.
- 49 (2) ~~Employee. – A person who is employed for consideration for at least 35~~
50 ~~hours a week and whose wages are subject to withholding under Article 4A~~
51 ~~of Chapter 105 of the General Statutes.~~

- 1 (3) Highly compensated individual. – An individual who directly or indirectly
2 receives compensation in excess of one million dollars (\$1,000,000) for
3 personal services with respect to a single production. An individual receives
4 compensation indirectly when a production company pays a personal service
5 company or an employee leasing company that pays the individual.
- 6 (4) Loan-out company. – A personal service corporation that employs an
7 individual who is hired by a film or digital media production company.
- 8 (5) Production. – Any of the following:
9 a. A motion picture intended for commercial distribution to a motion
10 picture theater or directly to the consumer viewing market that has a
11 running time of at least 75 minutes.
12 b. A video or television series or a commercial for theatrical or
13 television ~~viewing-viewing, including access through cable~~
14 television, broadcast television, digital video discs, and online
15 sources. For video and television series, a production is ~~all of the~~
16 ~~episodes each episode~~ of the series produced for a single season.
- 17 (6) Production company. – Defined in G.S. 105-164.3.
- 18 (7) Qualifying expenses. – The sum of the amounts listed in this subdivision,
19 substantiated pursuant to subsection (d) of this section, and spent in this
20 State by a production company in connection with a production, less the
21 amount paid in excess of one million dollars (\$1,000,000) to a highly
22 compensated individual:
23 a. Goods and services leased or purchased. For goods with a purchase
24 price of twenty-five thousand dollars (\$25,000) or more, the amount
25 included in qualifying expenses is the purchase price less the fair
26 market value of the good at the time the production is completed.
27 Goods and services includes the costs of tangible and intangible
28 property used for, and services performed primarily and customarily
29 in, production, including preproduction and postproduction and other
30 direct costs of producing the project in accordance with generally
31 accepted entertainment industry practices. Goods and services
32 exclude costs for development, marketing, and distribution; costs of
33 financing for the production, of bonding related to the production, of
34 production-related insurance coverage obtained on the production;
35 and expenses for insurance coverage purchased from a related
36 member.
37 b. Compensation and wages and payments on which withholding
38 payments are remitted to the Department of Revenue under Article
39 4A of Chapter 105 of the General Statutes. Payments made to a
40 loan-out company for services provided in North Carolina shall be
41 subject to gross income tax withholding at the applicable rate under
42 ~~the~~ Article 4 of Chapter 105 of the General Statutes.
43 c. Employee fringe contributions, including health, pension, and
44 welfare contributions.
45 d. Per diems, stipends, and living allowances paid for work being
46 performed in this State.
- 47 (8) Related member. – Defined in G.S. 105-130.7A.
- 48 (9) Secretary. – The Secretary of Commerce.
- 49 (c) Application. – A production company shall apply, under oath, to the Secretary for a
50 grant on a form prescribed by the Secretary. The Secretary shall evaluate the applications to
51 ensure the production's content is created for entertainment purposes. The application shall

1 include all documentation and information the Secretary deems necessary to evaluate the grant
2 application.

3 (c1) Agreement. – The Secretary of Commerce may enter into an agreement to provide
4 funds from the Film and Entertainment Grant Fund to a production company pursuant to this
5 section. The term of the agreement may not exceed five years. An agreement under this
6 subsection is a binding obligation of the State and is not subject to State funds being
7 appropriated by the General Assembly.

8 (d) Substantiation. – The Secretary shall work with the North Carolina Film Office to
9 adopt guidelines to provide a process to verify the actual qualifying expenses of a certified
10 production. The Secretary may not release grant funds until the substantiation process required
11 by this subsection is complete and the final verified amount of qualified expenses is
12 determined. The process shall require each of the following:

13 (1) The production company shall submit all the qualifying expenses for the
14 production and data substantiating the qualifying expenses, including
15 documentation on the net expenditure on equipment and other tangible
16 personal property to an independent certified public accountant licensed in
17 this State.

18 (2) The accountant shall conduct a compliance audit, at the certified
19 production's expense, pursuant to guidelines established by the Secretary and
20 submit the results as a report, along with the required substantiating data, to
21 the production company and the North Carolina Film Office.

22 (3) The North Carolina Film Office shall review the report and advise the
23 Department on the final verified amount of qualifying expenses made by the
24 certified production.

25 (e) Report. – The Department shall provide to the Department of Revenue, and the
26 Department of Revenue must include in the economic incentives report required by
27 G.S. 105-256, the following information, itemized by production company:

28 (1) The location of sites used in a production for which a grant was awarded.

29 (2) The qualifying expenses, classified by whether the expenses were for goods,
30 services, or compensation paid by the production company.

31 (3) The number of people employed in the State with respect to grants awarded,
32 including the number of residents of the State employed.

33 (4) The total cost of the grants awarded.

34 (f) NC Film Office. – To claim a grant under this section, a production company must
35 notify the Division of Tourism, Film, and Sports Development in the Department of Commerce
36 of its intent to apply for a grant. The notification must include the title of the production, the
37 name of the production company, a financial contact for the production company, the proposed
38 dates on which the production company plans to begin filming the production, and any other
39 information required by the Division.

40 (g) Guidelines. – The Department of Commerce shall develop guidelines related to the
41 administration of the Film and Entertainment Grant Fund and to the selection of productions
42 that will receive grants from the Fund. At least 20 days before the effective date of any
43 guidelines or nontechnical amendments to the guidelines, the Department of Commerce shall
44 publish the proposed guidelines on the Department's Web site and provide notice to persons
45 who have requested notice of proposed guidelines. In addition, the Department must accept oral
46 and written comments on the proposed guidelines during the 15 business days beginning on the
47 first day that the Department has completed these notifications."

48 **SECTION 2.** There is appropriated from the General Fund to the Film and
49 Entertainment Grant Fund established pursuant to G.S. 143B-437.02A the sum of sixty-six
50 million dollars (\$66,000,000) in recurring funds for the 2015-2016 fiscal year for use consistent
51 with the purposes of that Fund.

1 **SECTION 3.** This act becomes effective July 1, 2015, and applies to grants made
2 on or after that date.