



**SCREEN ACTORS GUILD**  
**HAWAI'I BRANCH**  
**TRANSMITTAL COVER**

Date: 1/27/08 ♦ Time: 3:00 PM ♦ No. of pages including cover: 2

♦ URGENT \_\_\_\_\_ ♦ PLEASE RESPOND \_\_\_\_\_

TO: House Committee on Tourism & Culture

FIRM: House of Representatives - Hawaii State Legislature

FROM: Brenda Ching

SUBJECT: Testimony for HB 2734 – Relating to Digital Media

**Please submit testimony for HB 2734 – Relating to Digital Media**

**Hearing Date: Monday, January 28, 2008**

**Hearing Time: 9:00 a.m., Conference Room 325**

**Thank you for your assistance.**

**Aloha,**

**Brenda Ching**



House of Representatives  
The Twenty-Fourth Legislature  
Regular Session of 2008

Committee on Tourism & Culture  
Monday, January 27, 2008  
9:00 a.m., State Capitol, Conference Room 325

TO: Representative Ryan I. Yamane, Chair  
Representative Joey Manahan, Vice-Chair  
Members of the Committee

FR: Brenda Ching, Executive Director, Screen Actors Guild Hawaii Branch

RE: Testimony in Opposition of House Bill 2734, Relating to Digital Media

Dear Chair, Vice Chair and Members of the Committee:

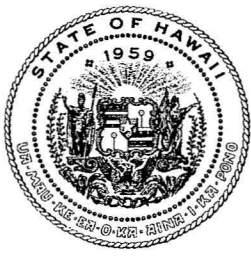
The Screen Actors Guild Hawaii Branch appreciates the committee's interest and support of Hawaii's film industry but **opposes HB2734** for the following reasons:

We have been counseled by the Attorney General's office that a Hawaii residency stipulation is facially discriminatory and would leave the measure vulnerable to a constitutional challenge. Based on a letter from the Attorney General's office that we received from Representative Takumi, dated February 7, 2005, the 6<sup>th</sup> paragraph of the letter states *"To insulate the bill from a possible constitutional challenge, we recommend either of two possible remedies: (1) that the bill be amended to remove the reference favoring Hawaii-based products, individuals, and equipment; or (2) that a legitimate government purpose substantially related to that purpose be articulated within the preamble of the bill. ..."*

In addition, state certification of industry workers does not fit with the union-based industry structure and management practices.

Thank you for the opportunity to provide these comments.

Screen Actors Guild  
949 Kapiolani Blvd., Suite 105, ♦ Honolulu, HI 96814 ♦ Tel. 808.596.0388; ♦ Fax 808.593.2636



**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

LINDA LINGLE  
GOVERNOR  
THEODORE E. LIU  
DIRECTOR  
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Statement of  
**THEODORE E. LIU**  
Director

Department of Business, Economic Development, and Tourism  
before the

**HOUSE COMMITTEE ON TOURISM & CULTURE**

Monday, January 28, 2008

9:00 a.m.

State Capitol, Conference Room 325

in consideration of  
HB 2734

**RELATING TO DIGITAL MEDIA.**

Chair Yamane, Vice-Chair Manahan, and members of the Committee.

The Department of Business, Economic Development & Tourism (DBEDT) supports the concept behind HB 2734 but we must oppose the bill, as we have concerns that it would create significant problems to implement, that it may impact the limited resources of the Film Industry Branch and have significant cost implications.

HB 2734 seeks to stimulate film and digital media production in the state by amending §235-17, HRS, motion picture, digital media, and film production income tax credit to include a 50% credit on wages paid to below-the-line crew who are residents of Hawaii and to grow the experience level and size of our local crew base by authorizing the Department of Labor and Industrial Relations to implement and operate a media production training programs.

We strongly feel that there will be significant problems in implementing a 50% local wage credit that is applicable only to Hawaii residents. The exclusion of this credit for any above-the-line positions for Hawaii residents is counter to the goal of growing all aspects of a robust local industry.

While we defer to the Department of the Attorney General (AG) to comment on the technical merits of the constitutional implications of such a wage credit, it is our understanding from prior communication with the AG that a wage credit linked to a local

hiring requirement may pose legal issues with regard to our state constitution. And if such a wage credit could pass constitutional muster with our state AG, such a wage credit would not apply to any of the high paying, more senior above-the-line positions that carry more responsibility, thereby discouraging out of state productions from using Hawaii hires to fill these important positions.

We believe that the current provisions of the motion picture, digital media and film production income tax credit are generous at this point and bring Hawaii to a competitive level with other jurisdictions. If such a wage credit were to be implemented, and since the existing 15-20% credit applies to all wages and salaries, above- and below-the-line, it would provide productions a total of 57.5% to 60% for local wages below the line. There's no doubt that would provide additional incentive to productions to shoot in Hawaii and hire locally but we have serious concerns that the state may not be able to sustain such a generous credit, especially since we have not had a chance to fully assess the overall economic impact of Act 88 on the state.

We defer to the Department of Labor and Industrial Relations to respond to the substantive merits of the amendments to §383-128, HRS. However, we strongly believe that a media production training program is so highly specialized that it would pose a challenge for the department to develop such a program, despite the development and administration guidance of an industry advisory group. Assembling such an advisory group to carry out this mandate poses a challenge in itself because of the broad cross section of industry that would have to be represented and the time and effort involved. If such a program were to be implemented, having the option to contract these training program services out to qualified industry organizations would be critical.

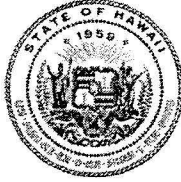
Additionally, the Film Industry Branch currently has neither the expertise nor sufficient staff to approve film training programs or certify production crew as film and multimedia trainees. Currently DBEDT's Film Industry Branch is responsible for certifying the tax credits applied for through §235-17, HRS and for handling all film permitting and other production support. The branch does not have sufficient staff to handle these current responsibilities. Hawaii cannot risk losing its reputation as a film friendly location, which is a likely outcome if an increased number of productions may not be able to efficiently access our tax credit program and securing film permits in a

timely manner for filming on public property poses a challenge. We believe that it is more appropriate to have the private sector create a certification system, thereby preventing conflicts or duplication with the unions that oversee the film industry.

Thank you for this opportunity to comment on this bill.

LINDA LINGLE  
GOVERNOR

JAMES R. AIONA, JR.  
LT. GOVERNOR



KURT KAWAFUCHI  
DIRECTOR OF TAXATION

SANDRA L. YAHIRO  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF TAXATION  
P.O. BOX 259  
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510  
FAX NO: (808) 587-1560

## HOUSE COMMITTEE ON TOURISM & CULTURE

### TESTIMONY REGARDING HB 2734 RELATING TO DIGITAL MEDIA

**TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)**

**DATE: JANUARY 28, 2008**

**TIME: 9:00AM**

**ROOM: 325**

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This legislation modifies the existing motion picture tax credit provided under HRS § 235-17, to include an additional component comprised of a credit equal to 50% of costs incurred in wages associated with training below-the-line crew.

The Department of Taxation takes **no position** on this measure; however has **concerns regarding this bill's constitutionality**.

#### **I. STRONG SUPPORT FOR THE MOTION PICTURE INDUSTRY**

The Department strongly supports the existing tax incentives for the motion picture industry and the economic activity this incentive has brought to Hawaii. Likewise, the Department also recognizes that additional incentives could help even further with continuing to build up Hawaii's talent and labor forces that provide services to this industry. However, the Legislature must ensure that the Hawaii Film Office, which implements a majority of this credit, is sufficiently staffed to carry out any extension of the existing credit.

#### **II. POSSIBLE CONSTITUTIONAL ISSUE**

The Department is primarily concerned because this legislation conditions receipt of the labor credit component on a production company hiring a "Hawaii resident." The Department is concerned that this legislation could be found facially unconstitutional in violation of the Privileges & Immunities Clause or other constitutional restrictions on discriminating against interstate commerce. The Department defers to the Department of the Attorney General on this bill's constitutionality, but raises the issue nonetheless.

#### **III. NEED TO COMPETE WITH OTHER JURISDICTIONS**

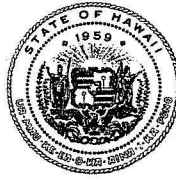
The Department recognizes that in order for Hawaii to remain competitive in the worldwide marketplace of filming locations, its tax incentives must remain attractive. Labor costs associated with filmmaking can be a large production cost, including the labor costs in Hawaii. The Department understands that other states, such as New Mexico, have created labor incentive programs similar to this measure. The Department suggests that the Committee consider the spirit of this proposal by providing additional incentives targeted at the labor side of motion picture production.

#### **IV. PREFER AN EXPENDITURE PROGRAM, SUCH AS SCHOLARSHIPS**

In order to continue the discussion of providing incentives for hiring local labor in motion picture productions, the Department recommends that this legislation be amended to provide the Hawaii Film Office with a budgetary appropriation or other monies to expend through some sort of scholarship program. Such a scholarship program should also include budgetary appropriations to implement the program. State constitutional regulations on residential preferences have different standards for expenditures of monies, such as the preference for a favorable in-state tuition. If this legislation provides for a budgeted scholarship program, the Film Office could payout revenues for those productions hiring local labor and providing education-based instruction to local hires. Because a scholarship program is not "run through the tax code," the discrimination issue is tempered.

#### **V. REVENUE ESTIMATE**

This legislation will result in a revenue loss of approximately \$6 million per year.



**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813

[www.hawaii.gov/labor](http://www.hawaii.gov/labor)

Phone: (808) 586-8842 / Fax: (808) 586-9099

Email: [dliir.director@hawaii.gov](mailto:dliir.director@hawaii.gov)

January 25, 2008

To: The Honorable Ryan Yamane, Chair  
and Members of the House Committee on Tourism and Culture

Date: January 28, 2008  
Time: 9:00 a.m.  
Place: Conference Room 325, State Capitol

From: Darwin L.D. Ching, Director  
Department of Labor and Industrial Relations

**Testimony in Opposition  
to  
H.B. 2734 – Relating to Digital Media**

**I. OVERVIEW OF CURRENT PROPOSED LEGISLATION**

House Bill 2734 authorizes the Department of Labor and Industrial Relations (“Department”) to implement and operate media production training programs through the Department’s New Industry Training Program.

Further, H.B. 2734 amends the “Motion Picture, Digital Media, and Film Production Income Tax Credit” to allow a tax credit on fifty percent of wages paid to below-the-line crew who are Hawaii residents that meet certain training and certification requirements.

**II. CURRENT LAW**

**New Industry Training Program**

Section 394-8, Hawaii Revised Statutes (“HRS”), was established in 1987. The program was intended to be a “rapid response” program to provide training programs to local residents hired by businesses relocating to Hawaii or local businesses expanding their operations. The legislature appropriated \$250,000 in General Funds to the Department to support the program.

The New Industry Training Program presently exists in statute only. There is no current



staff or funding allocated to this program.

### **Employment Training Fund**

The Department also administers the employer funded Employment Training Fund ("ETF") to assist in upgrading employee skills.

In 1991, the legislature added an additional .05 percent assessment on wages subject to unemployment taxes to fund an employment and training fund. This law was to sunset at the end of 1996. It was assumed that the fund would be allowed to sunset because the training programs had provided employment training to only a small percentage of the workforce. However, instead of allowing the fund to sunset, the legislature made it permanent and expanded the purposes for which the funds could be used to include grants and subsidies to agencies which provide services for the school-to-work program.

Additionally, because the ETF fund was established on a temporary basis the tax on employers was designed to be phased out incrementally. As such, the tax on employers had been reduced from .05 percent to a .01 percent assessment on wages. Once the program and fund was made permanent, the assessment was never restored to the original funding level. This has caused the ETF to require that employers pay for fifty (50) percent of the training or any excess beyond the tuition cap. Today, less than five (5) percent of Hawaii businesses are utilizing the fund although they entirely fund the program.

### **III. HOUSE BILL**

The Department opposes H.B. 2734 for the following reasons:

1. The New Industry Training Program is not operational. The Department has no staff, funding or expertise to implement and operate the media production job training programs envisioned by the bill.
2. Additionally, the bill is slightly confusing as it makes reference to the ETF and implies a relationship or interaction with the New Industry Training Program found in section 294-8, HRS. There is no relationship or interaction between these programs as the New Industry Training Programs does not exist.
3. The film industry already has the ability to apply for an ETF training (Macro) grant from the Department to effectuate the purpose of this bill. However, the ETF is not designed, nor does it have the resources, to fully fund the training program envisioned

by this bill.

The ETF training grant (Macro) program provides grants for education and training projects where there are critical skill shortages in high growth industries. However, it only acts as a catalyst, providing seed money for education, training curricula and program design. It is expected that the industry applying for and receiving the grant will also provide funding.

Additionally, H.B. 2734 creates an inequity in not allowing the Director to require employers utilizing the envisioned digital media training program to pay for fifty percent of the cost. The bill would single out one specific industry for preferential treatment while not giving the same consideration to other industries.

4. The Department defers to the Department of Taxation and the Department of Business, Economic Development and Tourism regarding the "Motion Picture, Digital Media, and Film Production Income Tax Credit".



HAWAII COUNCIL *of*  
COUNTY FILM COMMISSIONERS

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Testimony of  
HAWAII COUNCIL OF COUNTY FILM COMMISSIONERS

John Mason, Big Island Film Office, County of Hawaii  
Walea Constantinou, Honolulu Film Office, City and County of Honolulu  
Art Umezu, Kauai Film Commission, County of Kauai  
Benita Brazier, Maui Film Office, County of Maui

HOUSE COMMITTEE  
ON  
TOURISM & CULTURE

January 28, 2008 - 9:00 am  
State Capitol, Conference Room 325

RE: HB 2734 – RELATING TO DIGITAL MEDIA

Dear Chair Yamane and members of the committee:

We thank the legislature for its long-standing and visionary support of Hawaii's film industry. We submit this testimony **in opposition to HB 2734**.

While we acknowledge and appreciate the intent of the measure, we have concerns regarding the constitutionality of the bill and support DBEDT's position on the matter as advised to them by the Attorney General's office.

Additionally, we support labor's concerns regarding the certification and training proposals in the bill.

Thank you for the opportunity to provide these comments.



House of Representatives  
The Twenty-Fourth Legislature  
Regular Session of 2008

Committee on Tourism & Culture  
Monday, January 27, 2008  
9:00 a.m., State Capitol, Conference Room 325

TO: Representative Ryan I. Yamane, Chair  
Representative Joey Manahan, Vice-Chair  
Members of the Committee

FR: Brenda Ching, Executive Director, Screen Actors Guild Hawaii Branch

RE: Testimony in Opposition of House Bill 2734, Relating to Digital Media

Dear Chair, Vice Chair and Members of the Committee:

The Screen Actors Guild Hawaii Branch appreciates the committee's interest and support of Hawaii's film industry but **opposes HB2734** for the following reasons:

We have been counseled by the Attorney General's office that a Hawaii residency stipulation is facially discriminatory and would leave the measure vulnerable to a constitutional challenge. Based on a letter from the Attorney General's office that we received from Representative Takumi, dated February 7, 2005, the 6<sup>th</sup> paragraph of the letter states *"To insulate the bill from a possible constitutional challenge, we recommend either of two possible remedies: (1) that the bill be amended to remove the reference favoring Hawaii-based products, individuals, and equipment; or (2) that a legitimate government purpose substantially related to that purpose be articulated within the preamble of the bill. ..."*

In addition, state certification of industry workers does not fit with the union-based industry structure and management practices.

Thank you for the opportunity to provide these comments.

Screen Actors Guild  
949 Kapiolani Blvd., Suite 105, ♦ Honolulu, HI 96814 ♦ Tel. 808.596.0388; ♦ Fax 808.593.2636

COMMITTEE ON TOURISM & CULTURE

Hearing Date:

Monday, January 28, 2008 at 9:00 a.m.  
State Capitol - Conference Room 325

January 27, 2008

TO: Representative Ryan I. Yamane      Chair, Committee on Tourism & Culture  
Representative Joey Manahan      Vice Chair, Committee on Tourism & Culture  
Members of the Committee on Tourism & Culture

FR: Jeanne C. Ishikawa  
Business Representative, Hawaii Teamsters & Allied Workers Union, Local 996

RE: TESTIMONY SUBMITTED OPPOSING HB 2734 RELATING TO DIGITAL MEDIA

Dear Chairman Yamane, Vice Chair Manahan and Members of the Committee:

The Hawaii Teamsters and Allied Workers Union, Local 996 appreciate the committee's interest and support of Hawaii's film industry. However, as a labor organization representing the Hawaii movie and television industry drivers, the Teamsters Union OPPOSES House Bill 2734 (HB2734) for the following reasons:

1. A previous and similar attempt to enforce a Hawaii residency based hiring quota was discouraged by the Attorney General's office as said quota could possibly encourage a constitutional challenge on grounds of discrimination; and
2. Local 996 would not be in agreement with having a State agency certifying and overseeing our bargaining unit members.

Thank you for accepting this testimony on behalf of the Hawaii Teamsters, Local 996 – Movie Drivers Division.

Sincerely,

Jeanne C. Ishikawa  
Business Representative  
Hawaii Teamsters & Allied Workers Union, Local 996  
1817 Hart Street Honolulu, Hawaii 96819  
Phone: 808.847.6633 Fax: 808.842.4575  
email: loc996@hawaii.rr.com

# Musicians' Association of Hawaii

LOCAL No. 677, American Federation of Musicians

MICHAEL J. LARGARTICHA  
President

BRIEN MATSON  
Vice President

MARSHA SCHWEITZER  
Secretary-Treasurer



House of Representatives  
Twenty-Fourth Legislature  
Regular Session of 2008

Committee on Tourism & Culture  
Meeting January 28, 2008  
9:00 a.m. State Capitol, Conference Room 325

TO: Representative Ryan I. Yamane, Chair  
Representative Joe Manahan, Vice Chair  
Members of the Committee

FROM: Brien Matson, Vice President, Musicians' Association of Hawaii, Local 677

RE: Testimony in Opposition of House Bill 2734 – Relating to Digital Media

Dear Chair, Vice Chair and Members of the Committee:

The Musicians' Association of Hawaii is appreciative of the Committee's support and interest of Hawaii's film industry. However, we are opposed to HB2734 for the following reasons:

- 1) A residency requirement would leave the measure vulnerable to a constitutional challenge, according to the Hawaii State Attorney General's Office.
- 2) State certification of industry workers does not fit with the union-based industry structure and management practices.

Thank you.

# TAXBILLSERVICE

536 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel.

**SUBJECT:** INCOME, Expand motion picture, digital media, and film production credit

**BILL NUMBER:** SB 2273; HB 2734 (Identical)

**INTRODUCED BY:** SB by Fukunaga, Espero, Ige, Baker, English and 1 Republican; HB by Rhoads

**BRIEF SUMMARY:** Amends HRS section 235-17 to provide that the motion picture, digital media, and film production tax credit shall be expanded to include 50% of the wages paid to below-the-line crew members who: (1) are Hawaii residents; (2) have participated in approved job-training courses; and (3) have been certified as a film and multimedia trainee by the film industry branch of the department of business, economic development and tourism provided further that the credit claimed under this section shall be first applied to a qualified production's qualified production costs prior to calculating any other tax credit under this section.

"Below-the-line crew" includes production, art construction, set dressing, props, camera, sound, stage and studio, electrical, grip, wardrobe, makeup, special effects, laboratory and film, food transportation, locations, editorial and other hires based upon industry standards.

This section shall be applicable to wages and salaries paid to Hawaii residents in below-the-line crew position on or after July 1, 2008 and before January 1, 2016. Repeals this section on January 1, 2016 and provides that HRS section 235-17 shall be reenacted in the form in which it read before the effective date of this act.

**EFFECTIVE DATE:** July 1, 2008

**STAFF COMMENTS:** The legislature by Act 107, SLH 1997, enacted an income tax credit of 4% for costs incurred as a result of producing a motion picture or television film in the state and 7.25% for transient accommodations rented in connection with such activity. The credit was adopted largely to address the impact of the state's general excise tax on goods and services used by film producers. The proposed measure would provide a tax credit for 50% of the wages paid to below-the-line crew members who are Hawaii residents.

That earlier tax credit was replaced by the digital media and film production credit in 2006, Act 88 which provides for a credit of 15% of qualified production costs if the film is made on Oahu and 20% of qualified costs if filmed on a Neighbor Island. According to information disclosed by the Hawaii Film Office, that credit attracted more than \$200 million in qualified production costs last year and that to date claims for more than \$25 million for the digital media credit have been filed. For the advocates of the credit, this is proof that the credit is attracting productions to Hawaii. If that is so, one has to ask why this proposal is needed other than being an attempt to "give away the store" at the expense of all resident taxpayers.

It should be noted that income tax credits are designed to reduce the tax burden by providing relief for

taxes paid. Tax credits are justified on the basis that taxpayers with a lesser ability to pay should be granted relief for state taxes imposed. As it was pointed out when the Act was originally enacted, this measure merely results in a subsidy by government at the expense of all taxpayers. This measure proposes to further expand the motion picture, digital media, and film production tax credit program. While the proponents of the measure may try to justify the argument that Hawaii needs to enact such an incentive to compete for this type of business, one has to ask "at what price?" Perhaps when wages are paid to these select workers, there should be a phrase at the bottom of the check that says: "Paid for by the working poor taxpayers of Hawaii."

Promoters of the film industry obviously don't give much credit to Hawaii's natural beauty and more recently relative security. If promoters of the film industry would just do their job in outlining the advantages of doing this type of work in Hawaii and address some of the costly barriers by correcting them, such tax incentives would not be necessary. From permitting to skilled labor to facilitating transportation of equipment, there are ways that could reduce the cost of filming in Hawaii. Unless these intrinsic elements are addressed, movie makers will probably demand subsidies such as this incentive. Unfortunately, they come at the expense of all taxpayers and industries struggling to survive in Hawaii.

If lawmakers want to subsidize the film industry in Hawaii, then a direct appropriation of public funds is more accountable and would subject that expenditure to public scrutiny. If taxpayers do not agree with the subsidy or the amount of public funds being spent, they can hold their lawmakers accountable for that expense.

Finally, nothing has been done to insure that such productions only benefit once from the state trough. As lawmakers learned, investors in the Blue Crush movie will see \$16 million in tax credits as a result of Act 221. One has only to ask just how much more will Hawaii taxpayers be asked to underwrite for the film industry that, at best, provides dubious economic gains for the state. If nothing else, lawmakers ought to demand a cost-benefit analysis of this proposed credit as well as all the other handouts that have been provided with the various and sundry credits enacted in the last five years.

Finally, the bemoaning of lawmakers about the "brain-drain" of Hawaii's brightest and best is somewhat disingenuous given proposals like this when the burden of running state government shifts to all other taxpayers. Where do lawmakers believe the money to fund these tax credits comes from? And unlike the companies from the plantation that now have passed into history, how many of the beneficiaries of these tax credits truly give back to the community other than lending their presence at celebrity functions? In all truth, these beneficiaries have only taken and rarely have given back the way old time businesses did so willingly in the past.