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March 17, 2008

To: The Honorable Alex Sonson, Chair
and Members of the House Committee on Labor and Public Employment

Date: March 17, 2008
Time: 9:15 a.m.
Place: Conference Room 309, State Capitol

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

Testimony in Opposition
to
S.B. 2273, hd1 – Relating to Digital Media

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

SB 2273, hd1, seeks to prevent double dipping between the high technology investment tax credit under Section 235-110.9, Hawaii Revised Statutes, ("HRS") and the 15-20% refundable production tax credit under section 235-17, HRS.

This measure also seeks to have the Department of Labor and Industrial Relations ("Department") establish an advisory group to study the hiring practices of the film industry in recruiting and employing local talent.

II. CURRENT LAW

There is no current law or advisory group that studies the hiring practices of the film and digital media industries.

III. SENATE BILL

The Department takes no position on section 1 of S.B. 2273, hd1 and defers to the Department of Taxation and the Department of Business and Economic Development and Tourism on the substantive merits and cost implication.

The Department is opposed to section 3, of the bill as it appropriates funds to the Department to establish an advisory group which may adversely affect Governor's Supplemental Budget priorities. The Department recommends that section 3 be deleted as the Department would be able to provide staff and resources to convene this task force and make recommendations without an appropriation.

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
THEODORE E. LIU
Director
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Tuesday, March 18, 2008
9:15 a.m.
State Capitol, Conference Room 309

in consideration of
SB 2273, SD2, HD1
RELATING TO DIGITAL MEDIA.

Chair Sonson, Vice-Chair Nakasone, and members of the Committee.

The Department of Business, Economic Development & Tourism (DBEDT) supports the intent of SB 2273, SD2, HD1. However, we recommend some changes to the language of the proposed measure. Additionally, we note that this appropriation was not included in the Executive's Supplemental Budget, and request that this appropriation not displace the priorities contained in that budget.

SB 2273, SD2, HD1, seeks to prevent double dipping between the high technology investment tax credit under Section 235-110.9 and the 15-20% refundable production tax credit under section 235-17. We defer to the Department of Taxation to provide specific language to prevent the double dipping. We agree with Section 1 (2) which states that qualified production costs that are financed by public funds from the State shall not be eligible for credits under this section.

This measure also seeks to have the Department of Labor and Industrial Relations (DLIR) establish an advisory group to study the hiring practices of the film industry.

DBEDT supports the idea of establishing an advisory group under DLIR to study the issues and challenges relating to the hiring practices of the film industry with specific attention paid to ways the state can encourage greater work opportunities for our local labor force. We would suggest that the language of the advisory group members should be prefaced with "may consist of, but not be limited to," in order to provide opportunity for greater representation of the diverse industry. We defer to the DLIR to respond to the substantive merits and cost implications of the establishing such an advisory group.

Thank you for this opportunity to comment on this bill.

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

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HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

TESTIMONY REGARDING SB 2273 SD 2 HD 1
RELATING TO DIGITAL MEDIA

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: MARCH 18, 2008
TIME: 9:15AM
ROOM: 309

This legislation modifies the existing motion picture tax credit provided under HRS § 235-17, to include additional limitations on the claim for credit.

The Committee on Economic Development amended the measure by providing the 5% additional credit.

The Committee on Ways & Means amended the measure by clarifying the resident below-the-line hiring requirement.

The Senate passed the measure on third reading.

The House Committees on Economic Development & Business Concerns and Tourism & Culture amended the measure by eliminating its contents and including limitations that preclude credit claims for any qualified production that also claims the High Technology Business Investment Tax Credit, also known as Act 221.

The Department of Taxation **supports the intent** of this measure; however requests amendments.

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. However, it is important for the Legislature to recognize that in order for Hawaii to remain competitive in the worldwide marketplace of filming locations, its tax incentives must remain attractive.

INELIGIBILITY FOR STATE FUNDED PROJECTS—The Department takes no position on the provision that limits the credit for production costs that are financed by public funds. The Department finds that it is the Legislature's prerogative to determine whether a taxpayer can benefit from State funds twice, which could be the case under current law because there is no limitation that a taxpayer be barred from claiming the film credit if the project is paid for with public money.

INELIGIBILITY FOR ACT 221—The Department supports the intent of limiting the claim for the film credit for those that also utilize the Act 221 investment tax credit. The State has worked diligently in promoting Hawaii's motion picture tax credit as a streamlined, competitive, and viable alternative to the Act 221 investment tax credit. Larger motion pictures that seek to film in Hawaii for a short period of time have sought out the film credit because of its ease of use.

The Department points out that small production companies utilize Act 221 as a viable means of financing their production projects. The Department would like to ensure that the Act 221 tax incentive remains available for these smaller productions. For example, a production with less than $200,000 in costs is ineligible for the film credit; however remains eligible for Act 221. The Department would like to ensure that both alternatives remain available and does not oppose that a production company be forced to choose one tax incentive or the other.

The Department points out that the current language of both Act 221 and the film credit do not preclude a taxpayer from technically taking advantage of both tax incentives. The language is clear that the limitation is only to the extent that a credit is "claimed" under Act 221 to finance production costs. Currently, the Department is working on administrative rules that clarify the only qualified means of taking advantage of both credits. In order to curb abuse, the Department is seeking to regulate this area vigorously through the administrative process. The regulations currently contemplate a requirement that the funding sources must be entirely segregated so that the Department can trace the character of funds (whether Act 221 funds or other funds) during audit. In addition, a requirement will exist that any Act 221 funds with credit potential must be expressly waived in order to take the film credit.

CLARIFYING AMENDMENTS REQUESTED—The Department requests that the bill be amended to reflect the language in HRS § 235-17(l), which precludes from credit eligibility any cost that was **or will be** financed by Act 221 money.

"(e) Claims for credit under this section shall be subject to the following limitations:

(1) On or after July 1, 2006, no qualified production cost that has been financed by investments for which a credit was **or will be** claimed by any taxpayer pursuant to section 235-110.9 is eligible for credits under this section.

(2) Qualified production costs that are financed by public funds from the State shall not be eligible for credits under this section; and

(3) After June 30, 2008, no taxpayer shall be eligible to claim the tax credit under this section for qualified

productions that are financed, in whole or in part, by investments for which a credit has been **or will be** claimed by the taxpayer as a qualified high technology business under section 235-110.9. If a claim for credit is made under this section after June 30, 2008, the taxpayer shall no longer qualify for the credit under section 235-110.9 and any credit that has been claimed under that section shall be subject to recapture under section 235-110.9(i)."

REVENUE IMPACT—Due to no hard data, the revenue impact of this measure is indeterminate. However, the Department anticipates a revenue gain as a result of this measure.

HAWAII FILM & ENTERTAINMENT BOARD

HOUSE COMMITTEE ON
LABOR AND PUBLIC EMPLOYMENT

March 18, 2008, 9:15 am
State Capitol, Conference Room 309

RE: SB 2273 SD2 HD1 - RELATING TO DIGITAL MEDIA

Dear Chair Sonson and members of the committees:

The Hawaii Film and Entertainment Board (HFEB), 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. We **support the intent of the measure as received by the House,** to create incentives that drive workforce development of the industry, and **we support the inclusion of language** that separates the use of tax credit from other state credits or state funding.

HFEB is working with noted labor economist Dr. William Boyd to assess the economic impact of the measure, of which initial analysis is very positive. It is our strong desire to maintain Act 88 as the fiscally responsible bill it has proven to be.

We encourage the legislature to continue to dialog with the film industry about the issue so we may arrived at a cost-effective measure that helps to build a new industry and creates jobs for our community. As such ask that you pass the bill out so the discussion may continue.

Thank you for the opportunity to provide these comments.

c/o SCREEN ACTORS GUILD • 949 Kapiolani Blvd., Suite 105 • Honolulu, HI 96814 • PH: (808) 596-0388 • FAX: (800) 305-8146

SUBJECT: INCOME, Motion picture, digital media, and film production credit

BILL NUMBER: SB 2273, HD-1

INTRODUCED BY: House Committees on Tourism and Culture and Economic Development and Business Concerns

BRIEF SUMMARY: Amends HRS section 235-17 to: (1) provide that qualified production costs that are financed by public funds from the state shall not be eligible for the credit; and (2) after June 30, 2008, no taxpayer shall be eligible to claim the credit for qualified productions that are financed by investments for which a credit has been claimed by the taxpayer as a qualified high technology business under HRS section 235-110.9; provided that any claim for the credit made after June 30, 2008 does not qualify for the credit under HRS section 235-110.9 and any credit that has been claimed shall be subject to recapture.

Requires the department of labor and industrial relations to establish an advisory group to conduct a study on the issues relating to the hiring practices of motion picture, digital media, and film productions in Hawaii, including specific consideration of ways to promote local hiring. Requires the submission of a report to the 2009 legislature.

Appropriates $______ in general funds for fiscal 2009 for expenses related to the study carried out by the advisory group.

EFFECTIVE DATE: July 1, 2025

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 impost of the state's general excise tax on goods and services used by film producers. 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. The act also prohibited the concurrent claiming of the motion picture, digital media, and film production credit and the high technology business investment tax credit under HRS section 235-110.9.

While the proposed measure provides that qualified production costs financed by public funds from the state shall not be eligible for the credit and also provides for the recapture of any credits if the taxpayer no longer qualifies for the credit, it perpetuates the existence of the motion picture, digital media and film production income tax credit.

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, these credits merely result in a subsidy by government at the expense of all taxpayers. While the proponents of these credits justify the argument that Hawaii needs to such incentives 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 its 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 of 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.

Digested 3/17/08