



Sen. Mattie Hunter

Filed: 5/26/2011

09700HB1355sam001

LRB097 07051 HLH 56308 a

1 AMENDMENT TO HOUSE BILL 1355

2 AMENDMENT NO. _____. Amend House Bill 1355 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the Live
5 Theater Production Tax Credit Act.

6 Section 5. Purpose. The Illinois economy depends heavily on
7 the commercial for-profit live theater industry and the
8 pre-Broadway and long-run shows that are presented in Illinois.
9 As a result of intense competition from other prominent theater
10 cities in the United States and abroad in attracting
11 pre-Broadway and long-run shows, Illinois must move
12 aggressively with new business development investment tools so
13 that Illinois is more competitive in site location decision
14 making for show producers. In an increasingly global economy,
15 Illinois' long term development will benefit from the rational,
16 strategic use of State resources in support of pre-Broadway

1 live theater and long run show development and growth. It is
2 the purpose of this Act to preserve and expand the existing
3 work force used in live theater and enhance the marketing of
4 the presentation of live theater in Illinois. It shall be the
5 policy of this State to promote and encourage the training and
6 hiring of Illinois residents who represent the diversity of the
7 Illinois population through the creation and implementation of
8 training, education, and recruitment programs organized in
9 cooperation with Illinois colleges and universities, labor
10 organizations, and the commercial for-profit live theater
11 industry.

12 Section 10. Definitions. As used in this Act:

13 "Accredited theater production" means a for-profit live
14 stage presentation in a qualified production facility, as
15 defined in this Section, that is either (i) a pre-Broadway
16 production or (ii) a long-run production for which the
17 aggregate Illinois labor and marketing expenditures exceed
18 \$100,000.

19 "Pre-Broadway production" means a live stage production
20 that, in its original or adaptive version, is performed in a
21 qualified production facility having a presentation scheduled
22 for Broadway's Theater District in New York City within 12
23 months after its Illinois presentation.

24 "Long-run production" means a live stage production that is
25 performed in a qualified production facility for longer than 8

1 weeks, with at least 6 performances per week, and includes a
2 production that spans the end of one tax year and the
3 commencement of a new tax year that, in combination, meets the
4 criteria set forth in this definition making it a long-run
5 production eligible for a theater tax credit award in each tax
6 year or portion thereof.

7 "Accredited theater production certificate" means a
8 certificate issued by the Department certifying that the
9 production is an accredited theater production that meets the
10 guidelines of this Act.

11 "Applicant" means a taxpayer that is a theater producer,
12 owner, licensee, operator, or presenter that is presenting or
13 has presented a live stage presentation located within the
14 State of Illinois who:

15 (1) owns or licenses the theatrical rights of the stage
16 presentation for the Illinois production period; or

17 (2) has contracted or will contract directly with the
18 owner or licensee of the theatrical rights or a person
19 acting on behalf of the owner or licensee to provide live
20 performances of the production.

21 An applicant that directly or indirectly owns, controls, or
22 operates multiple qualified production facilities shall be
23 presumed to be and considered for the purposes of this Act to
24 be a single applicant; provided, however, that as to each of
25 the applicant's qualified production facilities, the applicant
26 shall be eligible to separately and contemporaneously (i) apply

1 for and obtain accredited theater production certificates,
2 (ii) stage accredited theater productions, and (iii) apply for
3 and receive a tax credit award certificate for each of
4 applicant's accredited theater productions performed at each
5 of the applicant's qualified production facilities.

6 "Department" means the Department of Commerce and Economic
7 Opportunity.

8 "Director" means the Director of the Department.

9 "Illinois labor expenditure" means gross salary or wages
10 including, but not limited to, taxes, benefits, and any other
11 consideration incurred or paid to non-talent employees of the
12 applicant for services rendered to and on behalf of the
13 accredited theater production. To qualify as an Illinois labor
14 expenditure, the expenditure must be:

15 (1) incurred or paid by the applicant on or after the
16 effective date of the Act for services related to any
17 portion of an accredited theater production from its
18 pre-production stages, including, but not limited to, the
19 writing of the script, casting, hiring of service
20 providers, purchases from vendors, marketing, advertising,
21 public relations, load in, rehearsals, performances, other
22 accredited theater production related activities, and load
23 out;

24 (2) directly attributable to the accredited theater
25 production;

26 (3) limited to the first \$100,000 of wages incurred or

1 paid to each employee of an accredited theater production
2 in each tax year;

3 (4) included in the federal income tax basis of the
4 property;

5 (5) paid in the tax year for which the applicant is
6 claiming the tax credit award, or no later than 60 days
7 after the end of the tax year;

8 (6) paid to persons residing in Illinois at the time
9 payments were made; and

10 (7) reasonable in the circumstances.

11 "Illinois production spending" means any and all expenses
12 directly or indirectly incurred relating to an accredited
13 theater production presented in any qualified production
14 facility of the applicant, including, but not limited to,
15 expenditures for:

16 (1) national marketing, public relations, and the
17 creation and placement of print, electronic, television,
18 billboard, and other forms of advertising; and

19 (2) the construction and fabrication of scenic
20 materials and elements; provided, however, that the
21 maximum amount of expenditures attributable to the
22 construction and fabrication of scenic materials and
23 elements eligible for a tax credit award shall not exceed
24 \$500,000 per applicant per production in any single tax
25 year.

26 "Qualified production facility" means a facility located

1 in the State in which live theatrical productions are, or are
2 intended to be, exclusively presented that contains at least
3 one stage, a seating capacity of 1,200 or more seats, and
4 dressing rooms, storage areas, and other ancillary amenities
5 necessary for the accredited theater production.

6 "Tax credit award" means the issuance to a taxpayer by the
7 Department of a tax credit award in conformance with Sections
8 40 and 45 of this Act.

9 "Tax year" means a calendar year for the period January 1
10 to and including December 31.

11 Section 15. Powers of the Department. The Department, in
12 addition to those powers granted under the Civil Administrative
13 Code of Illinois, is granted and has all the powers necessary
14 or convenient to carry out and effectuate the purposes and
15 provisions of this Act, including, but not limited to, the
16 power and authority to:

17 (1) adopt rules deemed necessary and appropriate for
18 the administration of the Tax Credit Award program;
19 establish forms for applications, notifications,
20 contracts, or any other agreements; and accept
21 applications at any time during the year;

22 (2) assist applicants pursuant to the provisions of
23 this Act to promote, foster, and support live theater
24 development and production and its related job creation or
25 retention within the State;

1 (3) gather information and conduct inquiries, in the
2 manner and by the methods set forth in this Act, required
3 for the Department to comply with Section 40 and, without
4 limitation, obtain information with respect to applicants
5 for the purpose of making any designations or
6 certifications necessary or desirable to assist the
7 Department with any recommendation or guidance in the
8 furtherance of the purposes of this Act and relating to
9 applicants' participation in training, education, and
10 recruitment programs that are organized in cooperation
11 with Illinois colleges and universities or labor
12 organizations designed to promote and encourage the
13 training and hiring of Illinois residents who represent the
14 diversity of the Illinois population;

15 (4) provide for sufficient personnel to permit
16 administrative, staffing, operating, and related support
17 required to adequately discharge its duties and
18 responsibilities described in this Act from funds as may be
19 appropriated by the General Assembly for the
20 administration of this Act; and

21 (5) require that the applicant at all times keep proper
22 books and records of accounts relating to the tax credit
23 award, in accordance with generally accepted accounting
24 principles consistently applied, and make, upon reasonable
25 written request by the Department, those books and records
26 available for reasonable Department inspection and audit

1 during the applicant's normal business hours. Any
2 documents or data made available to or received from the
3 applicant by any agent, employee, officer, or service
4 provider to the Department shall be deemed confidential and
5 shall not constitute public records to the extent that the
6 documents or data consist of commercial or financial
7 information regarding the operation by the applicant of any
8 theater or any accredited theater production, or any
9 recipient of any tax credit award under this Act.

10 Section 20. Tax credit award. Subject to the conditions set
11 forth in this Act, an applicant is entitled to a tax credit
12 award as approved by the Department for qualifying Illinois
13 labor expenditures and Illinois production spending for each
14 tax year in which the applicant is awarded an accredited
15 theater production certificate issued by the Department.

16 Section 25. Application for certification of accredited
17 theater production. Any applicant proposing an accredited
18 theater production located or planned to be located in Illinois
19 may request an accredited theater production certificate by
20 application to the Department.

21 Section 30. Review of application for accredited theater
22 production certificate.

23 (a) The Department shall issue an accredited theater

1 production certificate to an applicant if it finds that by a
2 preponderance the following conditions exist:

3 (1) the applicant intends to make the expenditure in
4 the State required for certification of the accredited
5 theater production;

6 (2) the applicant's accredited theater production is
7 economically sound and will benefit the people of the State
8 of Illinois by increasing opportunities for employment and
9 will strengthen the economy of Illinois;

10 (3) the following requirements related to the
11 implementation of a diversity plan have been met: (i) the
12 applicant has filed with the Department a diversity plan
13 outlining specific goals for hiring Illinois labor
14 expenditure eligible minority persons and females, as
15 defined in the Business Enterprise for Minorities,
16 Females, and Persons with Disabilities Act, and for using
17 vendors receiving certification under the Business
18 Enterprise for Minorities, Females, and Persons with
19 Disabilities Act; (ii) the Department has approved the plan
20 as meeting the requirements established by the Department
21 and verified that the applicant has met or made good faith
22 efforts in achieving those goals; and (iii) the Department
23 has adopted any rules that are necessary to ensure
24 compliance with the provisions set forth in this paragraph
25 and necessary to require that the applicant's plan reflects
26 the diversity of the population of this State;

1 (4) the applicant's accredited theater production
2 application indicates whether the applicant intends to
3 participate in training, education, and recruitment
4 programs that are organized in cooperation with Illinois
5 colleges and universities, labor organizations, and the
6 holders of accredited theater production certificates and
7 are designed to promote and encourage the training and
8 hiring of Illinois residents who represent the diversity of
9 Illinois;

10 (5) that, if not for the tax credit award, the
11 applicant's accredited theater production would not occur
12 in Illinois, which may be demonstrated by any means,
13 including, but not limited to, evidence that: (i) the
14 applicant, presenter, owner, or licensee of the production
15 rights has other state or international location options at
16 which to present the production and could reasonably and
17 efficiently locate outside of the State, (ii) at least one
18 other state or nation could be considered for the
19 production, (iii) the receipt of the tax award credit is a
20 major factor in the decision of the applicant, presenter,
21 production owner or licensee as to where the production
22 will be presented and that without the tax credit award the
23 applicant likely would not create or retain jobs in
24 Illinois, or (iv) receipt of the tax credit award is
25 essential to the applicant's decision to create or retain
26 new jobs in the State; and

1 (6) the tax credit award will result in an overall
2 positive impact to the State, as determined by the
3 Department using the best available data.

4 (b) If any of the provisions in this Section conflict with
5 any existing collective bargaining agreements, the terms and
6 conditions of those collective bargaining agreements shall
7 control.

8 (c) The Department shall act expeditiously regarding
9 approval of applications for accredited theater production
10 certificates so as to accommodate the pre-production work,
11 booking, commencement of ticket sales, determination of
12 performance dates, load in, and other matters relating to the
13 live theater productions for which approval is sought.

14 Section 35. Training programs for skills in critical
15 demand. To accomplish the purposes of this Act, the Department
16 may use the training programs provided under Section 605-800 of
17 the Department of Commerce and Economic Opportunity Law of the
18 Civil Administrative Code of Illinois.

19 Section 40. Issuance of Tax Credit Award Certificate.

20 (a) In order to qualify for a tax credit award under this
21 Act, an applicant must file an application for each accredited
22 theater production at each of the applicant's qualified
23 production facilities, on forms prescribed by the Department,
24 providing information necessary to calculate the tax credit

1 award and any additional information as reasonably required by
2 the Department.

3 (b) Upon satisfactory review of the application, the
4 Department shall issue a tax credit award certificate stating
5 the amount of the tax credit award to which the applicant is
6 entitled for that tax year and shall contemporaneously notify
7 the applicant and Illinois Department of Revenue in accordance
8 with Section 221 of the Illinois Income Tax Act, as amended.

9 Section 45. Amount and payment of the tax credit award. The
10 tax credit award shall be calculated each tax year based upon
11 the filing by the applicant on forms prescribed by the
12 Department containing information regarding qualifying and
13 quantified Illinois labor expenditures, as defined in Section
14 10, net of the limitation in that Section, and Illinois
15 production spending, as defined in Section 10, net of the
16 limitation in that Section. From the amount calculated, the
17 applicant shall be entitled to receive a tax credit award of:

18 (1) 20% of the Illinois labor expenditures for each tax
19 year; plus

20 (2) 20% of the Illinois production spending for each
21 tax year; plus

22 (3) 15% of the Illinois labor expenditures generated by
23 the employment of Illinois residents in geographic areas of
24 high poverty or high unemployment in each tax year, as
25 determined by the Department.

1 In no event shall the collective total tax credit award for
2 each accredited theater production in any tax year exceed a
3 maximum of \$2,000,000 plus an additional maximum tax credit
4 award not to exceed \$500,000 for (i) Illinois labor
5 expenditures attributable to the contracting for construction
6 and fabrication of new and previously non-existing scenic
7 materials and elements by service providers, (ii) purchases
8 from Illinois vendors, or (iii) both (i) and (ii). Following
9 the Department's determination of the tax credit award, the
10 Department shall issue the tax credit award to the applicant.

11 Section 50. Live theater tax credit award program
12 evaluation and reports.

13 (a) The Department's live theater tax credit award
14 evaluation must include:

15 (i) an assessment of the effectiveness of the program
16 in creating and retaining new jobs in Illinois;

17 (ii) an assessment of the revenue impact of the
18 program;

19 (iii) in the discretion of the Department, a review of
20 the practices and experiences of other states or nations
21 with similar programs; and

22 (iv) an assessment of the overall success of the
23 program. The Department may make a recommendation to
24 extend, modify, or not extend the program based on the
25 evaluation.

1 (b) At the end of each fiscal quarter, the Department shall
2 submit to the General Assembly a report that includes, without
3 limitation:

4 (i) an assessment of the economic impact of the
5 program, including the number of jobs created and retained,
6 and whether the job positions are entry level, management,
7 vendor, or production related;

8 (ii) the amount of accredited theater production
9 spending brought to Illinois, including the amount of
10 spending and type of Illinois vendors hired in connection
11 with an accredited theater production; and

12 (iii) a determination of whether those receiving
13 qualifying Illinois labor expenditure salaries or wages
14 reflect the geographical, racial and ethnic, gender, and
15 income level diversity of the State of Illinois.

16 (c) At the end of each fiscal year, the Department shall
17 submit to the General Assembly a report that includes, without
18 limitation:

19 (i) the identification of each vendor that provided
20 goods or services that were included in an accredited
21 theater production's Illinois production spending;

22 (ii) a statement of the amount paid to each identified
23 vendor by the accredited theater production and whether the
24 vendor is a minority or female owned business as defined in
25 Section 2 of the Business Enterprise for Minorities,
26 Females and Persons with Disability Act; and

1 (iii) a description of the steps taken by the
2 Department to encourage accredited theater productions to
3 use vendors who are minority or female owned businesses.

4 Section 55. Program terms and conditions. Any documentary
5 materials or data made available or received from an applicant
6 by any agent or employee of the Department are confidential and
7 are not public records to the extent that the materials or data
8 consist of commercial or financial information regarding the
9 operation of or the production of the applicant or recipient of
10 any tax credit award under this Act.

11 Section 80. The Illinois Income Tax Act is amended by
12 adding Section 221 as follows:

13 (35 ILCS 5/221 new)

14 Sec. 221. Live theater production credit.

15 (a) For tax years beginning on or after January 1, 2012, a
16 taxpayer who has received a tax credit award under the Live
17 Theater Production Tax Credit Act is entitled to a credit
18 against the taxes imposed under subsections (a) and (b) of
19 Section 201 of this Act in an amount determined under that Act
20 by the Department of Commerce and Economic Opportunity.

21 (b) If the taxpayer is a partnership, limited liability
22 partnership, limited liability company, or Subchapter S
23 corporation, the tax credit award is allowed to the partners,

1 unit holders, or shareholders in accordance with the
2 determination of income and distributive share of income under
3 Sections 702 and 704 and Subchapter S of the Internal Revenue
4 Code.

5 (c) A sale, assignment, or transfer of the tax credit award
6 may be made by the taxpayer earning the credit within one year
7 after the credit is awarded in accordance with rules adopted by
8 the Department of Commerce and Economic Opportunity.

9 (d) The Department of Revenue, in cooperation with the
10 Department of Commerce and Economic Opportunity, shall adopt
11 rules to enforce and administer the provisions of this Section.

12 (e) This Section is exempt from the provisions of Section
13 250 of this Act.

14 (f) The tax credit award may not be carried back. If the
15 amount of the credit exceeds the tax liability for the year,
16 the excess may be carried forward and applied to the tax
17 liability of the 3 tax years following the excess credit year.
18 The tax credit award shall be applied to the earliest year for
19 which there is a tax liability. If there are credits from more
20 than one tax year that are available to offset liability, the
21 earlier credit shall be applied first. In no event may a credit
22 under this Section reduce the taxpayer's liability to less than
23 zero.

24 Section 99. Effective date. This Act takes effect upon
25 becoming law."