

ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 744

AMENDMENT NO. **A32**
(to be filled in by
Principal Clerk)

S744-AMC-95 [v.4]

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Comm. Sub. [NO]
Amends Title [NO]
Fifth Edition

Date _____, 2014

Representative _____

1 moves to amend the bill on page 279, line 37, by adding immediately after the line the
2 following language to read:

3 **"THE FILM AND ENTERTAINMENT GRANT FUND**

4 **SECTION 37.8.(a)** Article 10 of Chapter 143B of the General Statutes is amended
5 by adding a new section to read:

6 **"§ 143B-437.02A. The Film and Entertainment Grant Fund.**

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

15 (1) The funds are reserved for a production on which the production company
16 has qualifying expenses of at least the following:

17 a. For a feature-length film, ten million dollars (\$10,000,000).

18 b. For a video or television production, one million dollars (\$1,000,000)
19 per episode.

20 c. For a commercial for theatrical or television viewing, five hundred
21 thousand dollars (\$500,000).

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 million dollars (\$5,000,000) for a
26 feature-length film, more than five million dollars (\$5,000,000) for a
27 single episode of a television or video production, or two hundred
28 fifty thousand dollars (\$250,000) for a commercial for theatrical or
29 television viewing.

30 (3) The funds are not used to provide a grant to more than one production
31 company for a single production.



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- (4) The funds are not used to provide a grant for a production that meets one or more of the following:
- a. It contains material that is obscene, as defined in G.S. 14-190.1.
 - b. It has the primary purpose of political advertising, fundraising, or marketing, other than by commercial, a product, or service.
 - c. News programming, including weather, financial market, and current events reporting.
 - d. Live sporting event programming, including pre-event and post-event coverage and scripted sports entertainment. For purposes of this exception, a live sporting event is a scheduled sporting competition, game, or race that is originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. The term does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production in which sporting events are presented through archived historical footage or similar footage taken at least 30 days before it is used.
 - e. Radio productions.
 - f. It is a talk, game, or awards show or other gala event. For purposes of this exception, an awards show is television programming involving the filming of a ceremony in which individuals, groups, or organizations are given an award.
 - g. It fails to contain, in the end credits of the production, a statement that the production was "Filmed in North Carolina," a logo provided by the North Carolina Film Office, and an acknowledgement of the regional film office responsible for the geographic area in which the filming of the production occurred. Additionally, the production company will offer marketing opportunities to be evaluated by the North Carolina Film Office to ensure that they offer promotional value to the State.
- (5) Priority for the use of funds shall be given to productions that, based on results of an economic impact assessment conducted by the Labor and Economic Analysis Division, are reasonably anticipated to maximize the economic benefits accruing to the State. The assessment shall include consideration of at least the following factors:
- a. Percentage of employees that are permanent residents in the State.
 - b. The extent to which the production features identifiable attractions or State locales in a manner that would be reasonably expected to induce visitation by nonresidents of the State to the attraction or locale.
 - c. The extent to which the production invests in permanent improvements to open, public spaces, commercial districts,

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1 traditional downtown areas, public landmarks, residential areas, or
2 similar properties or areas.

3 d. The extent to which the production will be filmed in an economically
4 distressed county or area of the State.

5 e. The duration of production activities in the State.

6 (b) Definitions. – The following definitions apply in this section:

7 (1) Department. – The Department of Commerce.

8 (2) Employee. – A person who is employed for consideration for at least 35
9 hours a week and whose wages are subject to withholding under Article 4A
10 of Chapter 105 of the General Statutes.

11 (3) Highly compensated individual. – An individual who directly or indirectly
12 receives compensation in excess of one million dollars (\$1,000,000) for
13 personal services with respect to a single production. An individual receives
14 compensation indirectly when a production company pays a personal service
15 company or an employee leasing company that pays the individual.

16 (4) Loan out company. – A personal service corporation that employs an
17 individual who is hired by a film or digital media production company.

18 (5) Production. – Any of the following:

19 a. A motion picture intended for commercial distribution to a motion
20 picture theater or directly to the consumer viewing market that has a
21 running time of at least 75 minutes.

22 b. A video or television production or a commercial for theatrical or
23 television viewing. For a television series or any other production
24 intended to be shown in two or more episodes, the applicant may
25 elect to treat each episode as a separate production or to treat two or
26 more episodes as a single production for all purposes of this section.
27 A single application may be filed for two or more production,
28 provided that the application clearly describes each separate
29 production.

30 (6) Production company. – Defined in G.S. 105-164.3.

31 (7) Qualifying expenses. – The sum of the amounts listed in the sub-subdivision
32 of this subdivision substantiated pursuant to subsection (d) of this section
33 and spent in this State by a production company in connection with a
34 production, less the amount paid in excess of one million dollars
35 (\$1,000,000) to a highly compensated individual. The term does not include
36 the cost of financing for the production, bonding related to the production,
37 production-related insurance coverage obtained on the production, or
38 expenses for insurance coverage purchased from a related member.

39 a. Goods and services leased or purchased. For goods with a purchase
40 price of twenty-five thousand dollars (\$25,000) or more, the amount
41 included in qualifying expenses is the purchase price less the fair
42 market value of the good at the time the production is completed.
43 Goods and services includes the costs of tangible and intangible

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property used for, and services performed primarily and customarily in, production, including preproduction and postproduction and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. Goods and services exclude costs for development, marketing, and distribution.

b. Compensation and wages and payments on which withholding payments are remitted to the Department of Revenue under Article 4A of Chapter 105 of the General Statutes. Payments made to a loan out company for services provided in North Carolina shall be subject to gross income tax withholding at the applicable rate under the Article 4 of Chapter 105 of the General Statutes.

c. Employee fringe contributions, including health, pension, and welfare contributions.

d. Per diems, stipends, and living allowances paid for work being performed in this State.

(8) Related member. – Defined in G.S. 105-130.7A.

(9) Secretary – The Secretary of Commerce

(c) Application. – A production company shall apply, under oath, to the Secretary for a grant on a form prescribed by the Secretary. The Secretary shall evaluate the applications to ensure the production's content is created for entertainment purposes. The application shall include all documentation and information the Secretary deems necessary to evaluate the grant application.

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

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

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

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

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

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

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

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

(4) The total cost of the grants awarded.

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

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

SECTION 37.8.(b) G.S. 150B-1(d) is amended by adding a new subdivision to read:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

...

(18) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Job Maintenance and Capital Development Fund under G.S. 143B-437.012.

(18a) The Department of Commerce in administering the Film and Entertainment Grant Fund under G.S. 143B-437.02A.

...."

SECTION 37.8.(c) Notwithstanding anything in this act or in the N.C. House of Representatives Appropriations Committee Report on the Continuation, Expansion, and Capital Budgets for Senate Bill 744, dated June 11, 2014 to the contrary, the reduction for the Management Flexibility Reserve for the Department of Commerce shall be five dollars (\$5.00) greater than the amount in the Report, and five dollars (\$5.00) shall be used for grants for the Film and Entertainment Grant Fund created by this section.

SECTION 37.8.(d) This Part becomes effective January 1, 2015, and expires July 1, 2020. The Secretary shall not award a grant for any qualifying expenses for which a taxpayer receives a tax credit under G.S. 105-130.47 or G.S. 105-151.29."

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SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

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