

PROPOSED

THE SENATE  
TWENTY-FOURTH LEGISLATURE, 2007  
STATE OF HAWAII

S.B. NO. 1920  
S.D. 1

---

---

## 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 motion pictures, digital media, and film  
5 production. This part is intended to simplify the statutory  
6 structure through recodification and the renaming of certain  
7 provisions, where necessary, and not to effect any substantive  
8 changes to the current tax provisions, except for the amount of  
9 the motion picture, digital media, and film production tax  
10 credit allowed. In particular, the sunset provisions for the  
11 performing arts investment tax credit and the tax credit for  
12 performing arts research activities remain the same as in  
13 current law - December 31, 2010.

14 It is time for Hawaii to take full advantage of its natural  
15 constituency with the countries of the Pacific rim and the  
16 rising tide of global popular culture in all its forms



1 (including video games, animation, and indigenous films)

2 leveraging Hawaii's inherent strengths.

3 Digital entertainment, in the form of computer animated  
4 films and video games, not only dominates the entertainment  
5 business today (e.g., top box office hits like *Finding Nemo* and  
6 *Happy Feet*), but it is a globally-distributed economy.

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

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

19 "PART . MOTION PICTURE, DIGITAL MEDIA, AND FILM PRODUCTION

20 §235-A Performing arts royalties derived from patents,  
21 copyrights, or trade secrets excluded from gross income. (a)

22 In addition to the exclusions in section 235-7, there shall be



1 excluded from gross income, adjusted gross income, and taxable  
2 income, amounts received by an individual or a qualified  
3 business as royalties and other income derived from any patents,  
4 copyrights, and trade secrets:

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

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

7 (b) This exclusion shall extend to:

8 (1) The authors of performing arts products, or any parts  
9 thereof, without regard to the application of the  
10 work-for-hire doctrine under United States copyright  
11 law;

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

15 (3) The assignors, licensors, and licensees of any  
16 copyright rights in performing arts products, or any  
17 parts thereof.

18 (c) For the purposes of this section:

19 "Performing arts products" means:

20 (1) Audio files, video files, audiovideo files, computer  
21 animation, and other entertainment products perceived  
22 by or through the operation of a computer; and



PROPOSED S.B. NO. 1920 S.D. 1

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

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

7 "Qualified research" means:

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

10 (2) Performing arts products.

11 **§235-B Performing arts investment tax credit.** (a) There  
12 shall be allowed to each taxpayer subject to the taxes imposed  
13 by this chapter a performing arts investment tax credit that  
14 shall be deductible from the taxpayer's net income tax  
15 liability, if any, imposed by this chapter for the taxable year  
16 in which the investment was made and the following four years  
17 provided the credit is properly claimed. The tax credit shall  
18 be as follows:

19 (1) In the year the investment was made, thirty-five per  
20 cent;

21 (2) In the first year following the year in which the  
22 investment was made, twenty-five per cent;



**PROPOSED****S.B. NO.** 1920  
S.D. 1

1 (3) In the second year following the investment, twenty  
2 per cent;

3 (4) In the third year following the investment, ten per  
4 cent; and

5 (5) In the fourth year following the investment, ten per  
6 cent;

7 of the investment made by the taxpayer in each qualified  
8 business, up to a maximum allowed credit in the year the  
9 investment was made, \$700,000; in the first year following the  
10 year in which the investment was made, \$500,000; in the second  
11 year following the year in which the investment was made,  
12 \$400,000; in the third year following the year in which the  
13 investment was made, \$200,000; and in the fourth year following  
14 the year in which the investment was made, \$200,000.

15 (b) The credit allowed under this section shall be claimed  
16 against the net income tax liability for the taxable year. For  
17 the purpose of this section, "net income tax liability" means  
18 net income tax liability reduced by all other credits allowed  
19 under this chapter.

20 (c) If the tax credit under this section exceeds the  
21 taxpayer's income tax liability for any of the five years that  
22 the credit is taken, the excess of the tax credit over liability



PROPOSED

1 may be used as a credit against the taxpayer's income tax  
 2 liability in subsequent years until exhausted. Every claim,  
 3 including amended claims, for a tax credit under this section  
 4 shall be filed on or before the end of the twelfth month  
 5 following the close of the taxable year for which the credit may  
 6 be claimed. Failure to comply with the foregoing provision  
 7 shall constitute a waiver of the right to claim the credit.

8 (d) If at the close of any taxable year in the five year  
 9 period in subsection (a):

- 10 (1) The business no longer qualifies as a qualified  
 11 business;
- 12 (2) The business or an interest in the business has been  
 13 sold by the taxpayer investing in the qualified  
 14 business; or
- 15 (3) The taxpayer has withdrawn the taxpayer's investment  
 16 wholly or partially from the qualified business;

17 the credit claimed under this section shall be recaptured. The  
 18 recapture shall be equal to ten per cent of the amount of the  
 19 total tax credit claimed under this section in the preceding two  
 20 taxable years. The amount of the credit recaptured shall apply  
 21 only to the investment in the particular qualified business that  
 22 meets the requirements of paragraph (1), (2), or (3). The



1 recapture provisions of this subsection shall not apply to a tax  
2 credit claimed for a qualified business that does not fall  
3 within the provisions of paragraph (1), (2), or (3). The amount  
4 of the recaptured tax credit determined under this subsection  
5 shall be added to the taxpayer's tax liability for the taxable  
6 year in which the recapture occurs under this subsection.

7 (e) Every taxpayer, before April 1 of each year in which  
8 an investment in a qualified business was made in the previous  
9 taxable year, shall submit a written, certified statement to the  
10 director of taxation identifying:

- 11 (1) Qualified investments, if any, expended in the  
12 previous taxable year;
- 13 (2) The amount of tax credits claimed pursuant to this  
14 section, if any, in the previous taxable year; and
- 15 (3) The number of total hires versus the number of local  
16 hires by category (i.e., department) and by country.

17 The department of taxation shall use the information from the  
18 statements submitted each year under this subsection to prepare  
19 a report published by May 1 of each year presenting the  
20 information received under this subsection. The information  
21 shall be presented in the aggregate and shall be available to  
22 the public.



**PROPOSED****S.B. NO. 1920**  
S.D. 1

- 1 (f) The department shall:
- 2 (1) Maintain records of the names and addresses of the
- 3 taxpayers claiming the credits under this section and
- 4 the total amount of the qualified investment costs
- 5 upon which the tax credit is based;
- 6 (2) Verify the nature and amount of the qualifying
- 7 investments;
- 8 (3) Total all qualifying and cumulative investments that
- 9 the department certifies; and
- 10 (4) Certify the amount of the tax credit for each taxable
- 11 year and cumulative amount of the tax credit.

12 Upon each determination made under this subsection, the

13 department shall issue a certificate to the taxpayer verifying

14 information submitted to the department, including qualifying

15 investment amounts, the credit amount certified for each taxable

16 year, and the cumulative amount of the tax credit during the

17 credit period. The taxpayer shall file the certificate with the

18 taxpayer's tax return with the department.

19 The director of taxation may assess and collect a fee to

20 offset the costs of certifying tax credits claims under this

21 section. All fees collected under this section shall be





**PROPOSED****S.B. NO. 1920  
S.D. 1**

1 deposited into the tax administration special fund established  
2 under section 235-20.5.

3 (g) As used in this section:

4 "Investment tax credit allocation ratio" means, with  
5 respect to a taxpayer that has made an investment in a qualified  
6 business, the ratio of:

7 (1) The amount of the credit under this section that is,  
8 or is to be, received by or allocated to the taxpayer  
9 over the life of the investment, as a result of the  
10 investment; to

11 (2) The amount of the investment in the qualified  
12 business.

13 "Qualified business" means a business engaged in producing  
14 performing arts products, employing or owning capital or  
15 property, or maintaining an office, in this State; provided  
16 that:

17 (1) More than fifty per cent of its total business  
18 activities are qualified research; and provided  
19 further that the business conducts more than seventy-  
20 five per cent of its qualified research in this State;  
21 or



# PROPOSED

# S.B. NO. 1920 S.D. 1

1           (2) More than seventy-five per cent of its gross income is  
 2           derived from qualified research; and provided further  
 3           that this income is received from:

4           (A) Products sold from, manufactured in, or produced  
 5           in this State; or

6           (B) Services performed in this State.

7           "Qualified research" means the same as defined in section  
 8 235-A.

9           "Performing arts products" means the same as defined in  
 10 section 235-A.

11          (h) Common law principles, including the doctrine of  
 12 economic substance and business purpose, shall apply to any  
 13 investment. There exists a presumption that a transaction  
 14 satisfies the doctrine of economic substance and business  
 15 purpose to the extent that the special allocation of the  
 16 performing arts tax credit has an investment tax credit ratio of  
 17 1.5 or less of credit for every dollar invested.

18          Transactions for which an investment tax credit allocation  
 19 ratio greater than 1.5 but not more than 2.0 of credit for every  
 20 dollar invested and claimed may be reviewed by the department  
 21 for applicable doctrines of economic substance and business  
 22 purpose.



PROPOSED

1 Businesses claiming a tax credit for transactions with  
2 investment tax credit allocation ratios greater than 2.0 of  
3 credit for every dollar invested shall substantiate economic  
4 merit and business purpose consistent with this section.

5 (i) Persons eligible for a tax credit under section 235-D  
6 may claim a tax credit under this section but not under section  
7 235-110.9. Persons not eligible for a tax credit under 235-D  
8 shall not claim any tax credit under this section. Any person  
9 that has:

- 10 (1) Claimed the tax credit under section 235-110.9; and
- 11 (2) Not exhausted the right to claim the tax credit for  
12 the five-year period provided thereunder,

13 shall be eligible to continue to claim the tax credit, without  
14 reduction or requalification, for the remainder of the five-year  
15 period pursuant to this section if the taxpayer qualifies for a  
16 credit under section 235-D.

17 (j) This section shall not apply to taxable years  
18 beginning after December 31, 2010.

19 **§235-C Tax credit for performing arts research activities.**

20 (a) Section 41 (with respect to the credit for increasing  
21 research activities) and section 280C(c) (with respect to  
22 certain expenses for which the credit for increasing research



**PROPOSED S.B. NO. 1920 S.D. 1**

1 activities are allowable) of the Internal Revenue Code shall be  
 2 operative for the purposes of this chapter as provided in this  
 3 section; except that references to the base amount shall not  
 4 apply and credit for all qualified research expenses may be  
 5 taken without regard to the amount of expenses for previous  
 6 years. If section 41 of the Internal Revenue Code is repealed  
 7 or terminated prior to January 1, 2011, its provisions shall  
 8 remain in effect for purposes of the income tax law of the State  
 9 as modified by this section, as provided for in subsection (j).

10 (b) All references to Internal Revenue Code sections  
 11 within sections 41 and 280C(c) of the Internal Revenue Code  
 12 shall be operative for purposes of this section.

13 (c) There shall be allowed to each qualified business  
 14 subject to the tax imposed by this chapter an income tax credit  
 15 for qualified research activities equal to the credit for  
 16 research activities provided by section 41 of the Internal  
 17 Revenue Code and as modified by this section. The credit shall  
 18 be deductible from the taxpayer's net income tax liability, if  
 19 any, imposed by this chapter for the taxable year in which the  
 20 credit is properly claimed.

21 (d) Every qualified business, before April 1 of each year  
 22 in which qualified research and development activity was



1 conducted in the previous taxable year, shall submit a written,  
2 certified statement to the director of taxation identifying:

- 3 (1) Qualified expenditures, if any, expended in the
- 4 previous taxable year; and
- 5 (2) The amount of tax credits claimed pursuant to this
- 6 section, if any, in the previous taxable year.

7 The department of taxation shall use the information from the  
8 statements submitted each year under this subsection to prepare  
9 a report published by May 1 of each year presenting the  
10 information received under this subsection. The information  
11 shall be presented in the aggregate and shall be available to  
12 the public.

13 (e) The department shall:

- 14 (1) Maintain records of the names and addresses of the
- 15 taxpayers claiming the credits under this section and
- 16 the total amount of the qualified research and
- 17 development activity costs upon which the tax credit
- 18 is based;
- 19 (2) Verify the nature and amount of the qualifying costs
- 20 or expenditures;
- 21 (3) Total all qualifying and cumulative costs or
- 22 expenditures that the department certifies; and



**PROPOSED**

1           (4) Certify the amount of the tax credit for each taxable  
2           year and cumulative amount of the tax credit.

3           Upon each determination made under this subsection, the  
4 department shall issue a certificate to the taxpayer verifying  
5 information submitted to the department, including the  
6 qualifying costs or expenditure amounts, the credit amount  
7 certified for each taxable year, and the cumulative amount of  
8 the tax credit during the credit period. The taxpayer shall  
9 file the certificate with the taxpayer's tax return with the  
10 department.

11           The director of taxation may assess and collect a fee to  
12 offset the costs of certifying tax credit claims under this  
13 section. All fees collected under this section shall be  
14 deposited into the tax administration special fund established  
15 under section 235-20.5.

16           (f) As used in this section:

17           "Basic research" under section 41(e) of the Internal  
18 Revenue Code shall not include research conducted outside of the  
19 State.

20           "Qualified business" means the same as in section 235-B.



PROPOSED

1 "Qualified research" under section 41(d)(1) of the Internal  
2 Revenue Code shall not include research conducted outside of the  
3 State.

4 (g) If the tax credit for qualified performing arts  
5 research activities claimed by a taxpayer exceeds the amount of  
6 income tax payment due from the taxpayer, the excess of the tax  
7 credit over payments due shall be refunded to the taxpayer;  
8 provided that no refund on account of the tax credit allowed by  
9 this section shall be made for amounts less than \$1.

10 (h) All claims for a tax credit under this section shall  
11 be filed on or before the end of the twelfth month following the  
12 close of the taxable year for which the credit may be claimed.  
13 Failure to properly claim the credit shall constitute a waiver  
14 of the right to claim the credit.

15 (i) The director of taxation may adopt any rules under  
16 chapter 91 and forms necessary to carry out this section.

17 (j) Persons eligible to claim a tax credit under section  
18 235-D may claim a tax credit under this section but not under  
19 section 235-110.91. Persons not eligible for a tax credit under  
20 section 235-D shall not claim a tax credit under this section.  
21 Any person that has:

22 (1) Claimed the tax credit under section 235-110.91; and



1           (2) Not exhausted the right to claim the tax credit  
2           provided thereunder,  
3 shall be eligible to continue to claim the tax credit, without  
4 reduction or requalification, pursuant to this section, if the  
5 taxpayer is eligible to claim a credit under section 235-D.

6           (k) This section shall not apply to taxable years  
7 beginning after December 31, 2010."

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:~~





PROPOSED S.B. NO. 1920 S.D. 1

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:



# PROPOSED

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 as follows:

18 1. By renumbering the section, inserting it into the new  
19 part of chapter 235, Hawaii Revised Statutes, established under  
20 section 2 of this Act, and amending subsection (a) to read:

21 **"~~§235-17~~ §235-D Motion picture, digital media, and film**  
22 **production income tax credit.** (a) Any law to the contrary



PROPOSED

1 notwithstanding, there shall be allowed to each taxpayer subject  
2 to the taxes imposed by this chapter, an income tax credit which  
3 shall be deductible from the taxpayer's net income tax  
4 liability, if any, imposed by this chapter for the taxable year  
5 in which the credit is properly claimed. The amount of the  
6 credit shall be:

7 (1) [~~Fifteen~~] Twenty per cent of the qualified production  
8 costs incurred by a qualified production in any county  
9 of the State with a population of over seven hundred  
10 thousand; or

11 (2) [~~Twenty~~] Twenty-five per cent of the qualified  
12 production costs incurred by a qualified production in  
13 any county of the State with a population of seven  
14 hundred thousand or less.

15 A qualified production occurring in more than one county may  
16 prorate its expenditures based upon the amounts spent in each  
17 county, if the population bases differ enough to change the  
18 percentage of tax credit.

19 In the case of a partnership, S corporation, estate, or  
20 trust, the tax credit allowable is for qualified production  
21 costs incurred by the entity for the taxable year. The cost  
22 upon which the tax credit is computed shall be determined at the



PROPOSED

1 entity level. Distribution and share of credit shall be  
2 determined by rule.

3 If a deduction is taken under section 179 (with respect to  
4 election to expense depreciable business assets) of the Internal  
5 Revenue Code of 1986, as amended, no tax credit shall be allowed  
6 for those costs for which the deduction is taken.

7 The basis for eligible property for depreciation of  
8 accelerated cost recovery system purposes for state income taxes  
9 shall be reduced by the amount of credit allowable and claimed."

10 2. By amending subsection (h) to read:

11 "(h) Every taxpayer claiming a tax credit under this  
12 section for a qualified production shall, no later than ninety  
13 days following the end of each taxable year in which qualified  
14 production costs were expended, submit a written, sworn  
15 statement to the department of business, economic development,  
16 and tourism, identifying:

- 17 (1) All qualified production costs as provided by
- 18 subsection (a), if any, incurred in the previous
- 19 taxable year;
- 20 (2) The amount of tax credits claimed pursuant to this
- 21 section, if any, in the previous taxable year; [~~and~~]



# PROPOSED

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

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

6           (A) Teacher training, mentorship, and internship  
 7           opportunities by industry professionals and  
 8           Hawaii-based productions for "below-the-line"  
 9           local technical crews; and

10          (B) Participation in a statewide advisory council to  
 11          develop the training, mentorship, and internship  
 12          opportunity programs to produce qualified workers  
 13          entering film and television production and  
 14          creative media industries.

15 The department of business, economic development, and tourism  
 16 shall use the information from the statements submitted under  
 17 this section to prepare a report, published biannually, no later  
 18 than June 30 and December 31, presenting information identifying  
 19 tax credit recipients and the aggregate total value of the  
 20 credits received under this subsection. The information shall  
 21 be available to the public in both print and electronic form."

22           3. By amending subsection (j) to read:



# PROPOSED

1           "(j) Total tax credits claimed per qualified production  
 2 shall not exceed [~~\$8,000,000.~~] \$ \_\_\_\_\_."

## PART II

4           SECTION 5. This purpose of this part is to enable local  
 5 writers, directors, and producers to create parts for local  
 6 actors filmed by local crews by increasing membership in and the  
 7 authority of the Hawaii television and film board and by  
 8 authorizing and appropriating funds for grants programs. This  
 9 part complements the tax credit provided under section 235-D,  
 10 Hawaii Revised Statutes, by making it possible for talented  
 11 Hawaii filmmakers to obtain financing for their productions  
 12 through a separate grants process.

13           Just as Act 221, Session Laws of Hawaii 2001, and Act 215,  
 14 Session Laws of Hawaii 2003, were intended to provide start-up  
 15 financing for high-technology start-ups in the early stages of  
 16 development, the Hawaii film and television development special  
 17 fund will provide seed financing that independent and budding  
 18 filmmakers can use to leverage non-state funding sources. Since  
 19 many of these filmmakers' projects would not be eligible for the  
 20 film/digital media production credits, the special fund takes on  
 21 special significance for independent filmmakers.



1 SECTION 6. Section 201-112, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "~~[+]~~\$201-112~~[+]~~ **Hawaii television and film development**  
4 **board.** (a) There is established the Hawaii television and film  
5 development board. The board shall be attached to the  
6 department of business, economic development, and tourism for  
7 administrative purposes only. The board shall administer the  
8 grant ~~[and venture capital investment]~~ programs and the Hawaii  
9 television and film development special fund established under  
10 this part. The board shall also ~~[assess and consider]~~ further  
11 the overall viability and development of the television and film  
12 industries and make recommendations to appropriate state or  
13 county agencies.

14 (b) The board shall be composed of ~~[nine]~~ eleven members,  
15 ~~[four]~~ six of whom shall be appointed by the governor pursuant  
16 to section 26-34, and all of whom shall serve four-year  
17 staggered terms. ~~[One]~~ Two of the governor's appointments shall  
18 be made from a list of nominees submitted by the president of  
19 the senate ~~[and another appointment]~~, two shall be made from a  
20 list of nominees submitted by the speaker of the house of  
21 representatives~~[-]~~, and one appointment shall be a current  
22 member of the University of Hawaii's faculty or administration.



1 The [~~four~~] six appointed members shall possess a current working  
2 knowledge of the film, television, or entertainment industry.  
3 The director of business, economic development, and tourism, and  
4 the chairs of the four county film commissions or [~~its~~] their  
5 equivalent, shall serve as ex officio voting members, who may be  
6 represented on the board by designees.

7 The chairperson and vice chairperson of the board shall be  
8 selected by the board by majority vote. [~~Five~~] Seven members  
9 shall constitute a quorum, whose affirmative vote shall be  
10 necessary for all actions by the board. The members shall serve  
11 without compensation but shall be reimbursed for expenses,  
12 including travel expenses, necessary for the performance of  
13 their duties.

14 (c) The film industry branch development manager shall  
15 serve as the executive secretary of the board.

16 (d) The board may establish subcommittees to administer  
17 specific programs and activities for which the board has  
18 responsibility, including but not limited to the disbursement of  
19 grants and loans. The subcommittees shall be composed of board  
20 members and selected by the board by majority vote. The  
21 subcommittees may make recommendations to the board.





PROPOSED

S.B. NO. 1920 S.D. 1

1       (e) The board shall convene only if there is a balance in  
 2 the special fund established under section 201-113 or if any  
 3 grant, loan, or investment program of the board remains  
 4 outstanding. In the absence of either of these conditions, the  
 5 board, by its own decision, may choose not to convene.

6       ~~[(d)]~~ (f) The board may adopt rules pursuant to chapter 91  
 7 to effectuate the purposes of this part."

8       SECTION 7. Section 201-113, Hawaii Revised Statutes, is  
 9 amended to read as follows:

10       "~~+~~§201-113~~+~~ **Hawaii television and film development**  
 11 **special fund.** (a) There is established in the state treasury  
 12 the Hawaii television and film development special fund into  
 13 which shall be deposited:

- 14       (1) Appropriations by the legislature;
- 15       (2) Donations and contributions made by private  
 16 individuals or organizations for deposit into the  
 17 fund; and
- 18       (3) Grants provided by governmental agencies or any other  
 19 source~~+~~ and
- 20       ~~(4) Any profits or other amounts received from venture~~  
 21 ~~capital investments.],~~ including those related to  
 22 creative media and production.



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

8 ~~(1)~~ A] a grant program[-] through which funds shall be  
9 disbursed for the furtherance of a sustainable local  
10 television and film industry and exposure and  
11 publicity for the State. The board, by majority vote,  
12 shall select a subcommittee composed of five board  
13 members to review grant applications and recommend  
14 grant recipients to the board. Two of the  
15 subcommittee members shall be from the government and  
16 three shall be from the private sector. All  
17 subcommittee members shall declare any personal  
18 relationships or affiliations that may affect their  
19 ability to make objective recommendations. The board  
20 shall adopt rules pursuant to chapter 91 to provide  
21 conditions and qualifications for grants.  
22 Applications for grants shall be made to the board and



1 shall contain such information as the board shall  
 2 require by rules adopted pursuant to chapter 91. At a  
 3 minimum, the applicant shall agree to the following  
 4 conditions:

5 ~~[+A+]~~ (1) The grant shall be used exclusively for  
 6 eligible Hawaii projects;

7 ~~[+B+]~~ (2) The applicant shall have applied for or  
 8 received all applicable licenses and permits;

9 ~~[+C+]~~ (3) The applicant shall comply with applicable  
 10 federal and state laws prohibiting discrimination  
 11 against any person on the basis of race, color,  
 12 national origin, religion, creed, sex, age, or  
 13 physical handicap;

14 ~~[+D+]~~ (4) The applicant shall comply with other  
 15 requirements as the board may prescribe;

16 ~~[+E+]~~ (5) All activities undertaken with funds  
 17 received shall comply with all applicable  
 18 federal, state, and county statutes and  
 19 ordinances;

20 ~~[+F+]~~ (6) The applicant shall indemnify and save  
 21 harmless the State of Hawaii and its officers,  
 22 agents, and employees from and against any and



PROPOSED S.B. NO. 1920  
S.D. 1

1 all claims arising out of or resulting from  
2 activities carried out or projects undertaken  
3 with funds provided hereunder, and procure  
4 sufficient insurance to provide this  
5 indemnification if requested to do so by the  
6 department;

7 ~~[(G)]~~ (7) The applicant shall make available to the  
8 board all records the applicant may have relating  
9 to the project, to allow the board to monitor the  
10 applicant's compliance with the purpose of this  
11 chapter; and

12 ~~[(H)]~~ (8) The applicant, to the satisfaction of the  
13 board, shall establish that sufficient funds are  
14 available for the completion of the project for  
15 the purpose for which the grant is awarded~~[,] and~~

16 ~~[(2)] A venture capital program. The board shall adopt~~  
17 ~~rules pursuant to chapter 91 to provide conditions and~~  
18 ~~qualifications for venture capital investments in~~  
19 ~~eligible Hawaii projects. The program may include a~~  
20 ~~written agreement between the borrower and the board,~~  
21 ~~as the representative of the State, that as~~  
22 ~~consideration for the venture capital investment made~~



1 ~~under this part, the borrower shall share any~~  
2 ~~royalties, licenses, titles, rights, or any other~~  
3 ~~monetary benefits that may accrue to the borrower~~  
4 ~~pursuant to terms and conditions established by the~~  
5 ~~board by rule pursuant to chapter 91. Venture capital~~  
6 ~~investments may be made on such terms and conditions~~  
7 ~~as the board shall determine to be reasonable,~~  
8 ~~appropriate, and consistent with the purposes and~~  
9 ~~objectives of this part].~~

10 (c) Up to ten per cent of any amounts in the special fund  
11 may be used by the board to support the operations of the board  
12 and the administration of the special fund and any grant or loan  
13 program established by the board."

14 SECTION 8. There is appropriated out of the general  
15 revenues of the State of Hawaii the sum of \$1,000,000, or so  
16 much thereof as may be necessary for fiscal year 2007-2008, and  
17 the same sum, or so much thereof as may be necessary for fiscal  
18 year 2008-2009, to be deposited into the Hawaii television and  
19 film development special fund under section 201-113, Hawaii  
20 Revised Statutes.

21 SECTION 9. There is appropriated out of the Hawaii  
22 television and film development special fund of the State of



**PROPOSED****S.B. NO. 1920**  
**S.D. 1**

1 Hawaii the sum of \$1,000,000, or so much thereof as may be  
2 necessary for fiscal year 2007-2008, and the same sum, or so  
3 much thereof as may be necessary for fiscal year 2008-2009, for  
4 the purposes of this part.

5 The sums appropriated shall be expended by the department  
6 of business, economic development, and tourism for the purposes  
7 of this part.

8 **PART III**

9 SECTION 10. In codifying the new sections added by  
10 sections 2 and 4 of this Act, the revisor of statutes shall  
11 substitute appropriate section numbers for the letters used in  
12 designating the new sections in this Act.

13 SECTION 11. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 12. This Act, upon its approval, shall apply to  
16 taxable years beginning after December 31, 2006; provided that  
17 part II shall take effect on July 1, 2007.



# PROPOSED

**Report Title:**

Taxation; Motion Picture, Digital Media, Film Production; Hawaii Television and Film Board; Membership; Appropriation

**Description:**

Recodifies and renames existing motion picture, digital media, and film production tax provisions. Increases the tax credits from fifteen and twenty per cent to twenty and twenty-five per cent. Increases reporting requirements. Increases membership of the Hawaii television and film board; enables the board to delegate certain administrative functions to subcommittees; authorizes the board to not have to meet if no money is in its special fund or no grants are being managed; and appropriates funds to the board's special fund for grants programs. (SD1)

