

## CHAPTER 182

**AN ACT** concerning the promotion of the film industry and amending and supplementing P.L.1974, c.80 (C.34:1B-1 et seq.).

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.34:1B-178 Short title.

1. Sections 1 through 7 of this act shall be known and may be cited as the "New Jersey Film Production Assistance Act."

C.34:1B-179 Findings, declarations relative to film production assistance.

2. The Legislature finds and declares that:

a. The film industry spent over \$69 million in this State in the year 2000 on a record 664 different projects including 88 feature films;

b. The creation of additional incentives to attract film companies to this State will make substantial contributions to the State's continued economic growth and development;

c. In order to attract greater investment by film companies in this State, it is important to establish a film production assistance program with sufficient incentives to encourage new film projects and investment in this State.

C.34:1B-180 Definitions relative to film production assistance.

3. As used in this act:

"Above-the-line expenses" means the major expenses committed to a film project before production begins and may include storywriting, salaries for the producer, director, and cast, travel and living, and production fees if the film project is bought from another film production company.

"Act" means the New Jersey Film Production Assistance Act.

"Authority" means the New Jersey Economic Development Authority established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

"Below-the-line expenses" means all physical production costs not included in the above-the-line expenses of a film project and may include material costs, music rights, publicity, or advertisements.

"Film production company" or "company" means a person engaged in the business of making motion picture or television images for theatrical, commercial or educational purposes.

"Film project" means a single media or multimedia program produced by a film production company including, but not limited to, motion pictures, feature films, shorts and documentaries, television films or episodes or similar programs fixed on film, videotape, computer disk, laser disk or other similar means that is intended for exhibition in theaters, by television stations or by other means for the home viewing market but does not include any film production that is produced by or on behalf of a corporation or other person for its own internal use for advertising, educational, training or similar purposes. "Film project" shall not mean a single media or multimedia program produced by a film production company if records, as required under 18 U.S.C. s.2257, are to be maintained by that film production company with respect to any performer portrayed in that single media or multimedia program.

"Financial assistance" means a loan guarantee.

"Program" means the "New Jersey Film Production Assistance Program" established in the authority pursuant to section 4 of P.L.2003, c.180 (C.34:1B-181).

C.34:1B-181 New Jersey Film Production Assistance Program.

4. a. There is created in the authority the New Jersey Film Production Assistance Program. The purpose of the program shall be to attract film production companies with financial assistance from the authority in order to promote and encourage the development of film projects and investments by film production companies in this State.

b. The authority shall adopt eligibility criteria for providing financial assistance to film production companies. These criteria shall limit financial assistance to film production companies that:

(1) want to engage in film projects where more than 70 percent of the shooting days take place in this State and where at least 50 percent of the amount of the below-the-line expenses

of the operating budget of the film project is spent in this State;

(2) have obtained a minimum of one-half of the estimated total production costs from other sources;

(3) provide in their employment contracts that not less than the prevailing wage rate, as determined by the Commissioner of Labor, pursuant to the provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.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

(4) have posted such financial security as may be deemed to be necessary by the authority.

c. The authority shall provide financial assistance to eligible film production companies to facilitate their film projects in New Jersey. In order to be eligible for the financial assistance, film production companies shall, in addition to meeting the authority's customary underwriting criteria, demonstrate to the authority's satisfaction that they meet the eligibility criteria adopted pursuant to subsection b. of this section. If at any time the authority determines that a film production company does not meet such criteria, any financial assistance provided shall be withdrawn or any financial assistance to be provided shall be rendered null and void, as appropriate.

d. The authority shall utilize the program to stimulate greater investment in this State by film production companies through measures that include, but are not limited to:

(1) identifying low-interest loans or tax credits that may be available from the State or from federal government agencies or private organizations to promote the planning and development of film projects in this State; and

(2) in consultation with the Department of the Treasury, identifying existing surplus State property that could be utilized by film production companies for film projects.

C.34:1B-182 Establishment, maintenance of program; funding use.

5. a. To implement this act, the authority shall establish and maintain the program with moneys to be used by the authority for the purposes specified in this act. Moneys to be utilized by the program shall include, but not be limited to:

(1) any moneys that shall be received by the authority from the repayment of the moneys in the account used to provide financial assistance to film production companies pursuant to P.L.2003, c.182 (C.34:1B-178 et al.);

(2) any moneys that shall be received by the authority from other business assistance programs administered by the authority which it determines to deposit therein; and

(3) any other source that the authority may determine is available to effectuate the purposes of the program.

b. The authority shall use the moneys available for the program to:

(1) provide, for a period of five years after the effective date of this act, financial assistance to film production companies deemed eligible pursuant to section 4 of P.L.2003, c.182 (C.34:1B-181); and

(2) defray the administrative expenses of carrying out the purposes and provisions of P.L.2003, c.182 (C.34:1B-178 et al.). Such administrative expenses may be used by the authority to employ an administrator and additional personnel or consultants to oversee the operations of the program and to prepare any reports or other documentation regarding the program with the assistance of the authority. Such administrator, additional personnel or consultants shall review each application for financial assistance for the purpose of assisting the authority in an investigation and analysis of the financial soundness of the film project or film production company.

Within 30 days of the end of the five-year period as provided in paragraph (1) of subsection b. of this section, the authority shall determine whether sufficient interest in financial assistance from qualified film production companies warrants the continuation of the program and the authority may discontinue the program at the end of such period if the authority determines that such interest is not evident. The authority shall notify the Governor and Legislature of its decision and issue a report of its findings and any suggestions for improvement to the program

if such suggestions are warranted.

c. The maximum amount of any loan that is guaranteed by the authority and is to be provided to a film production company, pursuant to P.L.2003, c.182 (C.34:1B-178 et al.), shall not exceed either \$1,500,000 per film project, or an amount that is no greater than 30 percent of any loan for the film project that is derived from private sources, whichever amount is less. The authority shall not have a balance outstanding of all loans guaranteed pursuant to P.L.2003, c.182 (C.34:1B-178 et al.) of an amount greater than \$10 million at any time, except that the authority may increase this amount if the authority determines that the demand for financial assistance warrants such increase.

d. The authority shall provide in any agreement between the authority and a film production company for financial assistance from the program that the authority 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, to the extent necessary to insure the authority's full recovery of the amount of any financial assistance. Prior to the granting of any financial assistance, the authority shall require the film production company to enter into a faithful performance bond, completion bond or similar security with the authority in such form, amount and terms as shall be determined by the authority.

C.34:1B-183 Report to Governor, Legislature.

6. Within two years of the effective date of P.L.2003, c.182 (C.34:1B-178 et al.), the authority shall submit a written report to the Governor and the Legislature describing the status of the program, the demand for the program, the total amount of financial assistance awarded by the authority from the program and an assessment of the success of the program in meeting the goals of this act and any recommendations for improving the operation and effectiveness of the program.

C.34:1B-184 Rules, regulations.

7. The authority shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to effectuate the purposes of this act.

8. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read as follows:

C.34:1B-5 Powers.

5. The authority shall have the following powers:

- a. To adopt bylaws for the regulation of its affairs and the conduct of its business;
- b. To adopt and have a seal and to alter the same at pleasure;
- c. To sue and be sued;

d. To acquire in the name of the authority by purchase or otherwise, on such terms and conditions and such manner as it may deem proper, or by the exercise of the power of eminent domain in the manner provided by the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or other property which it may determine is reasonably necessary for any project or school facilities project; provided, however, that the authority in connection with any project shall not take by exercise of the power of eminent domain any real property except upon consent thereto given by resolution of the governing body of the municipality in which such real property is located; and provided further that the authority shall be limited in its exercise of the power of eminent domain in connection with any project to municipalities receiving State aid under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to municipalities which had a population, according to the latest federal decennial census, in excess of 10,000;

e. To enter into contracts with a person upon such terms and conditions as the authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of the project or the school facilities project and to pay or compromise any claims arising therefrom;

f. To establish and maintain reserve and insurance funds with respect to the financing of the project or the school facilities project and any project financed pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.);

g. To sell, convey or lease to any person all or any portion of a project or school facilities project, for such consideration and upon such terms as the authority may determine to be reasonable;

h. To mortgage, pledge or assign or otherwise encumber all or any portion of a project, school facilities project or revenues, whenever it shall find such action to be in furtherance of the purposes of this act, P.L.2000, c.72 (C.18A:7G-1 et al.), and the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.);

i. To grant options to purchase or renew a lease for any of its projects or school facilities projects on such terms as the authority may determine to be reasonable;

j. To contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the United States of America or any agency or instrumentality thereof, or from the State or any agency, instrumentality or political subdivision thereof, or from any other source and to comply, subject to the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), and the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.) with the terms and conditions thereof;

k. In connection with any application for assistance under P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.) or the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.) or commitments therefor, to require and collect such fees and charges as the authority shall determine to be reasonable;

l. To adopt, amend and repeal regulations to carry out the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), and the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.);

m. To acquire, purchase, manage and operate, hold and dispose of real and personal property or interests therein, take assignments of rentals and leases and make and enter into all contracts, leases, agreements and arrangements necessary or incidental to the performance of its duties;

n. To purchase, acquire and take assignments of notes, mortgages and other forms of security and evidences of indebtedness;

o. To purchase, acquire, attach, seize, accept or take title to any project or school facilities project by conveyance or by foreclosure, and sell, lease, manage or operate any project or school facilities project for a use specified in this act, P.L.2000, c.72 (C.18A:7G-1 et al.), and the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.);

p. To borrow money and to issue bonds of the authority and to provide for the rights of the holders thereof, as provided in P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), and the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.);

q. To extend credit or make loans to any person for the planning, designing, acquiring, constructing, reconstructing, improving, equipping and furnishing of a project or school facilities project, which credits or loans may be secured by loan and security agreements, mortgages, leases and any other instruments, upon such terms and conditions as the authority shall deem reasonable, including provision for the establishment and maintenance of reserve and insurance funds, and to require the inclusion in any mortgage, lease, contract, loan and security agreement or other instrument, such provisions for the construction, use, operation and maintenance and financing of a project or school facilities project as the authority may deem necessary or desirable;

r. To guarantee up to 90% of the amount of a loan to a person, if the proceeds of the loan are to be applied to the purchase and installation, in a building devoted to industrial or commercial purposes, or in an office building, of an energy improvement system;

s. To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the authority

to carry out the purposes of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), and the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.) and to fix and pay their compensation from funds available to the authority therefor, all without regard to the provisions of Title 11A of the New Jersey Statutes;

t. To do and perform any acts and things authorized by P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), and the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.) under, through or by means of its own officers, agents and employees, or by contract with any person;

u. To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as it deems desirable;

v. To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), and the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.);

w. To construct, reconstruct, rehabilitate, improve, alter, equip, maintain or repair or provide for the construction, reconstruction, improvement, alteration, equipping or maintenance or repair of any development property and lot, award and enter into construction contracts, purchase orders and other contracts with respect thereto, upon such terms and conditions as the authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of any such development property and the settlement of any claims arising therefrom and the establishment and maintenance of reserve funds with respect to the financing of such development property;

x. When authorized by the governing body of a municipality exercising jurisdiction over an urban growth zone, to construct, cause to be constructed or to provide financial assistance to projects in an urban growth zone which shall be exempt from the terms and requirements of the land use ordinances and regulations, including, but not limited to, the master plan and zoning ordinances, of such municipality;

y. To enter into business employment incentive agreements as provided in the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et al.);

z. To undertake school facilities projects and to enter into agreements or contracts, execute instruments, and do and perform all acts or things necessary, convenient or desirable for the purposes of the authority to carry out any power expressly provided pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.) and P.L.2000, c.72 (C.18A:7G-1 et al.), including, but not limited to, entering into contracts with the State Treasurer, the Commissioner of Education, districts and any other entity which may be required in order to carry out the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.);

aa. To enter into leases, rentals or other disposition of a real property interest in and of any school facilities project to or from any local unit pursuant to P.L.2000, c.72 (C.18A:7G-1 et al.);

bb. To make and contract to make loans or leases and to make grants to local units to finance the cost of school facilities projects and to acquire and contract to acquire bonds, notes or other obligations issued or to be issued by local units to evidence the loans or leases, all in accordance with the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.);

cc. Subject to any agreement with holders of its bonds issued to finance a project or school facilities project, obtain as security or to provide liquidity for payment of all or any part of the principal of and interest and premium on the bonds of the authority or for the purchase upon tender or otherwise of the bonds, lines of credit, letters of credit, reimbursement agreements, interest rate exchange agreements, currency exchange agreements, interest rate floors or caps, options, puts or calls to hedge payment, currency, rate, spread or similar exposure or similar agreements, float agreements, forward agreements, insurance contract, surety bond, commitment to purchase or sell bonds, purchase or sale agreement, or commitments or other contracts or agreements, and other security agreements or instruments in any amounts and upon any terms as the authority may determine and pay any fees and expenses required in connection therewith;

dd. To charge to and collect from local units, the State and any other person, any fees and charges in connection with the authority's actions undertaken with respect to school facilities projects, including, but not limited to, fees and charges for the authority's administrative, organization, insurance, operating and other expenses incident to the financing, construction and placing into service and maintenance of school facilities projects;

ee. To make loans to refinance solid waste facility bonds through the issuance of bonds or other obligations and the execution of any agreements with counties or public authorities to effect the refunding or rescheduling of solid waste facility bonds, or otherwise provide for the payment of all or a portion of any series of solid waste facility bonds. Any county or public authority refunding or rescheduling its solid waste facility bonds pursuant to this subsection shall provide for the payment of not less than fifty percent of the aggregate debt service for the refunded or rescheduled debt of the particular county or public authority for the duration of the loan; except that, whenever the solid waste facility bonds to be refinanced were issued by a public authority and the county solid waste facility was utilized as a regional county solid waste facility, as designated in the respective adopted district solid waste management plans of the participating counties as approved by the department prior to November 10, 1997, and the utilization of the facility was established pursuant to tonnage obligations set forth in their respective interdistrict agreements, the public authority refunding or rescheduling its solid waste facility bonds pursuant to this subsection shall provide for the payment of a percentage of the aggregate debt service for the refunded or rescheduled debt of the public authority not to exceed the percentage of the specified tonnage obligation of the host county for the duration of the loan. Whenever the solid waste facility bonds are the obligation of a public authority, the relevant county shall execute a deficiency agreement with the authority, which shall provide that the county pledges to cover any shortfall and to pay deficiencies in scheduled repayment obligations of the public authority. All costs associated with the issuance of bonds pursuant to this subsection may be paid by the authority from the proceeds of these bonds. Any county or public authority is hereby authorized to enter into any agreement with the authority necessary, desirable or convenient to effectuate the provisions of this subsection.

The authority shall not issue bonds or other obligations to effect the refunding or rescheduling of solid waste facility bonds after December 31, 2002. The authority may refund its own bonds issued for the purposes herein at any time;

ff. To pool loans for any local government units that are refunding bonds and do and perform any and all acts or things necessary, convenient or desirable for the purpose of the authority to achieve more favorable interest rates and terms for those local governmental units;

gg. To finance projects approved by the board, provide staff support to the board, oversee and monitor progress on the part of the board in carrying out the revitalization, economic development and restoration projects authorized pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.) and otherwise fulfilling its responsibilities pursuant thereto; and

hh. To offer financial assistance to qualified film production companies as provided in the "New Jersey Film Production Assistance Act," P.L.2003, c.182 (C.34:1B-178 et al.).  
(cf: P.L.2002, c.43, s.41)

9. This act shall take effect immediately.

Approved September 15, 2003.