Regular Session, 2013

HOUSE BILL NO. 483

BY REPRESENTATIVE NANCY LANDRY

TAX CREDITS: Extends authority to grant tax credits for certain state-certified musical or theatrical facility infrastructure projects

1	AN ACT
2	To amend and reenact R.S. 47:6034(A), (B)(4), (8), (9), (10), and (11), (C)(1)(a)(ii)(aa) and
3	(bb), (C)(3), (E)(1)(e) and (F), to enact R.S. 47:6034(B)(12) and (H), and to repeal
4	R.S. 47:6034(C)(1)(b), (e), and (f), relative to income tax credits for state-certified
5	musical and theatrical productions and state-certified infrastructure projects; to
6	extend the time period for granting certain tax credits; to provide with respect to a
7	tax credit for state-certified higher education musical or theatrical infrastructure
8	projects; to provide relative to certain definitions; to provide for certain requirements
9	and limitations; to provide with respect to the application for such tax credits and
10	certification of productions and infrastructure projects; to provide for the
11	disallowance of credits; to provide for the recovery of credits; and to provide for
12	related matters.
13	Be it enacted by the Legislature of Louisiana:
14	Section 1. R.S. 47:6034(A), (B)(4), (8), (9), (10), and (11), (C)(1)(a)(ii)(aa) and (bb),
15	(C)(3), (E)(1)(e) and (F) are hereby amended and reenacted and R.S. 47:6034 $(B)(12)$ and (H)
16	are hereby enacted to read as follows:
17	§6034. Musical and theatrical production income tax credit
18	A. Purpose. It is the intention of the legislature in creating these five
19	different types of tax credits: a credit for qualified production expenditures made
20	from investments in a state-certified musical or theatrical production; a credit for the
21	construction, repair, or renovation of facilities related to such productions and

1 performances; a credit for qualified transportation costs for performance-related 2 property; a credit for the payroll of Louisiana residents employed in connection with 3 a state-certified musical or theatrical production; and a credit for employing college, 4 university, and vocational-technical students employed in connection with a state-5 certified musical or theatrical production, to establish and promote Louisiana as one of the primary places in the United States in which live performances, from creation 6 7 to presentation, are present and thriving. The live performance industry will enhance 8 economic development because it fits well with the state's reputation as a tourist 9 destination, will offer numerous and varied employment opportunities, and in 10 conjunction with the available federal and state incentives, will be an attraction for 11 new and relocating businesses and will provide for the reinventing of countless 12 abandoned properties as either performance or rehearsal spaces. The live 13 performance industry will also spur educational development: Louisiana colleges, 14 universities, and vocational-technical schools will be able to offer talented 15 undergraduate and graduate students from this state, other states, and around the 16 world a real-world opportunity to participate in degree programs across the state that 17 work on the various productions in accounting, law, management, and marketing and 18 to fill arts-related positions such as actors, writers, producers, stagehands, and 19 directors, as well as technicians working on all aspects of the production such as 20 lighting, sound, and actual stage production and operations. 21 B. Definitions. For the purposes of this Section: 22

(4) "Limited state-certified musical or theatrical production" means a
 musical or theatrical production or a series of productions occurring in Louisiana by
 a nonprofit community theater that held a public performance before an audience
 within this state during the 2008 calendar year which has been certified, verified, and
 approved in accordance with the provisions of this Section. "Infrastructure
 expenditures" means expenditures directly related to the state-certified infrastructure
 project or state-certified higher education infrastructure projects including land and

Page 2 of 12

1	land acquisition costs, construction costs, design fees, furniture, fixtures, and
2	equipment purchased subject to a sale agreement or capital lease. Infrastructure
3	expenditures shall not include indirect costs such as general administrative costs,
4	insurance, or any costs related to the transfer or allocation of tax credits. The
5	Department of Economic Development may determine whether expenditures
6	submitted as production-related costs of capital costs related to an infrastructure
7	facility represent legitimate expenditures for the actual costs of related goods or
8	services that have economic substance and a business purpose related to the certified
9	production or facility, or such costs constitute constructive dividends, self-dealing,
10	inflated prices or similar transactions entered into for the purpose of inflating the
11	amount of tax credits earned rather than for the benefit of the production or facility.
12	* * *
13	(8) <u>"Related party transaction" means a transaction between parties deemed</u>
14	to be related by common ownership or control under generally accepted auditing
15	principles. Related party transaction expenditures may be subject to limitations as
16	provided for by rules and regulations promulgated by the department.
17	(9)(a) "Resident" or "resident of Louisiana" means a natural person and, for
18	the purpose of determining eligibility for the tax incentives provided by this Section,
19	a person who qualifies for any of the following reasons:
20	(i) The person is domiciled in the state of Louisiana.
21	(ii) The person maintains a permanent place of abode within the state and
22	spends in the aggregate more than six months of each year within the state.
23	(iii) The person pays taxes to the state on the amount of money paid to such
24	person for which a credit is sought pursuant to this Section.
25	(b) A company owned or controlled by such a person and which lends the
26	services of such a person for a state-certified musical or theatrical production shall
27	also be deemed a resident if such company is organized or authorized to do business
28	in the state and such company pays taxes to the state on the amount of money paid
29	to such company for such services of such person.

Page 3 of 12

1	(9)(10) "State-certified higher education musical or theatrical infrastructure
2	project" means a new proscenium or black-box theatre infrastructure project situated
3	on a parcel of land located on the campus of a higher education institution in this
4	state, that is owned by a higher education campus institution or support foundation
5	related to the campus primarily operated to benefit and support campus students and
6	the higher education facility. The primary purpose of the proposed infrastructure
7	facility must be to host live performances, and the facility must have a minimum
8	fixed seating capacity of five hundred. Expenditures attributable to areas other than
9	where live performances will take place may comprise no more than twenty-five
10	percent of total qualifying expenditures.
11	(11)(a) "State-certified musical or theatrical facility infrastructure project"
12	or "state-certified infrastructure project", for any project which receives initial
13	certification before July 1, 2013, means a capital infrastructure project in the state
14	directly related to the production or performance of musical or theatrical productions
15	as defined in this Section, and movable and immovable property and equipment
16	related thereto, or any other facility that supports and is a necessary component of
17	such facility, and any expenditures in the state related to the construction, repair, or
18	renovation of such project, which that are certified, verified, and approved as
19	provided for in this Section.
20	(b) "State-certified musical or theatrical infrastructure project" or "state
21	certified infrastructure project", for any project which receives initial certification
22	on or after July 1, 2013, means a new or rehabilitated proscenium or black-box
23	theatre infrastructure project located in the state and any expenditures in the state
24	directly related to the construction, repair, or renovation of such project, which are
25	certified, verified, and approved as provided for in this Section. The primary
26	purpose of the proposed facility must be to host live performances and the facility
27	must have a minimum capacity of five hundred. Expenditures attributable to areas
28	other than where live performances will take place may comprise no more than
29	twenty-five percent of total qualifying expenditures.

Page 4 of 12

1 $\frac{(10)(a)(12)(a)}{(12)(a)}$ "State-certified musical or theatrical production" means a 2 musical or theatrical production performed in this state including but not limited to 3 concerts, musical tours, ballet, dance, comedy revue, or live variety entertainment, 4 or a series of productions occurring over the course of a twelve-month period, and 5 the recording or filming of such production, that originate, are developed, or have their initial public performance before an audience within Louisiana, or that have 6 7 their United States debut within Louisiana, and the production expenditures, 8 expenditures for the payroll of residents, transportation expenditures, and 9 expenditures for employing college and vocational-technical students related to such 10 production or productions, that are certified, verified, and approved as provided for 11 in this Section. Non-qualifying projects include but are not limited to non-touring 12 music and cultural festivals, industry seminars, and trade shows, and any production 13 activity taking place outside the state.

(b) A "state-certified musical or theatrical production" that shall be eligible
for recertification and the credit provided for in this Section shall include a
previously certified musical or theatrical production that received a credit pursuant
to this Section and is otherwise eligible pursuant to this Section, that returns for
performances within the state after being performed on Broadway.

19 (11)(a) "Transportation expenditures" means expenditures for the packaging, 20 crating, and transportation both to the state for use in a state-certified musical or 21 theatrical production of sets, costumes, or other tangible property constructed or 22 manufactured out of state, and/or from the state after use in a state-certified musical 23 or theatrical production of sets, costumes, or other tangible property constructed or 24 manufactured in this state. Such term shall include the packaging, crating, and 25 transporting of property and equipment used for special and visual effects, sound, 26 lighting, and staging, costumes, wardrobes, make-up and related accessories and 27 materials, as well as any other performance or production-related property and 28 equipment; provided that transportation services are purchased through a company 29 which has a significant business presence in the state.

Page 5 of 12

2	property and equipment to be used only for filming and not in a state-certified
	property and equipment to be used only for mining and not in a state-certified
3	production, any indirect costs, any expenditures that are later reimbursed by a third
4	party, or any amounts that are paid to persons or entities as a result of their
5	participation in profits from the exploitation of the production.
6	C. Income tax credits for state-certified productions and state-certified
7	musical or theatrical facility infrastructure projects:
8	(1) There is hereby authorized the following types of credits against the state
9	income tax:
10	(a)
11	* * *
12	(ii)(aa) Until For state-certified infrastructure projects that receive initial
13	certification on or before January 1, 2014, a base investment credit may be granted
14	earned for certified, verified, and approved expenditures made in the state on or
15	before January 1, 2014, for the construction, repair, or renovation of a state-certified
16	musical or theatrical facility infrastructure project or for investments made by a
17	company or a financier in such infrastructure project which are, in turn, expended for
18	such construction, repair, or renovation, not to exceed ten million dollars per state-
19	certified infrastructure project, under conditions provided for in this Item. No more
20	than sixty million dollars in tax credits under this Section shall be granted for
21	infrastructure projects per year.
22	(bb) If all or a portion of an infrastructure project is a facility which may be
23	used for other purposes not directly related to the production or performance of
24	musical or theatrical production activities, then the project shall be approved only if
25	a determination is made that the multiple-use facility will support and will be
26	necessary to secure musical or theatrical production activities for the musical or
27	theatrical production or performance facility and the applicant provides sufficient
28	contractual assurances that: For state-certified higher education musical or theatrical
29	infrastructure projects that receive initial certification on or before January 1, 2018.

1	a base investment credit may be earned for expenditures made in the state on or
2	before January 1, 2022, for the construction, repair, or renovation of a new state-
3	certified higher education musical or theatrical facility infrastructure project, or for
4	investments made by a company or a financier in such infrastructure project that are,
5	in turn, expended for such construction, repair, or renovation. No more than ten
6	million dollars in tax credits per project or sixty million dollars total in tax credits
7	shall be granted for state-certified higher education musical or theatrical
8	infrastructure projects. Twenty-five percent of the total base investment provided
9	for in the initial certification letter of a state-certified higher education musical or
10	theatrical infrastructure project must be expended on or before January 1, 2020, in
11	order for the project to earn credits for the remaining estimated base investment
12	provided for in the initial certification letter, as expenditures are made in the state on
13	or before January 1, 2022. No credits shall be certified until the state-certified higher
14	education musical or theatrical infrastructure project is complete. The initial
15	certification letter shall be effective for qualified expenditures made no more than
16	six months prior to the date of application. State-certified higher education musical
17	or theatrical infrastructure projects shall not be subject to the provisions of Subitem
18	(cc) of this Item nor shall such projects be subject to the provisions of Subsection H
19	of this Section.
20	(I) The facility will be used for the production or performance of musical or
21	theatrical production activities, or as a support and component thereof, for the useful
22	life of the facility.
23	(II) No tax credits shall be earned on such multiple-use facilities until the
24	facility directly used in musical or theatrical productions or performances is
25	complete.
26	* * *
27	(3) Tax credits associated with a state-certified musical or theatrical
28	production or a state-certified musical or theatrical facility infrastructure project shall

1	never exceed the total base investment in that production or infrastructure project
2	and transportation expenditures.
3	* * *
4	E. Certification and administration:
5	(1)
6	* * *
7	(e) Prior to the final certification of a production or infrastructure project, the
8	applicant shall submit to the Department of Economic Development a report an audit
9	of the final amount of expenditures qualifying for credits pursuant to this Section,
10	which report the Department of Economic Development may require to be prepared
11	by an independent certified public accountant. The Department of Economic
12	Development shall review the report audit and shall issue a final tax credit
13	certification letter, certifying the applicant and indicating the type and amount of tax
14	credits for which the applicant or other companies or financiers are eligible pursuant
15	to this Section.
16	* * *
17	F.(1) Recapture of credits. If the Department of Economic Development, or
18	the Department of Revenue find that funds for which a taxpayer received credits
19	according to this Section were not expended for expenditures qualifying for a credit
20	as provided in this Section, then the taxpayer's state income tax for such taxable
21	period shall be increased by such amount necessary for the recapture of credit
22	provided by this Section.
23	(2)(a) Recovery of credits by Department of Revenue. Credits granted to a
24	taxpayer, but later disallowed, may be recovered by the secretary of the Department
25	of Revenue through any collection remedy authorized by R.S. 47:1561 and initiated
26	within three years from December thirty-first of the year in which the credit was
27	taken.
28	(b) The only interest that may be assessed and collected on recovered credits
29	is interest at a rate three percentage points above the rate provided in R.S.

1	9:3500(B)(1), which shall be computed from the original date of the return on which
2	the credit was taken.
3	(3) The provisions of this Subsection are in addition to and shall not limit the
4	authority of the secretary of the Department of Revenue to assess or to collect under
5	any other provision of law. Disallowance of credits by the Department of Economic
6	Development. Tax credits shall be subject to disallowance in whole or in part, if the
7	Department of Economic Development finds that a taxpayer has obtained a tax credit
8	in violation of the provisions of this Section, including but not limited to fraud or
9	misrepresentation, as further provided by rule.
10	* * *
11	H. Recovery of credits by the Department of Revenue:
12	(1) Credits previously granted to a taxpayer but later disallowed by the
13	Department of Economic Development may be recovered by the secretary of the
14	Department of Revenue through any collection remedy authorized by R.S. 47:1561
15	and initiated within three years from December thirty-first of the year in which the
16	credit was taken.
17	(2) The only interest that may be assessed and collected on recovered credits
18	is interest at a rate three percentage points above the rate provided for in R.S.
19	9:3500(B)(1), which shall be computed from the original date of the return on which
20	the credit was taken.
21	(3) The provisions of this Subsection are in addition to and shall not limit the
22	authority of the secretary of the Department of Revenue to assess or to collect under
23	any other provision of law.
24	* * *
25	Section 2. R.S. 47:6034(C)(1)(b), (e), and (f) are hereby repealed in their entirety.
26	Section 3. This Act shall become effective July 1, 2013.

Page 9 of 12

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Nancy Landry

HB No. 483

Abstract: Extends the time period for granting income tax credits related to the construction, repair, or renovation of facilities related to musical and theatrical productions and performances and limits credits for projects after Jan. 1, 2014, to those located on the campus of a higher education institution.

<u>Present law</u> establishes five different types of tax credits related to musical and theatrical productions.

<u>Proposed law</u> repeals two credits: the credit for qualified transportation costs for performance-related property, and the credit for projects for nonprofit community theaters.

One of the five credits authorized in <u>present law</u> is a credit for the construction, repair, or renovation of a state-certified musical or theatrical facility infrastructure project. <u>Present law</u> further provides that the amount of the base investment credit given for investment in such projects cannot exceed \$10,000,000 per project. Further provides that no more than \$60,000,000 in tax credits under <u>present law</u> may be granted for these projects per year.

<u>Proposed law</u> retains <u>present law</u> with respect to the limitations on the amount of credits per project as well as the annual overall program limit.

Present law sunsets the authority to grant credits on Dec. 31, 2013.

<u>Proposed law</u> changes the termination date for the authority to grant tax credits <u>from</u> Dec. 31, 2013, to Dec. 31, 2022.

<u>Present law</u> defines "infrastructure project" as a capital infrastructure project in La. directly related to the production or performance of musical or theatrical productions, property and equipment related thereto, any other facility which supports and is a necessary component of such facility, and any expenditures in the state related to the construction, repair, or renovation of such project.

<u>Proposed law</u> retains <u>present law</u> definition of "infrastructure project" for those projects which receive initial certification before July 1, 2013.

<u>Proposed law</u> revises the definition of "infrastructure project" for those projects which receive initial certification on or after July 1, 2013. <u>Proposed law</u> defines "infrastructure project" as a new or rehabilitated proscenium or black-box theatre infrastructure project located in La. and any expenditures in the state directly related to the construction, repair, or renovation of such project. Further, the primary purpose of the proposed facility must be to host live performances and the facility must have a minimum capacity of 500. Expenditures attributable to areas other than where live performances will take place may comprise no more than 25% of total qualifying expenditures.

<u>Proposed law</u> also defines "higher education infrastructure project" in the same manner as <u>proposed law</u> for projects receiving initial certification on or after July 1, 2013, except limits projects to those located on the campus of an institution of higher education.

<u>Proposed law</u> defines "infrastructure expenses" as those directly related to a state-certified infrastructure project or state-certified higher education infrastructure project including land

Page 10 of 12

and land acquisition costs, construction costs, design fees, furniture, fixtures, and equipment purchased subject to a sale agreement or capital lease.

<u>Proposed law</u> excludes from the definition of "infrastructure expenditures" indirect costs such as general administrative costs, insurance, or any costs related to the transfer or allocation of tax credits.

<u>Present law</u> defines "state-certified musical or theatrical production" as a musical or theatrical production or a series of productions occurring over the course of a twelve-month period, and the recording or filming of such production, which originate, are developed, or have their initial public performance before an audience within La., or which have their United States debut within La., and expenditures related thereto. <u>Proposed law</u> retains <u>present law</u> and adds to the definition by including concerts, musical tours, ballet, dance, comedy revue, or live variety entertainment.

<u>Proposed law</u> provides that after Jan. 1, 2014, the availability for tax credits shall be limited to those infrastructure projects situated on a parcel of land located on the campus of a higher education institution, which is owned by a higher education campus institution or support foundation related to the campus primarily operated to benefit and support campus students and faculty.

<u>Proposed law</u> provides that for higher education musical or theatrical infrastructure projects which receive initial certification on or before Jan. 1, 2018, a base investment credit may be earned for expenditures made in La. on or before Jan. 1, 2022, for the construction, repair, or renovation of a new state-certified higher education musical or theatrical facility infrastructure project, or for investments made by a company or a financier in such infrastructure project which are, in turn, expended for such construction, repair, or renovation. One quarter of the total base investment must be expended on or before Jan. 1, 2020, in order for a project to earn credits for any remaining estimated base investment provided for in its initial certification letter, as expenditures are made on or before Jan. 1, 2022.

<u>Proposed law</u> requires that an infrastructure project be complete before any credits are certified.

<u>Present law</u> requires that 50% of the total amount of tax credits granted annually shall be reserved for projects located outside of Jefferson and Orleans parishes. <u>Proposed law</u> excludes higher education musical or theatrical infrastructure projects from this requirement.

Present law provides for disallowance and recapture of credits.

<u>Proposed law</u> rewords provisions of <u>present law</u> regarding disallowance and recapture, but retains the substance of <u>present law</u>.

Effective July 1, 2013.

(Amends R.S. 47:6034(A), (B)(4), (8), (9), (10), and (11), (C)(1)(a)(ii)(aa) and (bb), (C)(3), (E)(1)(e), and (F); Adds R.S. 47:6034(B)(12) and (H); Repeals R.S. 47:6034(C)(1)(b), (e), and (f))

Summary of Amendments Adopted by House

- Committee Amendments Proposed by <u>House Committee on Ways and Means</u> to the <u>original</u> bill.
- 1. Changes program eligibility after Jan. 1, 2014, <u>from</u> a project located anywhere in the state <u>to</u> a project on the campus of a higher education institution.

- 2. Adds requirements for the timing of expenditures for qualification for tax credits.
- 4. Revises <u>present law</u> regarding disallowance, recapture and recovery of tax credits.
- 5. Deletes provisions of <u>present law</u> requiring the Dept. of Economic Development to report to the legislature with regard to the tax credit program.
- 6. Deletes the tax credit authorized under <u>present law</u> for certain investments in nonprofit community theaters.
- 7. Deletes <u>present law</u> regarding the allowance of transportation costs as certified expenditures.
- 8. Adds and revises definitions.

House Floor Amendments to the engrossed bill.

- 1. Deletes provisions governing recapture of disallowed tax credits by the Dept. of Revenue.
- 2. Adds specific definitions of "state-certified musical or theatrical infrastructure project" for projects receiving initial certification both before and after the effective date of <u>proposed law</u>.
- 3. Adds July 1, 2013 effective date.