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SENATE BILL 10-158

BY SENATOR(S) Newell, Bacon, Carroll M., Gibbs, Heath, Hodge, Hudak, Johnston, Keller, Kester, Lundberg, Morse, Romer, Sandoval, Schwartz, Spence, Steadman, Tapia, Tochtrop, White, Whitehead, Williams, Boyd, Shaffer B.;

also REPRESENTATIVE(S) Rice, Ryden, Court, Frangas, Kefalas, Labuda, Massey, Merrifield, Middleton, Riesberg, Todd, Vigil.

CONCERNING THE CREATION OF THE CREATIVE INDUSTRIES DIVISION WITHIN THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT, AND, IN CONNECTION THEREWITH, RECODIFYING THE STATUTORY PROVISIONS THAT CREATE THE COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA, THE COUNCIL ON CREATIVE INDUSTRIES, AND THE ART IN PUBLIC PLACES PROGRAM.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 48.5 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART CONTAINING RELOCATED PROVISIONS, WITH AMENDMENTS, to read:

PART 3
CREATIVE INDUSTRIES DIVISION

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

24-48.5-301. Creative industries division - creative industries cash fund - creation - repeal. (1) THERE IS HEREBY CREATED WITHIN THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT THE CREATIVE INDUSTRIES DIVISION, WHICH SHALL BE REFERRED TO IN THIS PART 3 AS THE "DIVISION". THE DIRECTOR OF THE DIVISION SHALL BE THE PERSON WHO IS APPOINTED DIRECTOR OF THE COUNCIL ON CREATIVE INDUSTRIES BY THE DIRECTOR OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT. THE DIVISION SHALL BE COMPRISED OF THE OFFICE OF FILM, TELEVISION, AND MEDIA, THE COUNCIL ON CREATIVE INDUSTRIES, AND THE ART IN PUBLIC PLACES PROGRAM, AND THE DIRECTOR OF THE DIVISION SHALL OVERSEE SUCH OFFICE, COUNCIL, AND PROGRAM.

(2) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE CREATIVE INDUSTRIES CASH FUND, REFERRED TO IN THIS SECTION AS THE "FUND". THE FUND SHALL CONSIST OF:

(I) (A) MONEYS TRANSFERRED TO THE FUND PURSUANT TO SECTIONS 24-48.5-308 (3), 24-48.5-311 (5) (d), AND 24-48.5-312 (7) (b).

(B) THIS SUBPARAGRAPH (I) IS REPEALED, EFFECTIVE JULY 1, 2011.

(II) MONEYS TRANSFERRED TO THE FUND IN ACCORDANCE WITH SECTION 12-47.1-701 (4), C.R.S.;

(III) MONEYS CREDITED TO THE FUND BY THE STATE TREASURER FOR PURPOSES OF THE ART IN PUBLIC PLACES PROGRAM PURSUANT TO SECTION 24-48.5-312 (7) (b.5);

(IV) MONEYS APPROPRIATED TO THE FUND BY THE GENERAL ASSEMBLY; AND

(V) ANY GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES THAT THE DIVISION IS HEREBY AUTHORIZED TO SEEK AND ACCEPT.

(b) THE MONEYS IN THE FUND SHALL BE ANNUALLY APPROPRIATED TO THE DIVISION FOR THE OPERATION OF THE DIVISION, AND FOR THE FOLLOWING:

(I) FOR PURPOSES OF THE COUNCIL ON CREATIVE INDUSTRIES, INCLUDING THE ADMINISTRATION OF THE COUNCIL;

(II) FOR THE OPERATION OF THE COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA AND FOR THE PERFORMANCE-BASED INCENTIVE FOR FILM PRODUCTION IN COLORADO AS SPECIFIED IN SECTION 24-48.5-311 (1); AND

(III) FOR THE PURCHASE OF WORKS OF ART PURSUANT TO THE ART IN PUBLIC PLACES PROGRAM, TAKING INTO CONSIDERATION THE ARTIST'S PRELIMINARY SITE VISIT, THE DESIGN FEE, THE TOTAL COSTS OF CONSTRUCTION AND INSTALLATION OF THE WORK OF ART, JURY EXPENSES, AND PROGRAM ADMINISTRATION IN COMPLIANCE WITH THE PROVISIONS OF SECTION 24-48.5-312 (6).

(c) ALL MONEYS NOT EXPENDED OR ENCUMBERED, AND ALL INTEREST EARNED ON THE INVESTMENT OR DEPOSIT OF MONEYS IN THE FUND, SHALL REMAIN IN THE FUND AND SHALL NOT REVERT TO THE GENERAL FUND OR ANY OTHER FUND AT THE END OF ANY FISCAL YEAR. ANY MONEYS NOT EXPENDED OR ENCUMBERED FROM ANY APPROPRIATION AT THE END OF ANY FISCAL YEAR SHALL REMAIN AVAILABLE FOR EXPENDITURE IN THE NEXT FISCAL YEAR WITHOUT FURTHER APPROPRIATION.

24-48.5-302. [Formerly 24-48.8-102] Council on creative industries - legislative declaration. (1) The general assembly finds and declares:

(a) That encouragement and support of the arts and humanities, while primarily a matter for private and local initiative, is also an appropriate matter of concern to the state government;

(b) That many of our citizens lack the opportunity to view, enjoy, or participate in living theatrical performances, musical concerts, operas, dance and ballet recitals, art exhibits, examples of fine architecture, and the performing and visual arts generally;

(c) That, with increasing leisure time, the practice and enjoyment of the arts and humanities are of increasing importance;

(d) That many of our citizens possess talents of an artistic and creative nature ~~which~~ THAT cannot be utilized to their fullest extent under existing conditions;

(e) That the general welfare of the people of the state will be promoted by giving further recognition to the arts and humanities as a vital part of our culture and heritage and as an important means of expanding the scope of our community life;

(f) That it is desirable to establish a ~~state~~ council on ~~the arts~~ CREATIVE INDUSTRIES and to provide such recognition and assistance as will encourage and promote the state's artistic and cultural progress;

(g) That it is the policy of the state to cooperate with private patrons, private and public institutions, and professional and nonprofessional organizations concerned with the arts and humanities to ~~insure~~ ENSURE that the role of the arts and humanities in the life of our communities will continue to grow and to play an ever more significant part in the welfare and educational experience of our citizens and to establish the paramount position of this state in the nation and in the world as a cultural center;

(h) That all activities undertaken by the state in carrying out the policy set out in this section shall be directed toward encouraging and assisting, rather than in any way limiting, the freedom of artistic expression ~~which~~ THAT is essential for the well-being of the arts and humanities.

24-48.5-303. [Formerly 24-48.8-103] Council on creative industries - establishment of council - members - term of office - chair - compensation. (1) ~~(a)~~ There is hereby established within the ~~department of higher education~~ DIVISION a ~~state~~ council on ~~the arts~~ CREATIVE INDUSTRIES, referred to in this ~~article~~ PART 3 as the "council". ~~The council shall remain within the department of higher education through June 30, 2006.~~ The council shall consist of eleven members, including the ~~chairman~~ CHAIR, to be appointed by the governor. The members of the council shall be broadly representative of the major fields of the arts and humanities AND RELATED CREATIVE INDUSTRIES and shall be appointed from among private citizens who are widely known for their competence and experience in connection with the arts and humanities AND RELATED CREATIVE INDUSTRIES, as well as their knowledge of community and state interests. In making these appointments, the governor shall seek and consider those recommended for membership by persons or organizations involved in civic, educational, business, labor, professional, cultural, ethnic, and performing and creative arts fields, as well as those with knowledge of community and state interests. At least one such person from each area

designated shall be a member of the council, the membership to include both men and women.

~~(b) (f) On and after July 1, 2006, the council and the powers, duties, and functions of the council are transferred from the department of higher education to the Colorado office of economic development.~~

~~(H) On and after July 1, 2006, employees of the council whose employment is deemed necessary by the director of the Colorado office of economic development shall become employees of the Colorado office of economic development. Any employees transferred to the Colorado office of economic development who are classified employees in the state personnel system shall retain all rights to the personnel system and retirement benefits pursuant to the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and regulations.~~

~~(HH) On and after July 1, 2006, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the council, are transferred to the Colorado office of economic development and become property thereof.~~

(2) On and after July 1, 1990, members appointed to the council, except the ~~chairperson~~ CHAIR, shall hold office for terms of three years, commencing on July 1 of the year of appointment. Members of the council, except the ~~chairperson~~ CHAIR, shall not be eligible to serve for more than two consecutive terms nor be eligible for reappointment to the council during the three-year period following the expiration of the second of two consecutive terms. Members of the council shall hold office until the expiration of the appointed terms or until successors are duly appointed. Any vacancy occurring on the council other than by expiration of term shall be filled by the governor by the appointment of a qualified person for the unexpired term.

(3) The governor shall appoint a ~~chairperson~~ CHAIR of the council who is a person widely recognized for his or her knowledge, experience, and interest in the arts and humanities, as well as his or her knowledge of community and state interests. ~~He or she~~ THE CHAIR shall serve at the pleasure of the ~~appointing~~ governor, but not longer than six consecutive

years, and shall not be eligible for reappointment during the three-year period following the expiration of such six-year period. ~~He or she~~ THE CHAIR shall advise the governor with respect to the development in the arts and humanities in the state of Colorado. If any vacancy occurs in the office of ~~chairperson~~ THE CHAIR, the governor shall fill within sixty days the vacancy by the appointment of a qualified person in the same manner in which the original appointment was made.

(4) Members of the council shall serve without compensation, but each member shall be reimbursed for his or her necessary traveling and other expenses incurred in the performance of his or her official duties.

24-48.5-304. [Formerly 24-48.8-104] Council on creative industries - meetings of council - quorum. The council shall meet at the call of the ~~chairperson~~ CHAIR, but not less than twice during each calendar year. Five members of the council shall constitute a quorum. All meetings of the council shall be open and public, and all persons shall be permitted to attend any meeting of the council. The ~~chairperson~~ CHAIR shall vote only in case of a tie on any question voted on by the council.

24-48.5-305. [Formerly 24-48.8-106] Council on creative industries - powers of the council. (1) The council has the powers necessary to carry out the duties imposed upon it by this ~~article~~ PART 3, including, but not limited to, the power:

(a) To employ such administrative, technical, and other personnel, subject to the constitution and state personnel system laws of this state, as may be necessary for the performance of its powers and duties;

(b) To hold hearings, make and sign any agreements, and perform any acts ~~which~~ THAT may be necessary, desirable, or proper to carry out the purposes of ~~this article~~ THE COUNCIL;

(c) To request from any department, division, board, bureau, commission, or other agency of the state such reasonable assistance and data as will enable it properly to carry out its powers and duties under this ~~article~~ PART 3;

(d) To appoint such advisory committees as it deems advisable and necessary to the carrying out of its powers and duties under this ~~article~~ PART

3;

(e) To accept, on behalf of the state of Colorado, and expend any federal funds granted by act of congress or by executive order for all or any of the purposes of ~~this article~~ THE COUNCIL; except that the council may expend such funds only upon appropriation by the general assembly if the federal funds require matching state contributions or capital outlay or create a commitment for future state funding;

(f) To accept any gifts, GRANTS, donations, or bequests for all or any of the purposes of ~~this article~~ THE COUNCIL;

(g) To propose methods AND PROCESSES to encourage private ~~initiative in~~ AND PUBLIC INITIATIVES THAT RECOGNIZE AND ENHANCE THE ROLE THAT the arts and humanities PLAY IN CREATIVE INDUSTRIES;

(h) To advise and consult with national foundations and other local, state, and federal departments and agencies on methods by which to coordinate and assist existing resources and facilities, with the purpose of fostering artistic and cultural endeavors toward the use of the arts and humanities both nationally and internationally, in the best interest of Colorado.

24-48.5-306. [Formerly 24-48.8-107] Council on creative industries - duties of the council. (1) The duties of the council shall be:

(a) To stimulate and encourage throughout the state the study and development of the arts and humanities, as well as public interest and participation therein;

(b) To take such steps as may be necessary and appropriate to encourage public interest in the cultural heritage of our state and to expand the state's cultural resources;

(c) To encourage and assist freedom of artistic expression essential for the well-being of the arts and humanities;

(d) To assist the communities and organizations within the state in originating and creating their own cultural and artistic programs;

(e) To make such surveys as may be deemed advisable of public and private institutions engaged within the state in artistic and cultural activities, including, but not limited to, humanities, music, theater, dance, painting, sculpture, photography, architecture, and allied arts and crafts, and to make recommendations concerning the appropriate methods to encourage participation in and appreciation of the arts and humanities in order to meet the legitimate needs and aspirations of persons in all parts of the state;

(f) To submit a report to the governor not later than ninety days after the end of each fiscal year and at such other times as the governor requests or the council deems appropriate.

24-48.5-307. [Formerly 24-48.8-108] Council on creative industries - interference by council prohibited. In carrying out its duties and powers under this ~~article~~ PART 3, the council shall never by action, directly or indirectly, interfere with the freedom of artistic expression of the established or contemplated cultural programs in any local community or institution, nor shall it make any recommendations that might be interpreted to be a form of censorship.

24-48.5-308. [Formerly 24-48.8-109] State council on the arts cash fund - creation - repeal. (1) There is hereby created in the state treasury the state council on the arts cash fund, referred to in this section as the "fund". FOR FISCAL YEARS PRIOR TO THE 2010-11 FISCAL YEAR, the fund shall consist of:

(a) Moneys transferred to the fund in accordance with section 12-47.1-701 (4) (a), C.R.S.; and

(b) Any moneys appropriated to the fund by the general assembly.

(2) FOR FISCAL YEARS PRIOR TO THE 2010-11 FISCAL YEAR, the moneys in the fund shall be annually appropriated by the general assembly for the purposes of THE COUNCIL, including administration of ~~this article~~ by the council. All moneys not expended or encumbered, and all interest earned on the investment or deposit of moneys in the fund, shall remain in the fund and shall not revert to the general fund at the end of any fiscal year. Any moneys not expended or encumbered from any appropriation at the end of any fiscal year shall remain available for expenditure in the next fiscal year without further appropriation.

(3) ANY MONEYS REMAINING IN THE FUND ON JULY 1, 2010, SHALL BE TRANSFERRED TO THE CREATIVE INDUSTRIES CASH FUND CREATED IN SECTION 24-48.5-301.

(4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2011.

24-48.5-309. [Formerly 24-48.5-201] Film, television, and media - definitions. As used in this ~~part 2~~ SECTION AND SECTIONS 24-48.5-310 AND 24-48.5-311, unless the context otherwise requires:

(1) "Film" means any visual or audiovisual work, including, without limitation, a video game, that contains a series of related images, regardless of the medium by which the work is fixed and from which it can be viewed or reproduced, and that is primarily intended to be either:

(a) Commercially exploited by being shown in theaters, licensed for television exhibition, licensed for the home market, or otherwise; or

(b) For internal industrial, corporate, or institutional use.

(2) "Office" means the Colorado office of film, television, and media created pursuant to ~~section 24-48.5-202~~ SECTION 24-48.5-310.

(3) "Production activities" means the shooting of a film, support activities related to such shooting, and any preshooting or postshooting activities that commence on or after July 1, 2009, and that are necessary to produce a finished film, including but not limited to editing and the creation of sets, props, costumes, and special effects.

(4) "Production company" means a person, including a corporation or other business entity, that engages in production activities for the purpose of producing all or any portion of a film in Colorado.

(5) "Qualified local expenditure" means a payment made by a production company operating in Colorado to a business in Colorado in connection with the production of a film that the production company is producing in Colorado. "Qualified local expenditure" shall include, but need not be limited to:

(a) Payments made in connection with developing or purchasing the

story and scenario to be used for a film;

(b) Payments made for the costs of set construction and operations, wardrobe, accessories, and related services;

(c) Payments made for the costs of photography, sound synchronization, lighting, and related services;

(d) Payments made for the costs of editing, post-production, music, and related services;

(e) Payments made for the costs of renting facilities and equipment, including location fees, leasing vehicles, and providing food and lodging to people working on the film production;

(f) Payments for airfare purchased through a Colorado-based travel agency or company;

(g) Payments for insurance and bonding purchased through a Colorado-based insurance agent; and

(h) Payments for other direct costs incurred by the film production company that are deemed appropriate by the office.

(6) "Qualified payroll expenditure" means an expenditure of up to three million dollars per employee or contractor, made by a production company to pay the salaries of actors, management, and crew, who participate in the film production activities. In order for any salary to be considered a qualified payroll expenditure, all Colorado income taxes shall be withheld and paid either by the production company or the individual. Any expenditures in excess of three million dollars per employee or contractor shall be excluded.

24-48.5-310. [Formerly 24-48.5-202] Film, television, and media.

(1) There is hereby created within the ~~Colorado office of economic development~~ DIVISION the Colorado office of film, television, and media, the head of which shall be the director of the Colorado office of film, television, and media. The director of the office shall be assisted by a staff to fulfill the office's mission to promote Colorado as a location for making feature films, television shows, television commercials, still photography,

music videos, and emerging mass media projects. BEGINNING ON JULY 1, 2010, THE DIRECTOR OF THE OFFICE SHALL REPORT TO THE DIRECTOR OF THE DIVISION.

(2) The office shall:

(a) Market Colorado as a destination for making feature films, television shows, television commercials, still photography, music videos, and new media projects;

(b) Assist production companies that are interested in conducting production activities in Colorado in scouting appropriate locations in the state for the production company's film;

(c) Assist state and local government agencies and organizations in the creation of permitting criteria for production companies that plan to conduct production activities on state or local government property;

(d) Assist production companies in determining the appropriate state or local government agencies to contact to apply for a permit to conduct production activities on state or local government property;

(e) Serve as a general liaison for production companies and assist in coordination efforts among production companies, any state or local government agency, and local businesses and individuals before, during, and after the production company conducts production activities in Colorado;

(f) Serve as a resource for local governments and communities around Colorado when a production company approaches the local government or community regarding the possibility of conducting production activities on the property of the local government or within the community;

(g) Administer the performance-based incentive for film production in Colorado as specified in ~~section 24-48.5-203~~ SECTION 24-48.5-311;

(h) Conduct educational seminars to promote the film industry and people working in the film industry in Colorado; and

(i) Perform any other duties in furtherance of the office's mission as deemed necessary by the director of the office, ~~and~~ the director of the office of economic development, AND THE DIRECTOR OF THE DIVISION.

24-48.5-311. [Formerly 24-48.5-203] Film, television, and media - performance-based incentive for film production in Colorado - film, television, and media operational account cash fund - creation - repeal.

(1) Subject to the provisions of this section, on or after July 1, 2009, any production company that spends at least seventy-five percent of its production expenditures for a film on qualified local expenditures and at least seventy-five percent of its payroll expenditures for a film on qualified local payroll expenditures shall be allowed to claim a performance-based incentive in an amount as follows:

(a) For a production company that originates the film production in Colorado, an amount equal to ten percent of the total amount of the production company's qualified local expenditures and qualified payroll expenditures if the total of such expenditures equals or exceeds one hundred thousand dollars; and

(b) For a production company that does not originate the film production activities in Colorado, an amount equal to ten percent of the total amount of the production company's qualified local expenditures and qualified payroll expenditures if the total of such expenditures equals or exceeds one million dollars.

(2) (a) In order for a production company to claim a performance-based incentive for film production activities in Colorado pursuant to this section, the production company shall apply to the office, in a manner to be determined by the office, prior to beginning production activities in the state. The application shall include a statement of intent by the production company to produce a film in Colorado for which the production company will be eligible to receive the incentive. The production company shall submit, in conjunction with the application, any documentation necessary to demonstrate that the production company's projected qualified local expenditures and qualified payroll expenditures will satisfy the expenditures specified in paragraph (a) or (b) of subsection (1) of this section, as applicable.

(b) The office shall review each application submitted by a

production company before the production company begins work on a film in Colorado. Based on the information provided in the production company's application, the office shall make an initial determination of whether the production company will be eligible to receive a performance-based incentive and estimate the amount of the incentive that will be due to the production company. The ~~office~~ COUNCIL shall grant conditional written approval to every production company that, based on the information provided by the production company, will satisfy the requirements of this section and be eligible to claim an incentive.

(c) Upon completion of production activities in Colorado, a production company that received conditional approval for a performance-based incentive from the office shall submit financial documents to the office that detail the expenses incurred in the course of the film production activities in Colorado, along with a signed affidavit stating that the financial documents are an accurate accounting of the production company's qualified local expenditures and qualified payroll expenditures. If the amount of the production company's actual qualified local expenditures and qualified payroll expenditures equal or exceed the production company's projected qualified local expenditures and qualified payroll expenditures submitted to the office pursuant to paragraph (a) of this subsection (2), the office shall issue an incentive to the production company.

(d) The office shall develop procedures for the administration of this section, including application guidelines for production companies applying to receive a performance-based incentive and for the office to issue payment of the incentives pursuant to this section.

(3) The office shall include data regarding the number of production companies that claimed the performance-based incentive pursuant to this section and the total amount of all incentives claimed during the most recent fiscal year for which such information is available in an annual report to the general assembly.

(4) (a) There is hereby created in the state treasury the Colorado office of film, television, and media operational account cash fund, referred to in this section as the "fund". FOR FISCAL YEARS PRIOR TO THE 2010-11 FISCAL YEAR, the fund shall consist of:

~~(a) (I) Moneys transferred to the fund as specified in section 24-46-105.8 (4) (a).~~

~~(H) This paragraph (a) is repealed, effective January 1, 2010.~~

~~(b) (I) Moneys transferred to the fund in accordance with section 12-47.1-701 (4) (a) (V) (A), C.R.S.;~~

~~(c) (II) Any gifts, grants, or donations from private or public sources that the office is hereby authorized to seek and accept; and~~

~~(d) (III) Any moneys appropriated to the fund by the general assembly.~~

(b) THIS SUBSECTION (4) IS REPEALED, EFFECTIVE JULY 1, 2011

(5) (a) FOR FISCAL YEARS PRIOR TO THE 2010-11 FISCAL YEAR, the moneys in the fund shall be continuously appropriated to the office for the operation of the office and for the performance-based incentive for film production in Colorado as specified in subsection (1) of this section.

~~(b) The total amount of performance-based incentives that the office issues pursuant to this section in any fiscal year shall not exceed the amount appropriated to the office to be used for the purposes of this section in the applicable fiscal year. If the office receives applications for incentives that exceed the amount appropriated by the general assembly for the fiscal year, the office shall issue incentives to production companies in the order in which the commission received applications until the amount appropriated has been expended.~~

(c) All moneys not expended or encumbered, and all interest earned on the investment or deposit of moneys in the fund, shall remain in the fund and shall not revert to the general fund at the end of any fiscal year.

(d) ANY MONEYS REMAINING IN THE FUND ON JULY 1, 2010, SHALL BE TRANSFERRED TO THE CREATIVE INDUSTRIES CASH FUND CREATED IN SECTION 24-48.5-301.

(e) THIS SUBSECTION (5) IS REPEALED, EFFECTIVE JULY 1, 2011.

(6) THE TOTAL AMOUNT OF PERFORMANCE-BASED INCENTIVES THAT THE OFFICE ISSUES PURSUANT TO THIS SECTION IN ANY FISCAL YEAR SHALL NOT EXCEED THE AMOUNT APPROPRIATED TO THE DIVISION TO BE USED FOR THE PURPOSES OF THIS SECTION IN THE APPLICABLE FISCAL YEAR. IF THE OFFICE RECEIVES APPLICATIONS FOR INCENTIVES THAT EXCEED THE AMOUNT APPROPRIATED BY THE GENERAL ASSEMBLY FOR THE FISCAL YEAR, THE OFFICE SHALL ISSUE INCENTIVES TO PRODUCTION COMPANIES IN THE ORDER IN WHICH THE COMMISSION RECEIVED APPLICATIONS UNTIL THE AMOUNT APPROPRIATED HAS BEEN EXPENDED.

24-48.5-312. [Formerly 24-80.5-101] Art in public places program - allocations from capital construction costs - guidelines - fund created - definitions - repeal. (1) (a) The state of Colorado, in recognition of its responsibility to create a more humane environment of distinction, enjoyment, and pride for all of its citizens and in recognition that public art is a resource ~~which~~ THAT stimulates the vitality and economy of the state's communities and ~~which~~ THAT provides opportunity for artists and other skilled workers to practice their crafts, declares it to be a matter of state policy that, when appropriate, a portion of each capital construction appropriation be allocated for the acquisition of works of art to be placed in public places.

(b) There is hereby established an art in public places program to be administered by the state council; ~~on the arts.~~ EXCEPT THAT, ON AND AFTER JULY 1, 2010, THE PROGRAM SHALL BE ADMINISTERED BY THE DIRECTOR OF THE DIVISION. All works of art purchased and commissioned under the art in public places program shall become a part of the state art collection developed, administered, and operated by the state council. ~~on the arts.~~ All works of art purchased or commissioned under this section prior to March 19, 1987, shall be considered a part of the state art collection to be administered by the state council. ~~on the arts.~~

(2) As used in this section, unless the context otherwise requires:

(a) "Architect" means the person or firm designing the public construction project. "Architect" includes architects, landscape architects, interior designers, and other design professionals.

(b) "Artist" means a practitioner in the visual arts generally recognized by ~~his~~ peers or critics as a professional who produces works of

art. "Artist" does not include the architect of a public building under construction or any member of ~~his architectural~~ THE ARCHITECT'S firm.

(c) "Public construction project" means a capital construction project subject to the provisions of section 24-30-1303 (3).

(d) "Works of art" means all forms of original creations of visual art including, but not limited to:

(I) Sculpture, in any material or combination of materials, whether in the round, bas-relief, high relief, mobile, fountain, kinetic, or electronic; ~~or~~

(II) Painting, whether portable or permanently fixed, as in the case of murals; ~~or~~

(III) Mosaics; ~~or~~

(IV) Photographs; ~~or~~

(V) Crafts made from clay, fiber and textiles, wood, glass, metal, plastics, or any other material, or any combination thereof; ~~or~~

(VI) Calligraphy; ~~or~~

(VII) Mixed media composed of any combination of forms or media; ~~or~~

(VIII) Unique architectural stylings or embellishments, including architectural crafts; ~~or~~

(IX) Environmental landscaping; ~~or~~ AND

(X) Restoration or renovation of existing works of art of historical significance.

(3) (a) (I) Each capital construction appropriation for a public construction project shall include as a nondeductible item an allocation of not less than one percent of the capital construction costs to be used for the acquisition of works of art; except that the requirements specified in this

subparagraph (I) shall not apply to:

(A) Capital construction appropriations covered by ~~section 24-80.5-102~~ SECTION 24-48.5-313;

(B) Agricultural facilities where livestock are housed or agricultural products are grown;

(C) The diagnostic center located in the city and county of Denver;

(D) The facilities authorized by section 1 of ~~Senate Bill No. 101~~ SENATE BILL 86-101, enacted at the second regular session of the fifty-fifth general assembly IN 1986;

(E) The Front Range community college - Larimer campus, Mount Antero and Blanca Peak buildings renovation, phase 2 of 2;

(F) The Pueblo community college - industrial technology/technical education renovation, phase 1 of 2 and phase 2 of 2;

(G) The Morgan community college - automotive programs relocation, phase 1 of 2 and phase 2 of 2;

(H) The Fort Lewis college - exercise science/athletic facilities, phase 1 of 2 and phase 2 of 2;

(I) Department of public safety - Colorado state patrol, Grand Junction troop office construction;

(J) Department of public safety - Colorado state patrol, Castle Rock troop office construction - office portion only; and

(K) Department of personnel - North campus upgrades.

~~(H) and (HH) Repealed.~~

~~(IV)~~ (II) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), the percentage of the capital construction costs for the juvenile detention and juvenile commitment beds authorized by sections 15 and 16 of House Bill 94-1340, enacted at the second regular session of the

~~fifty-ninth general assembly~~ IN 1994, and sections 25, 26, and 27 of House Bill 95-1352, enacted ~~at the first regular session of the sixtieth general assembly~~ IN 1995, allocated to acquisition of works of art shall be one-tenth of one percent. It is the intent of the general assembly that these allocations be utilized to acquire artworks produced by residents of the state's juvenile facilities.

(b) If the allocation provided for in paragraph (a) of this subsection (3) is equal to or greater than one thousand dollars, the ~~state council on the arts~~ shall select a jury as described in paragraph (a) of ~~subsection (5)~~ SUBSECTION (6) of this section.

(c) If the allocation provided for in paragraph (a) of this subsection (3) is less than one thousand dollars, the ~~state council on the arts~~ may, at its discretion, either select a jury or direct that the funds be held within the works of art in public places fund described in ~~subsection (6)~~ SUBSECTION (7) of this section for the acquisition of works of art for the state agency for which the capital construction project is to be constructed. Whenever the funds for any state agency equal or exceed one thousand dollars, the ~~state council on the arts~~ shall select a jury as described in paragraph (a) of ~~subsection (5)~~ SUBSECTION (6) of this section.

(d) The works of art acquired under this ~~article~~ PART 3 shall be placed in a publicly accessible location within the state agency for which the capital construction project is to be constructed. A collection of works of art may be selected for placement within the state agency and, at the discretion of the state agency and the ~~state council, on the arts~~, made available for loan, circulation, and exhibition in other public facilities.

(4) The office of state planning and budgeting, in both the planning and review stages in the construction of state buildings and other public facilities, shall be responsible for insuring compliance with the provisions of subsection (3) of this section.

~~(4.5)~~ (5) The administration of the art in public places program includes supervision of the jury process ~~which~~ THAT convenes to select the site and the artwork, contracting, purchase, commissioning, and reviewing of design, execution, and placement. Acceptance of works of art shall be the responsibility of the ~~state council, on the arts~~. These activities shall be conducted in consultation with the executive directors of the respective state

agencies. The administration of the art in public places program shall not include bearing the costs of maintaining or insuring the works of art. Such costs shall be the responsibility of the respective state agencies.

~~(5)~~ (6) All works of art acquired with funds allocated under subsection (3) of this section shall be contracted for separately from all other items in the original construction plans pursuant to the following guidelines:

(a) Selection of artists shall be by the jury method. The ~~state council on the arts~~ shall select jury members and convene juries. Jury recommendations shall be presented to the ~~state council on the arts~~ for review and final approval. Any significant changes in the design or construction of the work of art occurring after such final approval of the artist shall be subject to the approval of both the jury and the ~~state council on the arts~~. The council shall determine which changes shall be considered significant for the purposes of this paragraph (a). Each jury shall contain at least the following:

(I) A representative from the contracting state agency for which the capital construction project is to be constructed; ~~and~~

(II) The architect; ~~and~~

(III) A professional artist; ~~and~~

(IV) A representative from each community in which a capital construction project is to be constructed; ~~and~~

(V) A member of the ~~state council; on the arts; and~~

~~(VI) Repealed.~~

~~(VII)~~ (VI) A representative from the contracting state agency who is a tenant or future tenant of the capital construction site; ~~and~~

~~(VIII)~~ (VII) A member of the state house of representatives to be appointed by the speaker of the house; and

~~(IX)~~ (VIII) A member of the state senate to be appointed by the

president of the senate.

~~(b) Repealed.~~

~~(c)~~ (b) Residents of Colorado shall be the participants of this program except for artists from other states and territories who have achieved national recognition in their specific forms of expression.

~~(d)~~ (c) Jury members who are not state employees shall be reimbursed for actual and necessary travel expenses incurred in fulfilling their duties under this section. Such expenses shall be deducted from the one percent allocation for art.

~~(e)~~ (7) (a) There is hereby created in the state treasury the works of art in public places fund, any moneys in which are hereby appropriated to the state council on the arts, which fund shall be used exclusively for the following purpose: THE purchase of works of art, taking into consideration the artist's preliminary site visit, the design fee, the total costs of construction and installation of the work of art, jury expenses, and program administration in compliance with the provisions of ~~subsection (5)~~ SUBSECTION (6) of this section.

(b) PRIOR TO THE 2010-11 FISCAL YEAR, all moneys allocated for the acquisition of works of art pursuant to subsection (3) of this section shall be transmitted to the state treasurer, who shall credit the same to the works of art in public places fund. Any unexpended moneys shall remain in the fund at the end of the fiscal year and shall not revert to the capital construction fund. ANY MONEYS REMAINING IN THE WORKS OF ART IN PUBLIC PLACES FUND ON JULY 1, 2010, SHALL BE TRANSFERRED TO THE CREATIVE INDUSTRIES CASH FUND CREATED IN SECTION 24-48.5-301.

(c) If any moneys allocated for the acquisition of works of art pursuant to subsection (3) of this section are not expended after the jury has been convened and has rendered its decision, such moneys shall remain in the works of art in public places fund to be used for the capital construction project for which they were allocated or shall revert to the general fund.

~~(d) Notwithstanding any provision of this subsection (6) to the contrary, on March 5, 2003, the state treasurer shall deduct one hundred forty-five thousand one hundred thirty-eight dollars from the works of art~~

~~in public places fund and transfer such sum to the general fund.~~

(e) THIS SUBSECTION (7) IS REPEALED, EFFECTIVE JULY 1, 2011.

(8) FOR THE 2010-11 FISCAL YEAR AND EACH FISCAL YEAR THEREAFTER, ALL MONEYS ALLOCATED FOR THE ACQUISITION OF WORKS OF ART PURSUANT TO SUBSECTION (3) OF THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE CREATIVE INDUSTRIES CASH FUND CREATED IN SECTION 24-48.5-301.

~~(7)~~ (9) Nothing in this section shall be construed to preclude the placement of works of art in public places other than those placed pursuant to this section.

24-48.5-313. [Formerly 24-80.5-102] Art in public places - works of art in correctional and juvenile facilities. (1) Each capital construction appropriation for a correctional facility shall include as a nondeductible item an allocation of not less than one-tenth of one percent of the capital construction costs to be used for a prison inmate art fund. The moneys in such fund shall be used for materials to allow inmates to create works of art to be included in the construction of or to be placed permanently in such facility. The department of corrections shall administer by rule a competitive program among the inmates of such facility in order to determine which art projects and inmates shall receive an incentive award not to exceed two hundred dollars each. The ~~state council on the arts~~ shall appoint one of its members to serve in an advisory capacity to the department of corrections on the implementation of this subsection (1).

(2) For the purposes of subsection (1) of this section, "correctional facility" means any state facility in which persons are or may be lawfully held in custody as a result of conviction of a crime.

(3) (a) On and after January 1, 1998, each capital construction appropriation for a juvenile correctional facility shall include as a nondeductible item an allocation of not less than one-tenth of one percent of the capital construction costs to be used for a juvenile art fund. The moneys in such fund shall be used for materials to allow juveniles housed by the department of human services to create works of art to be included in the construction of or to be placed permanently in juvenile facilities. The ~~state council on the arts~~ shall appoint one of its members to serve in an

advisory capacity to the department of human services on the implementation of this subsection (3).

(b) As used in this subsection (3), "juvenile correctional facility" means any facility operated by or under contract with the department of human services pursuant to section 19-2-403, C.R.S.

SECTION 2. 12-47.1-701 (4) (a) (IV) (A), (4) (a) (IV) (A.5), (4) (a) (IV) (B), (4) (a) (V) (A), and (4) (a) (V) (C), Colorado Revised Statutes, are amended to read:

12-47.1-701. Limited gaming fund. (4) (a) At the end of each fiscal year, the state treasurer shall distribute the balance remaining in the limited gaming fund in accordance with the provisions of section 9 (5) (b) (II) of article XVIII of the state constitution and paragraph (c) of subsection (1) of this section; except that:

(IV) (A) Except as provided in subparagraph (VI) of this paragraph (a) and sub-subparagraphs (A.5) and (B) of this subparagraph (IV), for the 2005-06 fiscal year and each fiscal year thereafter, of the portion of limited gaming fund moneys that would otherwise be transferred to the general fund pursuant to section 9 (5) (b) (II) of article XVIII of the state constitution, after the transfer to the local government limited gaming impact fund required by section 12-47.1-1601, nineteen million dollars shall be transferred to the Colorado travel and tourism promotion fund created in section 24-49.7-106, C.R.S., one million five hundred thousand dollars shall be transferred to the state council on the arts cash fund created in ~~section 24-48.8-109~~ SECTION 24-48.5-308, C.R.S., and three million dollars shall be transferred to the new jobs incentives cash fund created in section 24-46-105.7, C.R.S.; EXCEPT THAT, FOR THE 2010-11 FISCAL YEAR AND EACH FISCAL YEAR THEREAFTER, THE AMOUNT THAT WOULD OTHERWISE BE TRANSFERRED TO THE STATE COUNCIL ON THE ARTS CASH FUND PURSUANT TO THIS SUB-SUBPARAGRAPH (A) SHALL INSTEAD BE TRANSFERRED TO THE CREATIVE INDUSTRIES CASH FUND, CREATED IN SECTION 24-48.5-301, C.R.S. For purposes of the transfers occurring at the end of the 2006-07 fiscal year and each fiscal year thereafter, no later than June 1, 2007, and no later than June 1 of each calendar year thereafter, the executive director of the department of revenue shall adjust the dollar amounts specified in this sub-subparagraph (A) to reflect the percentage change in the consumer price index for the Denver metropolitan area. As used in this

sub-subparagraph (A), "percentage change in the consumer price index for the Denver metropolitan area" means the percentage change between the two published annual estimates of the consumer price index for the Denver-Boulder-Greeley combined statistical area for all urban consumers, all goods, as defined and officially reported by the bureau of labor statistics in the United States department of labor, or its successor index, for the two calendar years immediately preceding the calendar year in which the adjustment is made.

(A.5) If, based on the March revenue forecast prepared by the legislative council, the joint budget committee determines that the amount of general fund revenues for the fiscal year in which the forecast is prepared will be insufficient to cover the amount of general fund appropriations to be made for that fiscal year as included in the joint budget committee's appropriations report, the joint budget committee, acting by bill, shall determine the amount of limited gaming fund moneys, if any, that should be transferred to the state council on the arts cash fund OR THE CREATIVE INDUSTRIES CASH FUND, AS APPLICABLE, the new jobs incentive cash fund, and the Colorado travel and tourism promotion fund at the end of that fiscal year.

(B) If the joint budget committee, pursuant to sub-subparagraph (A.5) of this subparagraph (IV), does not determine the amount of limited gaming fund moneys, if any, to be transferred to the funds specified in sub-subparagraph (A) of this subparagraph (IV) and if, based on the June revenue forecast prepared by the legislative council, the state treasurer determines that the amount of general fund revenues for the fiscal year in which the forecast is prepared will be insufficient to cover the amount of general fund appropriations to be made for that fiscal year as included in the joint budget committee's appropriations report, the state treasurer shall transfer to the general fund from the moneys that would otherwise be transferred to the state council on the arts cash fund OR THE CREATIVE INDUSTRIES CASH FUND, AS APPLICABLE, the new jobs incentives cash fund, and the Colorado travel and tourism promotion fund pursuant to sub-subparagraph (A) of this subparagraph (IV) at the end of the fiscal year an amount equal to the lesser of the full amount that would otherwise be transferred to the state council on the arts cash fund OR THE CREATIVE INDUSTRIES CASH FUND, AS APPLICABLE, the new jobs incentives cash fund, and the Colorado travel and tourism promotion fund or the amount necessary to cover the amount of general fund appropriations to be made for

the fiscal year as included in the joint budget committee's appropriations report. Any reduction in the amounts transferred to the state council on the arts cash fund OR THE CREATIVE INDUSTRIES CASH FUND, AS APPLICABLE, the new jobs incentives cash fund, and the Colorado travel and tourism promotion fund required by this sub-subparagraph (B) shall be pro-rated based on the amounts otherwise required to be transferred to said funds pursuant to sub-subparagraph (A) of this subparagraph (IV).

(V) (A) Except as provided in subparagraph (VI) of this paragraph (a) and sub-subparagraphs (B), (C), and (E) of this subparagraph (V), for the 2006-07, 2007-08, and 2008-09 fiscal years, of the portion of limited gaming fund moneys that would otherwise be transferred to the general fund pursuant to section 9 (5) (b) (II) of article XVIII of the state constitution, after the transfer to the local government limited gaming impact fund required by section 12-47.1-1601, six hundred thousand dollars shall be transferred to the film incentives cash fund created in section 24-46-105.8, C.R.S. Except as provided in sub-subparagraphs (B) and (C) of this subparagraph (V), for the 2009-10 fiscal year and each fiscal year thereafter, of the portion of limited gaming fund moneys that would otherwise be transferred to the general fund pursuant to section 9 (5) (b) (II) of article XVIII of the state constitution, after the transfer to the local government limited gaming impact fund required by section 12-47.1-1601, six hundred thousand dollars shall be transferred to the Colorado office of film, television, and media operational account cash fund created in ~~section 24-48.5-203~~ SECTION 24-48.5-311, C.R.S., EXCEPT THAT, FOR THE 2010-11 FISCAL YEAR AND EACH FISCAL YEAR THEREAFTER, THE AMOUNT THAT WOULD OTHERWISE BE TRANSFERRED TO THE COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA OPERATIONAL ACCOUNT CASH FUND PURSUANT TO THIS SUB-SUBPARAGRAPH (A) SHALL INSTEAD BE TRANSFERRED TO THE CREATIVE INDUSTRIES CASH FUND, CREATED IN SECTION 24-48.5-301, C.R.S. For purposes of the transfers occurring at the end of the 2006-07 fiscal year and each fiscal year thereafter, no later than June 1, 2007, and no later than June 1 of each calendar year thereafter, the executive director shall adjust the dollar amounts specified in this sub-subparagraph (A) to reflect the percentage change in the consumer price index for the Denver metropolitan area. As used in this sub-subparagraph (A), "percentage change in the consumer price index for the Denver metropolitan area" means the percentage change between the two published annual estimates of the consumer price index for the Denver-Boulder-Greeley combined statistical area for all urban consumers, all goods, as defined and officially reported

by the bureau of labor statistics in the United States department of labor for the two calendar years immediately preceding the calendar year in which the adjustment is made.

(C) If the joint budget committee, pursuant to sub-subparagraph (B) of this subparagraph (V), does not determine the amount of limited gaming fund moneys, if any, to be transferred to the film incentives cash fund, ~~or~~ the Colorado office of film, television, and media operational account cash fund, OR THE CREATIVE INDUSTRIES CASH FUND, AS APPLICABLE, specified in sub-subparagraph (A) of this subparagraph (V) and if, based on the June revenue forecast prepared by the legislative council, the state treasurer determines that the amount of general fund revenues for the fiscal year in which the forecast is prepared will be insufficient to cover the amount of general fund appropriations to be made for that fiscal year as included in the joint budget committee's appropriations report, the state treasurer shall transfer to the general fund from the moneys that would otherwise be transferred to the film incentives cash fund, ~~or~~ the Colorado office of film, television, and media operational account cash fund, OR THE CREATIVE INDUSTRIES CASH FUND, AS APPLICABLE, pursuant to sub-subparagraph (A) of this subparagraph (V) at the end of the fiscal year an amount equal to the lesser of the full amount that would otherwise be transferred to the film incentives cash fund, ~~or~~ the Colorado office of film, television, and media operational account cash fund, OR THE CREATIVE INDUSTRIES CASH FUND, AS APPLICABLE, or the amount necessary to cover the amount of general fund appropriations to be made for the fiscal year as included in the joint budget committee's appropriations report. Any reduction in the amount transferred to the film incentives cash fund, ~~or~~ the Colorado office of film, television, and media operational account cash fund, OR THE CREATIVE INDUSTRIES CASH FUND, AS APPLICABLE, required by this sub-subparagraph (C) and the amounts transferred to the state council on the arts cash fund OR THE CREATIVE INDUSTRIES CASH FUND, AS APPLICABLE, the new jobs incentives cash fund, and the Colorado travel and tourism promotion fund required by sub-subparagraph (B) of subparagraph (IV) of this paragraph (a) shall be pro-rated based on the amounts otherwise required to be transferred to said funds pursuant to sub-subparagraph (A) of this subparagraph (V) and sub-subparagraph (A) of subparagraph (IV) of this paragraph (a).

SECTION 3. 24-1-137, Colorado Revised Statutes, is amended to read:

24-1-137. Effect of decrease in the length of terms of office for certain state boards, commissions, authorities, and agencies. Persons who are holding office on June 15, 1987, and who were appointed to terms of office pursuant to sections 11-2-102, 12-4-103, 12-22-104, 12-32-103, 12-33-103, 12-36-103, 12-40-106, 12-60-102, 22-80-104, 23-9-103, 23-15-104, 23-40-104, 23-41-102, 24-32-706, 24-42-102, 25-25-104, 29-1-503, 29-4-704, 34-60-104, 35-41-101, 35-65-401, 35-75-104, 39-2-123, and 40-2-101, C.R.S., as said sections existed prior to June 15, 1987, shall continue to serve in such office, but such service shall be at the pleasure of the governor, who may appoint a replacement to serve for the unexpired term of any member. However, if the governor has not appointed any such replacement on or before November 15, 1987, then the person who is holding such office on June 15, 1987, shall no longer be subject to replacement pursuant to this section but shall be subject to whatever removal provisions may otherwise apply for such office. Any such member for whom a replacement has been appointed shall continue to serve until his or her successor is duly qualified. Appointments to new terms of office made after June 15, 1987, shall be made for terms of four years as prescribed by law; except that such provision shall not apply to terms of office of persons appointed pursuant to section 23-9-103, C.R.S., as it existed prior to July 1, 2006, or to ~~section 24-48.8-103~~ SECTION 24-48.5-303, which is the former section 23-9-103, C.R.S.

SECTION 4. 24-37.5-402 (4), Colorado Revised Statutes, is amended to read:

24-37.5-402. Definitions. As used in this part 4, unless the context otherwise requires:

(4) "Department of higher education" means the Colorado commission on higher education, collegeinvest, the Colorado student loan program, the Colorado college access network, the private occupational school division, AND the state historical society. ~~and the state council on the arts.~~

SECTION 5. The introductory portion to 43-1-404 (1) and 43-1-404 (1) (e) (III), Colorado Revised Statutes, are amended to read:

43-1-404. Advertising devices allowed - exception. (1) The following advertising devices as defined in section 43-1-403 may be erected

and maintained when in compliance with all provisions of this part 4 and the rules ~~and regulations~~ adopted by the department:

(e) (III) The department shall consult with the ~~state~~ council on ~~the arts~~ CREATIVE INDUSTRIES and the state historical society to determine places of cultural importance which are eligible to erect advertising devices pursuant to sub-subparagraph (C) of subparagraph (I) of this paragraph (e). It is the intent of the general assembly that no state moneys nor any federal funds be used to erect such advertising devices.

SECTION 6. Repeal of provisions being relocated in this act.

Part 2 of article 48.5 of title 24, article 48.8 of title 24, and article 80.5 of title 24, Colorado Revised Statutes, are repealed.

SECTION 7. Repeal of provisions not being relocated in this act.

24-46-105.8 (4) (a), 24-48.8-101, and 24-48.8-105, Colorado Revised Statutes, are repealed.

SECTION 8. Specified effective date. This act shall take effect

July 1, 2010.

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO