

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 948

Short Title: Film Production Recruitment Stimulus. (Public)

Sponsors: Representatives Owens, Earle, Sherrill, Wright (Primary Sponsors);
Faison, Fisher, Goforth, Jones, Steen, and Wainwright.

Referred to: Finance, if favorable, Appropriations.

March 29, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES IN THE REVENUE LAWS AND ESTABLISH A
GRANT PROGRAM TO STIMULATE FILM PRODUCTION IN THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3 is amended by adding a new subdivision to
read:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

...

(9a) Film or video production equipment. – Items used directly and exclusively in the production of motion picture or television images. The term includes cameras, camera supplies, camera accessories, lighting equipment, cables, wires, generators, motion picture film and video tape stock, cranes, booms, dollies, teleprompters, props, costumes, and building materials used in the production of sets."

SECTION 2. G.S. 105-164.13 is amended by adding a new subdivision to
read:

"§ 105-164.13. Retail sales and use tax.

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

...

(22b) Sales of film or video production equipment to a production company."

SECTION 3. G.S. 105-164.14 is amended by adding a new subsection to
read:

"(k) Production Companies. – A production company is allowed an annual refund of part of the sales taxes it pays under G.S. 105-164.4(a)(3) on the rental of transient

1 accommodations for occupancy by its employees. If an employee of the production
2 company occupies a transient accommodation for a continuous period of more than 30
3 days but less than 90 days, the production company is allowed a refund of the sales tax
4 it paid on the rental for the entire rental period.

5 A request for a refund must be in writing and must include any information and
6 documentation required by the Secretary. A request for a refund is due within six
7 months after the end of the State's fiscal year. Refunds applied for after the due date are
8 barred."

9 **SECTION 4.** Article 7 of Chapter 153A of the General Statutes is amended
10 by adding a new section to read:

11 **"§ 153A-155.1. Refund of occupancy taxes for certain production companies.**

12 Notwithstanding any local act to the contrary, a county that is authorized to levy an
13 occupancy tax must refund to a production company the occupancy tax paid by the
14 company on rentals of certain transient accommodations. A production company's rental
15 of transient accommodations is eligible for a refund under this section if the company is
16 entitled to a refund under G.S. 105-164.14(k) of sales and use tax paid on the rental. The
17 time limitations, application requirements, penalties, and restrictions provided in
18 G.S. 105-164.14(k) apply to refunds to production companies under this section. When
19 a production company applies for a refund of the occupancy tax paid by it, it must
20 attach to its application a copy of the application submitted to the Department of
21 Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same
22 rentals. An applicant for a refund under this subsection must provide any information
23 required by the county to substantiate the claim."

24 **SECTION 5.** Article 9 of Chapter 160A of the General Statutes is amended
25 by adding a new section to read:

26 **"§ 160A-215.2. Refund of occupancy taxes for certain production companies.**

27 Notwithstanding any local act to the contrary, a city that is authorized to levy an
28 occupancy tax must refund to a production company the occupancy tax paid by the
29 company on rentals of certain transient accommodations. A production company's rental
30 of transient accommodations is eligible for a refund under this section if the company is
31 entitled to a refund under G.S. 105-164.14(k) of sales and use tax paid on the rental. The
32 time limitations, application requirements, penalties, and restrictions provided in
33 G.S. 105-164.14(k) apply to refunds to production companies under this section. When
34 a production company applies for a refund of the occupancy tax paid by it, it must
35 attach to its application a copy of the application submitted to the Department of
36 Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same
37 rentals. An applicant for a refund under this subsection must provide any information
38 required by the city to substantiate the claim."

39 **SECTION 6.** G.S. 143B-434.4 is repealed.

40 **SECTION 7.** Article 10 of Chapter 143B is amended by adding a new Part
41 to read:

42 "Part 21. Film NC Fund.

43 **"§ 143B-437.80. Legislative findings and purpose.**

44 The General Assembly finds that:

- 1 (1) It is the policy of the State of North Carolina to stimulate economic
2 activity and to create new jobs for the citizens of the State by
3 encouraging and promoting the growth and expansion of businesses
4 and industries within the State.
- 5 (2) The North Carolina film production industry barely existed in the late
6 1970s.
- 7 (3) Since that time, the North Carolina film production industry has grown
8 to employ thousands of North Carolinians and to support seven studio
9 complexes, hundreds of production service and support companies,
10 and a substantial permanent resident crew base of film professionals,
11 all of which contribute to the economy of the State and are a source of
12 tax revenue for the State and local governments.
- 13 (4) North Carolina, through its film industry, has hosted over 600
14 productions over the past 20 years, is regarded as the country's third
15 largest film-making state behind California and New York, and has
16 hosted productions in at least 75 of North Carolina's 100 counties.
- 17 (5) Because of the nature of the national film production industry, the
18 success and economic viability of North Carolina's film production
19 industry depend in many respects on the State's ability to attract
20 productions originating from other states such as California and New
21 York to undertake production activity in North Carolina utilizing the
22 State's existing film industry infrastructure.
- 23 (6) The national film production industry is a highly creative industry in
24 which decisions to film productions in North Carolina are typically
25 made outside of the State and are frequently based upon factors such
26 as cost of production.
- 27 (7) However, current trends in the industry, including trends in foreign
28 countries such as Canada and trends in the other states, to develop new
29 and creative means to attract, and to cut production costs for, the type
30 of productions that, in the past, have sustained North Carolina's film
31 industry, threaten the viability of the State's investments in its film
32 industry and film production infrastructure.
- 33 (8) Recent changes in the State's economic condition have created a level
34 of economic distress that requires a reevaluation of certain existing
35 State programs, and the enactment and funding of programs such as
36 the Film NC Fund are designed to stimulate new economic activity and
37 to create new jobs and opportunities for employment within the State.
- 38 (9) The enactment, funding, and administration of this program are
39 necessary to stimulate the economy, facilitate economic recovery,
40 create new jobs in North Carolina, and help sustain and preserve the
41 State's investments in the film production industry and will promote
42 the general welfare and confer, as its primary purpose and effect,
43 benefits on citizens throughout the State through the creation of new
44 jobs and opportunities for employment, an enlargement of the overall

1 tax base, an expansion and diversification of the State's industrial base,
2 and an increase in revenue to the State and its political subdivisions, in
3 accord with the policies declared in G.S. 143B-428.

- 4 (10) The purpose of the Film NC Fund is to stimulate economic activity
5 and to create jobs and employment opportunities within the State.

6 **"§ 143B-437.81. Definitions.**

7 The following definitions apply in this Part.

- 8 (1) Committee. – The Film NC Fund Grant Committee established
9 pursuant to G.S. 143B-437.83.
10 (2) Production company. – Defined in G.S. 105-164.3.
11 (3) Related member. – Defined in G.S. 105-130.7A.
12 (4) Total State expenditures. – The sum of the total amount spent in this
13 State for goods and services purchased by the production company in
14 connection with the production and the compensation paid by the
15 production company on which it must withhold estimated personal
16 income tax payments under Article 4A of Chapter 105 of the General
17 Statutes.

18 **"§ 143B-437.82. Film NC Fund Program established.**

19 There is established the Film NC Fund Program to be administered by the
20 Committee. In order to foster job creation and investment in the economy of this State,
21 the Committee may enter into negotiated agreements with production companies to
22 provide grants in accordance with the provisions of this Part. The Committee, in
23 consultation with the Attorney General, shall develop criteria to be used in determining
24 whether the conditions of this section are satisfied and whether the production described
25 in the application is otherwise consistent with the purposes of this Part. Before entering
26 into an agreement, the Committee must find that all the following conditions are met:

- 27 (1) The production will benefit the people of this State by increasing
28 opportunities for employment and by strengthening this State's
29 economy by utilizing or building upon the State's film industry
30 infrastructure.
31 (2) A grant under this Part is necessary for all or part of the production to
32 be undertaken in this State.
33 (3) The total benefits of the production to the State outweigh its costs and
34 render the grant appropriate for the production.
35 (4) The production company's total State expenditures will exceed two
36 hundred fifty thousand dollars (\$250,000).
37 (5) The production does not contain any material that is obscene, as
38 defined in G.S. 14-190.1.

39 **"§ 143B-437.83. Film NC Fund Grant Committee established.**

40 (a) Membership. – The Film NC Fund Grant Committee is established. The
41 Committee consists of the following members:

- 42 (1) The Secretary of Commerce, or the Secretary's designee.
43 (2) The Director of the North Carolina Film Office.
44 (3) The Chair of the North Carolina Film Council.

1 (4) One member appointed by the General Assembly upon the
2 recommendation of the Speaker of the House of Representatives.

3 (5) One member appointed by the General Assembly upon the
4 recommendation of the President Pro Tempore of the Senate.

5 The members of the Committee appointed by the General Assembly may not be
6 members of the General Assembly. The members of the Committee appointed by the
7 General Assembly serve two-year terms that begin upon appointment.

8 (b) Decision Required. – The Committee may act only upon a decision of three
9 of its five members.

10 (c) Conflict of Interest. – It is unlawful for a current or former member of the
11 Committee to, while serving on the Committee or within two years after the end of
12 service on the Committee, provide services for compensation, as an employee,
13 consultant, or otherwise, to any business or a related member of the business that is
14 awarded a grant under this Part while the member is serving on the Committee.
15 Violation of this subsection is a Class 1 misdemeanor. In addition to the penalties
16 imposed under G.S. 15A-1340.23, the court shall also make a finding as to what
17 compensation was received by the defendant for services in violation of this section and
18 shall order the defendant to forfeit that compensation.

19 If a person is convicted under this section, the person shall not provide services for
20 compensation, as an employee, consultant, or otherwise, to any business or a related
21 member of the business that was awarded a grant under this Part while the member was
22 serving on the Committee until two years after the person's conviction under this
23 section.

24 (d) Public Notice. – At least 20 days before the effective date of any criteria or
25 nontechnical amendments to criteria, the Committee must publish the proposed criteria
26 on the Department of Commerce's Web site and provide notice to persons who have
27 requested notice of proposed criteria. In addition, the Committee must accept oral and
28 written comments on the proposed criteria during the 15 business days beginning on the
29 first day that the Committee has completed these notifications. For the purpose of this
30 subsection, a technical amendment is either of the following:

31 (1) An amendment that corrects a spelling or grammatical error.

32 (2) An amendment that makes a clarification based on public comment
33 and could have been anticipated by the public notice that immediately
34 preceded the public comment.

35 (e) Sunshine. – Meetings of the Committee are subject to the open meetings
36 requirements of Article 33C of Chapter 143 of the General Statutes. All documents of
37 the Committee, including applications for grants, are public records governed by
38 Chapter 132 of the General Statutes and any applicable provisions of the General
39 Statutes protecting confidential information.

40 **"§ 143B-437.84. Identification of productions; applications; reports.**

41 (a) Identification of Productions. – The North Carolina Film Council and the
42 regional film commissions shall identify productions in the State that likely satisfy the
43 Program's requirements and shall assist those productions in applying for grants under
44 this Part.

1 (b) Application. – A production company shall apply under oath to the
2 Committee for a grant on a form prescribed by the Committee that includes at least all
3 of the following:

- 4 (1) The name of the production company and the proposed location of the
5 production.
- 6 (2) The names and addresses of the principals or management of the
7 production company.
- 8 (3) The estimated total State expenditures with respect to the production.
- 9 (4) Information concerning other locations, including locations in other
10 states and countries, being considered for the production and the nature
11 of any benefits that would accrue to the production company if the
12 production were to be located in one of those locations.
- 13 (5) Information concerning any other State or local government incentives
14 for which the production company is applying or that it has an
15 expectation of receiving.
- 16 (6) Any other information necessary for the Committee to evaluate the
17 application.

18 (c) Annual Reports. – The Committee shall publish a report on the Film NC Fund
19 on or before April 30 of each year. The report shall include the following:

- 20 (1) A listing of each agreement negotiated and entered into during the
21 preceding calendar year, including the name of the production
22 company, the cost/benefit analysis conducted by the Committee during
23 the application process, a description of the production, and the
24 amount of the grant made under the agreement during that year.
- 25 (2) The number and location of jobs created by productions with respect to
26 which grants were awarded.
- 27 (3) The amount of new income tax revenue received from withholdings
28 related to the productions for which grants were awarded.
- 29 (4) The total State expenditures with respect to productions for which
30 grants were awarded.
- 31 (5) The criteria developed by the Committee, in consultation with the
32 Attorney General, to implement this Part and any changes in those
33 criteria from the previous calendar year.
- 34 (6) The geographic distribution of grants, by number and amount, awarded
35 under this Part.

36 **"§ 143B-437.85. Calculation of grants; factors considered.**

37 The amount of the grant awarded in each case shall be a percentage of the total State
38 expenditures of the production company. The percentage shall be no more than ten
39 percent (10%). The Committee shall determine the percentage used to determine the
40 amount of the grant after considering at least the following factors:

- 41 (1) The number of jobs to be created by the production.
- 42 (2) The expected duration of those jobs.
- 43 (3) The production company's use of existing film industry infrastructure
44 in the State and additions or improvements to that infrastructure.

- 1 (4) The amount of other financial assistance the project will receive from
2 the State or local governments.
3 (5) The importance of the production to the State or locality.
4 (6) The estimated total State expenditures with respect to the production.

5 **"§ 143B-437.86. Agreements required.**

6 A grant agreement between the State and a production company must contain the
7 following provisions:

- 8 (1) A provision specifying the percentage used to determine the amount of
9 a grant under this Part and a cap on the amount of a grant associated
10 with any specific production.
11 (2) A commitment by the production company to have total State
12 expenditures of a specified amount and to provide satisfactory proof of
13 those expenditures to the State.
14 (3) A commitment by the production company to report to the State the
15 total number of jobs with respect to which the production company
16 must withhold estimated personal income tax payments under Article
17 4A of Chapter 105 of the General Statutes and the total amount of
18 those withholdings. Payroll and tax information submitted under this
19 section is tax information subject to G.S. 105-259.
20 (3) A provision allowing the State to inspect all records of the production
21 company that may be used to confirm compliance with the agreement
22 or with the requirements of this Part.
23 (4) A provision establishing the method for determining compliance with
24 the agreement.
25 (5) A provision establishing a schedule for disbursement of funds under
26 the agreement that allows disbursement of funds only after the
27 production is completed.
28 (6) Any other provision the State finds necessary or appropriate given the
29 specific circumstances of the production.

30 **"§ 143B-437.87. Film NC Fund established as a nonreverting account.**

31 The Film NC Fund is established as a special revenue fund in the Department of
32 Commerce. Funds may be disbursed from the Film NC Fund only in accordance with
33 agreements entered into between the State and a production company under this Part."

34 **SECTION 8.** G.S. 105-259(b) is amended by adding a new subdivision to
35 read:

36 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State
37 who has access to tax information in the course of service to or employment by the State
38 may not disclose the information to any other person unless the disclosure is made for
39 one of the following purposes:

- 40 ...
- 41 (32) To provide to the Film NC Fund Grant Committee established
42 pursuant to G.S. 143B-437.83 information necessary to implement
43 Part 21 of Article 10 of Chapter 143B of the General Statutes."

1 **SECTION 9.** There is appropriated from the General Fund to the Film NC
2 Fund the sum of four million dollars (\$4,000,000) for the 2005-2006 fiscal year and the
3 sum of four million dollars (\$4,000,000) for the 2006-2007 fiscal year. It is the intent of
4 the General Assembly that this becomes a recurring appropriation.

5 **SECTION 10.** This act becomes effective July 1, 2005, and applies to sales
6 occurring on or after that date.