

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 2021**

**SENATE BILL 105**

**RATIFIED BILL**

AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE AGENCIES, DEPARTMENTS, AND INSTITUTIONS AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

PART I. TITLE AND INTRODUCTION TITLE OF ACT SECTION 1.1. This act shall be known as the "Current Operations Appropriations Act of 2021.

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**ESPORTS INDUSTRY GRANT FUND SECTION**

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

**"§ 143B-437.02B. The Esports Industry Grant Fund.**

(a) Creation and Purpose of Fund. – There is created in the Department of Commerce a special, nonreverting account to be known as the Esports Industry Grant Fund to provide funds to encourage esports events to be held within the State. The Department of Commerce shall adopt guidelines providing for the administration of the program. The guidelines may provide for the Secretary to award the grant proceeds over a period of time, not to exceed three years. The guidelines shall include the following provisions, which shall apply to each grant from the account:

- (1) The funds are reserved for a production for which a production company has qualifying expenses of at least one hundred fifty thousand dollars (\$150,000) with respect to a single production.
- (2) The funds may not be used to provide a grant in excess of an amount more than twenty-five percent (25%) of the qualifying expenses for a single production.
- (3) The funds shall not be used to provide a grant to more than one production company for a single production.
- (4) The funds shall not be 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. It consists of 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.
  - d. It fails to display a promotional logo, website link, statement, or some combination thereof that has been approved by the Department indicating that the production was recorded in or broadcast from North Carolina. The production company shall offer additional marketing opportunities to be evaluated by the Department that 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 anticipated number of in-person spectators.
  - 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 or in programs that develop the esports industry in the State.
  - d. The duration of the 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) Esports event. – A scheduled form of multiplayer video game competition, particularly between professional players, individually or as teams, organized by an amateur, collegiate, or professional organization, institution, or association that is broadcast live or in a recorded format. An esports event does not include a live sporting event.
- (4) 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 an esports event. An individual receives compensation

indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

- (5) Loan-out company. – A personal service corporation that employs an individual who is hired by a production company.
- (6) Production. – An esports event held in this State with in-person spectators, in addition to participants or competitors, that is intended for commercial distribution on television, websites, the internet, or other digital platforms.
- (7) Production company. – A person engaged in the business of producing esports productions.
- (8) 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 in this State from a North Carolina vendor. 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 include the cost 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 production in accordance with generally accepted entertainment industry practices. Goods and services exclude costs for development, marketing, and distribution; costs of financing for the event, of bonding related to the event, of production-related insurance coverage obtained on the event; 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 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.
- (9) Related member. – Defined in G.S. 105-130.7A.
- (10) Secretary. – The Secretary of Commerce.

- (11) Video game. – A game that employs electronics to create an interactive system between one or more players and a user interface or input device to generate visual feedback on a video display device for the player or players.

(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 is created for entertainment purposes. 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 hold the event, the proposed location of the event, and any other information required by the Department. The application shall include all documentation and information the Secretary deems necessary to evaluate the grant application.

(d) Award. – The amounts committed for grants allowed under this section in a single fiscal year may not exceed five million dollars (\$5,000,000).

(e) Substantiation. – The Secretary shall work with the North Carolina Division of Tourism, Film, and Sports Development 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 Division of Tourism, Film, and Sports Development.
- (3) The North Carolina Division of Tourism, Film, and Sports Development shall review the report and advise the Department on the final verified amount of qualifying expenses made by the certified production.

(f) 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 the site used in the 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 number of in-person attendees at the event, including both participants and observers.
- (5) The total cost of the grants awarded.

(g) Guidelines. – The Department of Commerce shall develop guidelines related to the administration of the Esports Industry Grant Fund and to the selection of events 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 website 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.

(h) Administrative Expenses. – The Department may use three percent (3%) of the funds appropriated to the Grant Fund each fiscal year for administrative costs associated with administration of the Fund. These funds may be used for up to two full-time equivalent positions or to contract with a third party to administer the program."

**SECTION 11.13.(b)** This section is effective when it becomes law.

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*Also includes modifications made as part of the technical corrections bill (SL 2021-198 HB 334)*