



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

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March 26, 2008

To: The Honorable Marcus Oshiro, Chair
and Members of the House Committee on Finance

Date: March 27, 2008

Time: 4:00 a.m.

Place: Conference Room 308, State Capitol

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

**Testimony Offering Comments
to
S.B. 2273, hd2 – Relating to Digital Media**

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

SB 2273, hd2, 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

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The Department takes no position on S.B. 2273, hd2 and defers to the Department of Taxation and the Department of Business and Economic Development and Tourism on the substantive merits and cost implication.

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HOUSE COMMITTEE ON FINANCE

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

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

DATE: MARCH 26, 2008

TIME: 4:00PM

ROOM: 308

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 House Committee on Labor amended the measure by eliminating the strongly anti-"double dipping" language for taxpayers that utilize both Act 221 and the Act 88 film credit.

The Department of Taxation **supports the intent** of this measure as amended.

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 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.

"DOUBLE DIPPING" PROVISION REMOVED—As amended, this measure eliminates a provision that provided an absolute prohibition for a production company from utilizing both Act 221 and Act 88 to finance its production costs. The Department raises the issue of a taxpayer's ability to utilize both incentives for discussion purposes.

The State has worked diligently in promoting Hawaii's Act 88 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 Act 88 film credit because of its ease of use.

Even though Act 88 has been a success for large productions, it is important that small production companies have Act 221 as a viable means of financing their production projects. 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; however the Department 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.

The abuse the Department is policing is any finance arrangement where the same dollar generated two different credits. This scenario is beyond the legislative intent and will be subject to audit by the Department.

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.

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

BILL NUMBER: SB 2273, HD-2

INTRODUCED BY: House Committee on Labor and Public Employment

BRIEF SUMMARY: Amends HRS section 235-17 to provide that qualified production costs that are financed by public funds from the state shall not be eligible for the credit

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.

EFFECTIVE DATE: July 1, 2009

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.

This measure provides that qualified production costs financed by public funds from the state shall not be eligible for the credit and provides for a study of the issues relating to the hiring practices of motion picture, digital media and film productions including the consideration of ways to promote local hiring. Earlier drafts of this measure would have awarded an additional percentage of tax credits for the hiring of local residents that are paid a minimum base rate of pay and provided training. Apparently in the legislative process, lawmakers have learned that putting such restrictions on production companies actually acts as a disincentive to these businesses much as any other mandate would to any other business even though a tax incentive is being handed out.

This is perhaps the most frustrating challenge with the legislative process, the ignorance of what businesses must take into consideration before undertaking a new enterprise. Improving the business climate by clearing regulatory hurdles that have been put in place by previous lawmakers should be a priority if the business climate is to be improved.

Digested 3/25/08