

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH30348-MC-158 (04/03)

Short Title: Film Grants for NC Productions and Festivals. (Public)

Sponsors: Representatives Belk, White, Brockman, and Black (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, movies for
9 television, productions intended for on-line distribution, and commercials and to develop the
10 filmmaking industry within the State. The Department of Commerce shall adopt guidelines
11 providing for the administration of the program. Those guidelines may provide for the
12 Secretary to award the grant proceeds over a period of time, not to exceed three years. Those
13 guidelines shall include the following provisions, which shall apply to each grant from the
14 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, five million dollars (\$5,000,000).
18 b. For a television series, one million dollars (\$1,000,000) per episode.
19 c. For a commercial for theatrical or television viewing or on-line
20 distribution, two hundred fifty thousand dollars (\$250,000).
21 (2) The funds are not used to provide a grant in excess of any of the following:
22 a. An amount more than twenty-five percent (25%) of the qualifying
23 expenses for the production.
24 b. An amount more than five million dollars (\$5,000,000) for a
25 feature-length film, more than nine million dollars (\$9,000,000) for a
26 single season of a television series, or two hundred fifty thousand
27 dollars (\$250,000) for a commercial for theatrical or television
28 viewing or on-line distribution.
29 (3) The funds are not used to provide a grant to more than one production
30 company for a single production.
31 (4) The funds are not used to provide a grant for a production that meets one or
32 more of the following:
33 a. It contains material that is "obscene," as defined in G.S. 14-190.1, or
34 that is "harmful to minors," as defined in G.S. 14-190.13.
35 b. It has the primary purpose of political advertising, fundraising, or
36 marketing, other than by commercial, a product, or service.



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- 1 c. News programming, including weather, financial market, and current
2 events reporting.
- 3 d. Live sporting event programming, including pre-event and post-event
4 coverage and scripted sports entertainment. For purposes of this
5 exception, a live sporting event is a scheduled sporting competition,
6 game, or race that is originated solely by an amateur, collegiate, or
7 professional organization, institution, or association for live or
8 tape-delayed television or satellite broadcast. The term does not
9 include commercial advertising, an episodic television series, a
10 television pilot, a music video, a motion picture, or a documentary
11 production in which sporting events are presented through archived
12 historical footage or similar footage taken at least 30 days before it is
13 used.
- 14 e. Radio productions.
- 15 f. It is a talk, game, or awards show or other gala event. For purposes
16 of this exception, an awards show is television programming
17 involving the filming of a ceremony in which individuals, groups, or
18 organizations are given an award.
- 19 g. It fails to contain, in the end credits of the production, a statement
20 that the production was "Filmed in North Carolina," a logo provided
21 by the North Carolina Film Office, and an acknowledgement of the
22 regional film office responsible for the geographic area in which the
23 filming of the production occurred. Additionally, the production
24 company will offer marketing opportunities to be evaluated by the
25 North Carolina Film Office to ensure that they offer promotional
26 value to the State.
- 27 (5) Priority for the use of funds shall be given to productions that are reasonably
28 anticipated to maximize the benefit to the State, in consideration of at least
29 the following factors:
- 30 a. Percentage of employees that are permanent residents in the State.
- 31 b. The extent to which the production features identifiable attractions or
32 State locales in a manner that would be reasonably expected to
33 induce visitation by nonresidents of the State to the attraction or
34 locale.
- 35 c. The extent to which the production invests in permanent
36 improvements to open public spaces, commercial districts, traditional
37 downtown areas, public landmarks, residential areas, or similar
38 properties or areas.
- 39 d. The extent to which the production will be filmed in an economically
40 distressed county or area of the State.
- 41 e. The duration of production activities in the State.
- 42 (b) Definitions. – The following definitions apply in this section:
- 43 (1) Department. – The Department of Commerce.
- 44 (2) Employee. – A person who is employed for consideration and whose wages
45 are subject to withholding under Article 4A of Chapter 105 of the General
46 Statutes.
- 47 (3) Highly compensated individual. – An individual who directly or indirectly
48 receives compensation in excess of one million dollars (\$1,000,000) for
49 personal services with respect to a single production. An individual receives
50 compensation indirectly when a production company pays a personal service
51 company or an employee leasing company that pays the individual.

- 1 (3a) Individual. – A human being.
- 2 (4) Loan-out company. – A personal service corporation that employs an
- 3 individual who is hired by a film or digital media production company.
- 4 (5) Production. – Any of the following:
- 5 a. A motion picture intended for commercial distribution to a motion
- 6 picture theater or directly to the consumer viewing market that has a
- 7 running time of at least 75 minutes.
- 8 b. A television series or a commercial for theatrical or television
- 9 viewing, made-for-television movie, or production intended for
- 10 on-line distribution. For video and television series, a production is
- 11 all of the episodes of the series produced for a single season.
- 12 (6) Production company. – Defined in G.S. 105-164.3.
- 13 (7) Qualifying expenses. – The sum of the amounts listed in this subdivision,
- 14 substantiated pursuant to subsection (d) of this section, and spent in this
- 15 State by a production company in connection with a production, less the
- 16 amount paid in excess of one million dollars (\$1,000,000) to a highly
- 17 compensated individual:
- 18 a. Goods and services leased or purchased. For goods with a purchase
- 19 price of twenty-five thousand dollars (\$25,000) or more, the amount
- 20 included in qualifying expenses is the purchase price less the fair
- 21 market value of the good at the time the production is completed.
- 22 Goods and services includes the costs of tangible and intangible
- 23 property used for, and services performed primarily and customarily
- 24 in, production, including preproduction and postproduction and other
- 25 direct costs of producing the project in accordance with generally
- 26 accepted entertainment industry practices. Goods and services
- 27 exclude costs for development, marketing, and distribution; costs of
- 28 financing for the production, of bonding related to the production, of
- 29 production-related insurance coverage obtained on the production;
- 30 and expenses for insurance coverage purchased from a related
- 31 member.
- 32 b. Compensation and wages and payments on which withholding
- 33 payments are remitted to the Department of Revenue under Article
- 34 4A of Chapter 105 of the General Statutes. Payments made to a
- 35 loan-out company for services provided in North Carolina shall be
- 36 subject to gross income tax withholding at the applicable rate under
- 37 the Article 4 of Chapter 105 of the General Statutes.
- 38 c. Employee fringe contributions, including health, pension, and
- 39 welfare contributions.
- 40 d. Per diems, stipends, and living allowances paid for work being
- 41 performed in this State.
- 42 (8) Related member. – Defined in G.S. 105-130.7A.
- 43 (9) Secretary. – The Secretary of Commerce.
- 44 (c) Application. – A production company shall apply to the Secretary for a grant on a
- 45 form prescribed by the Secretary. The Secretary shall evaluate the applications to ensure the
- 46 production's content is created for entertainment purposes. The application shall include all
- 47 documentation and information the Secretary deems necessary to evaluate the grant application.
- 48 (d) Substantiation. – The Secretary shall work with the North Carolina Film Office to
- 49 adopt guidelines to provide a process to verify the actual qualifying expenses of a certified
- 50 production. The Secretary may not release grant funds until the substantiation process required

1 by this subsection is complete and the final verified amount of qualified expenses is
2 determined. The process shall require each of the following:

- 3 (1) The production company shall submit all the qualifying expenses for the
4 production and data substantiating the qualifying expenses, including
5 documentation on the net expenditure on equipment and other tangible
6 personal property to an independent certified public accountant licensed in
7 this State.
- 8 (2) The accountant shall conduct a compliance audit, at the certified
9 production's expense, pursuant to guidelines established by the Secretary and
10 submit the results as a report, along with the required substantiating data, to
11 the production company and the North Carolina Film Office.
- 12 (3) The North Carolina Film Office shall review the report and advise the
13 Department on the final verified amount of qualifying expenses made by the
14 certified production.

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

- 18 (1) The location of sites used in a production for which a grant was awarded.
- 19 (2) The qualifying expenses, classified by whether the expenses were for goods,
20 services, or compensation paid by the production company.
- 21 (3) The number of people employed in the State with respect to grants awarded,
22 including the number of residents of the State employed.
- 23 (4) The total cost of the grants awarded.

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

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

37 (h) Small Productions. – There is created in the Film and Entertainment Grant Fund a
38 special account, the Small Production Account. The provisions of this section apply to grants
39 from the Small Production Account, with the following modifications:

- 40 (1) Grants from the Small Production Account are available only to individuals
41 who are permanent residents of the State. Provisions of this section directed
42 toward production companies shall, for purposes of application in the Small
43 Production Account, be interpreted as being directed toward individuals.
- 44 (2) The funds are reserved for feature-length films on which the individual has
45 qualifying expenses of at least one hundred thousand dollars (\$100,000) but
46 not more than five hundred thousand dollars (\$500,000).

47 (i) There is created in the Film and Entertainment Grant Fund a special account, the
48 Film Festival Account. Of the unencumbered, unexpended funds in the Film and Entertainment
49 Grant Fund, the sum of five hundred thousand dollars (\$500,000) shall be transferred to the
50 Film Festival Account. Funds in the Film Festival Account do not revert and shall be used for
51 grants for advertising and marketing film festivals held in this State. Grants provided in this

1 subsection shall not exceed the lesser of one hundred thousand dollars (\$100,000) or
2 twenty-five percent (25%) of the advertising and marketing costs incurred for the film festival.
3 For purposes of this section, a "film festival" is an organized, extended presentation of films in
4 one or more cinemas or screening venues in a single city or region held over a period of not
5 more than three days."

6 **SECTION 2.** Of the unencumbered, unexpended funds in the Film and
7 Entertainment Grant Fund, the sum of five million dollars (\$5,000,000) shall be transferred to
8 the Small Production Account to be used for the purposes provided in G.S. 143B-437.02A(h).

9 **SECTION 3.** Of the unencumbered, unexpended funds in the Film and
10 Entertainment Grant Fund, the sum of five hundred thousand dollars (\$500,000) shall be
11 transferred to the Film Festival Account to be used for the purposes provided in
12 G.S. 143B-437.02A(i).

13 **SECTION 4.** This act is effective when it becomes law.