

**OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

Authority Assistance Programs

**Loan Guarantee Program & Film Production Assistance Program
Proposed Amendments: N.J.A.C. 19:31-2.1, 2.3 and 2.4**

Proposed: January 5, 2004 at 36 N.J.R. 1211

Adopted: March 9, 2004 by New Jersey Economic Development Authority
Stanley Kosierowski, Chief Operating Officer.

Filed: March 10, 2004 as R. 2003 d. ____ , **without change**

Authority: N.J.S.A. 34:1B-1 et seq.

Effective Date: April 5, 2004.

Expiration Date: June 16, 2005.

Summary of Public Comments and Agency Responses:

COMMENT: B. Sachau believes that the maximum amount of funds that the Authority may guarantee for the projects funded under the program should be limited to \$750,000 because of the high risk nature of film making, and that any financial exposure to the Authority should be less than \$800,000. B. Sachau also opposes the proposal based upon an understanding that the Authority receives public funding to operate its programs.

RESPONSE: Rejected. The Authority is a self-financed entity that does not receive public funding to support its operations or programs. Operations are supported by the fees and interest the Authority charges applicants to its programs and other interest earnings. The Authority will establish and maintain the program with existing financial resources. The Authority is adopting the maximum guarantee amount and maximum amount of exposure to the Authority pursuant to the limits set forth in P.L. 2003, c. 182.

Full text of the adoption follows:

Smart Growth Impact

The proposed amendments shall have no impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

SUBCHAPTER 2. LOAN GUARANTEE PROGRAMS

19:31-2.1 Program Description

(a) - (b) (No change.)

(c) There are four types of guarantees available: Fixed Asset Guarantees, Working Capital Guarantees, [and] Special Guarantees, and Film Production Assistance Program Guarantees.

1-3 (No change.)

4. Under the Film Production Assistance Program:

- i. The Authority may guarantee the lesser of \$1.5 million or 30 percent of the principal amount of the financing;
- ii. The Authority, prior to the granting of any guarantee, shall require:
 - (1) That funding for the film project, as defined in P.L. 1974, c. 80 (N.J.S.A.34: 1B-180(3)), has been secured and is in place through a financial institution;
 - (2) The film production company, as defined in P.L. 1974, c. 80(N.J.S.A.34: 1B-180(3)), to enter into a completion bond or similar security with the Authority in such form, amount, and terms as shall be determined by the Authority; and
 - (3) That a minimum of one-half the estimated total production costs have been obtained from other sources;
- iii. The Authority shall provide in any agreement between the Authority and a film production company for a guarantee that the lender shall retain a security interest in the assets of the film production company, including, but not limited to, all revenues, payments, money, and proceeds generated by the company's film project, and the Authority shall have a subrogated security interest in the collateral to the extent necessary to insure the Authority's full recovery of the amount of any guarantee;
- iv. At least 50 percent of the material and production costs for any assisted project shall be purchased and/or spent in the State of New Jersey;
- v. More than 70 percent of the filming days must take place in the State of New Jersey;

- vi. Film production companies must provide in their Employment contracts that not less than the prevailing wage rate, as determined by the Commissioner of Labor, pursuant to P.L. 1963, c.150 (N.J.S.A.34:11-56.25 et seq.), shall be paid to workers employed in the performance of contracts in connection with a proposed project, including construction, reconstruction, rehabilitation or demolition of property and improvements thereon; and
 - vii. The total Authority exposure to any entity or related entities shall not exceed \$1.5 million at any one time. Related entities shall mean any person(s) or entity(ies) with ownership interests of 10 percent or more.
- (d) Both the Fixed Asset Guarantee and the Working Capital guarantee have a maximum term of 10 years for the guarantee, although the financing can be for a longer term. A Special Guarantee term shall not exceed the term of the financing. Film Production Assistance Program guarantee terms will be determined on a project-by-project basis. Factors to be considered in determining the terms of the guarantee are as set forth in N.J.A.C. 19:31-2.4.

19:31-2.3 Application procedures

(a) – (d) (No change.)

- (e) For all Film Production Assistance Program guarantees, the Authority shall require, in addition to the requirements of (a) through (d) above:
1. A copy of the completion bond;
 2. Copies of distribution agreements, as may be available, with major intended markets specified, and details including, but not limited to, companies, territories, and/or countries involved, and duration of exhibition in all major intended markets;
 3. Specifics on target audience(s) for film project;
 4. A listing and copies of credentials for all principals signed to participate in the film project in the following categories: producing, directing, acting, screenwriting, and cinematography;
 5. A complete breakdown of the film project budget;
 6. A copy of the proposed shooting schedule, including dates and locations;
 7. A copy of the screenplay and brief treatment of the film project, specifying chain of title and/or assignment of rights to literary property;
 8. The location of production office; and
 9. Proof of liability insurance in an amount acceptable to the Authority.

(f) (No change in text.)

19:31-2.4 Evaluation process

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1.–6. (No change.)

7. An Analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability;
8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches; and
9. For projects funded under the Film Industry Production Assistance Guarantee Program, the Authority may utilize a consultant or subject matter experts such as the staff of the New Jersey Motion Picture and Television Commission to review each application and its technical elements for the purpose of assisting the Authority in an investigation and analysis of the financial soundness of the film project or film production company. This review will be considered by the Authority in addition to its own credit evaluation based on the criteria in (a) 1 through 8 above.

(b) – (c) (No change.)