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JAMES R. AIONA, JR.
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SENATE COMMITTEE ON WAYS & MEANS

TESTIMONY REGARDING SB 2273 SD 1 RELATING TO DIGITAL MEDIA

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: FEBRUARY 25, 2008
TIME: 10:30AM
ROOM: 211

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 5% of qualified production costs if certain local hiring requirements are met.

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

The Department of Taxation takes **no position** on this measure.

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. 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.

III. CLARIFICATION ON CREDIT CALCULATION

The Department currently reads this measure to provide an "additional" 5% credit if the hiring requirements are satisfied.

The current provisos in the bill are confusing. Assuming the intent is to provide a "bonus" credit for satisfying hiring requirements, the Department suggests that the language for calculating the credit could be clearer. Rather than using "ands," "ors," and "provisos" to calculate the credit, it may be easier to read and follow for taxpayers if amended as follows—

(1) Fifteen per cent of the qualified production costs incurred by a qualified production in any county of the State with a population of over seven hundred thousand; or

(2) Twenty per cent of the qualified production costs incurred by a qualified production in any county of the State with a population of seven hundred thousand or less[~~.~~]; and **in addition to the credit allowed under paragraph (1) or (2), there shall be allowed an additional**

(3) Five per cent of the qualified production costs incurred by a qualified production in any county of the State; provided that the qualified production employs workers who satisfy the following requirements:

- (A) Is a Hawaii resident;
- (B) Is paid a base rate of $200 per day for a ten-hour day, or $1,000 per week, as a comparable amount;
- (C) Participates in on-the-job training, or completes a motion picture, digital media, or film production training course established under section 394-8(c) or approved by the film industry branch of the department of business, economic development, and tourism; and
- (D) Is certified as a trainee by the film industry branch of the department of business, economic development, and tourism[~~; provided further that any credit claimed under this paragraph shall first be applied to a qualified production's qualified production costs prior to calculating any credit under paragraph (1) or (2).~~]

IV. REVENUE ESTIMATE

Annual revenue loss is estimated at $2.05 million for FY 2009 (1/2 yr impact), and $4.1 million for FY 2010 to FY 2016. The general fund expenditure will increase by an unspecified amount in FY 2009.

According to the Hawaii Data Book 2006, motion picture and TV production expenditures amounted to $164.0 million in 2004. We assumed 50% of the expenditures qualified for the 5% tax credit ($164 million X 50% X 5%).

HAWAII FILM & ENTERTAINMENT BOARD

SENATE WAYS AND MEANS COMMITTEE

February 25, 2008 - 10:30 am, State Capitol, Room 211

RE **SB 2273 SD1** RELATING TO DIGITAL MEDIA

Dear Chair Baker and members of the committee:

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 but **must oppose SB 2273 SD1 as written.**

We support the intent of the portion of the bill that seeks to drive workforce development with a wage credit enhancement of five percent, but believe that there are technical errors that unintentionally broaden which production expenditures qualify for the enhancement and at the same time severely limit the number of Hawaii residents who would be eligible to qualify. We recommend revising the bill to reflect:

- the incentive apply to **Hawaii resident wages only** and not all production expenditures

- the enhancement be applied to Hawaii residents who make a <u>minimum</u> of $200 per day as calculated on an industry standard per-day-rate, excluding overtime, and not to only those who make $200 per day

- include a per person per production cap of $500,000 as the maximum amount the wage credit may be calculated

The goal of the industry's proposed language is to create an enhancement to the credit that incents production to hire Hawaii residents in positions of greater responsibility and authority and by doing so, stimulate the most ideal workforce development in the industry, on-the-job training. We welcome and encourage a continued dialog with the legislature so as to develop the most effective and cost-efficient measure possible.

Additionally, HFEB **strongly opposes the certification and training language** because:

- the idea of certifying industry workers above and beyond standard industry and union practices is inappropriate
- DLIR has testified that training monies and the mechanism to access them are currently available

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

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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
SENATE COMMITTEE ON WAYS AND MEANS
Monday, February 25, 2008
10:30 a.m.
State Capitol, Conference Room 211

in consideration of
SB 2273, SD1
RELATING TO DIGITAL MEDIA.

Chair Baker, Vice-Chair Tsutsui, and members of the Committee.

The Department of Business, Economic Development & Tourism (DBEDT) supports the intent of SB 2273, SD1, but we must oppose the measure as it is written. DBEDT has concerns that tying incentives to these requirements will not deliver the desired workforce development goal, the measure will impact the limited resources of the Film Industry Branch and have significant cost implications.

SB 2273, SD1, 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 an additional 5% credit on qualified production costs for productions that meet specific employment requirements, which we believe is unintended language that broadens the impact of coverage of the incentive. As written, the measure will increase the total amount of the credit to 19.25% or 24% for all qualified production costs, not just create a wage enhancement for Hawaii residents for qualified productions depending on which county(ies) they film. We defer to the Department of Taxation to report on the specific cost implications that the more broadly written language would create.

This measure seeks to grow the experience level and size of our local crew base by providing enhanced incentives so that productions will hire more local people to provide on-the-job training to and by authorizing the Department of Labor and Industrial Relations to implement and operate motion picture, digital media and film production training programs. DBEDT's Film Industry Branch (FIB) and the unions associated with the film industry strongly believe that the on-the-job training that would be created by a credit that focuses on providing an enhanced wage credit for Hawaii residents and only those residents above a certain skill level will deliver the best workforce development results. The industry has recommended that the wage enhancement applies to workers who earn a minimum of $200 per day, calculated on an industry standard 10-hour day, excluding overtime. The intent of this thinking is to incent production to hire local residents in positions of greater responsibility and authority to help drive workforce development. The language of the measure as written is flawed and limits the qualification to only those that receive $200 per day, no more and no less. Additionally, we agree with the industry that some limits need to be considered and included that caps the amount that can be claimed for Hawaii residents. Under consideration is a per person per production limit of $500,000.

DBEDT's Film Industry Branch (FIB) and the unions associated with the film industry also strongly believe that the certification and training programs described are best developed outside of the bill, in concert with existing DLIR programs. DBEDT, DLIR and the industry are meeting to identify funds that are available to be able to implement specific courses, such as safety training classes, that will build upon the specific technical knowledge best received from on-the-job training.

We defer to the Department of Labor and Industrial Relations to respond to the substantive merits and cost implications of the amendment to §383-128. Under this measure, funds may be expended to support the motion picture, digital media and film production training program, however, the qualified productions would be exempt from mandatory contributions back to the fund. While this exemption is an added bonus for qualified productions, we are concerned that this exemption may negatively impact the collections for the Employment and Training Special Fund, programs currently administered by this special fund and administrative costs expended through this special fund.

We defer to the Department of Labor and Industrial Relations to respond to the substantive merits of the amendment to §394-8, HRS. However, we strongly believe that a motion picture, digital media and film 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.

Additionally, the Film Industry Branch currently has neither the expertise nor sufficient staff to approve motion picture, digital media and film production training programs or certify 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. 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 or non-profit sectors 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.

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

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

BILL NUMBER: SB 2273, SD-1

INTRODUCED BY: Senate Committee on Economic Development and Taxation

BRIEF SUMMARY: Amends HRS section 235-17 to establish a tax credit of 5% of the qualified production costs incurred by a qualified production provided the qualified production employs workers who: (1) are Hawaii residents; (2) are paid a base rate of $200 per day for a 10-hour day, or $1,000 per week; (3) have participated in approved job-training courses; and (4) 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.

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 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. This measure would provide an additional tax credit for a qualified production that utilizes Hawaii residents who are paid a base rate of at least $200 per day. 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 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 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.

Digested 2/22/08

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February 24, 2008

To: The Honorable Rosalyn Baker, Chair
and Members of the Senate Committee on Ways and Means

Date: February 25, 2008
Time: 10:30 a.m.
Place: Conference Room 211, State Capitol

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

Testimony in Opposition
to
S.B. 2273, SD1 – Relating to Digital Media

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

Senate Bill 2273, SD1 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, S.B. 2273 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 resources 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 then five (5) percent of Hawaii businesses are utilizing the fund although they entirely fund the program.

III. SENATE BILL

The Department opposes S.B. 2273 for the following reasons:

1. The Department has concerns with the methodology of providing a job training program for a particular industry through legislative mandate. Currently, any industry may apply for a grant from the Department's ETF training (Macro) grant to effectuate the purpose of 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 private funding.

2. This bill indicates that the ETF would be required to pay for 100% of the costs for the

film industry training program. The ETF is not designed, nor does it have the resources, to fully fund the training program envisioned by this bill.

Additionally, S.B. 2273 creates an inequity among industries by not allowing the Director to require employers utilizing the envisioned digital media training program to pay for a portion of the cost. **This bill singles out one specific industry for preferential treatment while not giving the same consideration to other industries.**

3. The New Industry Training Program that is tasked with designing and implementing the 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.

4. 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.

5. 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".

Senate Committee of Ways and Means

<u>Ref:</u> **Strong support of Bill SB2273**
Hearing date: 2/25/2008 Room211

Chair Rosalyn Baker,
Vice Chair Shan S.Tsutsui
And members of the committee,

Aloha.

I am strongly supporting Bill SB 2273 SD1, we need more incentives to bring production companies as feature films or Television series in our state, but we also need to increase the number of local hires as we saw last year.

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 on being hired.

Act 88 is a very good start but we need to be more specific in the hiring for one main reason: Local people earning that money will stay here and spend it here in our state. The crew from California or elsewhere will go home and spend their money there.

I am also supporting the training program funding to keep local workers updated on their craft and safety to stay on top of an industry that keeps evolving every time a project is being made.

The film industry is a great addition to the two main sectors that bring major revenues to our economy but it is also a very clean industry, it doesn't pollute or contaminate the land, it doesn't have repercussion on traffic, and wages are higher than average.

Thank you for your time.

Guy BELEGAUD
348-4242

testimony

From: Shawn Christensen [shawnc@pdchawaii.com]
Sent: Sunday, February 24, 2008 5:43 PM
To: testimony; senmeanor@capitol.hawaii.gov; Sen. Shan Tsutsui; Sen. Jill Tokuda; Sen. Gary Hooser; Sen. Fred Hemmings; Sen. Roz Baker; Sen. Donna Mercado Kim; Sen. Suzanne Chun Oakland
Cc: Sen. Carol Fukunaga; Sen. Paul Whalen
Subject: SB 2273 SD1

Senator Rosalyn H. Baker, Chair
Senator Shan S. Tsutsui, Vice-Chair
Committee on Ways and Means Room 211
Feb. 25, 2008 10:30am

Relating to Digital Media: SB 2273 SD1

In strong support there of:

Aloha Chairs and members of the committee, we the International Alliance of Theatrical and Stage Employees Local 665 of Honolulu, Hawaii with over 500 members strongly support this measure and ask the committee for their support. We are for the most part the unseen people who work behind the scenes making feature films, commercials, episodic television shows and videos.
We are grips, electricians, hair and make up artists, costumers and carpenters, boat handlers and divers and camera crew people.
We support this measure for the opportunities it would provide for not only those of us currently working in this industry, but for those who shall come in the future and who do not have the needed skills or training to safely perform these functions.

SB 2273 SD 1 provides an opportunity for the continued growth of this industry and the assurance that the people of the State of Hawaii can staff any and all future production needs. We thank you for the opportunity to submit our comments and would be more than willing to answer any questions you may have.

Shawn Christensen
Planning and Development
IATSE Local 665