

**DEPARTMENT OF STATE
DIVISION OF SMALL BUSINESS**

Statutory Authority: 29 Delaware Code, Section 8705A (29 **Del.C.** §8705A)

FINAL

ORDER

The Delaware Sports Tourism Capital Investment Fund

SUMMARY OF THE EVIDENCE

1. Senate Bill 160 of the 152nd General Assembly and 29 **Del.C.** §8705A authorize the Department of State, Division of Small Business to promulgate regulations in relation to the powers, duties, and functions for the administration of The Delaware Sports Tourism Capital Investment Fund.
2. Pursuant to this authority, the Division of Small Business is responsible to and intends to promulgate regulations regarding the process, procedures, and requirements concerning the fund.
3. The Division of Small Business will administer the fund.
4. Notice of the proposed regulations was published in the October 1, 2023 edition of the *Delaware Register of Regulations*, and the public was given 30 days to provide written comment.
5. The Division received several comments, all of which the Division thoroughly considered. Upon consideration of the comments received, the Division determined some changes to the proposed regulations were appropriate and considers the changes to be non-substantive.
6. Having provided the opportunity for public comment on the proposed regulations in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101, et. seq., this is the Order adopting the proposed regulations published previously with non-substantive changes.

FINDINGS OF FACT

1. The Director of the Division of Small Business finds that it is necessary to promulgate the proposed regulations published previously with changes determined to be non-substantive, in order to comply with Senate Bill 160 regarding The Delaware Sports Tourism Capital Investment Fund.

DECISION AND ORDER

For the foregoing reasons, the Director concludes that it is appropriate to promulgate regulations regarding The Delaware Sports Tourism Capital Investment Fund and in which the text of the final regulation shall be in the form referenced herein. Therefore, the regulations shall be adopted in accordance with this Order. The effective date of this Order shall be 10 days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 13th day of November, 2023.

Regina Mitchell, Director
Division of Small Business
Department of State

The Delaware Sports Tourism Capital Investment Fund

1.0 Enabling Legislation

- 1.1 The Delaware Sports Tourism Capital Investment Fund was established pursuant to Senate Bill 160 of the Bond and Capital Improvements Act of the State of Delaware and Certain of its Authorities for the Fiscal Year ending June 30, 2024; Authorizing the Issuance of General Obligations of the Bonds of the State; Appropriating Funds from the Transportation Trust Fund; Authorizing the issuance of Revenue Bonds of the Delaware Transportation Authority; Appropriating Special Funds of the Delaware Transportation Authority; Appropriating General Funds of the State; Reprogramming Certain Funds of the State; Specifying Certain Procedures, Conditions and Limitations for the Expenditure of Such Funds; and Amending Certain Statutory Provisions and appropriated to the Department of State.
- 1.2 The fund will be administered by the Division of Small Business.

- 1.3 The Division is responsible for the promulgation of regulations of the fund by December 31, 2023.
- 1.4 The following regulations have been adopted by the Division pursuant to its authority in 29 Del.C. §8705A and Section 69 of Senate Bill 160.

2.0 Purpose and Intent

- 2.1 The purpose of the fund is to provide grants in support of sports facilities (arenas, courts, fields, aquatics facilities, track and field, etc.) that will drive regional and national events to Delaware that will have a broad impact on the state and local economy. The purpose of these regulations is to establish clear criteria and processes for the administration of the fund and for eligibility.
- 2.2 It is the intent that said funds are to be leveraged by other sources including privately sourced debt, privately sourced equity, local, and county government funding.
- 2.3 The regulations contain procedures governing the process for applying to the Division for a grant under the fund, pre-closing and post-closing procedures and criteria for the Division's approval or disapproval of an application for a grant under the fund.

3.0 Definitions

The terms defined in Sections 1.0 and 2.0 of this regulation shall have the meanings set forth for such terms therein.

The following words and terms shall have the following respective meanings:

"Applicant" means any person, including individuals, associations, firms, not-for-profit corporations, partnerships, public or private corporations, or other legal entities, including public or governmental bodies as well as natural persons that own or ground lease property of a facility as defined in this Section 3.0 and for which a project is undertaken or proposed to be undertaken, and all subsidiaries, parents, and associated entities of such applicant.

"Application" means a certified application made to the Division of Small Business on such form or forms, together with all relevant attachments, and signed by an authorized officer or representative of the applicant, as the Division may, in its sole discretion, require in connection with administration of the fund.

"Department" means the Department of State.

"Division" means the Division of Small Business.

"Division review panel" or "panel" means the group of individuals designated by the Division and Department consisting of representatives from the Delaware Tourism Office, the General Assembly of the State of Delaware, the Greater Wilmington Convention and Visitors Bureau, Kent County Tourism Office, and Southern Delaware Tourism Office.

"Facility" means a high school, collegiate, or recreational venue located in the State of Delaware that generates positive incremental state tax benefits to the State, is used for public purposes, and regularly hosts sports tourism events as defined in this Section 3.0.

"Fund" means The Delaware Sports Tourism Capital Investment Fund.

"Grant" or "grants" shall have the meaning set forth in Section 9.0 of this regulation.

"Office" means the Delaware Tourism Office.

"Positive incremental state tax benefit" means, for the purposes of this program, a tax benefit demonstrated by either a feasibility study or other evidence satisfactory to the Division review panel in its sole discretion.

"Program" means the plan and process related to the administration of the fund.

"Project" means the specific intended use of proceeds from program funding for a sports facility.

"Sports facility" means an arena, court, field, aquatics facility, track and field facility, etc. located on the grounds of a facility which has the specific intended use of the proceeds from the fund.

"Sports tourism event" means tournaments, championships, or other sports-related event that brings out-of-state participants and visitors to Delaware and has a direct economic impact on tourism in the State.

"State" means the State of Delaware.

4.0 Division of Small Business Review Panel

- 4.1 The fund is administered by the Division. To facilitate with administering, the Division designates a Division review panel that will consist of the following members or the member's designee: the Director of the Office, the Sports Sales Leader of the Office, the Chair and Vice-Chair of the Joint Committee on Capital Improvement, the Executive Director of the Greater Wilmington Convention and Visitors Bureau, the President of the Kent County Tourism Office, and the Executive Director of Southern Delaware Tourism Office.

- 4.2 The panel shall consider criteria and factors as it may deem appropriate including those set forth in the regulations as well as facts relevant to the criteria and factors.
- 4.3 The panel will utilize a rubric process during its consideration of an application. The rubric process will evaluate the criteria outlined in subsection 7.2 of these regulations.
- 4.4 The panel may request documents or information from an applicant, in its sole discretion, in addition to the application.
- 4.5 If an application or requested document or information is incomplete, inaccurate, or provided untimely, the Division will inform the applicant and further consideration of the application will be stayed and taken out of the order in which the application was originally received, if and until the requested documents or information are received by the Division.
- 4.6 Upon preliminary approval by the ~~[Director of the]~~ Division, an application and an applicant evaluation report shall be submitted to the panel for review, and the panel shall make a recommendation with respect to the application to the Director of the Division.
- 4.7 Upon recommendation by the panel, the application shall be submitted to the Director of the Division for consideration and final approval or disapproval. If approved, such approval shall be final. The panel will issue its determination to approve or not approve an application, in whole or in part, and the Division will notify an applicant in writing about the determination.

5.0 Facility Eligibility

- 5.1 An applicant must satisfy the following criteria:
 - 5.1.1 Be a facility within the definition set forth in Section 3.0, specifically a high school, collegiate, or recreational venue that generates positive incremental state tax benefits to the State, is used for public purposes, and regularly hosts sports tourism events;
 - 5.1.2 Own the property on which the sports facility is to be constructed or renovated or be under a ground lease acceptable to the Division review panel;
 - 5.1.3 Possess sufficient committed funds, including funding from this program if approved, to achieve successful completion of the project;
 - 5.1.4 Have a useful life of a length satisfactory to the panel with a detailed maintenance plan and a funding source for maintenance;
 - 5.1.5 Promote the Office to visitors attending sporting events at their sports facility; and
 - 5.1.6 Indicate tourism-based events it intends to target for their sports facility in program application.
- 5.2 An applicant will provide documents and information determined by the panel, in its sole discretion, to satisfy the above criteria.

6.0 Application

- 6.1 An application must contain the following:
 - 6.1.1 Show at least a 1-to-1 match of funds. The panel may, in its sole discretion, waive the 1-to-1 match in specific circumstances.
 - 6.1.2 A description of anticipated use and any feasibility or economic studies or reports completed in the past **[2 5]** years; and
 - 6.1.3 At least 1 letter of support from a State or local government official representing the area in which the sports facility will be constructed. The letter of support cannot be from a member of the panel. Refer to subsection 4.1 for the list of panel members.
- 6.2 Requested funds can be used for sports facility equipment, however they cannot be used for supplies.
- 6.3 Applicant shall submit a completed original application concerning the project to the Division for review, together with 10 printed copies and an electronic copy included on a thumb drive. All applications must be signed by persons authorized to bind the applicant. Requests for confidential treatment for applicant information may be made pursuant to The Policies and Procedures Regarding FOIA Requests, 8 **DE Admin. Code** 1500, Section 6.0, <https://regulations.delaware.gov/AdminCode/title8/1500.shtml#TopOfPage>. No application will be reviewed by the Division until it is complete to the satisfaction of the Division. Applicants may obtain application forms by contacting Jessica Welch, Delaware Tourism Office, Division of Small Business, 99 Kings Highway, Dover, DE 19901. Phone (302) 739-4271 / Fax (302) 739-5749, or through the Office's website at <https://www.visitdelaware.com/sports>.

7.0 Evaluation Process

- 7.1 Upon determination that the application is complete, the panel will evaluate the project based upon some or all of the following criteria outlined in the application rubric.
- 7.2 The application rubric includes the following criteria:
- 7.2.1 The project's support of the mission of The Delaware Sports Tourism Capital Investment Fund as outlined in Section 2.0 of these regulations.
- ~~[7.2.3]~~ 7.2.2]The geographic area where the facility is located, including if there are other sports facilities in the area.
- 7.2.3 The potential economic impact on the state and local economy if the facility is provided funding.
- 7.2.4 Other sources of funding secured by the applicant for the facility, including private, state, and local investment committed to the project.
- 7.2.5 For applications requesting funding for facility improvements, a thorough and substantiated explanation of how funding would enhance their facility and its ability to attract more sports tourism events or increase their current sports tourism event offerings. Facilities must indicate existing tourism-based events or targeted events in the application.
- 7.2.6 How the applicant will recognize the fund's investment in the facility (e.g.: signage on the property; banners; etc.). Recognition will be mutually agreed-upon following approval of the application.

8.0 Additional Considerations for Project Funding

- 8.1 The panel shall consider such factors as it may deem appropriate when reviewing an application for project funding.
- 8.2 Some of the factors deemed appropriate include:
- 8.2.1 The need in the geographic region within which the project is to be located, including other similar sports facilities;
- 8.2.2 General geographic diversity of projects under consideration for or already-approved for funding;
- 8.2.3 Facility's readiness to proceed with construction or renovation;
- 8.2.4 Economic feasibility of the project to support ongoing projected maintenance and operation requirements;
- 8.2.5 Local support for the project;
- 8.2.6 Sources and level of funding commitments other than support from the fund;
- 8.2.7 Owner, operator and manager of the project; and
- 8.2.8 Economic impact on the local economy and overall economic benefit to the State.

9.0 Grants

- 9.1 The fund has been appropriated to the Department and is administered by the Division.
- 9.2 Grant proceeds can be used for renovation, construction, or any other type of improvements to a facility within the definition set forth in Section 3.0, specifically a high school, collegiate, or recreational venue that generates positive incremental state tax benefits to the State, is used for public purposes, and regularly hosts sports tourism events;
- 9.3 Recapture Provision: The Division shall determine, in its sole discretion, those circumstances in which a grantee must repay all or part of a grant (i.e.: grant recapture). Recapture may include substantial or complete cessation of operations by the applicant, or failure to reach completion of the project in a timely manner. The recapture obligation shall be consistent with the fund purposes and should extend for the number of years necessary to realize the objectives of the grant, which is considered as the recapture period. Should an applicant fail to start construction on the sports facility within a certain period of time (e.g. 2 years), the Division has the right to recapture grant funds.
- 9.4 Post-Grant Period and Annual Reporting: The applicant shall, for a period equal to the recapture period of the grant, submit to the Division on an annual basis in a form acceptable to the Division a progress report on the status of the project, including, but not limited to: an update on construction or renovation of the facility, total number of sporting events held at the facility, attendance at sporting events held at the facility, number of hotel rooms booked for sporting events held at the facility, any economic impact information acquired by the applicant for the facility, and any other information required by the Division. This reporting period may be extended or reduced, as appropriate, by the Division in its sole discretion. Annual reports should be submitted to the Division no later than June 30 of each of the term years of the grant.
- 9.5 Before grant funds are issued, the facility must enter into a written grant agreement in the form required by the Division. Failure to enter into a timely grant agreement may result in the Division rescinding its approval.

- 9.6 Facility must provide data to the Office on sports tourism events held at the facility, including, but not limited to: data on attendance at events, hotel rooms booked for events, estimated economic impact of the event, etc., for the duration of the grant agreement.
- 9.7 Facility must display onsite a plaque, sign, or other recognition that states, "This project was supported by The Delaware Sports Tourism Capital Investment Fund."

10.0 Approval Process

- 10.1 Timing: The Division shall use its reasonable best efforts to complete its review of the application within 60 days from the date it deems an application complete.
- 10.2 Final approval will be effective for a period not to exceed 1 year from the last date of the Division review panel meetings to review the project prior to such final approval, and all funds committed for a project must be completely dispersed by the Division within that time. The Division, in its sole discretion, may make limitations or grant extensions with respect to this 1-year period.

27 DE Reg. 443 (12/01/23) (Final)