

July 9, 2020

RE: Louisiana Entertainment Development Fund – (#2 -Filmmaker) – Summary Report

To Whom It May Concern:

The Department of Economic Development hereby announces its plan to proceed with rule-making by finalizing the Louisiana Entertainment Development Fund Rules published as a Notice of Intent in the March 2020 *Louisiana Register* on pages 402-404.

A public hearing was conducted on April 27, 2020 via a modified teleconference format during the COVID-19 crisis. It was attended by various entertainment industry representatives, including those from the following organizations: LFEA, Film Baton Rouge, The Ranch Studios, Recording Academy, Louisiana Film Prize, and creative industries advocates Sherri Mc Connell and Julie Bordelon.

Participants expressed their overall support for the proposed rules, while maintaining that the following areas could be further clarified: 1) possible limitations of administrative fees, and 2) possible restrictions on in-kind use of facilities or equipment. The \$100,000 per filmmaker project was questioned as possibly being too low, in comparison to the \$250,000 per applicant cap for equipment and training projects. It was suggested that such guidance could either come in the form of subsequent rule revisions, or be specifically addressed in any contracts with successful applicants.

The attached follow-up written comments were also received.

We thank all interested parties for their comments and will consider these concerns moving forward in the administration of the program. For now, LED has made no substantive changes to the rules, and instead will provide any further clarification on the above issues in any contracts issued to successful program applicants, that can best be addressed on a case by case basis.

Subject to legislative oversight by the House or Senate Committees on Commerce, the House Committee on Ways and Means or the Senate Committee on Revenue and Fiscal Affairs, the Department intends to submit for final publication as a Rule in the August 2020 *Louisiana Register*.

As always, we welcome your consideration and I can be reached at ph.# (225) 342-5406 with any questions.

Sincerely,



Stephanie Le Grange
Staff Attorney

cc: Senate, Committee on Commerce, Consumer Protection, and International Affairs
Senate, Revenue & Fiscal Affairs Committee
House of Representatives, Ways & Means Committee
House of Representatives, Committee on Commerce

Notices of Intent

NOTICE OF INTENT

Department of Economic Development Office of Entertainment Industry Development

Louisiana Entertainment Development Fund (LAC 13:III.Chapter 21)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Economic Development proposes to enact program rules for issuance of awards from the fund known as the Louisiana Entertainment Development Fund created by Act 223 of the 2017 Regular Session of the Louisiana Legislature.

Title 13

ECONOMIC DEVELOPMENT

Part III. Financial Assistance Programs

Chapter 21. Louisiana Entertainment Development Fund

Subchapter B. Louisiana Filmmaker Matching Grants

§2125. Preamble and Purpose

A. Film festivals, fellowships, filmmaking labs, and other entertainment initiatives designed to champion indigenous filmmaking talent provide vital opportunities for new and aspiring filmmakers to showcase their work and receive feedback, and support the state's long-term goal of achieving an independent, self-supporting filmmaking industry.

B. The purpose of the program is to support filmmakers statewide by providing matching funds to existing arts and film organizations with film festivals, film grant programs, fellowships, filmmaking labs, and other entertainment initiatives designed to champion indigenous filmmaking talent as approved by LED, as a means of ensuring a high-quality filmmaker matching grant program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§2127. Definitions

Applicant—the arts or film organization requesting a matching award from LED under this program.

Award—funding approved under this program for eligible matching funds.

Award Agreement—that agreement or contract hereinafter referred to between the training provider and LED, through which, by cooperative endeavor agreement or otherwise, the parties set forth the amount of the award, the terms, conditions and performance objectives of the award provided pursuant to these rules.

LED—Louisiana Department of Economic Development, or their designee, including any third party administrator engaged by LED.

OEID—Office of Entertainment Industry Development.

Program—the Education Development Grant Program.

Secretary—Secretary of the Department of Economic Development, or designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§2129. General Principles

A. The following general principles will direct the administration of the program.

1. Awards are not to be construed as an entitlement for companies, and the secretary has the sole discretion to determine whether or not each particular applicant is eligible and meet the criteria for the award, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination of the applicants' award status.

2. Award amounts may vary at the discretion of LED, up to a maximum of \$100,000 per applicant, per year.

3. LED shall negotiate with each applicant seeking an award based on the individual merits of each project.

4. Contracts for awards shall contain "clawback" (or refund) provisions to protect the state in the event of a default.

5. Award funds shall be used for the approved project only.

6. Awards may be administered by LED through OEID, or LED may use funds to contract with a third party administrator to undertake such activities.

7. Applications will be accepted on a year round basis, subject to availability of funding in any given year, or as otherwise determined by LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§2131. Eligibility

A. An eligible applicant is a non-profit arts or film organization approved by LED, with a proven track record of organizing film festivals, film grant programs, fellowships, filmmaking labs, or other entertainment initiatives designed to champion indigenous filmmaking talent as approved by LED.

B. Applicants must demonstrate a track record of successful organization and operations that have been in effect for at least two years. Start-up companies or training providers with less than two years of documented program history or performance shall be ineligible for this program, unless evidence of funding can be provided from established arts, film or entertainment organizations, as approved by LED.

C. An applicant shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to its failure or inability to pay its obligations; including state or federal taxes, or bankruptcy proceedings, or if it has pending, at the federal, state, or local level, any

proceeding concerning denial or revocation of a necessary license or permit, or if the company has a previous contract with LED in which the company is in default and/or is not in compliance.

D. Applicants must be in full compliance with all state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§2133. Criteria

A. LED will consider various factors when determining which proposal will be funded. Among the factors which may be taken into account in the review of the award requests are the following:

1. needs of the entertainment industry;
2. disbursement of funding statewide;
3. unique or innovative nature of the proposed project;
4. availability of other federal, state, local or private funding programs for the project;
5. the terms of the "clawback" (or refund) provisions, in the event of a default;
6. evidence of likely success of project;
7. availability of funding; and
8. best interest of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§2135. Application Procedure

A. The applicant(s) must submit an application to LED, or if a third party administrator has been engaged, as otherwise directed by LED, which may be in letter form or in a more formal application format, as directed by LED, which shall contain, but not be limited to the following:

1. an overview of the arts organization, its history, and the business climate in which it operates;
2. a preliminary budget, overall description of the proposed film initiative, and funding to be provided;
3. information evidencing eligibility;
4. an articulation of any relevant factors in §2133; and
5. any additional information required to make a determination of qualification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§2137. General Award Provisions

A. In the event the Secretary determines, in his discretion, that an award would be appropriate, an award agreement shall demonstrate the intent and commitments of the applicant and LED to enter into an award agreement consistent with the Constitution and laws of the state of Louisiana and with these rules.

1. The award agreement will specify the amount of the award, the terms and conditions of the award, the performance objectives expected of the applicant and the compliance requirements in exchange for the award. Under the agreement, LED or its designated third party administrator will oversee the progress of the project.

2. Award funds will be disbursed to the applicant on an as-needed reimbursement basis following submission of required documentation to LED or its third party administrator, sufficient to demonstrate compliance, as set forth in the award agreement between the parties.

3. In the event a party to the award agreement fails to meet its performance objectives as specified in its award agreement with LED, LED shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the applicant in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state, as determined by LED.

4. In the event an applicant knowingly files a false statement in its application or in subsequent compliance documentation, the applicant may be guilty of the offense of filing false public records, and may be subject to the penalty provided in R.S. 14:133.

5. LED shall retain the right, for itself, for the Legislative Auditor, and for the Division of Administration, to require and/or conduct financial and performance audits of a project, including all relevant documents of the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

Subchapter C. Loan Guarantee Program—Reserved.

Subchapter D. Deal Closing Fund Reserved.

Family Impact Statement

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services as described in HCR 170 of the 2014 Regular Legislative Session.

Small Business Analysis

All entities requesting funding from this program must provide documents sufficient to show eligibility for and compliance with all requirements for funding. A handful of small businesses, mainly non-profit entities or entertainment organizations may be impacted, but the benefit from additional matching award funding, at a nominal cost of some additional planning and paperwork associated with the application process, reports and invoices for reimbursement should provide a positive impact to any small businesses that choose to apply to the program.

Public Comments

Interested persons should submit written comments on the proposed Rules to Chris Stelly through the close of business on Friday, April 24, 2020 at Department of Economic Development, 617 North Third Street, 11th Floor, Baton Rouge, LA 70802 or via email to chris.stelly@la.gov.

Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 3 p.m. on Monday, April 27,

Anne G. Villa
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Louisiana Entertainment
Development Fund**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be an increase in expenditures of the Department of Economic Development (LED) as a result of the rules promulgated to provide guidelines and application procedures for the Louisiana Economic Development Fund (Fund) created by Act 223 of 2017.

Act 223 of 2017 created the Louisiana Entertainment Development Fund for education development initiatives, matching grants for Louisiana filmmakers, a loan guarantee program, and a deal closing fund. Expenditures of the LED will consist of grant awards to non-profit arts or film organizations with a proven track record of organizing film festivals, film grant programs, fellowships, filmmaking labs, or other entertainment initiatives designed to champion indigenous filmmaking talent, as approved by LED. These awards may provide additional funding for indigenous filmmaker initiatives. Award amounts may vary at the discretion of the Department, with a maximum of \$100,000 per applicant, per year.

Administration of the awards will be carried out utilizing existing staff and resources at LED. Administration may also be handled by a third-party administrator (TPA). Should LED hire a TPA, administrative fees would be up to 10% of any award.

There may also be an increase in expenditures of those non-profit arts or film organizations to the extent that they successfully participate in the competitive grant program.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be an increase in revenues of the Department of Economic Development (LED).

Act 223 of 2017 provides that for film projects that apply to LED after July 1, 2017, a transfer fee of 2% of the tax credit transfer value is placed in the fund. A total of 25 percent is allocated to the Louisiana Department of Revenue (LDR) for administrative purposes and 75 percent to the Department of Economic Development for education development initiatives, matching grants for Louisiana filmmakers, a loan guarantee program, and a deal closing fund. The Department of Economic Development will see increased revenues as a result of this transfer fee. The Department estimates annual revenues as high as \$2.7 M could be generated based on the maximum transfer rate. However, actual total collections to date are approximately \$1.8 M. Since the transfer fee projections are occurring under the auspices of the \$150 M credit issuance and \$180 M claims caps, aggregate revenues for the state will not be affected.

Those non-profit arts or film organizations that organize film festivals, film grant programs, fellowships, filmmaking labs, or other entertainment initiatives designed to champion indigenous filmmaking talent may see an increase in their revenue as a result of the grant award, to the extent that they successfully participate in the competitive grant program.

The proposed rule change will not affect local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

Non-profit arts or film organizations may benefit from additional revenues should they choose to participate in the LED grant program. The cost to these entities may include the cost of some additional planning and paperwork requirements associated with the application process, reports, and invoices for reimbursement. Those Louisiana businesses, including small businesses (mainly non-profit entities) in the entertainment industry will benefit from better trained and more productive filmmakers. Louisiana residents will benefit from enhanced employment opportunities in the Louisiana entertainment industry.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The program's goal is to make workers more employable in the Louisiana entertainment industry. The competitiveness of Louisiana businesses should be enhanced as employees become better equipped to adapt to the demands of this industry.

Anne G. Villa
Undersecretary
2002#018

Evan Brasseaux
Staff Director
Legislative Fiscal

NOTICE OF INTENT

**Department of Economic Development
Office of Entertainment Industry Development**

**Sound Recording Investor Tax Credit Program
(LAC 61:I.Chapter 65)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Economic Development proposes to amend the Sound Recording Investor Tax Credit Program (R.S. 47:6023) to align the rules with current statutory provisions and administrative practices.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

**Chapter 65. Louisiana Sound Recording Investor Tax
Credit Program**

§6531. Purpose and Description

A. The purpose of this program is to encourage development in Louisiana of a strong capital and infrastructure base for sound recording productions in order to achieve an independent, self-supporting sound recording industry, and to encourage investments in multiple state-certified sound recording production projects.

B. Approvals and certifications as to whether a project qualifies as a state-certified production as required for Sound Recording Investor Tax Credits are not to be considered as entitlements for sound recording production companies, and the Louisiana Department of Economic Development shall have the discretion to determine whether or not each particular sound recording, meets the criteria for such qualification as provided herein.

C. These rules implement the Louisiana sound recording investor tax credit pursuant to R.S. 47:6023.

D. ...

Stephanie Le Grange

From: Chris Stelly
Sent: Tuesday, April 28, 2020 11:50 AM
To: Gregory Kallenberg
Cc: Stephanie Le Grange
Subject: Re: Feedback on Film Fund...

Gregory:

Appreciate the insight and input!

Take care and stay safe....see you soon(er – than later)!

C

From: "gregory@rationalmiddle.com" <gregory@prize.foundation>
Date: Tuesday, April 28, 2020 at 10:42 AM
To: Christopher Stelly <Chris.Stelly@LA.GOV>
Subject: Feedback on Film Fund...

EXTERNAL EMAIL: Please do not click on links or attachments unless you know the content is safe.

Chris,

Thanks for the hard work you're doing in these precarious times.

I talked with my team and here are some thoughts.

- We'd like there to a number put in that would allow for us to take some of the grant funds for management and overhead. Our number would be between 15-20% depending on the program and what needed to be done to manage it.

- We'd like there to be clarification on the fact that Film Prize Foundation could be a qualified non-profit to distribute funds and we could also apply for grants from these funds. For example, we'd like to distribute the funds as grants to Film Prize filmmakers, but the Film Prize Foundation's production company called Film Prize Feature Factory should also get to apply for funding.

- We'd love for the grant values to be higher than 100,000 per entity. Film Prize Foundation covers such a large area, and we are one of the only ones doing what we do in north Louisiana.

Thanks for your consideration of these suggestions. Stay strong and keep leading the change and being awesome!

Best,

Gregory

Gregory Kallenberg
Prize Foundation
Film/Food/Music/Startup Prize

Stephanie Le Grange

From: Chris Stelly
Sent: Tuesday, April 28, 2020 11:46 AM
To: Jay Weigel
Cc: Stephanie Le Grange
Subject: Re: Comments

Jay - it was great to hear from you.

Thanks for your insight and inputs below and verbally.

You can register to receive updates via:

<https://info.opportunitylouisiana.com/email-sign-up>

take care and stay safe.

Chris

On 4/28/20, 11:11 AM, "Jay Weigel" <jay@jayweigel.com> wrote:

EXTERNAL EMAIL: Please do not click on links or attachments unless you know the content is safe.

Here is a summary of my comments from yesterday's hearings. Please put me on the email notice list for any public hearings regarding the entertainment programs.

- 1) Sound Recording - explore anyway to make the "application fee" payable after the project is certified.
- 2) Development Fund - If the department chooses to utilize a third party to help distribute the awards, I suggest it use at least two. Those two should be from different geographical regions in the state
- 3) I would suggest some guidance be in the language suggesting what percentage of money could be used to cover "the overhead" of any non-profit being awarded a grant. I'd like to see as much money go to the filmmakers as possible.
- 4) I would suggest that the amount of match allowed from in-kind services being articulated. Guidance in this area is always helpful.

Thanks Chris, I hope to see you soon.

Jay Weigel
Composer/Producer
504-258-8299
https://urldefense.proofpoint.com/v2/url?u=http-3A__www.jayweigel.com&d=DwIFaQ&c=xIPCXuHzMdaH2F1c1sgyicYpGQbQbU9KDEmgNF3_wl0&r=zm0vO4-Q389En5yFjySSQK2X0kO22Jel6AMfz0yu01E&m=RdoxtmLw0CSPnmgTFF8tq_uNt_IVfUrspRhP6LqhlUQ&s=DaiSfRfO5AnK1CPad21R0lbuo2A0e8kMJkXtEIKYHHM&e=

Stephanie Le Grange

From: Chris Stelly
Sent: Tuesday, April 28, 2020 11:05 AM
To: Julie Bordelon; Lacey Chataignier
Cc: Stephanie Le Grange
Subject: Re: Sound Recording and QMC public hearing call

Thanks Julie – appreciate the written comments.

Lacey – can you answer the question regarding SR and a live show below? That isn't related to the rules.

Chris

From: Julie Bordelon <julie.adventures@gmail.com>
Date: Tuesday, April 28, 2020 at 10:58 AM
To: Lacey Chataignier <Lacey.McRight@LA.GOV>, Christopher Stelly <Chris.Stelly@LA.GOV>
Subject: Re: Sound Recording and QMC public hearing call

EXTERNAL EMAIL: Please do not click on links or attachments unless you know the content is safe.

I don't know if you are supposed to list who I work with:

Ada Ventures
#CreateLouisiana
Southern Screen

Julie Bordelon
Consultant | Producer | Coordinator
Music | Film | Live
julie.adventures@gmail.com

On Tue, Apr 28, 2020 at 10:56 AM Julie Bordelon <julie.adventures@gmail.com> wrote:

Hey y'all! Thanks for the call yesterday. I had to step away on the second call for a second and when I came back the call was ending. I'm guessing it was all the same people with no additional questions or comments.

For the most part I agreed with everyone and would like to reiterate that the fees are a bit high, especially for musicians. I like what Reid said about using the Development Fund to help offset some cost...not sure that's even a possibility. Could this be a grant given by #CreateLouisiana? For instance, if a Louisiana musician has been "pre approved" for the program, would it be possible to give them a sort of letter of approval that they could then use to apply for the application fee through a #CL grant? Just spitballing.

Could there be a lower fee for in-state musicians and/or QMC?

Also, would the sound recording credit be available for a live show? Sorry if that is written somewhere and I missed it.

Thanks,

Julie

Julie Bordelon
Consultant | Producer | Coordinator
Music | Film | Live
julie.adventures@gmail.com

Stephanie Le Grange

From: Chris Stelly
Sent: Tuesday, April 28, 2020 11:44 AM
To: Sherri McConnell; Lacey Chataignier
Cc: Stephanie Le Grange
Subject: Re: 4/28 Public hearing comments for SR & Film programs

Thanks for your comments Sherri.

Appreciate the input and insight.

Chris

From: Sherri McConnell <sherri@sherrimac.com>
Date: Tuesday, April 28, 2020 at 11:41 AM
To: Christopher Stelly <Chris.Stelly@LA.GOV>, Lacey Chataignier <Lacey.McRight@LA.GOV>
Subject: 4/28 Public hearing comments for SR & Film programs

EXTERNAL EMAIL: Please do not click on links or attachments unless you know the content is safe.

Hi Lacey and Chris,

Please find my comments and concerns regarding the proposed rules for the SR/QMC and Film programs below. Thanks

SR/QMC

The fees in the proposed rules are the most egregious of the proposals. They are way too high, burdensome and a disincentive for business attraction and growth.

- The .05 non-refundable application fee is not only ridiculously high on the front end of a process for an applicant who may never be initially certified, but they will also deter most small and start-up businesses from applying and ultimately considering Louisiana as a place to do business. This is counter to the purpose of the incentive and the fundamental principles of economic development. What are the fees for? Where do they go in the Department? It is stated in the fiscal impact note of the NOI that "Administration of the tax credits will be carried out utilizing existing staff and resources at LED". So where is the cost to LED to justify the fee?
- The rules continue with a proposal for an upfront advance deposit of \$7500 for the expenditure verification report once the applicant is found qualified (at initial certification?). Though refundable, this again requires additional dollars be spent before a single credit is granted. In addition, the need for any CPA review whether by audit or simple review seems unnecessary when LED has the ability to verify those W2 wage expenditures with the La. Work Commission as they regularly do now with the Quality Jobs program.
- The Department also proposes to charge another fee of \$250 every time the contract is amended! One has to wonder what all these fees are paying for.

FILM/Film Makers Grant Program

I feel the proposed rules are generally scant on details and leaves too much up to the discretion of LED - requiring each applicant to have to negotiate individual contracts with few guidelines on where to start and what is required. This will cause an overly burdensome, bureaucratic and slow process. There is a way to have some minimal guidelines while allowing for the ability to customize applicant contracts that meet the needs of their film projects.

More specially here are some of my comments:

- The proposal should consider " in-kind" as matching funds. Many non-profits will be able to offer services, equipment and facilities that have great value such as cameras, editing bays, sound stages, legal services etc and these costs can easily be verified by FMV.

- Prohibit the third party administrator from being an applicant as well. This could be a conflict of interest.
- Set reasonable maximum amount that an applicant can charge for administrative services of the program
- State whether an applicant can have a slate of film projects in a given year. Clarify “projects”
- Create some minimum criteria in rule for the filmmakers so that the applicants have some guidelines to follow for the projects they will be supporting
- Raise the minimum amount of \$100K to \$250K per applicant per year particularly if a slate of projects is allowed. As I said in the hearing – the concerns I raised in the workforce NOI public hearing where the maximum is \$250K per year could deplete the Entertainment fund, leaving more crucial initiatives unfunded or underfunded such as the Filmmakers Grant Program. Workforce, while important, is not as necessary as it used to be. We have a strong crew base for instance and all of them are looking for work. Above the Line workforce initiatives will be less costly When film production starts up again - post pandemic, there will be little need to train an below the line workforce.
- There are no guidelines or rules for “ a third part administrator”. What is this for? Is this administrator going to negotiate with each applicant? Vet film projects? The rules need to spell out the role of the Third Party Administrator and the minimum qualifications to be considered.
- This grant program should not be on a reimbursable basis, but should be given up front to help these La filmmakers make their movies. That’s it’s purpose. You can not assume that they have the money or can get a loan from a bank. There should be enough safeguards and vetting inplace by the applicants to ensure proper usage of those dollars. Addressing my fifth bullet will help too. And you always have the option of “clawback” if necessary.

Sherri McConnell
Creative Industry Policy Advisor