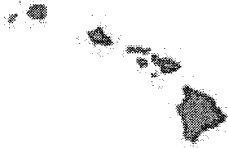


# HAWAII FILM & ENTERTAINMENT BOARD



*Brenda Ching, Chair  
Screen Actors Guild*

*Chris Conybeare, Esq.*

*Donovan Ahuna  
I.A.T.S.E., Local 665*

*Benita Brazier  
Maui Film Commission*

*Walea Constantinau  
Honolulu Film Office*

*Donne Dawson  
Hawaii Film Office*

*Jeanne Ishikawa  
Teamsters, Local 996*

*Leroy Jenkins  
H.I.F.A.*

*John Mason  
Big Island Film Office*

*Brien Matson  
A.F.M., Local 677*

*Stephanie Spangler  
F.A.V.A.H.*

*Art Umezu  
Kauai Film Commission*

*Randall Young  
I.B.E.W., Local 1260*

SENATE COMMITTEES  
ON  
ECONOMIC DEVELOPMENT and TAXATION  
TOURISM and GOVERNMENT

February 7, 2008 - 1:15 pm  
State Capitol, Conference Room 224

RE: SB 2273 – RELATING TO DIGITAL MEDIA

Dear Chair Fukunaga, Chair Nishihara and members of the committees:

The Hawaii Film and Entertainment Board, whose members include all of Hawaii's film unions, film commissions and leading industry associations, thank the legislature for its strong support of Hawaii's film industry but **must oppose SB 2273 as written** as advised through the Attorney General's office through DBEDT because there are concerns about the constitutionality of what has been proposed.

We also oppose the measure as written in regards to the certification and training details.

We do, however, **support the intent of the measure**, to create incentives that drive workforce development of the industry, and encourage the legislature to continue to dialog with the film industry about the issue.

LINDA LINGLE  
GOVERNOR



MARK J. BENNETT  
ATTORNEY GENERAL

LISA M. GINOZA  
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL  
TAX DIVISION  
425 QUEEN STREET  
HONOLULU, HAWAII 96813  
Tel. No.: (808) 586-1470  
Fax No.: (808) 586-1477

FEB 7 2008

February 7, 2008

**CONFIDENTIAL—ATTORNEY CLIENT PRIVILEGE**

The Honorable Carol Fukunaga  
Chair, Senate Committee on  
Economic Development and Taxation  
Hawaii State Capitol, Room 216  
415 South Beretania Street  
Honolulu, HI 96813

Dear Senator Fukunaga:

Re: S.B. No. 2273, Relating to Digital Media

This is in response to your request via e-mail for a letter expressing an opinion on whether S.B. No. 2273 and its House companion bill, H.B. No. 2734, are constitutionally defensible in light of the tax credit for taxpayers for fifty per cent of the wages paid to below the line crew members who are Hawaii residents.

The Commerce and Equal Protection Clauses of the United States Constitution prohibit states from discriminating against interstate commerce. For example, in Maryland v. Louisiana, 451 U.S. 725 (1981) the court invalidated various credits and exclusions that were available only to local interests effectively insulating local interests from the tax and discriminated against out of state interests. Likewise, in Bacchus Imports, Ltd. v. Dias, 468 U.S. 263 (1984), the Court struck down a Hawaii tax exemption for locally produced alcoholic beverages from an excise tax on the sale of wholesale liquors. The Court found that the tax plainly discriminated against interstate commerce by providing direct commercial advantage to local business.

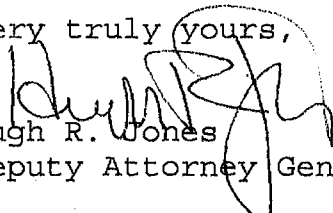
As we expressed to you during our meeting last week, the preference for local hires in S.B. No. 2273 is not totally free from doubt or possible challenge. Nevertheless, we believe that the bill is defensible because it is not facially discriminatory—

The Honorable Carol Fukunaga  
February 7, 2008  
Page 2


-the tax credit is available to resident and nonresident taxpayers alike. The credit can be claimed by a California domiciled film production company who employs local "below the line" crew members as much as a Hawaii based film production company. In addition, we believe, inasmuch as most film production activities in Hawaii already involve the employment of Hawaii residents, the likelihood that the provisions of this bill will be challenged appears remote.<sup>1</sup>

Please contact me at (808) 586-1473 if you should have any questions.

Very truly yours,

  
Hugh R. Jones  
Deputy Attorney General

APPROVED:

  
Mark G. Bennett  
Attorney General

---

<sup>1</sup> Chapter 235, Hawaii Revised Statutes, is replete with tax credits that are available to Hawaii resident taxpayers only. These provisions have never been challenged despite the fact that they are constitutionally suspect.

---

**From:** "Shawn Christensen" <shawnc@pdchawaii.com>  
**To:** <testimony@capitol.hawaii.gov>  
**Sent:** Wednesday, February 13, 2008 9:35 PM  
**Subject:** SB 2273 SD 1

Senator Carol Fukunaga, Chair Senator Will Espero, Vice Chair Committee on Economic Development and Taxation February 14, 2008 Room 224 at 1:15 In strong support of SB 2273 SD relating to Digital Media ; Tax credit ; Appropriation. Aloha Chair Fukunaga, Vice-Chair Espero and members of the Committee, We, the members of the International Alliance of Theatrical and Stage Employees Local 665 of the State of Hawaii with a membership of over 500 members spread across our islands are in strong support of this bill and ask the members of the committee for their support. We are the people who are behind the scenes, doing many different and at times demanding jobs, from set design and construction to hair, make up and wardrobe, special effects, lighting and the camera department just to name some of the jobs we perform. We are boat handlers, craft service people, medics, grips and divers. We are the skilled technical people who make ideas and stories into entertaining projects for all to enjoy. This bill along with other recently passed legislation would allow for the expansion and training of the next generation of craftspersons here in Hawaii. This bill would increase the opportunities for the people of our State to advance in their chosen craft and make that next leap forward in their career paths. This bill would create a training program that would establish industry guidelines and programs, which currently do not exist here in the state of Hawaii and across most of the United States. This would allow the state of Hawaii to become the entertainment industry leader for training and development. We would be more than happy to answer any questions or concerns the committee might have.

Shawn Christensen  
Development

Aloha and Mahalo  
Planning and  
IATSE Local 665

Ref: Strong support of Bill SB2273  
Hearing date: 2/14/2008 Room224

Chair Carol Fukunaga  
Vice Chair Will Espero  
And members of the committee, Aloha.

I am strongly supporting the bill SB2273, we need more incentives to bring production companies here in our state, but we also need them to hire local workers first.

In Hawai'i, we have a number of people who are as qualified as the ones coming from Los Angeles and I firmly believe that local craft men and women should have priority of being hired.

Act 88 is a good start but we need to be more specific in the hiring for one main reason: The local people earning that money will stay here and spend it here.

The ones from Los Angeles or anywhere else will go home with their money and will spend it there.

I am also supporting the training program funding to keep local workers informed with the updates and to stay on top of an industry that keeps evolving every time a movie is being made.

Thank you for your time.

Guy BELEGAUD  
348-4242