

JAN 25 2006

S.B. NO. 2384

A BILL FOR AN ACT

RELATING TO PERFORMING ARTS BUSINESSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Hawaii's film, television, and digital media
2 industry is fledgling, but holds much promise for the economic
3 and cultural future of the State. It is a crucial point for the
4 industry, as the industry is currently on the verge of growing
5 immensely but could benefit from appropriate tax incentives to
6 allow it to flourish. Without the State's support, the industry
7 and its workforce will remain in limbo and continue to have an
8 uncertain future. As many other states and foreign countries
9 have already done in recent years, Hawaii should take the
10 opportunity to stimulate the growth of this potential film and
11 digital media industry to the next level--one that will make it
12 a self-sustaining, dependable provider of steady, highly
13 skilled, highly paid twenty-first-century jobs for Hawaii's
14 residents, particularly its youth.

15 This creates a program that allows the State to purchase
16 certain investment tax credits from performing arts qualified
17 high technology businesses at a deep discount.

1 The purpose of such a program is to limit the exposure of
2 state funds with respect to certain performing arts qualified
3 high technology businesses, while at the same time enhancing the
4 economic benefits the credits were designed to bring.

5 While performing arts qualified high technology businesses
6 would still have the option of raising investment and maximizing
7 credit claims, the option to transfer credits back to the State
8 is an attractive alternative because it is direct, guaranteed,
9 hassle-free, and, in most cases, a better deal for the qualified
10 high technology businesses and the State.

11 Currently, only about 10-15 per cent of investment dollars
12 are going back to the performing arts qualified high technology
13 businesses in the form of investment tax credits, with the
14 majority of the credits going to middleman investors. The state
15 buy-back program ensures that credits go back to the performing
16 arts qualified high technology businesses they were meant to
17 stimulate, thereby directly benefiting them. By merely
18 redirecting the way credits are issued, the State can reap
19 better economic benefits (stimulating more productions) at
20 likely lower costs.

21 The program would also help to redirect a higher percentage
22 of local investment dollars toward smaller, independent

1 performing arts qualified high technology businesses and other
2 types of qualified high technology businesses whose ability to
3 remain in business relies greatly on investment dollars
4 stimulated by the credit.

5 Finally, this Act requires a production partaking of the
6 buy-back program to contribute 0.5 per cent of its aggregate
7 qualified investments to the Hawaii television and film
8 development special fund, for the purpose of directly funding
9 local projects that further the development of the local film
10 and television industry.

11 SECTION 2. Chapter 235, Hawaii Revised Statutes, is
12 amended by adding a new section to be appropriately designated
13 and to read as follows:

14 "§235- Transferability of the high technology business
15 investment tax credit. (a) Any taxpayer entitled to tax
16 credits under section 235-110.9 based on an investment in a
17 "performing arts qualified high technology business" may elect
18 to treat the credits as earned by the performing arts qualified
19 high technology business. The election must be made for all of
20 the credits earned over the five-year period provided in section
21 235-110.9. The election must be filed with the tax return for
22 the "performing arts qualified high technology business" and the

1 taxpayer's tax return for the taxable year that the taxpayer
2 made the investment.

3 (b) Any performing arts qualified high technology business
4 for which an election under subsection (a) has been made may
5 transfer the tax credits provided in section 235-110.9 to the
6 department of taxation for twenty per cent of the face value of
7 the credits earned, paid over five years pursuant to the pay-out
8 schedule established in section 235-110.9. The maximum allowed
9 credits per taxpayer set forth by section 235-110.9 shall not
10 apply to credits transferred pursuant to this section.

11 (c) To qualify to transfer the tax credits to the
12 department of taxation as provided in subsection (b):

13 (1) All taxpayers who have made an investment in the
14 performing arts qualified high technology business
15 during the taxable year of the qualified high
16 technology business must elect to treat the credits as
17 earned by the performing arts qualified high
18 technology business; and

19 (2) The performing arts qualified high technology business
20 must transfer all of the credits that it is treated as
21 earning to the department of taxation.

1 (d) Any performing arts qualified high technology business
2 or related entity that has transferred any credits to the
3 department of taxation pursuant to subsection (b) in a given
4 taxable year must also sell or waive the motion picture and film
5 production income tax credit set forth in section 235-17 and the
6 capital goods excise tax credit set forth in section 235-110.7
7 in that same taxable year in the manner provided in subsection
8 (b).

9 (e) Prior to making an election under subsection (a), the
10 performing arts qualified high technology business shall apply
11 to the director of taxation for approval of such election. The
12 director of taxation shall approve all qualifying elections to
13 transfer credits under this section in the order that such
14 requests for approval are received by the director of taxation;
15 provided that the director of taxation shall only approve
16 qualifying elections to transfer credits under this section for
17 the first \$25,000,000 in the aggregate paid to all performing
18 arts qualified high technology businesses making elections under
19 this section in any year. In any year, elections approved
20 requiring the department of taxation to pay less than
21 \$25,000,000 in the aggregate to all performing arts qualified

1 high technology businesses, the excess revenue may be carried
2 over and applied to subsequent years.

3 (f) This section shall not apply to any investments which
4 are part of a transaction, or series of transactions, structured
5 to avoid the purposes of this section so that a production could
6 utilize both this section, section 235-110.9, section 235-17, or
7 section 235-110.7.

8 (g) To qualify to transfer tax credits to the department
9 of taxation pursuant to subsection (b), a performing arts
10 qualified high technology business shall contribute 0.5 per cent
11 of its aggregate qualified investments to the Hawaii television
12 and film development special fund set forth in Section 201-113.

13 (h) Every performing arts qualified high technology
14 business, on or before March 31 of each year in which credits
15 are to be transferred for the previous taxable year, shall
16 submit the following to the department of business, economic
17 development, and tourism:

18 (1) A check for the contribution to the Hawaii television
19 and film development special fund, equal to 0.5 per
20 cent of its aggregate qualified investments in the
21 previous taxable year, pursuant to subsection (f);

JUSTIFICATION SHEET

SB. NO 2384

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO PERFORMING ARTS BUSINESSES.

PURPOSE: To allow the transferability of high technology business investment tax credits for performing arts qualified high technology businesses (QHTBs). Specifically, to establish a program by which the state could buy back such tax credits from these QHTBs at deeply discounted rate: 20% of the face value of the credits distributed over 5 years. Also, to require performing arts QHTBs using this program to contribute .5 percent of their aggregate qualified investments per year to the Hawaii television and film development special fund.

MEANS: Add a new section to chapter 235, Hawaii Revised Statutes.

JUSTIFICATION: Hawaii's film, television, and digital media industry is fledgling, but holds much promise for the economic and cultural future of the state. It is a crucial time for the industry, as it is currently primed for growth, but needs an extra push from the state to allow it to flourish. Without the state's support, the industry and its workforce will remain in limbo and continue to have an uncertain future. As many other U.S. states and foreign countries have already done in recent years, Hawaii should take the opportunity to stimulate the growth of the film and digital media industry to the next level--one that will make it a self-sustaining, dependable provider of steady, highly skilled, highly paid 21st-century jobs for Hawaii's residents, particularly its youth.

The purpose of such a program is to limit the exposure of state funds with respect to certain performing arts QHTBs, while at the same time enhancing the economic benefits the credits were designed to bring. As part of limiting

the exposure of state funds, the program provides for a \$25,000,000 cap on the amount paid to performing arts QHTBs on a first-come-first-served basis for any tax year.

Currently, only about 10-15 percent of investment dollars are going back to the performing arts QHTBs in the form of investment tax credits, with the majority of the credits going to middleman investors. The state buy-back program ensures that credits go back to the performing arts QHTBs they were meant to stimulate, thereby directly benefiting them. By merely redirecting the way credits are issued, the state can reap better economic benefits (stimulating more productions) at no greater cost (and possibly at a lower cost).

The program would also help to redirect a higher percentage of local investment dollars toward smaller, independent performing arts QHTBs and other types of QHTBs whose ability to remain in business relies greatly on investment dollars stimulated by the credit.

Finally, the initiative calls for a monetary contribution to the Hawaii Television and Film Development Special Fund from performing arts QHTBs utilizing the buy-back program. The contribution would equal 0.5 percent of the QHTB's aggregate qualified investments in the previous taxable year. This special fund can then be used to directly fund local projects that further the development of the local film and television industry.

Impact on the public: The public has been very supportive of the film, television, and digital media industry because it is a clean, progressive industry that augments Hawaii's economy by providing highly skilled, highly paid jobs, support for local businesses that service productions, and opportunities for our young people.

Furthermore, film, television, and digital media products often serve as highly visible ambassadors for the state. Productions such as

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"Blue Hawaii," "Magnum P.I.," "Hawaii Five-O," and most recently, the Emmy-winning "Lost," have generated significant promotion for Hawaii and have helped draw visitors to the state.

Any pro-industry measures taken by the administration and the legislature would be viewed by the public as forward-thinking and embracing of economic and cultural progress. Hawaii would be viewed by residents and visitors alike as a hospitable environment not only for the production business, but for other local industries on which productions depend, including hotel, transportation, food, equipment, communications, and consumer goods.

Impact on the department and other agencies:
This state buy-back program would encourage production and help Hawaii build a sustainable self-sufficient film, television, and digital media industry. In turn, this would augment the department's and the state's ability to attract further business, grow jobs and opportunities, market the state, and diversify the economy. Furthermore, this program would benefit the Department and the state as a whole because it is designed to save money.

GENERAL FUND: Will result in revenue gain of \$9.0 million in FY-07; \$7.4 million in FY-08; \$6.1 million in FY-09; \$5.4 million in FY-10; and \$4.8 million in FY-11.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None

OTHER AFFECTED
AGENCIES: Department of Business, Economic Development,
and Tourism.

EFFECTIVE DATE: July 1, 2006.