

JAN 22 2010

A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that encouraging live
2 musical and theatrical productions to debut in Hawaii will
3 broaden the State's economic climate and improve the artistic
4 and educational experiences of the people in the State. In
5 addition, bringing a wide variety of live musical and theatrical
6 productions to the State will provide an opportunity for the
7 State to continue to bolster its reputation as a premier tourist
8 destination. Securing live musical and theatrical productions
9 will also offer numerous employment opportunities for residents
10 in the State.

11 Tax credits related to live musical and theatrical
12 productions would provide the necessary financial incentive for
13 worldwide production companies to be based in Hawaii or at least
14 debut their productions in Hawaii. The tax credits would relate
15 to costs incurred for:

- 16 (1) Construction, development, repair, or renovation of
17 facilities related to qualified productions and
18 performances;



- 1 (2) Qualified transportation for performance-related
- 2 property;
- 3 (3) Wages paid to Hawaii residents employed in connection
- 4 with a qualified musical or theatrical production; and
- 5 (4) Wages paid to college, university, and vocational-
- 6 technical students enrolled in a program of study
- 7 related to musical or theatrical productions, whether
- 8 or not that student is a resident of Hawaii.

9 The purpose of this Act is to provide tax credits for
10 qualified live musical and theatrical productions and qualified
11 musical or theatrical facility infrastructure projects that
12 would present Hawaii as one of the primary places in the United
13 States in which to debut a live musical or theatrical production
14 and for the production company to be based from.

15 SECTION 2. Chapter 235, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:

18 "§235- Live musical or theatrical production tax
19 credits. (a) There shall be allowed to each qualified taxpayer
20 subject to the tax imposed by this chapter an applicable tax
21 credit that is described in this section, which shall be
22 deductible from the taxpayer's net income tax liability, if any,



1 imposed by this chapter for the taxable year in which the credit
2 is properly claimed.

3 (b) For purposes of this section:

4 "Base investment" means the actual investment made and
5 expended in this State by a qualified live musical or theatrical
6 production as production-related costs or as capital costs of a
7 qualified musical or theatrical facility infrastructure project.

8 "Expended in the State" or "expenditures in the State"
9 means an expenditure to acquire or lease immovable property
10 located in the State, an expenditure to acquire movable property
11 from a source within the State that is subject to income,
12 general excise, or use taxes of the State, or an expenditure as
13 compensation for services performed within the State that is
14 subject to income, employment, or withholding taxes in the
15 State.

16 "Live musical or theatrical production" means the
17 producing, rehearsing, marketing, administration, recording,
18 performing, or filming of a live musical or theatrical
19 performance in the State before live audiences, whether or not
20 there is a charge for admission. The performances shall
21 include, but not be limited to drama, comedy, comedy revue,
22 opera, ballet, jazz, cabaret, and variety entertainment.



1 "Payroll" means all salary, wages, and other compensation,
2 including related benefits, for services performed in the State.

3 "Production expenditures" means a contemporaneous exchange
4 of cash or cash equivalent for goods or services related to
5 development, production, or operating expenditures in the State
6 for a qualified live musical or theatrical production, including
7 but not limited to expenditures that are directly incurred in
8 connection with filming a production, such as set construction
9 and operation, special and visual effects, costumes, wardrobes,
10 make-up, accessories, costs associated with sound, lighting,
11 staging, payroll, and related direct costs. "Production
12 expenditures" shall not include any indirect costs, any
13 expenditures later reimbursed by a third party, costs related to
14 the transfer of the tax credits, or any amounts that are paid to
15 persons or entities as a result of their participation in
16 profits from the exploitation of the production.

17 "Qualified live musical or theatrical production" means a
18 musical or theatrical production or a series of productions, and
19 the recording or filming of the production or series of
20 productions, which originate, are developed, or have their
21 initial public performance before an audience within the State,
22 or which have their United States debut within the State, and



1 the production expenditures, expenditures for the payroll of
2 residents, transportation expenditures, and expenditures for
3 employing college, university, or vocational-technical students
4 related to the production or series of productions, that are
5 certified as provided for in this section. Non-qualifying
6 projects include, but are not limited to non-touring music and
7 cultural festivals, industry seminars, and trade shows.

8 "Qualified musical or theatrical facility infrastructure
9 project" means a capital infrastructure project in the State
10 directly related to the production or performance of live
11 musical or theatrical productions as defined in this section,
12 and movable and immovable property and equipment related
13 thereto, or any other facility that supports and is a necessary
14 component of such facility, and any expenditures in the State
15 related to the construction, repair, or renovation of such
16 project, that are certified as provided for in this section.

17 "Resident" means a natural person and, for the purpose of
18 determining eligibility for the tax incentives provided by this
19 section, a person who qualifies for any of the following
20 reasons:

21 (1) The person is domiciled in the State; or



1 (2) The person maintains a permanent place of abode within
2 the State and spends in the aggregate more than six
3 months of each year within the State.

4 "Transportation expenditures" means expenditures for the
5 packaging, crating, and transportation both to the State for use
6 in a qualified live musical or theatrical production of sets,
7 costumes, or other tangible property constructed or manufactured
8 outside the State, or from the State after use in a qualified
9 live musical or theatrical production of sets, costumes, or
10 other tangible property constructed or manufactured in this
11 State. "Transportation expenditures" shall include the
12 packaging, crating, and transporting of property and equipment
13 used for special and visual effects, sound, lighting, and
14 staging, costumes, wardrobes, make-up and related accessories
15 and materials, as well as any other performance or production-
16 related property and equipment; provided that transportation
17 services are purchased through a company that has a significant
18 business presence in the State. "Transportation expenditures"
19 shall not include any costs to transport property and equipment
20 to be used only for filming and not in a qualified live musical
21 or theatrical production, any indirect costs, any expenditures
22 that are later reimbursed by a third party, or any amounts that



1 are paid to persons or entities as a result of their
2 participation in profits from the exploitation of the
3 production.

4 (c) The following tax credits may be claimed under this
5 section and shall be determined as follows:

6 (1) A base investment tax credit for expenditures on a
7 qualified live musical or theatrical production or a
8 qualified musical or theatrical facility
9 infrastructure project:

10 (A) Ten per cent of the total base investment when
11 the base investment amount is greater than
12 \$100,000 and less than or equal to \$300,000;

13 (B) Twenty per cent of the total base investment when
14 the base investment amount is greater than
15 \$300,000 and less than or equal to \$1,000,000;

16 and

17 (C) Twenty-five per cent of the total base investment
18 when the base investment amount is greater than
19 \$1,000,000;

20 provided that no single qualified musical or
21 theatrical facility infrastructure project shall

1 receive more than \$10,000,000 in credits in any
2 taxable year;

3 (2) A transportation expenditure tax credit for
4 transportation expenditures, as defined in this
5 section, purchased from a company that has a
6 significant business presence in the State:

7 (A) One hundred per cent for expenditures incurred
8 from January 1, 2011, through December 31, 2011;

9 (B) Fifty per cent for expenditures incurred from
10 January 1, 2012, through December 31, 2012; and

11 (C) Twenty-five per cent for expenditures incurred
12 from January 1, 2013, through December 31, 2013;

13 (3) A college student compensation tax credit of one-tenth
14 of one per cent for the costs related to compensating
15 students enrolled in a program of study related to
16 musical or theatrical productions in a college,
17 university, or vocational-technical school in the
18 State who are employed to work on a qualified live
19 musical or theatrical production; and

20 (4) A resident payroll tax credit when base investment is
21 used to employ residents to work on either a qualified
22 live musical or theatrical production or qualified



1 musical or theatrical facility infrastructure project
2 that is equal to ten per cent of the resident's
3 compensation; provided that the payroll tax credit is
4 limited to the first \$1,000,000 compensated to each
5 resident;
6 provided that no more than \$60,000,000 in cumulative tax credits
7 under this section are granted per taxable year; provided
8 further that the credits under this section shall be granted on
9 a first-come, first-served basis and if the credits applied for
10 in any particular year exceeds the aggregate amount allowed in
11 that taxable year, then the excess shall be treated as having
12 been applied for on the first day of the subsequent taxable
13 year.

14 (d) The tax credits for a qualified musical or theatrical
15 facility infrastructure project shall be earned only as follows:

16 (1) Construction of the qualified musical or theatrical
17 facility infrastructure project shall begin within six
18 months of the certification as provided for in rules
19 adopted pursuant to this section;

20 (2) The base investment and resident payroll costs shall
21 be certified as provided for in this section, and



1 credits are not earned or claimable until
2 certification;
3 (3) Twenty-five per cent of the total base investment
4 shall be certified to have been expended before any
5 credits may be earned; and
6 (4) No tax credit shall be allowed for base investment and
7 resident payroll costs for any qualified musical or
8 theatrical facility infrastructure project two years
9 after certification, unless fifty per cent of the
10 total base investment has been previously expended.
11 (e) If all or a portion of a musical or theatrical
12 facility infrastructure project is a facility which may be used
13 for purposes not directly related to qualified live musical or
14 theatrical production activities, then the musical or theatrical
15 facility infrastructure project shall be considered qualified
16 only if a determination is made by the department of business,
17 economic development, and tourism that the multiple-use facility
18 will support and will be necessary to secure live musical or
19 theatrical productions and the applicant provides sufficient
20 contractual assurances that the facility will be used for the
21 production or performance of a qualified live musical or
22 theatrical production, or as support and a component thereof,



1 for the useful life of the facility. No tax credits shall be
2 earned on multiple-use facilities until the facility that is to
3 be used in a qualified live musical or theatrical production is
4 complete.

5 (f) If the tax credit under this section exceeds the
6 taxpayer's net income tax liability, the excess of credit over
7 liability may be used as a tax credit against the taxpayer's net
8 income tax liability in subsequent years until exhausted. All
9 claims for a tax credit under this section, including amended
10 claims, shall be filed on or before the end of the twelfth month
11 following the close of the taxable year for which the tax credit
12 may be claimed. Failure to comply with the foregoing provision
13 shall constitute a waiver of the right to claim any tax credits
14 under this section. In addition, no other tax credit may be
15 claimed under this chapter for the qualified costs used to
16 properly claim a tax credit under this section for the taxable
17 year.

18 (g) In the case of a partnership, S corporation, estate,
19 or trust, the tax credits allowable are for the qualified costs
20 incurred by the entity for the taxable year. The cost upon
21 which the tax credits are computed shall be determined at the
22 entity level. Distribution and share of the tax credit shall be



1 determined pursuant to section 704(b) (with respect to partner's
2 distributive share) of the Internal Revenue Code.

3 (h) A taxpayer may, on a one-time basis, transfer the tax
4 credits that the taxpayer is eligible to claim under this
5 section; provided that the transferee claims the credit in the
6 same taxable year that the expenditures eligible for the credit
7 were expended and the department receives written notice of the
8 transfer.

9 (i) The department of business, economic development, and
10 tourism shall certify which live musical or theatrical
11 productions and which musical or theatrical facility
12 infrastructure projects are qualified pursuant to this section
13 through the adoption of rules. The rules shall provide for all
14 of the following:

15 (1) The criteria for certification, including, at a
16 minimum, the factors identified in subsection (j);

17 (2) The manner in which the department of business,
18 economic development, and tourism shall decide which
19 expenditures for a live musical or theatrical
20 production or musical or theatrical facility
21 infrastructure projects will qualify for the tax
22 credits provided for in this section;



1 (3) An appeals process in the event that an application
2 for a live musical or theatrical production or musical
3 or theatrical facility infrastructure project, or
4 expenditure related to such production or project, is
5 denied; and

6 (4) Any other factor directly related to the purposes or
7 intent of this section.

8 (j) The department of business, economic development, and
9 tourism shall consider, at a minimum, the following factors when
10 determining whether or not a live musical or theatrical
11 production or musical or theatrical facility infrastructure
12 project is qualified for the tax credits under this section:

13 (1) The contribution of the live musical or theatrical
14 production or musical or theatrical facility
15 infrastructure project to establishing the State as a
16 leader in the live performance industry;

17 (2) The impact of the live musical or theatrical
18 production or musical or theatrical facility
19 infrastructure project on the employment of residents;

20 (3) The extent to which students in Hawaii colleges,
21 universities, and vocational-technical schools will
22 have an opportunity to work on the live musical or



1 theatrical production in an arts-related position,
2 such as an actor, writer, producer, stagehand, or
3 director, or as a technician working on aspects of the
4 production such as lighting, sound, and actual stage
5 work, or working indirectly on the production in
6 accounting, law, management, and marketing;

7 (4) The impact of the live musical or theatrical
8 production or musical or theatrical facility
9 infrastructure project on the overall economy of the
10 State, including the manner in which available federal
11 and State financial incentives will be utilized in the
12 financing or operation of the live musical or
13 theatrical production or musical or theatrical
14 facility infrastructure project;

15 (5) The availability and capacity of musical or theatrical
16 facilities within the area in which a musical or
17 theatrical facility infrastructure project is
18 proposed; and

19 (6) Any other factor directly related to the purposes or
20 intent of this section;

21 provided that the department of business, economic development,
22 and tourism shall not grant qualification to a live musical or



1 theatrical production or musical or theatrical facility
2 infrastructure project that is owned, affiliated, or controlled,
3 in whole or in part, by any person or entity that is in default
4 on a loan made or guaranteed by the State, or which has ever
5 declared bankruptcy that resulted in public funds or monies
6 being discharged in bankruptcy.

7 (k) Upon approval, the department of business, economic
8 development, and tourism shall certify that a live musical or
9 theatrical production or musical or theatrical facility
10 infrastructure project is qualified and send notice to the
11 applicant and the department. The notice shall include the
12 following:

13 (1) The total base investment to be expended on the
14 qualified live musical or theatrical production or
15 qualified musical or theatrical facility
16 infrastructure project;

17 (2) The taxpayer to whom the credits shall be allocated;

18 (3) The estimated amount of the credits to be allocated;

19 and

20 (4) A unique identifying number for the qualified live
21 musical or theatrical production or qualified musical
22 or theatrical facility infrastructure project.



1 (l) Prior to claiming any qualified live musical or
2 theatrical production or musical or theatrical facility
3 infrastructure project tax credits, the taxpayer shall submit to
4 the department of business, economic development, and tourism a
5 report of the final amount of expenditures qualifying for the
6 tax credits during the taxable year. The department of
7 business, economic development, and tourism shall review the
8 report and shall issue a tax credit certification letter,
9 certifying the tax credits that the taxpayer is eligible to
10 claim for the taxable year. An applicant applying for the tax
11 credits shall be required to reimburse the department of
12 business, economic development, and tourism for any audits
13 required in relation to granting the certification letter.

14 (m) Depending upon the type of tax credit that the
15 applicant is applying for under this section, the applicant
16 shall submit an application for certification of the tax credits
17 to the department of business, economic development, and tourism
18 that comprises of the following:

19 (1) For a qualified live musical or theatrical production,
20 the application shall include:

21 (A) A fee payable to the department of business,
22 economic development, and tourism that is to be



1 used to promote and market Hawaii within the
2 entertainment industry and is based upon the
3 following:

4 (i) Two-tenths of one per cent times the
5 estimated total incentive tax credits; and

6 (ii) The minimum application fee shall not be
7 less than \$200 and the maximum application
8 fee shall not be more than \$5,000;

9 (B) A preliminary budget including estimated base
10 investment, estimated transportation
11 expenditures, estimated Hawaii payroll, estimated
12 costs of hiring students enrolled in a related
13 program of study, and the manner in which
14 available federal and State financial incentives
15 will be utilized in the financing or operation of
16 the live musical or theatrical production;

17 (C) A general description of the live musical or
18 theatrical production and performance which may,
19 at the request of the department of business,
20 economic development, and tourism, include the
21 book, libretto, score, or concept, and plans for
22 recording or filming the production;



- 1 (D) A list of the principal creative elements
- 2 including the cast, musicians, headline
- 3 performers, conductor, producer, or director;
- 4 (E) The likelihood of offering students in Hawaii
- 5 colleges, universities, and vocational-technical
- 6 schools an opportunity to work directly in the
- 7 live musical or theatrical production in an arts-
- 8 related position, including a description of
- 9 possible job or trainee positions working with
- 10 professional actors, writers, producers,
- 11 stagehands, directors, or technicians working on
- 12 all aspects of the production such as lighting,
- 13 sound, and actual stage work, or working
- 14 indirectly on the live musical or theatrical
- 15 production with professionals in accounting, law,
- 16 management, and marketing;
- 17 (F) Estimated dates for start and completion of
- 18 rehearsals before paid performances and the
- 19 estimated dates of performances in the State;
- 20 (G) Plans, if any, for a national tour or for
- 21 performances in other states;



- 1 (H) The taxpayers to whom the credits shall be
- 2 allocated and the estimated amounts of the
- 3 credits to be allocated to each; and
- 4 (I) A discussion of any other reasons why the
- 5 applicant believes the live musical or theatrical
- 6 production should be considered a qualified live
- 7 musical or theatrical production as defined in
- 8 this section; and
- 9 (2) For a qualified musical or theatrical facility
- 10 infrastructure project, the application shall include:
- 11 (A) A fee payable to the department of business,
- 12 economic development, and tourism that is to be
- 13 used to promote and market Hawaii within the
- 14 entertainment industry and is based upon the
- 15 following:
- 16 (i) Two-tenths of one per cent times the
- 17 estimated total incentive tax credits; and
- 18 (ii) The minimum application fee shall not be
- 19 less than \$200 and the maximum application
- 20 fee shall not be more than \$5,000;
- 21 (B) A detailed description of the musical or
- 22 theatrical facility infrastructure project;



1 (C) A preliminary budget including estimated base
2 investment, estimated Hawaii payroll, and the
3 manner in which available federal and State
4 financial incentives will be utilized in the
5 financing or operation of the musical or
6 theatrical facility infrastructure project;

7 (D) The taxpayers to whom the tax credits shall be
8 allocated and the estimated amounts of the tax
9 credits to be allocated to each;

10 (E) A complete, detailed business plan and market
11 analysis; and

12 (F) A discussion of any other reasons why the
13 applicant believes the musical or theatrical
14 facility infrastructure project should be
15 considered a qualified musical or theatrical
16 facility infrastructure project as defined in
17 this section.

18 (n) The director of business, economic development, and
19 tourism, in consultation with the director of taxation, shall
20 adopt rules as are necessary to carry out the purposes or intent
21 of this section.



1 (o) Any tax credits claimed under this section by a
2 taxpayer that are later determined to not have been expended or
3 to not have been qualifying expenditures for any taxable year
4 shall be recaptured.

5 (p) The department of business, economic development, and
6 tourism shall study the dynamic economic impact of the tax
7 credits in this section and prepare a report that includes the
8 overall economic impact of the tax credits, the amount of the
9 tax credits issued, the number of new jobs created, the amount
10 of Hawaii payroll created, the number of students hired for a
11 qualified live musical or theatrical production, the economic
12 impact of the tax credits, the economic impact of each qualified
13 live musical or theatrical production and qualified musical or
14 theatrical facility infrastructure project, the amount of new
15 infrastructure that has been developed in the State, and any
16 other factors that describe the impact of the tax credits under
17 this section.

18 (q) The director of taxation shall prepare any forms that
19 may be necessary to claim a credit under this section. The
20 director may also require the taxpayer to furnish information to
21 ascertain the validity of the claim for the tax credits made



1 under this section and may adopt rules necessary to effectuate
2 the purposes of this section pursuant to chapter 91.

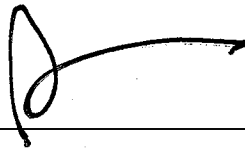
3 (r) The tax credits allowable in this section shall be
4 available for taxable years beginning after December 31, 2010."

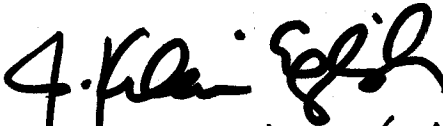
5 SECTION 3. New statutory material is underscored.


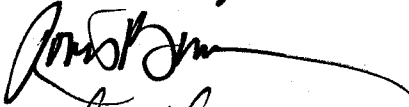

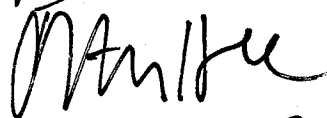


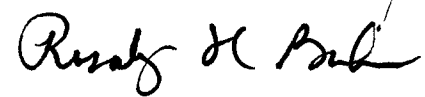
6 SECTION 4. This Act, upon its approval, shall apply to
7 taxable years beginning after December 31, 2010.

8

INTRODUCED BY:




Michelle D. Sedani
Amit J. Jy




Russell Kohrt



Norman Solomon

Franne Ann Oakland



Report Title:

Musical or Theatrical Production; Facility Infrastructure

Description:

Provides tax credits for the investment, transportation expenditures, and certain payroll costs associated with a qualified live musical or theatrical production or qualified musical or theatrical facility infrastructure project.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

