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NEW JERSEY ADMINISTRATIVE CODE

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THE ***

*** NEW JERSEY REGISTER, VOL. 39. NO. 20, OCTOBER 15, 2007 ***

TITLE 15. DEPARTMENT OF STATE

CHAPTER 27. NEW JERSEY CULTURAL TRUST

N.J.A.C. 15:27 (2007)

Title 15, Chapter 27 -- Chapter Notes

CHAPTER AUTHORITY: *N.J.S.A. 52:16A-72 et seq.*, specifically *52:16A-77a*.

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2007 d.291, effective August 15, 2007.

See: *39 N.J.R. 1640(a)*, *39 N.J.R. 3282(a)*, *39 N.J.R. 3995(a)*.

CHAPTER EXPIRATION DATE:

Chapter 27, New Jersey Cultural Trust, expires on August 15, 2012.

CHAPTER HISTORICAL NOTE:

Chapter 27, New Jersey Cultural Trust, was adopted as Special New Rules by R.2001 d.391, effective September 26, 2001 (to expire March 25, 2002). See: *33 N.J.R. 3687(a)*.

Chapter 27, New Jersey Cultural Trust, was readopted as R.2002 d.112, effective March 20, 2002. See: *33 N.J.R. 3687(a)*, *34 N.J.R. 1538(b)*.

Chapter 27, New Jersey Cultural Trust, was readopted as R.2007 d.291, effective August 15, 2007. See: Source and Effective Date. See, also, section annotations.

§ 15:27-1.1 Organization; information contact; petition for rulemaking

(a) The New Jersey Cultural Trust, in but not of the Department of State, is a 15-member board directed by the Legislature and Governor to establish a permanent, interest-generating fund to be an additional source of revenue to nonprofit arts, history, and humanities organizations, specifically for the building of endowments, the improvement of institutional and financial stability, and the capital improvement of cultural facilities. Ten members of the Board are public members, and five are ex officio members.

(b) To contact the New Jersey Cultural Trust, or to submit a petition for rulemaking pursuant to N.J.A.C. 1:30-4, write:

Carol Cronheim, Board Secretary

New Jersey Cultural Trust

PO Box 529

Trenton, NJ 08625-0529

§ 15:27-2.1 Purpose

This chapter constitutes the rules of the New Jersey Cultural Trust, in but not of the Department of State, for the New Jersey Cultural Trust Fund Program for the award of grants for endowments, capital facilities projects and financial and institutional stabilization in accord with the New Jersey Cultural Trust Act, P.L. 2000, c.76, *N.J.S.A. 52:16A-72* et seq.

§ 15:27-2.2 Ethical principles

The New Jersey Cultural Trust will maintain the highest level of integrity in conducting all of its business including the making of funding decisions. Funding decisions will be based on merit and on the performance of eligible nonprofit organizations measured against the legislation, regulations, and requirements of the Trust. To this end, Trustees may disqualify from consideration any organization that the Trustees find has sought to influence the decision-making process outside of the normal application procedures.

§ 15:27-2.3 Severability

If a court of competent jurisdiction declares any portion of this chapter invalid, the remainder of this chapter is not to be affected.

§ 15:27-2.4 Suspension of rules for cause

The Board reserves to itself the right to suspend any or all of the following rules or provisions thereof due to a lack of funding.

§ 15:27-2.5 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the New Jersey Cultural Trust Act, P.L. 2000, c.76 (*N.J.S.A. 52:16A-72 et seq.*).

"Applicant" means an organization applying to be approved as a qualified organization or applying to have its endowment gift certified, or an approved qualified nonprofit organization that appears on a list of suggested projects submitted to the Trust by the Council, Historic Trust or Commission.

"Board" means the Board of Trustees of the New Jersey Cultural Trust.

"Capital facilities project" means those projects in New Jersey of qualified organizations that construct, expand, renovate, plan for, repair, rehabilitate, restore, adaptively reuse, purchase, effectuate long-term leaseholds on, replace, relocate, or otherwise improve cultural or historical properties and facilities, as appropriate, including any work relating to providing access thereto for

persons with disabilities. The term includes the acquisition of an interest in real property and includes the repair and replacement of fixtures.

"Certification" means the process by which restricted and unrestricted donations are evaluated and approved by the Board, the result of which is a transfer of funds from the Account to the Fund.

"Commission" means the New Jersey Historical Commission established pursuant to *N.J.S.A. 18A:73-21 et seq.*

"Council" means the New Jersey State Council on the Arts established pursuant to P.L. 1966, c.214 (*N.J.S.A. 52:16A-25 et seq.*).

"Cultural Trust" means the New Jersey Cultural Trust, established by P.L. 2000, c.76 (*N.J.S.A. 52:16A-72 et seq.*).

"Donor" means any individual, fiduciary, corporation, company, association, society, firm, partnership, or other person or entity. This definition includes a fiduciary exercising authority, in accordance with *N.J.S.A. 3B:1-1 et seq.* or other similar laws of another state or foreign jurisdiction, as an executor, trustee, guardian, or other authorized representative.

"Endowment" means a permanent fund, the principal of which is to remain intact in perpetuity and which is invested and held by or for the exclusive use of a qualified organization, and the income of which may be expended by the qualified organization for the purposes consistent with its mission.

"Financial stabilization project" means those enhancements to a qualified organization that build assets, reduce liabilities, aid cash flow, establish working capital and capital reserves, expand income, improve public access, build institutional capability and efficiency, or otherwise effect long-term improvement of a qualified organization's financial ability to sustain itself and carry out its mission.

"Grant" means an award of funds from the interest of the Trust Fund to an applicant recommended by the Council, the Commission or the Historic Trust.

"Historic facility" means a building or structure which has been "certified" as eligible for listing on the State Register of Historic Places by the New Jersey Office of Historic Preservation.

"Historic Trust" means the New Jersey Historic Trust established pursuant to P.L. 1967, c.124 (*N.J.S.A. 13:1B-15.111 et seq.*)

"Nonprofit organization" means a corporation organized under the New Jersey Nonprofit Corporation Act, *N.J.S.A. 15A:1-1 et seq.*

"Project list" means a compilation of projects, their purposes and amounts recommended by the Council, Historic Trust and Commission for receipt of Cultural Trust moneys generated by the interest of the Trust Fund.

"Qualified organization" means a separately incorporated, tax-exempt under the Internal Revenue Code of 1986 (*26 U.S.C. § 501(c)*), nonprofit organization, whose primary mission is to promote the performing, visual and creative arts in New Jersey or to promote or preserve history and humanities in New Jersey. The term shall not include private, State, county, or municipal colleges, and universities. The term shall not include State, county, or local governmental units, authorities or corporations created by such units, and shall not include a "qualifying governmental body" as defined in section 2 of P.L. 1985, c.410 (*N.J.S.A. 52:16A-26.2*).

"Restricted donations" are donations made directly to qualified organizations for endowment, which once certified, cause the transfer of a dollar for dollar match from the Trust Account to the Trust Fund.

"Southern New Jersey" means the eight southernmost counties including Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem.

"Trust Account" means the New Jersey Cultural Trust Account in the General Fund established by section 8 of the Act (*N.J.S.A. 52:16A-79*).

"Trust fund" means the permanent investment fund established by the Board of Trustees as provided in P.L. 2000, c.76.

"Unrestricted donations" are donations made directly to the Cultural Trust, and once certified, cause the transfer of a dollar for dollar match from the Account to the Fund.

§ 15:27-2.6 Requirements for designation as a "qualified organization"

(a) In applying for designation as a qualified organization, the following are required:

1. An organization must submit current proof of nonprofit corporate status from the State of New Jersey. An organization must also submit a copy of its two most recent annual reports or a summary of activities for the past two years describing major programs and services.

i. An organization must be incorporated and operating for at least four consecutive years prior to applying to be a "qualified organization."

2. An organization must submit proof of tax-exempt status from the Internal Revenue Service.

3. An organization must provide documentation of arts, history or humanities services or programs that provide a New Jersey public benefit.

4. An organization must submit a copy of its mission statement as part of the documentation.

5. An organization must supply other documents, such as event calendars, brochures, educational outreach materials, performance and exhibition calendars, in support of its mission and to verify services to the public as determined by the Cultural Trust.

6. An organization with an annual budget of at least \$ 100,000 and/or endowment holding greater than \$ 100,000 must submit an independent certified audit of financial statements for the last two completed fiscal years. An organization with an annual budget under \$ 100,000 and no endowment or no endowment holding in excess of \$ 100,000 must submit copies of their past two annual budgets as approved by the organization's board of directors and their tax returns for the past two fiscal years, if they are required to file such returns.

(b) If a qualified organization does not apply to the Cultural Trust to certify a large gift donation, or does not receive a grant by virtue of appearing on a list of projects submitted by the Council, the Commission or the Historic Trust within three years of being notified of their approved status as a "qualified organization," the organization must reapply and meet all the requirements for "qualified organization."

(c) Private, State, county, or municipal colleges and universities are not eligible. State, county, or local governmental units, authorities or corporations created by such units and "qualifying governmental bodies" as defined in *N.J.S.A. 52:16A-26.2* are not eligible.

HISTORY:

Amended by R.2002 d.112, effective April 15, 2002.

See: *33 N.J.R. 3687(a)*, *34 N.J.R. 1538(b)*.

In (a)1, rewrote the introductory paragraph; rewrote (a)6.

Amended by R.2007 d.291, effective September 17, 2007.

See: *39 N.J.R. 1640(a)*, *39 N.J.R. 3282(a)*, *39 N.J.R. 3995(a)*.

Deleted (a)1ii; and in (a)6, deleted "their tax returns for the past two fiscal years and" following "submit copies of" and inserted "and their tax returns for the past two fiscal years, if they are required to file such returns".

§ 15:27-2.7 Certification and evaluation procedures for restricted donations to the Cultural Trust

(a) Money, real property or other item of monetary value given directly to a qualified organization and expressly dedicated to the organization's endowment may be considered a restricted donation to that organization and may be certified by the Cultural Trust for the purpose of transferring a dollar for dollar matching amount of money from the Trust Account to the Trust Fund.

(b) To obtain certification of a restricted donation of money to the endowment of a qualified organization, the qualified organization shall send the following to the Cultural Trust:

1. The amount of the donation, the name of the financial institution and account number from which the donation came;

2. The date the donation was received;

3. Any terms and conditions of the donation that, if not met, would result in the donation's rescission;

4. The current disposition of the donation;

5. A copy of the donation document received by the qualified organization from the donor; and

6. A copy of official organization board minutes establishing an endowment.

(c) To certify a restricted donation of real property or other items of monetary value to the endowment of a qualified organization, the qualified organization shall send the following to the Cultural Trust:

1. The amount or value of the donation;
2. Any terms and conditions of the donation that, if not met, would result in the donation's rescission;
3. The date the donation was received;
4. The current disposition of the donation;
5. A copy of the donation document received by the qualified organization from the donor; and
6. A copy of official organization board minutes establishing an endowment.

(d) In the case of a restricted donation of real property or other item of monetary value, the amount of the match transferred to the Cultural Trust shall be based upon the value of the real property or item of monetary value on the date of transfer of ownership from the donor to the qualified organization, based on the certified appraisal, deed or other documentation describing the real property or item of monetary value, stating its fair market value as of the close of business on the day on which the donation is made. The Board reserves the right to require additional proofs of value. The Board shall make the final determination of value for purposes of the match.

§ 15:27-2.8 Evaluation of restricted donations by the Cultural Trust

(a) Upon receipt, review and acceptance of the documents from the donor and the qualified organization as required under *N.J.A.C. 15:27-2.7*, the Board will:

1. Certify to the State Treasurer that the donation is consistent with the terms of the New Jersey Cultural Trust Act and request a transfer of an equal amount from the Trust Account to the Trust Fund; and

2. Notify the qualified organization in writing that the donation has been approved and certified and document the results of this process.

(b) The Board reserves the right to:

1. Inspect the financial records of a qualified organization whose restricted donation has been or is in the process of being certified;

2. Require a statement from the qualified organization's independent auditor confirming that any restricted donation of money, real property, or an item of monetary value is being applied to the organization's endowment;

3. Request additional documentation, affidavits, appraisals, etc. to confirm the value or ownership of a restricted donation; and

4. Refuse to certify a donation it deems unacceptable to the intent of the Act or that may expose the Cultural Trust or the State of New Jersey to liability.

§ 15:27-2.9 Procedures for large gift-restricted donations

(a) When the restricted donation is equal to or greater than \$ 100,000, the donation shall be considered a large gift donation. By resolution, the Board shall then disburse from the matched funds transferred from the Trust Account to the Trust Fund an amount equal to 20 percent of the donation received by the qualified organization. However, the aggregate of such disbursements shall not exceed 20 percent of the money transferred to the Trust Fund from the Trust Account by virtue of the certification process.

1. If the restricted donation of real property or other item of monetary value qualifies as a large gift donation, the Trust shall certify to the State Treasurer the amount of the donation from the

donor to the qualified organization for the purposes of calculating the transfer of funds from the Account to the Fund, and for the purpose of calculating the 20 percent matching disbursement from the Fund to the qualifying organization.

2. If the restricted donation is in the form of a pledge from one donor over a two-year period, the aggregate of which will qualify as a large gift donation, the yearly donation, after certification by the Board to the State Treasurer, shall cause a transfer of funds from the Account to the Fund in the amount of the yearly contribution. However, the qualifying organization shall not be eligible to receive the 20 percent matching disbursement of money in hand until the aggregate of those yearly donations from one donor equals at least \$ 100,000 and has been certified by the Board.

i. In each year of the pledged donation, in addition to the documents necessary to certify each yearly donation, the qualifying organization shall submit to the Trust financial records indicating the disposition of that year's donation, the disposition of the previous year's donations with regard to the pledge, and a financial audit of its operation by an independent certified public accountant, indicating the endowment account wherein the restricted donation is held.

3. On a regular basis, the Trust shall accept applications for qualification of organizations and certification of restricted donations. These actions can occur simultaneously.

4. In the event that the amount of restricted donations certified for a match from the Trust Fund exceeds the 20 percent aggregated amount available for distributions at any meeting, the Board at that meeting, and then annually, shall determine a minimum distribution amount to each eligible organization and with any remaining dollars determine a single flat percentage rate that all approved qualifying organizations with outstanding balances still owed in that round will receive, which corresponds to the available resources for that round of certified large-gift donations.

5. The Board reserves to itself the right to impose a uniform cap on the amount that any certified organization may receive in matching Trust funds at any meeting if the match to all other qualifying large restricted donations has not been satisfied and there remain no available matching funds.

6. Qualifying organizations that do not receive their match or any part of their match because of the unavailability of funding at any meeting and are approved by the Board pending availability of funding shall remain on the list as a class and receive first consideration at the next opportunity in which funding becomes available.

HISTORY:

Amended by R.2007 d.291, effective September 17, 2007.

See: *39 N.J.R. 1640(a)*, *39 N.J.R. 3282(a)*, *39 N.J.R. 3995(a)*.

Section was "Procedures for large gift restricted donations". Rewrote (a)4.

§ 15:27-2.10 Certification and evaluation procedures for unrestricted donations to the Cultural Trust

(a) Money, real property or other object of value given directly to the Cultural Trust is considered an unrestricted donation to the Cultural Trust. Once certified, the donation shall initiate a dollar-for-dollar transfer funds from the Trust Account to the Trust Fund.

(b) In order for an unrestricted donation of money to the Cultural Trust to be certified, the donor shall send a letter of donation to the Cultural Trust stating:

1. The amount of the donation;

2. The financial institution and account number from which the moneys were or will be allocated; and

3. All terms and conditions of the donation.

(c) Before certifying an unrestricted donation of real property or other item of monetary value, the donor shall send a letter of donation to the Cultural Trust:

1. Stating the name and address of the donor, the value of the donation and all terms and conditions of the donation; and

2. Accompanied by a certified appraisal, deed, or other documentation describing the real property or other item of monetary value, stating its fair market value as of the close of business on the day on which the donation was made, and verifying the donor's ownership of the real property or other items of monetary value.

(d) In the case of an unrestricted donation of real property or other item of monetary value, the amount of the match transferred to the Cultural Trust shall be based upon the value of the real property or item of monetary value from the donor to the Cultural Trust, based on the certified appraisal, deed or other documentation describing the real property or item of monetary value, stating its fair market value as of the close of business on the day on which the donation is made. The Board reserves the right to require additional proofs of value. The Board shall make the final determination of value for purposes of the match.

§ 15:27-2.11 Evaluation of unrestricted donations to the Cultural Trust

(a) Upon receipt, review and acceptance of the unrestricted donation, the Board shall:

1. Certify to the State Treasurer that the donation is consistent with the terms of the New Jersey Cultural Trust Act and request a transfer in the amount of the value of the donation from the Trust Account to the Trust Fund; and

2. Notify the donor in writing that the donation has been approved and certified and document the results of this process.

§ 15:27-2.12 Procedure for distribution of income from the Trust Fund

- (a) The Board has full discretion in determining if the interest from the Fund shall be reinvested or distributed.

- (b) Interest that is allocated for distribution shall be awarded to projects submitted to the Board by the Council, the Historic Trust and the Commission.

1. The project list submitted by the Historic Trust shall be composed of grants for capital facilities projects for qualifying history and humanities organizations.

2. The project list submitted by the Council shall be composed of grants for endowment, capital facilities projects and institutional and financial stabilization projects for qualifying arts organizations.

3. The project list submitted by the Commission shall be composed of grants for endowment and institutional and financial stabilization projects for qualifying history and humanities organizations.

- (c) Grant funds shall be allocated as follows:

1. Interest generated by the Fund shall be allocated as follows: 50 percent to the Council, 25 percent to the Commission and 25 percent to the Historic Trust.

2. Of the total allocation, at least 25 percent will be awarded to qualified organizations that directly benefit the residents of Southern New Jersey.

3. An affirmative vote of 10 or more members of the Board may alter the allocation to the Council, the Historic Trust or the Commission, but not the allocation to projects of qualified organizations that directly benefit the residents of Southern New Jersey.

i. Upon the completion of the fiscal year, the allocation shall revert back to the percentages enumerated in (c)1 above.

(d) The Council, the Historic Trust and the Commission shall each submit lists of projects recommended for funding from the interest of the Fund to the Board at least once each fiscal year.

1. The Council shall recommend projects based upon a priority system, ranking criteria and funding policies established by the Council pursuant to the Act and P.L. 1966, c.214 (*N.J.S.A. 52:16A-25 et seq.*) and any rules adopted pursuant thereto.

2. The Commission shall recommend projects based upon a priority system, ranking criteria and funding policies established by the Commission pursuant to the Act and *N.J.S.A. 18A:73-21 et seq.* and any rules adopted pursuant thereto.

3. The Historic Trust shall recommend projects based upon a priority system, ranking criteria and funding policies established by the Historic Trust pursuant to the Act and P.L. 1967, c.124 (*N.J.S.A. 13:1B-15.111 et seq.*) and any rules adopted pursuant thereto.

(e) The Board shall review the lists supplied by the Council, the Commission and the Historic Trust. The Board reserves the right to delete, but not to add, any project or groups of projects from any of the project lists submitted by either the Council, the Historic Trust or the Commission, or any combination thereof, if:

1. The organization does not meet the criteria to be designated as a qualified organization pursuant to this subchapter;

2. Based on the ranking of the organization on the lists provided by the Council, the Historic Trust and the Commission, the income from the investments of the Fund allocated for distribution is deemed inadequate to fund the complete lists of projects submitted;

3. The Fund has not generated sufficient income to warrant a grant program in a given fiscal year;

4. Any one of the recommending agencies, or a combination thereof, has employed an erroneous evaluative process in determining what projects are to be submitted on its recommended project list for funding;

5. Information becomes known about any project recommended on a project list for funding that was not known by the recommending agency prior to that agency placing the project on the project list;

6. The Board in its judgment determines that a public benefit is derived from the rejection of the project or group of projects; or

7. Any just cause for deletion, as may be determined by the Board, is identified about any project or group of projects.

(f) At the completion of the review process and deletion of any projects, the Board will approve the final list of projects at a regularly scheduled meeting.

§ 15:27-2.13 Procedures for appeals

(a) The Board shall provide any applicant who was rejected either for qualification, or for certification of an unrestricted or restricted donation, with a letter indicating so and the reasons for that rejection.

(b) The rejected organization may appeal the rejection by providing, to the Board in writing within 30 days of receipt of rejection, a response to the reasons for the rejection letter or providing such proofs as are necessary to address the reasons for rejection.

(c) The Board may select a committee to make recommendations on appeals to the Board in full, and shall reconsider the application in context of the appeal at its next scheduled meeting after committee consideration.

(d) The Board shall provide the applicant with a written decision on the appeal within 30 days of the decision, which decision shall be final.

(e) There shall be no prejudice against any future application due to the initial rejection of an application and any subsequent rejection of and appeal.

§ 15:27-2.14 Release of funds from the Trust Account to the Trust Fund

(a) Upon the action of the Board to certify a donation and after the expiration of the Governor's review period, the Board shall forward to the State Treasurer, either individually or in the aggregate, a statement of the restricted and unrestricted donations from qualified organizations approved at regularly scheduled meetings of the Board and request a transfer of funds from the Trust Account to the Trust Fund.

(b) Within 30 days of receipt of the statement listing the approved certified restricted and unrestricted donations, the State Treasurer will transfer a dollar for dollar match from the Trust Account to the Trust Fund for the purpose of accruing interest pursuant to *N.J.A.C. 15:27-2.12*.

§ 15:27-2.15

Release of funds from the Trust Fund to qualified organizations for a match for large gift donation

(a) Upon completion and signing of an agreement between the qualified organization and the Cultural Trust, the Cultural Trust will issue a check in the amount of 20 percent or an alternatively determined percent of the certified restricted large gift donation to the qualified organization from the matching funds in the Trust Fund.

1. The agreement shall set forth all terms and conditions for the transfer of funds.

§ 15:27-2.16 Release of funds from the Trust Fund for approved projects submitted by the Council, the Commission and the Historic Trust

(a) The Cultural Trust shall provide for the issuance of contracts to all qualified organizations approved for funding from lists supplied by the Council, the Commission and the Historic Trust.

1. The contract shall specify the project scope of work, schedule project activities and final product to be derived from the project.

2. Upon receipt of the signed contract from the qualified organization, the Cultural trust shall cause to be issued a payment to the organization based on the contract.

§ 15:27-2.17 Monitoring and reporting for certified restricted large gift donations

(a) Qualified organizations receiving matching funds from the Fund for large gift donations are required to submit annual audits for a period of five years following the receipt of the match from the Fund. The audit shall include a detailed schedule of the endowment.

1. The Board reserves the right to periodically inspect the financial records of organizations that receive matching funds for certified large gift donations.

(b) No recipient of matching funds for endowment shall dispose of or take a loan against funds from the Trust without the express written consent of the Cultural Trust.

§ 15:27-2.18 Monitoring and reporting for grants awarded from list supplied by the Council, the Commission and the Historic Trust

Qualified organizations which receive funding as a result of appearing on an approved list supplied by the Council, the Commission or the Historic Trust shall supply reports as outlined in the grant contract.

§ 15:27-2.19 Acknowledgement of public support in public information material

Once a qualified organization receives funding from the Cultural Trust, either through a match for a large gift donation or for a project funded from the interest generated by the Fund, the organization shall include acknowledgement of Cultural Trust funding in all printed material and press releases related to the large gift donation and Cultural Trust match or to the project funded from the interest generated by the Trust Fund. Any capital facilities project funded with money from the Cultural Trust shall erect a sign at the facility acknowledging the Cultural Trust support for the project, both during construction and upon completion.

NOTES:

Chapter Notes

