
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 PART I

2 SECTION 1. The purpose of this part is to improve the
3 organizational framework of the statutes relating to tax
4 provisions concerning performing arts, motion pictures, digital
5 media, and film production. This part is intended to simplify
6 the statutory structure of income tax exclusions relating to
7 performing arts royalties, and to improve the transparency and
8 administration of the motion picture, digital media, and film
9 production tax credit.

10 It is time for Hawaii to take full advantage of its natural
11 constituency with the countries of the Pacific rim and the
12 rising tide of global popular culture in all its forms
13 (including video games, animation, and indigenous films)
14 leveraging Hawaii's inherent strengths.

15 Digital entertainment, in the form of computer animated
16 films and video games, not only dominates the entertainment
17 business today (e.g., top box office hits like *Finding Nemo* and



1 *Happy Feet*), but it is a globally-distributed economy.
2 Technology means that companies can grow where people want to
3 live, not where they have to work. Today's biggest hits come
4 from outside Hollywood – from Emeryville (Pixar), Australia and
5 New Zealand (*Happy Feet* and *Lord of the Rings*), and upstate New
6 York (*Ice Age*). The \$25,000,000,000 video game industry is
7 based wherever the talent is; not where the historic
8 infrastructure is. In the competition for artistic talent,
9 Hawaii offers the perfect place to raise a family and the
10 perfect lifestyle for the artists in the creative digital field.

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

14 **"PART . PERFORMING ARTS ROYALTIES**

15 **§235-A Performing arts royalties derived from patents,**
16 **copyrights, or trade secrets excluded from gross income. (a)**

17 In addition to the exclusions in section 235-7, there shall be
18 excluded from gross income, adjusted gross income, and taxable
19 income, amounts received by an individual or a qualified
20 business as royalties and other income derived from any patents,
21 copyrights, and trade secrets:

22 (1) Owned by the individual or qualified business; and



1 (2) Developed and arising out of a qualified business.

2 (b) This exclusion shall extend to:

3 (1) The authors of performing arts products, or any parts
4 thereof, without regard to the application of the
5 work-for-hire doctrine under United States copyright
6 law;

7 (2) The authors of performing arts products, or any parts
8 thereof, under the work-for-hire doctrine under United
9 States copyright law; and

10 (3) The assignors, licensors, and licensees of any
11 copyright rights in performing arts products, or any
12 parts thereof.

13 (c) For the purposes of this section:

14 "Performing arts products" means:

15 (1) Audio files, video files, audiovideo files, computer
16 animation, and other entertainment products perceived
17 by or through the operation of a computer; and

18 (2) Commercial television and film products for sale or
19 license, and reuse or residual fee payments from these
20 products.



1 "Qualified business" means a business engaged in producing
2 performing arts products that conducts more than fifty per cent
3 of its activities in qualified research.

4 "Qualified research" means:

- 5 (1) The same as in section 41(d) of the Internal Revenue
6 Code; and
7 (2) Performing arts products."

8 SECTION 3. Section 235-7.3, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§235-7.3 Royalties derived from patents, copyrights, or**
11 **trade secrets excluded from gross income.** (a) In addition to
12 the exclusions in section 235-7, there shall be excluded from
13 gross income, adjusted gross income, and taxable income, amounts
14 received by an individual or a qualified high technology
15 business as royalties and other income derived from any patents,
16 copyrights, and trade secrets:

- 17 (1) Owned by the individual or qualified high technology
18 business; and
19 (2) Developed and arising out of a qualified high
20 technology business.

21 ~~[(b) With respect to performing arts products, this~~
22 ~~exclusion shall extend to:~~



1 ~~(1) The authors of performing arts products, or any parts~~
2 ~~thereof, without regard to the application of the~~
3 ~~work for hire doctrine under United States copyright~~
4 ~~law;~~

5 ~~(2) The authors of performing arts products, or any parts~~
6 ~~thereof, under the work for hire doctrine under United~~
7 ~~States copyright law; and~~

8 ~~(3) The assignors, licensors, and licensees of any~~
9 ~~copyright rights in performing arts products, or any~~
10 ~~parts thereof.~~

11 ~~(e)]~~ (b) For the purposes of this section:

12 ~~["Performing arts products" means:~~

13 ~~(1) Audio files, video files, audiovideo files, computer~~
14 ~~animation, and other entertainment products perceived~~
15 ~~by or through the operation of a computer; and~~

16 ~~(2) Commercial television and film products for sale or~~
17 ~~license, and reuse or residual fee payments from these~~
18 ~~products.]~~

19 "Qualified high technology business" means a business that
20 conducts more than fifty per cent of its activities in qualified
21 research.

22 "Qualified research" means:



1 (1) The same as in section 41(d) of the Internal Revenue
2 Code;

3 (2) The development and design of computer software for
4 ultimate commercial sale, lease, license or to be
5 otherwise marketed, for economic consideration. With
6 respect to the software's development and design, the
7 business shall have substantial control and retain
8 substantial rights to the resulting intellectual
9 property;

10 (3) Biotechnology;

11 [~~(4)~~] ~~Performing arts products;~~

12 ~~(5)]~~ (4) Sensor and optic technologies;

13 [~~(6)]~~ (5) Ocean sciences;

14 [~~(7)]~~ (6) Astronomy; or

15 [~~(8)]~~ (7) Nonfossil fuel energy-related technology."

16 SECTION 4. Section 235-17, Hawaii Revised Statutes, is
17 amended by amending subsection (h) to read as follows:

18 "(h) Every taxpayer claiming a tax credit under this
19 section for a qualified production shall, no later than ninety
20 days following the end of each taxable year in which qualified
21 production costs were expended, submit a written, sworn



1 statement to the department of business, economic development,
2 and tourism, identifying:

3 (1) All qualified production costs as provided by
4 subsection (a), if any, incurred in the previous
5 taxable year;

6 (2) The amount of tax credits claimed pursuant to this
7 section, if any, in the previous taxable year; [~~and~~]

8 (3) The number of total hires versus the number of
9 qualified local hires by category (i.e., department)
10 and by county[-]; and

11 (4) Evidence of educational or workforce development
12 efforts, including but not limited to:

13 (A) Teacher training, mentorship, and internship
14 opportunities by industry professionals and
15 Hawaii-based productions for "below-the-line"
16 local technical crews; and

17 (B) Participation in a statewide advisory council to
18 develop the training, mentorship, and internship
19 opportunity programs to produce qualified workers
20 entering film and television production and
21 creative media industries.



1 The department of business, economic development, and tourism
2 shall use the information from the statements submitted under
3 this section to prepare a report, published biannually, no later
4 than June 30 and December 31, presenting information identifying
5 tax credit recipients and the aggregate total value of the
6 credits received under this subsection. The information shall
7 be available to the public in both print and electronic form."

8 PART II

9 SECTION 5. The purpose of this part is to streamline the
10 administration of the Hawaii television development special
11 fund.

12 SECTION 6. Section 201-111, Hawaii Revised Statutes, is
13 amended to read as follows:

14 1. By adding the definition of "department" to be
15 appropriately inserted and to read:

16 "Department" means the department of business, economic
17 development, and tourism."

18 2. By deleting the definition of "board".

19 [~~"Board" means the Hawaii television and film development~~
20 ~~board."]~~

21 SECTION 7. Section 201-113, Hawaii Revised Statutes, is
22 amended by amending subsection (b) to read as follows:



1 "(b) The fund shall be used [~~by the board~~] by the
2 department to assist in, and provide incentives for, the
3 production of eligible Hawaii projects that are in compliance
4 with criteria and standards established [~~by the board~~] in
5 accordance with rules adopted [~~by the board~~] pursuant to chapter
6 91. [~~In particular, the board~~] The department shall adopt rules
7 to provide for the implementation of the following programs:

- 8 (1) A grant program. [~~The board shall adopt rules~~] Rules
9 adopted pursuant to chapter 91 [~~to~~] shall provide
10 conditions and qualifications for grants.
11 Applications for grants shall [~~be made to the board~~
12 ~~and shall~~] contain such information as [~~the board~~
13 ~~shall require~~] required by rules adopted pursuant to
14 chapter 91. At a minimum, the applicant shall agree
15 to the following conditions:
- 16 (A) The grant shall be used exclusively for eligible
17 Hawaii projects;
- 18 (B) The applicant shall have applied for or received
19 all applicable licenses and permits;
- 20 (C) The applicant shall comply with applicable
21 federal and state laws prohibiting discrimination
22 against any person on the basis of race, color,



- 1 national origin, religion, creed, sex, age, or
2 physical handicap;
- 3 (D) The applicant shall comply with other
4 requirements as the [~~board~~] department may
5 prescribe;
- 6 (E) All activities undertaken with funds received
7 shall comply with all applicable federal, state,
8 and county statutes and ordinances;
- 9 (F) The applicant shall indemnify and save harmless
10 the State of Hawaii and its officers, agents, and
11 employees from and against any and all claims
12 arising out of or resulting from activities
13 carried out or projects undertaken with funds
14 provided hereunder, and procure sufficient
15 insurance to provide this indemnification if
16 requested to do so by the department;
- 17 (G) The applicant shall make available [~~to the board~~]
18 all records the applicant may have relating to
19 the project, to allow the [~~board~~] department to
20 monitor the applicant's compliance with the
21 purpose of this chapter; and



1 (H) The applicant [~~, to the satisfaction of the~~
2 ~~board,~~] shall establish that sufficient funds are
3 available for the completion of the project for
4 the purpose for which the grant is awarded; and

5 (2) A venture capital program. [~~The board shall adopt~~
6 ~~rules~~] Rules adopted pursuant to chapter 91 [~~to~~] shall
7 provide conditions and qualifications for venture
8 capital investments in eligible Hawaii projects. The
9 program may include a written agreement between the
10 borrower and the [~~board,~~] department, as the
11 representative of the State, that as consideration for
12 the venture capital investment made under this part,
13 the borrower shall share any royalties, licenses,
14 titles, rights, or any other monetary benefits that
15 may accrue to the borrower pursuant to terms and
16 conditions established [~~by the board~~] by rule pursuant
17 to chapter 91. Venture capital investments may be
18 made on such terms and conditions as the [~~board~~]
19 department shall determine to be reasonable,
20 appropriate, and consistent with the purposes and
21 objectives of this part."



1 SECTION 8. Section 201-114, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~+~~]**S201-114**[~~+~~] **Inspection of premises and records.** The
4 [~~board~~] department shall have the right to inspect, at
5 reasonable hours, the plant, physical facilities, equipment,
6 premises, books, and records of any applicant in connection with
7 the processing of a grant to the applicant."

8 SECTION 9. Section 201-112, Hawaii Revised Statutes, is
9 repealed.

10 [~~"**S201-112**—**Hawaii television and film development board.**~~]

11 ~~(a) There is established the Hawaii television and film~~
12 ~~development board. The board shall be attached to the~~
13 ~~department of business, economic development, and tourism for~~
14 ~~administrative purposes only. The board shall administer the~~
15 ~~grant and venture capital investment programs and the Hawaii~~
16 ~~television and film development special fund established under~~
17 ~~this part. The board shall also assess and consider the overall~~
18 ~~viability and development of the television and film industries~~
19 ~~and make recommendations to appropriate state or county~~
20 ~~agencies.~~

21 ~~(b) The board shall be composed of nine members, four of~~
22 ~~whom shall be appointed by the governor pursuant to section 26-~~



1 ~~34, and all of whom shall serve four-year staggered terms. One~~
2 ~~of the governor's appointments shall be made from a list of~~
3 ~~nominees submitted by the president of the senate and another~~
4 ~~appointment shall be made from a list of nominees submitted by~~
5 ~~the speaker of the house of representatives. The four appointed~~
6 ~~members shall possess a current working knowledge of the film,~~
7 ~~television, or entertainment industry. The director of~~
8 ~~business, economic development, and tourism, and the chairs of~~
9 ~~the four county film commissions or its equivalent, shall serve~~
10 ~~as ex officio voting members, who may be represented on the~~
11 ~~board by designees.~~

12 ~~The chairperson and vice chairperson of the board shall be~~
13 ~~selected by the board by majority vote. Five members shall~~
14 ~~constitute a quorum, whose affirmative vote shall be necessary~~
15 ~~for all actions by the board. The members shall serve without~~
16 ~~compensation but shall be reimbursed for expenses, including~~
17 ~~travel expenses, necessary for the performance of their duties.~~

18 ~~(c) The film industry branch development manager shall~~
19 ~~serve as the executive secretary of the board.~~

20 ~~(d) The board may adopt rules pursuant to chapter 91 to~~
21 ~~effectuate the purposes of this part."]~~



1 PART III

2 SECTION 10. In codifying the new section added by section
3 2 of this Act, the revisor of statutes shall substitute an
4 appropriate section number for the letter used in designating
5 the new section in this Act.

6 SECTION 11. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 12. This Act shall take effect on July 1, 2040,
9 and shall apply to taxable years beginning after December 31,

10 .



S.B. NO. 1920
S.D. 2
H.D. 1

Report Title:

Film, Motion Pictures, and Digital Media

Description:

Improves the administration and transparency of the Motion Picture, Digital Media, and Film Production Tax Credit. Repeals the Hawaii Television and Film Development Board. (SB1920 HD1)

SB1920 HD1 HMS 2007-3316

