



Rep. Kelly M. Burke

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LRB103 37825 HLH 70104 a

1 AMENDMENT TO HOUSE BILL 5426

2 AMENDMENT NO. _____. Amend House Bill 5426 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Live Theater Production Tax Credit Act is
5 amended by changing Sections 10-10, 10-20, and 10-30 as
6 follows:

7 (35 ILCS 17/10-10)

8 Sec. 10-10. Definitions. As used in this Act:

9 "Accredited theater production" means a for-profit live
10 stage presentation in a qualified production facility, as
11 defined in this Section, that is ~~either~~ (i) a pre-Broadway
12 production, ~~or~~ (ii) a long-run production for which the
13 aggregate Illinois labor and marketing expenditures exceed
14 \$100,000, or (iii) a . ~~For credits awarded under this Act in~~
15 ~~State Fiscal Year 2023, "accredited theater production" also~~
16 ~~includes any~~ commercial Broadway touring show.

1 "Commercial Broadway touring show" means a production that
2 (i) is performed in a qualified production facility and plays
3 in more than 2 other markets in North America outside of
4 Illinois within 12 months of its Illinois presentation and
5 (ii) has Illinois production spending of not less than
6 \$100,000, as shown on the applicant's application for the
7 credit.

8 "Pre-Broadway production" means (i) a live stage
9 production that, in its original or adaptive version, is
10 performed in a qualified production facility and has ~~having~~ a
11 presentation scheduled for Broadway's Theater District in New
12 York City within 12 months after its Illinois presentation or
13 (ii) a live stage production that, in its original or adaptive
14 version, is performed in a qualified production facility with
15 the goal of having a presentation scheduled for Broadway's
16 Theater District in New York City after its Illinois
17 presentation.

18 "Long-run production" means a live stage production that
19 is performed in a qualified production facility for longer
20 than 8 weeks, with at least 6 performances per week, and
21 includes a production that spans the end of one tax year and
22 the commencement of a new tax year that, in combination, meets
23 the criteria set forth in this definition making it a long-run
24 production eligible for a theater tax credit award in each tax
25 year or portion thereof.

26 "Accredited theater production certificate" means a

1 certificate issued by the Department certifying that the
2 production is an accredited theater production that meets the
3 guidelines of this Act.

4 "Applicant" means a taxpayer that is a theater producer,
5 owner, licensee, operator, or presenter that is presenting or
6 has presented a live stage presentation located within the
7 State of Illinois who:

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

10 (2) has contracted or will contract directly with the
11 owner or licensee of the theatrical rights or a person
12 acting on behalf of the owner or licensee to provide live
13 performances of the production.

14 An applicant that directly or indirectly owns, controls,
15 or operates multiple qualified production facilities shall be
16 presumed to be and considered for the purposes of this Act to
17 be a single applicant; provided, however, that as to each of
18 the applicant's qualified production facilities, the applicant
19 shall be eligible to separately and contemporaneously (i)
20 apply for and obtain accredited theater production
21 certificates, (ii) stage accredited theater productions, and
22 (iii) apply for and receive a tax credit award certificate for
23 each of the applicant's accredited theater productions
24 performed at each of the applicant's qualified production
25 facilities.

26 "Department" means the Department of Commerce and Economic

1 Opportunity.

2 "Director" means the Director of the Department.

3 "Illinois labor expenditure" means gross salary or wages
4 including, but not limited to, taxes, benefits, and any other
5 consideration incurred or paid to non-talent employees of the
6 applicant for services rendered to and on behalf of the
7 accredited theater production. To qualify as an Illinois labor
8 expenditure, the expenditure must be:

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

18 (2) directly attributable to the accredited theater
19 production;

20 (3) limited to the first \$100,000 of wages incurred or
21 paid to each employee of an accredited theater production
22 in each tax year;

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

25 (5) paid in the tax year for which the applicant is
26 claiming the tax credit award, or no later than 60 days

1 after the end of the tax year;

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

4 (7) reasonable in the circumstances.

5 "Illinois production spending" means any and all expenses
6 directly or indirectly incurred relating to an accredited
7 theater production presented in any qualified production
8 facility of the applicant, including, but not limited to,
9 expenditures for:

10 (1) national marketing, public relations, and the
11 creation and placement of print, electronic, television,
12 billboard, and other forms of advertising; and

13 (2) the construction and fabrication of scenic
14 materials and elements; provided, however, that the
15 maximum amount of expenditures attributable to the
16 construction and fabrication of scenic materials and
17 elements eligible for a tax credit award shall not exceed
18 \$500,000 per applicant per production in any single tax
19 year.

20 "Qualified production facility" means a facility located
21 in the State in which live theatrical productions are, or are
22 intended to be, exclusively presented that contains at least
23 one stage, a seating capacity of 1,200 or more seats, and
24 dressing rooms, storage areas, and other ancillary amenities
25 necessary for the accredited theater production.

26 "Tax credit award" means the issuance to a taxpayer by the

1 Department of a tax credit award in conformance with Sections
2 10-40 and 10-45 of this Act.

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

5 (Source: P.A. 102-1112, eff. 12-21-22.)

6 (35 ILCS 17/10-20)

7 Sec. 10-20. Tax credit award. Subject to the conditions
8 set forth in this Act, an applicant is entitled to a tax credit
9 award as approved by the Department for qualifying Illinois
10 labor expenditures and Illinois production spending for each
11 tax year in which the applicant is awarded an accredited
12 theater production certificate issued by the Department. The
13 amount of tax credits awarded pursuant to this Act shall not
14 exceed ~~\$2,000,000 in any State fiscal year, except that the~~
15 ~~amount of tax credits awarded pursuant to this Act for the~~
16 ~~State fiscal year ending on June 30, 2023 shall not exceed~~
17 \$4,000,000 in any State fiscal year. Of that \$4,000,000: (1)
18 ~~For the State fiscal year ending on June 30, 2023,~~ no more than
19 \$2,000,000 in credits may be awarded to accredited theater
20 productions that are ~~not commercial Broadway touring shows,~~
21 ~~and no more than \$2,000,000 in credits may be awarded to~~
22 commercial Broadway touring shows or pre-Broadway productions
23 that have the goal of having a presentation scheduled for
24 Broadway's Theater District in New York City after their
25 Illinois presentations; and (2) no more than \$2,000,000 in

1 credits may be awarded to accredited theater productions that
2 are not described in item (1). Credits shall be awarded on a
3 first-come, first-served basis. Notwithstanding the foregoing,
4 if the amount of credits applied for in any fiscal year exceeds
5 the amount authorized to be awarded under this Section, the
6 excess credit amount shall be awarded in the next fiscal year
7 in which credits remain available for award and shall be
8 treated as having been applied for on the first day of that
9 fiscal year.

10 (Source: P.A. 102-700, eff. 4-19-22; 102-1112, eff. 12-21-22.)

11 (35 ILCS 17/10-30)

12 Sec. 10-30. Review of application for accredited theater
13 production certificate.

14 (a) The Department shall issue an accredited theater
15 production certificate to an applicant if it finds that by a
16 preponderance the following conditions exist:

17 (1) the applicant intends to make the expenditure in
18 the State required for certification of the accredited
19 theater production;

20 (2) the applicant's accredited theater production is
21 economically sound and will benefit the people of the
22 State of Illinois by increasing opportunities for
23 employment and will strengthen the economy of Illinois;

24 (3) the following requirements related to the
25 implementation of a diversity plan have been met: (i) the

1 applicant has filed with the Department a diversity plan
2 outlining specific goals for hiring Illinois labor
3 expenditure eligible minority persons and women, as
4 defined in the Business Enterprise for Minorities, Women,
5 and Persons with Disabilities Act, and for using vendors
6 receiving certification under the Business Enterprise for
7 Minorities, Women, and Persons with Disabilities Act; (ii)
8 the Department has approved the plan as meeting the
9 requirements established by the Department and verified
10 that the applicant has met or made good faith efforts in
11 achieving those goals; and (iii) the Department has
12 adopted any rules that are necessary to ensure compliance
13 with the provisions set forth in this paragraph and
14 necessary to require that the applicant's plan reflects
15 the diversity of the population of this State;

16 (4) the applicant's accredited theater production
17 application indicates whether the applicant intends to
18 participate in training, education, and recruitment
19 programs that are organized in cooperation with Illinois
20 colleges and universities, labor organizations, and the
21 holders of accredited theater production certificates and
22 are designed to promote and encourage the training and
23 hiring of Illinois residents who represent the diversity
24 of Illinois;

25 (5) except for qualifying commercial Broadway touring
26 shows ~~qualifying in the State fiscal year ending June 30,~~

1 ~~2023~~, if not for the tax credit award, the applicant's
2 accredited theater production would not occur in Illinois,
3 which may be demonstrated by any means, including, but not
4 limited to, evidence that: (i) the applicant, presenter,
5 owner, or licensee of the production rights has other
6 state or international location options at which to
7 present the production and could reasonably and
8 efficiently locate outside of the State, (ii) at least one
9 other state or nation could be considered for the
10 production, (iii) the receipt of the tax award credit is a
11 major factor in the decision of the applicant, presenter,
12 production owner or licensee as to where the production
13 will be presented and that without the tax credit award
14 the applicant likely would not create or retain jobs in
15 Illinois, or (iv) receipt of the tax credit award is
16 essential to the applicant's decision to create or retain
17 new jobs in the State; and

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

21 (b) If any of the provisions in this Section conflict with
22 any existing collective bargaining agreements, the terms and
23 conditions of those collective bargaining agreements shall
24 control.

25 (c) The Department shall act expeditiously regarding
26 approval of applications for accredited theater production

1 certificates so as to accommodate the pre-production work,
2 booking, commencement of ticket sales, determination of
3 performance dates, load in, and other matters relating to the
4 live theater productions for which approval is sought.

5 (Source: P.A. 102-1112, eff. 12-21-22.)

6 Section 99. Effective date. This Act takes effect upon
7 becoming law."