

## **N.C. Gen. Stat. § 143B-437.02A**

Current through Session Laws 2018-145 of the 2018 Regular Session and the 1st, 2nd, and 3rd Extraordinary Sessions of the General Assembly, but not including Session Laws 2018-146 or corrections and changes made to Session Laws 2018-132 through 2018-145 by the Revisor of Statutes, and through Session Laws 2019-3 of the 2019 Regular Session of the General Assembly, but not including corrections and changes made to the 2019 legislation by the Revisor of Statutes.

### **NC - General Statutes of North Carolina Annotated > CHAPTER 143B. EXECUTIVE ORGANIZATION ACT OF 1973 > ARTICLE 10. DEPARTMENT OF COMMERCE > PART 2. ECONOMIC DEVELOPMENT**

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

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

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

**a.**For a feature-length film:

- 1.**Three million dollars (\$ 3,000,000), if for theatrical viewing.
- 2.**One million dollars (\$ 1,000,000), if a movie for television.

**b.**For a television series, one million dollars (\$ 1,000,000) per episode.

**c.**For a commercial for theatrical or television viewing or on-line distribution, two hundred fifty thousand dollars (\$ 250,000).

**(2)**The funds are not used to provide a grant in excess of any of the following:

**a.**An amount more than twenty-five percent (25%) of the qualifying expenses for the production.

**b.**An amount more than seven million dollars (\$ 7,000,000) for a feature-length film, more than twelve million dollars (\$ 12,000,000) for a single season of a television series, or two hundred fifty thousand dollars (\$ 250,000) for a commercial for theatrical or television viewing or on-line distribution.

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

**(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](#), or that is "harmful to minors," as defined in [G.S. 14-190.13](#).

**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 are reasonably anticipated to maximize the benefit to the State, in 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, traditional downtown areas, public landmarks, residential areas, or similar properties or areas.

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

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

**(b) Definitions.** --The following definitions apply in this section:

**(1) Department.** --The Department of Commerce.

**(2) Employee.** --A person who is employed for consideration and whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes.

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

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

**(5) Production.** --Any of the following:

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

**b.**A television series or a commercial for theatrical or television viewing, made-for-television movie, or production intended for on-line distribution. For video and television series, a production is all of the episodes of the series produced for a single season.

**(6) Production company.** --Defined in [G.S. 105-164.3](#).

**(7) Qualifying expenses.** --The sum of the amounts listed in this subdivision, substantiated pursuant to subsection (d) of this section, and spent in this State by a production company in connection with a production, less the amount paid in excess of one million dollars (\$ 1,000,000) to a highly compensated individual:

- a. Goods and services leased or purchased. For goods with a purchase price of twenty-five thousand dollars (\$ 25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed. Goods and services includes the costs of tangible and intangible 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; costs of financing for the production, of bonding related to the production, of production-related insurance coverage obtained on the production; and expenses for insurance coverage purchased from a related member.
- 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 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.
- (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 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 Department.

(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.

## History

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[2014-100, s. 15.14B\(a\)](#); [2015-241, ss. 15.4\(d\)](#), 15.25(a); [2017-212, s. 4.3](#); [2018-5, s. 15.4\(a\)](#).

General Statutes of North Carolina

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