

COMMERCE AND TRADE (12 PA.C.S.) - INFRASTRUCTURE AND FACILITIES
IMPROVEMENT PROGRAM APPROVALS AND FILM PRODUCTION GRANT PROGRAM

Act of May 11, 2006, P.L. 167, No. 42

Cl. 12

Session of 2006

No. 2006-42

HB 983

AN ACT

Amending Title 12 (Commerce and Trade) of the Pennsylvania Consolidated Statutes, further providing, in the Infrastructure and Facilities Improvement Program, for approvals; establishing a film production grant program; and repealing provisions of the Tax Reform Code of 1971 relating to film production tax credits.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 3406(b) of Title 12 of the Pennsylvania Consolidated Statutes is amended to read:

§ 3406. Approval.

* * *

(b) Grant approval.--Upon receipt of the notification required in subsection (a), the department may approve the application and award the applicant a grant in an annual amount not to exceed the amount established by the Secretary of the Budget. Prior to providing grant funds to the applicant, the department shall enter into a contract with the applicant and the project user. The contract shall include provisions which do all of the following:

(1) Specify the base amount of the grant per year.

(2) Specify the total number of years that grant funds may be provided to the applicant **and the year in which the grant may commence, including an option to defer commencement of the grant to any date up to the date upon which the project is completed and operations have commenced**. If the applicant is an industrial enterprise, retail enterprise, a research and development enterprise or a manufacturer, the number of years may not exceed ten years. If the applicant is a hospital, convention center or hotel establishment, the number of years may not exceed 20 years.

[(3) If the grant will be awarded for more than four years, establish the procedure for awarding the grant after the fourth year. To provide a grant beyond the initial four-year period, the applicant shall be required to demonstrate to the satisfaction of the department, the Secretary of the Budget and the Department of Revenue that the tax revenues specified in section 3405 are anticipated to be equal to or exceed the amount of the grant awarded in the previous year. If the department, the Secretary of the Budget and the Department of Revenue determine that the tax revenues

specified in section 3405 are anticipated to equal or exceed the amount specified in paragraph (1), the applicant shall be awarded a grant for that year in the amount specified in paragraph (1). If the department, the Secretary of the Budget and the Department of Revenue determine that the tax revenues specified in section 3405 will not equal or exceed the amount specified in paragraph (1), the applicant shall be awarded a grant equal to the anticipated tax revenues specified in section 3405 for that year.]

(3) **If the grant will be awarded for more than four years, establish the procedure for the award of the grant after year four. If the department, the Secretary of the Budget and the Department of Revenue determine that the tax revenues specified in section 3405(b) during the fifth year and each succeeding year thereafter are anticipated to be equal to or exceed the amount of the grant awarded during the previous year, the department shall award the grant in the amount of the original grant as determined under this section. If the department, the Secretary of the Budget and the Department of Revenue determine that the tax revenues specified in section 3405(b) during the fifth year and each year thereafter will not equal or exceed the amount of the grant for the previous year, the department shall award a grant that is no less than the anticipated tax revenue specified in section 3405(b) and no more than the amount of the original grant awarded under this section.**

(4) Require the applicant to use the grant to pay debt service for the project and to repay all or any portion of a grant if the applicant fails to use the grant to pay debt service.

(5) Specify that the annual amount of the grant in any one year may not exceed the annual amount of the debt service on the project for that year.

(6) If the grant in any one year exceeds the annual payment on debt service in that year, require the applicant to repay the amount of the grant for that year which exceeds the payment on debt service for that year.

[(7) If the project user is not a governmental entity, prohibit the project user from holding title to the project during the period which the applicant is receiving a grant from the department.]

(8) Require the project user to pay to the applicant a sum equal to any payments received by the project user from third parties for infrastructure which is part of the project during the period which the applicant is receiving a grant from the department. Any payment received by the applicant under this paragraph must be applied to payment of the debt service for the project.

(9) Require the applicant to [insure] **satisfactorily demonstrate** that the full amount of annual debt service is paid for the project, regardless of the amount of the grant received.

(10) Require the project user to use the project for the period of time the applicant is receiving grants under this chapter and to repay all or any portion of a grant if the

project user fails to use the project for the period of time the applicant is receiving grants.

[(11) Require the project user to timely pay all Commonwealth and local taxes and fees.]

(11) Require the project user to timely pay all Commonwealth and local taxes and fees that are then due and owing. A local government unit as defined under 53 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and borrowing) or an issuing authority may enter into an agreement or adopt an ordinance or resolution to permit the local government unit or issuing authority to pay, waive, abate, settle, compromise or reimburse any local tax, fee or other imposition applicable to a project user imposed by any local government unit or issuing authority. The agreement, ordinance or resolution shall not affect the eligibility of an applicant or a project to receive a grant under this chapter.

(12) Require the department to approve any change of use of a project during the period in which the applicant is receiving a grant from the department. The department may not unreasonably withhold its consent to a change of use.

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Section 2. Title 12 is amended by adding a chapter to read:

CHAPTER 41

FILM PRODUCTION GRANTS

Sec.

4101. Scope of chapter.

4102. Definitions.

4103. Establishment.

4104. Application.

4105. Review.

4106. Approval.

4107. Penalty.

4108. Limitations.

4109. Guidelines.

§ 4101. Scope of chapter.

This chapter relates to the Film Production Grant Program.

§ 4102. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Applicant." A person that files a notice and application in accordance with this chapter.

"Department." The Department of Community and Economic Development of the Commonwealth.

"Film." The term includes a feature film, television film, television pilot or each episode of a television series which is intended as programming for a national audience. The term does not include a production featuring:

- (1) News, current events, weather and market reports.
- (2) Public programming.
- (3) Talk shows, game shows, sports events, awards shows or other gala events.
- (4) A production that solicits funds.
- (5) A production that primarily markets a product or service.

(6) A production containing obscene material or performances as defined in 18 Pa.C.S. § 5903(b) (relating to obscene and other sexual materials and performances).

(7) A production primarily for private, political, industrial, corporate or institutional purposes.

"Pennsylvania production expense." A production expense incurred in this Commonwealth. For the purposes of wages and salaries, the term includes only wages and salaries on which the taxes imposed by Article III or IV of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, have been paid or accrued.

"Production expense."

(1) An expense incurred in the production of a film. The term includes:

(i) The aggregate amount of wages and salaries of individuals each of whom receive less than \$1,000,000 and are employed in the production of the film.

(ii) The costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories.

(iii) The cost of rental facilities and equipment.

(2) The term does not include expenses incurred in purchasing story rights, music rights, development costs, marketing or advertising a film.

"Program." The Film Production Grant Program established in section 4103 (relating to establishment).

"Qualified film production expense." A Pennsylvania production expense if at least 60% of the total production expenses are Pennsylvania production expenses.

"Recipient." A person who receives a grant under this chapter.

"Start date." The first day of principal photography in this Commonwealth.

§ 4103. Establishment.

There is established within the department a program to be known as the Film Production Grant Program. The program shall be administered by the department to provide grants to persons for certain films produced within this Commonwealth.

§ 4104. Application.

At any time prior to 60 days after the completion of production of a film, a person may submit an application for a film production grant to the department. The application shall be on a form required by the department and shall include or demonstrate all of the following:

(1) An itemized list of production expenses incurred or to be incurred during the current fiscal year and the anticipated expenses to be incurred for any subsequent year if the film production is anticipated to extend into any such year.

(2) An itemized list of Pennsylvania production expenses incurred.

(3) The start date.

(4) The actual or projected completion date.

(5) A statement of the amount of grant sought.

(6) Any other information required by the department.

§ 4105. Review.

The department shall review the application to determine if the applicant has met all of the criteria set forth in section 4104 (relating to application).

§ 4106. Approval.

The following shall apply:

(1) Upon being satisfied that all requirements have been met and subject to section 4108 (relating to limitations), the department may approve the application and award a film production grant.

(2) Prior to providing grant funds to the applicant, the department shall enter into a contract with the applicant. The contract shall include provisions requiring the applicant to use the grant to pay costs associated with the production of the film.

(3) The department may impose any other terms and conditions on the grants authorized by this chapter as the department determines are in the best interests of the Commonwealth.

§ 4107. Penalty.

(a) Imposition.--Except as provided in subsection (b), the department shall impose a penalty upon a recipient for violation of the contract required by section 4106 (relating to approval).

(b) Exception.--The department may waive the penalty required by subsection (a) if the department determines that the failure was due to circumstances outside the control of the recipient.

(c) Amount.--The amount of the penalty shall be equal to the full amount of the grant received plus an additional amount of up to 10% of the amount of the grant received. The penalty shall be payable in one lump sum or in installments, with or without interest, as the department deems appropriate.

§ 4108. Limitations.

The following limitations shall apply:

(1) A grant awarded under this chapter to an applicant for a film may not exceed 20% of the qualified film production expenses incurred for the film.

(2) In no case shall the aggregate amount of grants awarded in any fiscal year under this chapter exceed \$10,000,000.

(3) A grant awarded under this chapter shall in no way constitute an entitlement derived from the Commonwealth or a claim on any other funds of the Commonwealth.

§ 4109. Guidelines.

The department shall develop necessary written guidelines for the program.

Section 3. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the addition of 12 Pa.C.S. Ch. 41.

(2) Article XVII-C of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is repealed, provided that this repeal shall not apply to any film production tax credit approved or issued prior to the effective date of this section.

Section 4. The amendment of 12 Pa.C.S. § 3406 shall apply retroactively to July 1, 2004.

Section 5. This act shall take effect as follows:

(1) Section 3 of this act shall take effect June 30, 2006.

(2) The remainder of this act shall take effect immediately.

APPROVED--The 11th day of May, A. D. 2006.

E DWARD G. RENDELL