

JAN 26 2011

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# 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, improve the artistic and  
4 educational experiences of the people in the State, and provide  
5 an opportunity for the State to continue to bolster its  
6 reputation as a premier tourist destination. Securing live  
7 musical and theatrical productions will also offer numerous  
8 employment opportunities for Hawaii residents.

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

14           (1) Construction, development, repair, or renovation of  
15 facilities related to qualified productions and  
16 performances;

17           (2) Qualified transportation for performance-related  
18 property;



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

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

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

16 "§235- Live musical or theatrical production tax  
17 credits. (a) There shall be allowed to each qualified taxpayer  
18 subject to the tax imposed by this chapter an applicable tax  
19 credit that is described in this section, which shall be  
20 deductible from the taxpayer's net income tax liability, if any,  
21 imposed by this chapter for the taxable year in which the credit  
22 is properly claimed.



1        (b) For purposes of this section:

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

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

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

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



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

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



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

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

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

- 19 (1) The person is domiciled in the State; or  
20 (2) The person maintains a permanent place of abode within  
21 the State and spends in the aggregate more than six  
22 months of each year within the State.



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



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

3        (1) A base investment tax credit for expenditures on a  
4 qualified live musical or theatrical production or a  
5 qualified musical or theatrical facility  
6 infrastructure project:

7        (A) Ten per cent of the total base investment when  
8 the base investment amount is greater than  
9 \$100,000 and less than or equal to \$300,000;

10       (B) Twenty per cent of the total base investment when  
11 the base investment amount is greater than  
12 \$300,000 and less than or equal to \$1,000,000;  
13 and

14       (C) Twenty-five per cent of the total base investment  
15 when the base investment amount is greater than  
16 \$1,000,000;

17 provided that no single qualified musical or  
18 theatrical facility infrastructure project shall  
19 receive more than \$                    in credits in any  
20 taxable year;

21       (2) A transportation expenditure tax credit for  
22 transportation expenditures, as defined in this



1 section, purchased from a company that has a  
2 significant business presence in the State:

3 (A) One hundred per cent for expenditures incurred  
4 from January 1, 2012, through December 31, 2012;

5 (B) Fifty per cent for expenditures incurred from  
6 January 1, 2013, through December 31, 2013; and

7 (C) Twenty-five per cent for expenditures incurred  
8 from January 1, 2014, through December 31, 2014;

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

16 (4) A resident payroll tax credit when base investment is  
17 used to employ residents to work on either a qualified  
18 live musical or theatrical production or qualified  
19 musical or theatrical facility infrastructure project  
20 that is equal to ten per cent of the resident's  
21 compensation; provided that the payroll tax credit is





1           limited to the first \$                      compensated to each  
2           resident;  
3 provided that no more than \$                      in cumulative tax credits  
4 under this section shall be granted per taxable year; provided  
5 further that the credits under this section shall be granted on  
6 a first-come, first-served basis and if the credits applied for  
7 in any particular year exceeds the aggregate amount allowed in  
8 that taxable year, then the excess shall be treated as having  
9 been applied for on the first day of the subsequent taxable  
10 year.

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

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

17           (2) The base investment and resident payroll costs shall  
18 be certified as provided for in this section, and  
19 credits are not earned or claimable until certified;

20           (3) Twenty-five per cent of the total base investment  
21 shall be certified to have been expended before any  
22 credits may be earned; and



1       (4) No tax credit shall be allowed for base investment and  
2       resident payroll costs for any qualified musical or  
3       theatrical facility infrastructure project two years  
4       after certification, unless fifty per cent of the  
5       total base investment has been previously expended.

6       (e) If all or a portion of a musical or theatrical  
7       facility infrastructure project is a facility that may be used  
8       for purposes not directly related to qualified live musical or  
9       theatrical production activities, the musical or theatrical  
10       facility infrastructure project shall be considered qualified  
11       only if a determination is made by the department of business,  
12       economic development, and tourism that the multiple-use facility  
13       will support and will be necessary to secure live musical or  
14       theatrical productions and the applicant provides sufficient  
15       contractual assurances that the facility shall be used for the  
16       production or performance of a qualified live musical or  
17       theatrical production, or as support and a component thereof,  
18       for the useful life of the facility. No tax credits shall be  
19       earned on multiple-use facilities until the facility that is to  
20       be used in a qualified live musical or theatrical production is  
21       complete.



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

14        (g) In the case of a partnership, S corporation, estate,  
15 or trust, the tax credits allowable are for the qualified costs  
16 incurred by the entity for the taxable year. The cost upon  
17 which the tax credits are computed shall be determined at the  
18 entity level. Distribution and share of the tax credit shall be  
19 determined pursuant to section 704(b) (with respect to partner's  
20 distributive share) of the Internal Revenue Code of 1986, as  
21 amended.



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

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

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

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

21        (3) An appeals process in the event that an application  
22 for a live musical or theatrical production or musical



1           or theatrical facility infrastructure project, or  
2           expenditure related to such production or project, is  
3           denied; and

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

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

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

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

19           (3) The extent to which students in Hawaii colleges,  
20           universities, and vocational-technical schools have an  
21           opportunity to work on the live musical or theatrical  
22           production in an arts-related position, such as an



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

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

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

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

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



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

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

- 12 (1) The total base investment to be expended on the  
13 qualified live musical or theatrical production or  
14 qualified musical or theatrical facility  
15 infrastructure project;
- 16 (2) The name or identification of the taxpayer to whom the  
17 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 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 shall be





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

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

5           (ii) An application fee of not less than \$200 and  
6           not more than \$5,000;

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

15           (C) A general description of the live musical or  
16           theatrical production and performance which, at  
17           the request of the department of business,  
18           economic development, and tourism, may include  
19           the book, libretto, score, or concept, and plans  
20           for 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 taxpayer; and
- 4           (I) A discussion of why the applicant believes the
- 5           live musical or theatrical production should be
- 6           considered a qualified live musical or theatrical
- 7           production as defined in this section; and
- 8        (2) For a qualified musical or theatrical facility
- 9        infrastructure project, the application shall include:
- 10       (A) A fee payable to the department of business,
- 11       economic development, and tourism that shall be
- 12       used to promote and market Hawaii within the
- 13       entertainment industry and is based upon the
- 14       following:
- 15           (i) Two-tenths of one per cent times the
- 16           estimated total incentive tax credits; and
- 17           (ii) An application fee of not less than \$200 and
- 18           not more than \$5,000;
- 19       (B) A detailed description of the musical or
- 20       theatrical facility infrastructure project;
- 21       (C) A preliminary budget including estimated base
- 22       investment, estimated Hawaii payroll, and the



1 manner in which available federal and State  
2 financial incentives will be utilized in the  
3 financing or operation of the musical or  
4 theatrical facility infrastructure project;

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

8 (E) A complete, detailed business plan and market  
9 analysis; and

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

16 (n) The director of business, economic development, and  
17 tourism, in consultation with the director of taxation, shall  
18 adopt rules pursuant to chapter 91 as are necessary to carry out  
19 the purposes or intent of this section.

20 (o) Any tax credit claimed under this section by a  
21 taxpayer that is later determined to have been based on amounts



1 that have not been expended or on non-qualifying expenditures  
2 for any taxable year shall be recaptured.

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

17 (q) The director of taxation shall prepare any forms that  
18 may be necessary to claim a credit under this section. The  
19 director may require the taxpayer to furnish information to  
20 ascertain the validity of the claim for the tax credits made  
21 under this section and may adopt rules necessary to effectuate  
22 the purposes of this section pursuant to chapter 91.



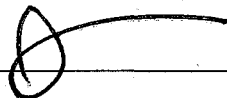
1        (r) The tax credits allowable in this section shall be  
2 available for taxable years beginning after December 31, 2011."

3        SECTION 3. New statutory material is underscored.

4        SECTION 4. This Act, upon its approval, shall apply to  
5 taxable years beginning after December 31, 2011.

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INTRODUCED BY: \_\_\_\_\_

A handwritten signature in black ink, consisting of a stylized, cursive-like mark, is written over a horizontal line.

**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.*

