

JAN 25 2012

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 drama, comedy, comedy revue, opera, ballet, jazz, cabaret, and
20 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 expenditures that are directly incurred in connection with
6 filming a production, such as set construction and operation,
7 special and visual effects, costumes, wardrobes, make-up,
8 accessories, costs associated with sound, lighting, staging,
9 payroll, and related direct costs. "Production expenditures"
10 shall not include any indirect costs, any expenditures later
11 reimbursed by a third party, costs related to the transfer of
12 the tax credits, or any amounts that are paid to persons or
13 entities as a result of their participation in profits from the
14 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 the facility, and
12 any expenditures in the State related to the construction,
13 repair, or renovation of the 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:

3 (1) To the State for use in a qualified live musical or
4 theatrical production of sets, costumes, or other
5 tangible property constructed or manufactured outside
6 the State; or

7 (2) From the State after use in a qualified live musical
8 or theatrical production of sets, costumes, or other
9 tangible property constructed or manufactured in the
10 State.

11 "Transportation expenditures" shall include the packaging,
12 crating, and transporting of property and equipment used for
13 special and visual effects, sound, lighting, and staging,
14 costumes, wardrobes, make-up, and related accessories and
15 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.

19 "Transportation expenditures" shall not include any costs
20 to transport property and equipment to be used only for filming
21 and not in a qualified live musical or theatrical production,
22 any indirect costs, any expenditures that are later reimbursed



1 by a third party, or any amounts that are paid to persons or
2 entities as a result of their participation in profits from the
3 exploitation of the 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 \$ in credits in any
2 taxable year;
- 3 (2) A transportation expenditure tax credit for
4 transportation expenditures, as defined in subsection
5 (b), purchased from a company that has a significant
6 business presence in the State:
- 7 (A) One hundred per cent for expenditures incurred
8 from January 1, 2012, through December 31, 2012;
- 9 (B) Fifty per cent for expenditures incurred from
10 January 1, 2013, through December 31, 2013; and
- 11 (C) Twenty-five per cent for expenditures incurred
12 from January 1, 2014, through December 31, 2014;
- 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 \$ _____ compensated to each
5 resident;
6 provided that no more than \$ _____ in cumulative tax credits
7 under this section shall be 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
22 credits are not earned or claimable until certified;



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

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

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



1 be used in a qualified live musical or theatrical production is
2 complete.

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

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



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 credits 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 each
11 qualified live musical or theatrical production and qualified
12 musical or theatrical facility infrastructure project, the
13 amount of new infrastructure that has been developed in the
14 State, and any other factors that describe the impact of the tax
15 credits under this section.

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

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



S.B. NO. 3014

1 SECTION 3. New statutory material is underscored.

2 SECTION 4. This Act shall take effect upon its approval

3 and shall apply to taxable years beginning after December 31,

4 2011.

5

INTRODUCED BY: _____

J
Robert Kappel
Clarence A. Washburn
Carol Furmaga



S.B. NO. 3014

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.

