

Regular Session, 2009

SENATE BILL NO. 326

BY SENATOR MURRAY

TAX/TAXATION. Provides the musical and theatrical production income tax credit.  
(8/15/09)

1 AN ACT  
2 To amend and reenact R.S. 47:6034(A), (B)(1), (3), (6), (9)(a), (C)(2)(a), (D)(1), the  
3 introductory paragraph of 6034(E)(1)(a)(i), 6034(E)(1)(a)(ii), the introductory  
4 paragraph of 6034(E)(1)(c), 6034(E)(1)(c)(i) and (v), the introductory paragraph of  
5 6034(E)(1)(d), 6034(E)(1)(e) and (f), (2), (3), (F)(1) and (G), and to enact R.S.  
6 47:6034(C)(1)(e) and (I), relative to income taxes; to provide for the musical and  
7 theatrical production income tax credit; to provide for definitions; to provide for  
8 credits involving musical or theatrical productions and musical or theatrical facility  
9 infrastructure projects; to provide for application fees; to provide for branding for  
10 state-certified productions and infrastructure projects; and to provide for related  
11 matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 47:6034(A), (B)(1), (3), (6), (9)(a), (C)(2)(a), (D)(1), the introductory  
14 paragraph of 6034(E)(1)(a)(i), 6034(E)(1)(a)(ii), the introductory paragraph of  
15 6034(E)(1)(c), 6034(E)(1)(c)(i) and (v), the introductory paragraph of 6034(E)(1)(d),  
16 6034(E)(1)(e) and (f), (2), (3), (F)(1) and (G) are hereby amended and reenacted and R.S.  
17 47:6034(C)(1)(e) and (I) are hereby enacted to read as follows:

1 §6034. Musical and theatrical production income tax credit

2 A. Purpose. It is the intention of the legislature in creating these five different  
 3 types of tax credits, ~~one for the production expenses of the producers of~~  
 4 ~~performances, a temporary one for transporting their property, one for the payroll of~~  
 5 ~~residents, one for employing college and vocational-technical students, and one for~~  
 6 ~~the construction, repair, or renovation of facilities related to such productions and~~  
 7 ~~performances; a credit for qualified production expenditures made from~~  
 8 ~~investments in a state-certified musical or theatrical production; a credit for the~~  
 9 ~~construction, repair, or renovation of facilities related to such productions and~~  
 10 ~~performances; a credit for qualified transportation costs for~~  
 11 ~~performance-related property; a credit for the payroll of Louisiana residents~~  
 12 ~~employed in connection with a state-certified musical or theatrical production;~~  
 13 ~~and a credit for employing college, university, and vocational-technical students~~  
 14 ~~employed in connection with a state-certified musical or theatrical production,~~  
 15 to establish and promote Louisiana as one of the primary places in the United States  
 16 in which all the classic disciplines in the performing arts live performances, from  
 17 creation to presentation, are present and thriving, ~~including touring Broadway-~~  
 18 ~~bound productions and productions of local artists. The creation of such a cultural~~  
 19 ~~center~~ The live performance industry will enhance economic development because  
 20 it fits well with the state's reputation as a tourist destination, ~~The industry~~ will offer  
 21 many numerous and varied employment opportunities, and, in conjunction with the  
 22 available federal and state incentives, will be an attraction for new and relocating  
 23 businesses and will provide for the reinventing of ~~countless~~ abandoned properties as  
 24 either performance or rehearsal spaces, ~~professional housing for artists, production~~  
 25 ~~support services and facilities, back-end production and marketing headquarters, or~~  
 26 ~~retail, restaurant, and entertainment spaces. Such a cultural center~~ The live  
 27 performance industry will also spur educational development: Louisiana colleges,  
 28 universities, and vocational-technical schools will be able to offer talented  
 29 undergraduate and graduate students from this state, other states, and around the

1 world a real world opportunity to participate in degree programs across the state that  
 2 work on the various productions in accounting, law, management, and marketing and  
 3 to fill arts-related positions such as actors, writers, producers, stage hands, and  
 4 directors, as well as technicians working on all aspects of the production such as  
 5 lighting, sound, and actual stage production and operations. ~~Careers now possible~~  
 6 ~~only in California and New York will keep our children here.~~

7 B. Definitions. For the purposes of this Section:

8 (1) "Base investment" means ~~expenditures for the following for which a~~  
 9 ~~credit is granted in this Section, or investments made by a company or financier~~  
 10 ~~which are for such expenditures:~~ **the actual investment made and expended in this**  
 11 **state by a state-certified musical or theatrical production as production-related**  
 12 **costs or as capital costs of a state-certified musical or theatrical facility**  
 13 **infrastructure project.**

14 (a) ~~Production expenditures for a state-certified musical or theatrical~~  
 15 ~~production.~~

16 (b) ~~Expenditures in the state for the construction, repair, or renovation of a~~  
 17 ~~state-certified musical or theatrical facility infrastructure project.~~

18 \* \* \*

19 (3) "Expended in the state" **or "expenditures in the state"** means **an**  
 20 ~~expenditures for tangible property to be used within the state; and in the case of~~  
 21 ~~services, means expenditures for services performed within the state; and in the case~~  
 22 ~~of intangible property, means the acquisition of permits, licenses, or other rights~~  
 23 ~~related to state-certified musical or theatrical productions or state-certified musical~~  
 24 ~~or theatrical facility infrastructure projects used within the state~~ **to acquire or lease**  
 25 **immovable property located in the state, an expenditure to acquire moveable**  
 26 **property from a source within the state which is subject to state sales and use**  
 27 **tax, or an expenditure as compensation for services performed within the state**  
 28 **which is subject to state income tax.**

29 \* \* \*

1 (6)(a) "Production expenditures" means **a contemporaneous exchange of**  
2 **cash or cash equivalent for goods or services related to** development, production,  
3 or operating expenditures in this state for a state-certified **musical or theatrical**  
4 production, including, but not limited to expenditures for ~~the following:~~ **set**  
5 **construction and operation, including special and visual effects, costumes,**  
6 **wardrobes, make-up, accessories, costs associated with sound, lighting, staging,**  
7 **payroll and other related costs.**

8 (i) ~~Set construction and operation, including special and visual effects.~~

9 (ii) ~~Costumes, wardrobes, make-up, accessories, and related services.~~

10 (iii) ~~Costs associated with sound, lighting, staging, and related services and~~  
11 ~~materials.~~

12 (iv) ~~Payroll.~~

13 (v) ~~Rental of facilities and equipment and leasing of vehicles.~~

14 (vi) ~~Food and lodging.~~

15 (vii) ~~Airfare for people to, from, or within the state shall be considered~~  
16 ~~production expenditures if purchased through a Louisiana-based travel agency or~~  
17 ~~travel company.~~

18 (viii) ~~Music performed live in the state or recorded in the state, including the~~  
19 ~~costs of sound, digital, analogue recordings or the recording of music by any other~~  
20 ~~means, and the mixing of such recordings if performed or recorded by a musician~~  
21 ~~who is a resident of Louisiana, a group of musicians based in Louisiana, or if~~  
22 ~~contracted for through a Louisiana-based agency. Such costs incurred when a group~~  
23 ~~of musicians based in Louisiana provide the musical accompaniment for non-resident~~  
24 ~~performers, or the costs of music directors, conductors, or composers who are non-~~  
25 ~~residents shall also be included as a production expenditure.~~

26 (ix) ~~Preproduction, production, and postproduction expenditures in this state~~  
27 ~~that are directly incurred in connection with filming such production which~~  
28 ~~expenditures do not otherwise qualify as a production expenditure in this Paragraph,~~  
29 ~~including but not limited to costs associated with the following: photography and~~

1 ~~sound synchronization, lighting, and related services and materials; editing and~~  
2 ~~related services; digital or tape editing, film processing, transfer of film to tape or~~  
3 ~~digital format, sound mixing, special and visual effects.~~

4 ~~(x) Administration and professional services, including but not limited to~~  
5 ~~management, accounting, and legal services incurred in connection with a state-~~  
6 ~~certified musical or theatrical production.~~

7 ~~(xi) The costs of insurance or bonding incurred in connection with a state-~~  
8 ~~certified musical or theatrical production, if purchased through a Louisiana-based~~  
9 ~~insurance agency.~~

10 ~~(xii) Preproduction and postproduction expenditures for marketing and~~  
11 ~~distribution within and without the state, if purchased through an agency which has~~  
12 ~~offices in Louisiana, if the creators of materials used in such marketing are residents~~  
13 ~~of Louisiana, or if the expenditures to create materials used in such marketing occur~~  
14 ~~within Louisiana.~~

15 ~~(xiii) The costs of acquiring permits, licenses, or other rights related to state-~~  
16 ~~certified musical or theatrical productions.~~

17 ~~(xiv) Similar production expenditures in the state as determined by rule.~~

18 (b) "Production expenditures" shall not include any indirect costs, any  
19 expenditures later reimbursed by a third party, **any costs related to the transfer of**  
20 **the tax credits**, or any amounts that are paid to persons or entities as a result of their  
21 participation in profits from the exploitation of the production.

22 \* \* \*

23 (9)(a) "State-certified musical or theatrical production" means a musical or  
24 theatrical production, or a series of productions occurring over the course of a  
25 twelve-month period, and the recording or filming of such production, which  
26 originate, are developed, or have their initial public performance before ~~a paying an~~ **an**  
27 audience within Louisiana, or which have their United States debut within Louisiana,  
28 and the production expenditures, expenditures for the payroll of residents,  
29 transportation expenditures, and expenditures for employing college and vocational-

1 technical students related to such production or productions, that are certified,  
2 verified, and approved as provided for in this Section. **Non-qualifying projects**  
3 **include, but are not limited to, non-touring music and cultural festivals,**  
4 **industry seminars, and trade shows.**

5 \* \* \*

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 \* \* \*

11 **(e) If all or a portion of an infrastructure project is a facility which may**  
12 **be used for purposes unrelated to live performance production or production-**  
13 **related activities, then the proposed base investment shall be approved only if**  
14 **the secretary of the Department of Economic Development determines that:**

15 **(i) The multiple-use facility will support and be necessary to secure live**  
16 **performance production activity for the project, and**

17 **(ii) The applicant provides sufficient contractual assurance that the**  
18 **project, including any multiple-use portion thereof, will be used as a live**  
19 **performance production facility, or as a support and component thereof, for the**  
20 **useful life of the facility.**

21 (2)(a) The tax credits shall be earned each calendar year to the extent the  
22 Louisiana Department of Economic Development verifies in writing that  
23 expenditures qualifying for a credit pursuant to this Section have been expended for  
24 the calendar year in accordance with the estimates of such expenditures for the  
25 calendar year set forth in the certification of the production or project.

26 \* \* \*

27 D.(1) The credit shall be allowed against individual or corporate income tax  
28 of the companies or financiers of the production or infrastructure project in  
29 accordance with their share of the credit as provided for in the application for

1 certification for the production or infrastructure project. A company or financier may  
 2 on a one-time basis, transfer the credit, and/or any refund of an overpayment, to an  
 3 individual or other entity including without limitation a bank or other lender,  
 4 provided that the transfer shall not be effective until receipt by the Department of  
 5 Revenue of written notice of such transfer. The credit shall be allowed for the taxable  
 6 period in which expenditures eligible for a credit are expended. Any excess of the  
 7 credit over the income tax liability against which the credit may be applied shall  
 8 constitute an overpayment, as defined in R.S. 47:1621(A), and the secretary **of the**  
 9 **Department of Revenue** shall make a refund of such overpayment from the current  
 10 collections of the taxes imposed by Chapter 1 of Subtitle II of this Title, as amended.  
 11 The right to a refund of any such overpayment shall not be subject to the  
 12 requirements of R.S. 47:1621(B).

\* \* \*

E. Certification and administration:

15 (1)(a)(i) The secretary of the Department of Economic Development, ~~the~~  
 16 ~~commissioner of administration, and the office of the governor~~ shall determine  
 17 which musical or theatrical productions and which musical or theatrical facility  
 18 infrastructure projects shall be certified pursuant to this Section through the adoption  
 19 and promulgation of rules by the ~~department, in consultation with the commissioner~~  
 20 ~~and the office of the governor~~ **Department of Economic Development**. The rules  
 21 shall also provide for all of the following:

\* \* \*

23 (ii) Prior to adoption, these rules shall be approved by the House Committee  
 24 on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs **in**  
 25 **accordance with the Administrative Procedure Act**. No tax credits shall be  
 26 granted under this Section until adoption of such rules.

\* \* \*

28 (c) When determining which musical or theatrical productions or musical or  
 29 theatrical facility infrastructure projects qualify for certification, the ~~Louisiana~~

1 Department of Economic Development, ~~the commissioner of administration, and the~~  
2 ~~office of the governor~~ shall take the following factors into consideration:

3 (i) The contribution of the production or infrastructure project to establishing  
4 the state as a cultural center for all the classic disciplines in the performing arts from  
5 creation to presentation, for touring productions as well as local artists **a leader in**  
6 **the live performance industry.**

7 \* \* \*

8 (v) The availability and kind of musical or theatrical facilities within the area  
9 in which a musical or theatrical facility infrastructure project is proposed ~~to be~~  
10 ~~located sufficient to provide production and presentation of all the classic disciplines~~  
11 ~~in the performing arts.~~

12 (d) Upon approval by the Louisiana Department of Economic Development;  
13 ~~the commissioner of administration, and the office of the governor, the department~~  
14 shall initially certify a production or project as a state-certified production or state-  
15 certified infrastructure project and send notice of such certification to the applicant  
16 and to the secretary of the Department of Revenue. The initial certification shall  
17 include all of the following:

18 \* \* \*

19 (e) Prior to the final certification of a production or infrastructure project, the  
20 applicant shall submit to the Louisiana Department of Economic Development a  
21 report of the final amount of expenditures qualifying for credits pursuant to this  
22 Section, which report the Louisiana Department of Economic Development may  
23 require to be prepared by an independent certified public accountant. The Louisiana  
24 Department of Economic Development shall review the report and, ~~upon the consent~~  
25 ~~of the commissioner of administration and the office of the governor,~~ shall issue a  
26 final tax credit certification letter, certifying the applicant and indicating the type and  
27 amount of tax credits for which the applicant or other companies or financiers are  
28 eligible pursuant to this Section.

29 (f) An applicant applying for the credits shall be required to reimburse the



1 Louisiana Department of Economic Development for any audits required in relation  
2 to granting the certification or tax credits.

3 (2)(a) Application. An applicant for the tax credit shall submit an application  
4 for initial certification to the Louisiana Department of Economic Development that  
5 includes the following information:

6 (i) The application for state-certified productions shall include:

7 **(aa) An application fee received by the Department of Economic**  
8 **Development based on the following:**

9 **(I) Two-tenths percent times the estimated total incentive tax credits.**

10 **(II) The minimum application fee is two hundred dollars, and the**  
11 **maximum application fee is five thousand dollars.**

12 **(III) The application fee shall be deposited upon receipt in the state**  
13 **treasury. After compliance with the requirements of Article 10 VII, Section 9(B)**  
14 **of the Constitution of Louisiana, relative to the Bond Security and Redemption**  
15 **Fund and prior to any money being placed into the general fund or any other**  
16 **fund, an amount equal to that deposited as required by this Item shall be**  
17 **credited by the treasurer to a special fund hereby created in the state treasury**  
18 **to be known as the Entertainment Promotion and Marketing Fund.**

19 **(IV) The money in the fund shall be appropriated by the legislature to**  
20 **be used solely for promotion and marketing of Louisiana's entertainment**  
21 **industry. The money in the fund shall be invested by the treasurer in the same**  
22 **manner as money in the state general fund and interest earned on the**  
23 **investment of the money shall be credited to the fund after compliance with the**  
24 **requirements of 20 Article VII, Section 9(B) of the Constitution of Louisiana**  
25 **relative to the Bond Security and Redemption Fund. All unexpended and**  
26 **unencumbered money in the fund at the end of the year shall remain in the**  
27 **fund.**

28 ~~(aa)~~ **(bb)** A preliminary budget including estimated Louisiana payroll,  
29 estimated transportation expenditures, and estimated base investment, including the

1 manner in which available federal and state incentives will be utilized in the  
2 financing or operation of the production.

3 ~~(bb)~~ **(cc)** A general description of the production and performance which  
4 may, at the request of the department, include the book, libretto, score, or concept,  
5 and plans for recording and/or filming such production.

6 ~~(cc)~~ **(dd)** A list of the principal creative elements including the cast,  
7 musicians, headline performers, conductor, producer, or director.

8 ~~(dd)~~ **(ee)** A possibility of offering students in Louisiana colleges, universities,  
9 and vocational-technical schools an opportunity to work directly in the production  
10 in an arts-related position, including a description of possible job or trainee positions  
11 working with professional actors, writers, producers, stage hands, directors, or  
12 technicians working on all aspects of the production such as lighting, sound, and  
13 actual stage work, or working indirectly on the production with professionals in  
14 accounting, law, management, and marketing.

15 ~~(ee)~~ **(ff)** Estimated dates for start and completion of rehearsals before paid  
16 performances and the estimated dates of performances in the state.

17 ~~(ff)~~ **(gg)** Plans, if any, for a national tour or for any performances in other  
18 states.

19 ~~(gg)~~ **(hh)** The companies and/or financiers to whom the credits shall be  
20 allocated and the estimated amounts of the credits to be allocated to each.

21 ~~(hh)~~ **(ii)** A discussion of any other reasons why the applicant believes the  
22 production should be considered a state-certified production as defined in this  
23 Section.

24 (ii) The application for state-certified musical or theatrical facility  
25 infrastructure projects shall include:

26 **(aa) An application fee received by the Department of Economic**  
27 **Development based on the following:**

28 **(I) Two-tenths percent times the estimated total incentive tax credits.**

29 **(II) The minimum application fee is two hundred dollars, and the**

1 maximum application fee is five thousand dollars.

2 (III) The application fee shall be deposited upon receipt in the state  
3 treasury. After compliance with the requirements of Article 10 VII, Section 9(B)  
4 of the Constitution of Louisiana relative to the Bond Security and Redemption  
5 Fund and prior to any money being placed into the general fund or any other  
6 fund, an amount equal to that deposited as required by this Item shall be  
7 credited by the treasurer to a special fund hereby created in the state treasury  
8 to be known as the Entertainment Promotion and Marketing Fund.

9 (IV) The money in the fund shall be appropriated by the legislature to  
10 be used solely for promotion and marketing of Louisiana's entertainment  
11 industry. The money in the fund shall be invested by the treasurer in the same  
12 manner as money in the state general fund and interest earned on the  
13 investment of the money shall be credited to the fund after compliance with the  
14 requirements of 20 Article VII, Section 9(B) of the Constitution of Louisiana  
15 relative to the Bond Security and Redemption Fund. All unexpended and  
16 unencumbered money in the fund at the end of the year shall remain in the  
17 fund.

18 ~~(aa)~~ **(bb)** A detailed description of the infrastructure project.

19 ~~(bb)~~ **(cc)** A preliminary budget, including the manner in which available  
20 federal and state incentives will be utilized in the financing or operation of the  
21 infrastructure project.

22 ~~(cc)~~ **(dd)** The companies and/or financiers to whom the credits shall be  
23 allocated and the estimated amounts of the credits to be allocated to each.

24 ~~(dd)~~ **(ee)** A complete, detailed business plan and market analysis.

25 (b) Additional information may be requested if deemed necessary by the  
26 Louisiana Department of Economic Development.

27 (3) In addition to the rules and regulations provided for in Subparagraph  
28 (E)(1)(a) of this Section, the secretary of the Louisiana Department of Economic  
29 Development, in consultation with the Department of Revenue, shall adopt and

1 promulgate such other rules and regulations as are necessary to carry out the intent  
2 and purposes of this Section in accordance with the general guidelines provided  
3 herein.

4 F.(1) Recapture of credits. If the ~~office of the governor, the~~ Department of  
5 Economic Development, or the Department of Revenue find that funds for which a  
6 taxpayer received credits according to this Section were not expended for  
7 expenditures qualifying for a credit as provided in this Section, then the taxpayer's  
8 state income tax for such taxable period shall be increased by such amount necessary  
9 for the recapture of credit provided by this Section.

10 \* \* \*

11 G. The ~~division of administration and the~~ Department of Economic  
12 Development shall prepare, with input from the legislative fiscal office, a written  
13 report to be submitted to the Senate Committee on Revenue and Fiscal Affairs and  
14 the House of Representatives Committee on Ways and Means no less than sixty days  
15 prior to the start of the Regular Session of the Legislature in 2008, and every second  
16 year thereafter. The report shall include the overall impact of the tax credits, the  
17 amount of the tax credits issued, the number of net new jobs created, the amount of  
18 Louisiana payroll created, the economic impact of the tax credits and the state-  
19 certified musical and theatrical productions and infrastructure projects, the amount  
20 of new infrastructure that has been developed in the state, and any other factors that  
21 describe the impact of the program.

22 \* \* \*

23 **I. Brand. As a condition for receiving certification of tax credits under**  
24 **this Section, state-certified productions and infrastructure projects shall display**  
25 **the state brand or logo, or both, as prescribed by the secretary of the**  
26 **Department of Economic Development.**

---

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Clifton W. Gillespie.

---

### DIGEST

Present law relative to tax credits for musical and theatrical productions, defines "base investment" to include expenditures or investments made as production expenditures for a state-certified musical or theatrical production or expenditures in the state for the construction, repair, or renovation of a state-certified musical or theatrical facility infrastructure project.

Proposed law redefines "base investment" to mean the actual investment made and expended in this state by a state-certified musical or theatrical production as production-related costs or as capital costs of a state-certified musical or theatrical facility infrastructure project.

Present law defines "expended in the state" to mean expenditures for tangible property to be used within the state; and in the case of services, expenditures for services performed within the state; and in the case of intangible property, and the acquisition of permits, licenses, or other rights related to state-certified musical or theatrical productions or state-certified musical or theatrical facility infrastructure projects used within the state.

Proposed law redefines "expended in the state," or "expenditures in the state" to mean an expenditure to acquire or lease immovable property in the state, to acquire moveable property from a source within the state which is subject to state sales and use tax, or as compensation for services performed within the state which is subject to state income tax.

Present law defines "production expenditures" to mean development, production, or operating expenditures in this state for a state-certified production, and enumerates a number of specific items included in the definition.

Proposed law deletes the specific listing and redefines "production expenditures" to mean a contemporaneous exchange of cash or cash equivalent for goods or services related to development, production, or operating expenditures in this state for a state-certified musical or theatrical production, including, but not limited to expenditures for set construction and operation, including special and visual effects, costumes, wardrobes, make-up, accessories, costs associated with sound, lighting, staging, payroll and other related costs.

Present law states that "production expenditures" does not include any indirect costs, any expenditures later reimbursed by a third party, or any amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production. Proposed law retains present law and provides that "production expenditures" does not include any costs related to the transfer of the tax credits.

Proposed law provides that non-qualifying projects under the definition of a state-certified musical or theatrical production include non-touring music and cultural festivals, industry seminars, and trade shows.

Present law lists authorized income tax credits for state-certified productions and state certified musical or theatrical facility infrastructure projects. Proposed law adds that if all or a portion of an infrastructure project is a facility which may be used for purposes unrelated to live performance production or production-related activities, then requires that the proposed base investment be approved only if the secretary of the Department of Economic Development determines the following:

- (a) The multiple-use facility will support and be necessary to secure live performance production activity for the project.

- (b) The applicant provides sufficient contractual assurance that the project, including any multiple-use portion thereof, will be used as a live performance production facility, or as a support and component thereof, for the useful life of the facility.

Present law provides that the credit is allowed against individual or corporate income tax of the "companies" or "financiers" [defined as people or other entities] of the production or infrastructure project in accordance with their share of the credit as provided for in the application for "certification" for the production or infrastructure project. Authorizes the transfer of the credit on a one-time basis, and/or any refund of an overpayment, to an individual or other entity, provided that the transfer is not effective until receipt by DOR. Allows the credit for the taxable period in which expenditures eligible for a credit are expended. Any excess of the credit over the income tax constitutes an overpayment and a refund of the overpayment is made from the current collections of income taxes.

Proposed law retains present law and clarifies that the secretary of the Department of Revenue is to make a refund of the overpayment.

Present law provides that the secretary of DED, the commissioner of administration, and the office of the governor determines which productions and which infrastructure projects are to be "certified" through the adoption and promulgation of rules by DED, in consultation with the commissioner of administration and the office of the governor.

Proposed law retains these provisions but deletes references to the commissioner of administration and the office of the governor.

Present law requires that prior to adoption, the rules promulgated by DED be approved by House Committee on Ways and Means and Senate Committee on Revenue and Fiscal Affairs. Proposed law provides that this approval be in accordance with the Administrative Procedure Act.

Present law requires DED, the commissioner of administration, and the office of the governor to consider certain factors when determining certification of a project.

Proposed law removes the commissioner of administration and the office of the governor from this process.

Present law provides for consideration as to the contribution by a project to establishing the state as a cultural center for all the classic disciplines in the performing arts from creation to presentation, for touring productions as well as local artists.

Proposed law changes this to whether the project will establish the state as a leader in the live performance industry.

Present law provides for consideration of whether a project's availability and kind of musical or theatrical facilities within the area in which it is to be located is sufficient to provide production and presentation of all the classic disciplines in the performing arts.

Proposed law retains the factor of availability and kind of musical or theatrical facilities within the area in which an infrastructure project is proposed, but deletes that it be sufficient to provide production and presentation of all the classic disciplines in the performing arts.

Present law provides that upon approval by DED, the commissioner of administration, and the office of the governor, DED "initially certifies" a production or project as a state-certified production or state-certified infrastructure project and sends notice of such certification to the applicant and to the secretary of DOR. Proposed law removes the commissioner of administration and the office of the governor from this process.

Present law provides that prior to "final certification" of a production or infrastructure

project, the applicant must submit to DED a report of the final amount of qualifying expenditures, which report DED may require to be prepared by an independent CPA. DED must review the report and, upon the consent of the commissioner of administration and the office of the governor, issue a "final tax credit certification letter," certifying the applicant and indicating the type and amount of tax credits for which the applicant or other companies or financiers are eligible. An applicant is required to reimburse DED for any audits required in relation to granting the certification or tax credits. Proposed law removes the commissioner of administration and the office of the governor from this process.

Present law requires an applicant for the tax credit to submit an application for "initial certification" to DED for state-certified production and infrastructure projects that includes certain specified information.

Proposed law requires that the application also be based on the following:

- (1) 0.2 percent times the estimated total incentive tax credits.
- (2) The minimum application fee is \$200, and the maximum application fee is \$5,000.
- (3) The application fee shall be deposited upon receipt by the state treasury into a special fund, to be known as the Entertainment Promotion and Marketing Fund, after compliance with the Bond Security and Redemption Fund.
- (4) The money in the fund shall be appropriated by the legislature solely for promotion and marketing of the states entertainment industry. The money in the fund shall be invested by the treasurer in the same manner as money in the state general fund and interest earned on the investment shall be credited to the fund. Further requires all unexpended and unencumbered money in the fund at the end of the fiscal year must remain in the fund.

Present law provides that if the office of the governor, DED, or DOR find that funds for which credits were received were not expended for "production expenditures" or were not "expended in the state" for an infrastructure project, then the taxpayer's income tax for such taxable period must be increased by the amount necessary for the recapture of the credit. The taxes may be recovered through any collection remedy authorized by R.S. 47:1561 and initiated within three years from December thirty-first of the year in which the credit was taken. Interest is assessed at a rate of three percentage points above the legal interest rate in R.S. 9:3500(B)(1), which must be computed from the original date of the return on which the credit was taken. Proposed law deletes reference to the office of the governor.

Present law provides that the division of administration and DED are required, with input from the Legislative Fiscal Office, to prepare a written report to be submitted to the Senate Revenue and Fiscal Affairs Committee and the House Ways and Means Committee no less than 60 days prior to the start of the 2008 RS, and every second year thereafter. Proposed law deletes reference to the division of administration.

Proposed law requires that as a condition for receiving certification of tax credits that a state-certified production or infrastructure project display the state brand or logo, or both, as prescribed by the secretary of DED.

Effective August 15, 2009.

(Amends R.S. 47:6034(A), (B)(1), (3), (6), (9)(a), (C)(2)(a), (D)(1), 6034(E)(1)(a)(i)(intro para), 6034(E)(1)(a)(ii), 6034(E)(1)(c)(intro para), 6034(E)(1)(c)(i) and (v), 6034(E)(1)(d)(intro para), 6034(E)(1)(e) and (f), (2), (3), (F)(1) and (G); adds R.S. 47:6034(C)(1)(e) and (I))