

1 "Department" means the department of business, economic
2 development, and tourism.

3 "Digital media" shall have the same meaning as in section
4 235-17.

5 "Digital media enterprise subzone" means the geographic
6 area located within a mile radius of a University of
7 Hawaii campus, on or off campus, which is within an enterprise
8 zone established pursuant to part I of this chapter or other
9 delineated geographic area designated by the legislature
10 pursuant to this part; provided that effective July 1, 2010, and
11 for the first two years thereafter, establishment of a subzone
12 shall be limited to an area within a mile radius, on or
13 off campus, of the University of Hawaii-West Oahu.

14 "Director" means the director of business, economic
15 development, and tourism.

16 "Qualified digital media infrastructure project" means the
17 development, construction, renovation, or operation of a digital
18 media production facility, a postproduction facility, or both,
19 that is located in this State within a digital media enterprise
20 subzone; provided that the facility may include a movie theater
21 or other commercial exhibition facility to assist in offsetting
22 operating costs of the production or postproduction facility,



1 but shall not include a facility used to produce pornographic
2 matter or a pornographic performance.

3 **§209E-B Digital media infrastructure tax credit. (a)**

4 There shall be allowed to a taxpayer qualifying for a tax credit
5 under this part and subject to the taxes imposed under chapter
6 235, a tax credit that shall be deductible from the taxpayer's
7 net state income tax liability for investment expenditures made
8 by the taxpayer for all qualified digital media infrastructure
9 projects within a digital media enterprise subzone. The tax
10 credit shall be equal to twenty-five per cent of the taxpayer's
11 base investment. The tax credit under this section shall be
12 reduced by any credit claimed by the taxpayer under chapter 235
13 for the same base investment.

14 (b) No more than \$20,000,000 in total tax credits under
15 this section shall be authorized in any one taxable year.

16 (c) If all or a portion of a qualified digital media
17 infrastructure project is a facility that may be used for
18 purposes unrelated to production or postproduction activities,
19 then the project shall be eligible for the tax credit provided
20 under this section only if the department determines that the
21 facility will support and be necessary to secure production or



1 postproduction activity for the production and postproduction
2 facility and the taxpayer agrees to both of the following:

3 (1) The facility will be used as a state of the art
4 production or postproduction facility or as support
5 and component of the facility for the useful life of
6 the facility; and

7 (2) The tax credit will not be claimed under this section
8 until the facility is complete.

9 (d) To claim a tax credit under this section, a taxpayer
10 shall submit an investment expenditure certificate issued under
11 section 209E-C to the department. If the tax credit allowed
12 under this section exceeds the amount of taxes owed by the
13 taxpayer under chapter 235 for a tax year, that portion of the
14 tax credit that exceeds the tax liability of the taxpayer for
15 the tax year shall not be refunded but may be carried forward to
16 offset net income tax liability under chapter 235 in subsequent
17 tax years for a period not to exceed ten tax years or until
18 exhausted, whichever occurs first.

19 (e) The tax credit under this section shall be claimed
20 after all other tax credits available to the taxpayer have been
21 claimed. A taxpayer eligible to claim a tax credit under this
22 section may assign all or a portion of a tax credit under this



1 section to any assignee. An assignee may subsequently assign a
2 tax credit or any portion of a tax credit assigned under this
3 subsection to one or more assignees. A taxpayer may claim a
4 portion of a tax credit and assign the remaining tax credit
5 amount. A tax credit assignment under this subsection shall be
6 irrevocable. The tax credit assignment under this subsection
7 shall be made on a form prescribed by the department. A
8 taxpayer claiming a tax credit under this section shall send a
9 copy of the completed assignment form to the department in the
10 tax year in which the assignment is made and shall attach a copy
11 of the form to the tax return on which the tax credit is
12 claimed.

13 (f) In addition to the \$100 application fee established
14 under section 209E-C(b), the department may establish, assess,
15 and collect a tax credit application and redemption fee to cover
16 the costs of administering the tax credit certification program
17 established under this part. The fee shall not exceed one-half
18 of one per cent of the tax credit claimed, and shall be paid to the
19 department by the taxpayer prior to filing for the tax credit.
20 The department shall deposit any proceeds derived from the fee
21 in the Hawaii film office special fund established under section
22 201-113.



1 (g) A taxpayer that wilfully submits information under
2 this section that the taxpayer knows to be fraudulent or false
3 shall be, in addition to any other penalties provided by law,
4 liable for a civil penalty equal to the amount of the taxpayer's
5 credit under this section. A penalty collected under this
6 section shall be deposited in the Hawaii film office special
7 fund established under section 201-113.

8 **§209E-C Eligibility and procedures to claim a digital**
9 **media infrastructure tax credit.** (a) In addition to any tax
10 credits or exemptions provided under this chapter, any taxpayer
11 that develops, constructs, renovates, or operates a digital
12 media infrastructure project in this State within a digital
13 media enterprise subzone shall be eligible for certification by
14 the department to qualify for a tax credit as provided in this
15 part; provided that the taxpayer:

16 (1) Receives from the department a written certification
17 that the taxpayer has undertaken, or will undertake
18 within one hundred eighty days of the issuance of the
19 certification, the development, construction,
20 renovation, or operation of a qualified digital media
21 infrastructure project within a digital media
22 enterprise subzone; provided that, upon request



1 submitted by the taxpayer based on good cause, the
2 department may extend the period for commencement of
3 work for up to an additional ninety days;

4 (2) Before July 1, 2011, shall expend not less than
5 \$100,000 on the base investment for a qualified
6 digital media infrastructure project within a digital
7 media enterprise subzone, and the taxpayer, after
8 July 1, 2011, shall expend not less than \$250,000 on
9 the base investment for a qualified digital media
10 infrastructure project in a digital media enterprise
11 subzone;

12 (3) Enters into an agreement as provided in this section;

13 (4) Receives an investment expenditure certificate from
14 the department under subsection (e);

15 (5) Submits the investment expenditure certificate issued
16 by the department under subsection (e) to the
17 department of taxation; and

18 (6) Shall not be delinquent in a tax or other obligation
19 owed to the State or be owned or under common control
20 of an entity that is delinquent in a tax or other
21 obligation owed to the State.



1 (b) In order to qualify for the tax credit established
2 under section 209E-B, the taxpayer shall submit an application
3 to enter into an agreement under this section to the department.
4 The application shall be submitted in a form prescribed by the
5 department and shall be accompanied by a \$100 application fee
6 and all of the information and records requested by the
7 department. The application fee received by the department
8 under this subsection shall be deposited in the Hawaii film
9 office special fund established pursuant to section 201-113.
10 The department shall not process an application until it is
11 complete. If the department enters into an agreement under this
12 section, the agreement shall provide for all of the following:

- 13 (1) A unique number assigned to the qualified digital
14 media infrastructure project;
- 15 (2) A detailed description of the qualified digital media
16 infrastructure project;
- 17 (3) A detailed business plan and market analysis for the
18 qualified digital media infrastructure project;
- 19 (4) A projected budget for the qualified digital media
20 infrastructure project;
- 21 (5) An estimated start date and completion date for the
22 qualified digital media infrastructure project;



1 (6) A requirement that the taxpayer not file a claim for
2 the credit under section 209E-B until at least twenty-
3 five per cent of the base investment in the qualified
4 digital media infrastructure project identified in the
5 agreement has been expended; and

6 (7) A requirement that the taxpayer provide the department
7 with the information and independent certification the
8 department deems necessary to verify investment
9 expenditures and eligibility for the credit under
10 section 209E-B.

11 (c) If at the close of any taxable year:

12 (1) The digital media infrastructure project no longer
13 qualifies for the tax credit established under this
14 section;

15 (2) The digital media infrastructure project or an
16 interest in the digital media infrastructure project
17 has been sold by the taxpayer making a base investment
18 in the qualified digital media infrastructure project;
19 or

20 (3) The taxpayer has withdrawn the taxpayer's base
21 investment wholly or partially from the qualified
22 digital media infrastructure project;



1 the tax credit claimed under section 209E-B shall be recaptured.
2 The recapture shall be equal to twenty-five per cent of the
3 amount of the total tax credit claimed under this section in the
4 preceding two taxable years. The amount of the tax credit
5 recaptured shall apply only to the investment in the particular
6 digital media infrastructure project that meets the requirements
7 of paragraph (1), (2), or (3). The amount of the recaptured tax
8 credit determined under this subsection shall be added to the
9 taxpayer's tax liability for the taxable year in which the
10 recapture occurs under this subsection.

11 (d) In determining whether to enter into an agreement
12 under this section, the department shall consider all of the
13 following:

- 14 (1) The potential that in the absence of the tax credit
15 allowed under section 209E-B, the qualified digital
16 media infrastructure project will be constructed in a
17 location other than this State;
- 18 (2) The extent to which the qualified digital media
19 infrastructure project may have the effect of
20 promoting economic development or job creation in this
21 State;



1 (3) The extent to which the tax credit will attract
2 private investment for the production of motion
3 pictures, videos, television programs, and digital
4 media in this State; and

5 (4) The extent to which the tax credit will encourage the
6 development of film, video, television, and digital
7 media production and postproduction facilities in this
8 State.

9 (e) The taxpayer shall submit a request to the department
10 for an investment expenditure certificate on a form prescribed
11 by the office, along with any information or independent
12 certification the office or the department deems necessary. The
13 department shall process each request within sixty days after
14 the request is complete. However, the department may request
15 additional information or independent certification before
16 issuing an investment expenditure certificate and need not issue
17 the investment expenditure certificate until satisfied that
18 investment expenditures and eligibility are adequately
19 established. The additional information requested may include a
20 report of expenditures audited and certified by an independent
21 certified public accountant. If the department determines that
22 a taxpayer has complied with the terms of an agreement entered



1 into under this section, the department shall issue an
2 investment expenditure certificate to the taxpayer. Each
3 investment expenditure certificate shall be signed by the
4 director and shall include the following information:

- 5 (1) The name of the taxpayer;
- 6 (2) A description of the qualified digital media
7 infrastructure project;
- 8 (3) The taxpayer's eligible base investment for the
9 qualified digital media infrastructure project;
- 10 (4) The unique number assigned to the qualified digital
11 media infrastructure project by the department under
12 subsection (b);
- 13 (5) The taxpayer's federal employer identification number
14 or state taxpayer identification number; and
- 15 (6) Any independent certification required by the
16 department.

17 (f) Information, records, or other data received,
18 prepared, used, or retained by the department under this section
19 that are submitted by an eligible taxpayer and considered by the
20 taxpayer and acknowledged by the department as confidential
21 shall not be subject to public disclosure. Information,
22 records, or other data shall only be considered confidential to



1 the extent that the information or records describe the
2 commercial and financial operations or intellectual property of
3 the taxpayer, the information or records have not been publicly
4 disseminated at any time, and disclosure of the information or
5 records may put the taxpayer at a competitive disadvantage."

6 SECTION 2. Chapter 209E, Hawaii Revised Statutes, is
7 amended by designating sections 209E-1 through 209E-14 as
8 follows:

9 "PART I. ENTERPRISE ZONES"

10 SECTION 3. Chapter 235, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 "§235- Digital media enterprise subzone workforce
14 development tax credit. (a) Any law to the contrary
15 notwithstanding, there shall be allowed to each taxpayer that
16 operates a business that is deemed a qualified animation or
17 visual effects business and located within a digital media
18 enterprise subzone as defined in section 209E-A and subject to
19 the taxes imposed by this chapter, an income tax credit that
20 shall be deductible from the taxpayer's net income tax
21 liability, if any, imposed by this chapter for the taxable year
22 in which the tax credit is properly claimed. The amount of the



1 tax credit shall be per cent of the wages paid to
2 animation or visual effects hires who are Hawaii residents.

3 In the case of a partnership, S corporation, estate, or
4 trust, the tax credit allowable is for qualified labor costs
5 incurred by the entity for the taxable year. The cost upon
6 which the tax credit is computed shall be determined at the
7 entity level. Distribution and share of credit shall be
8 determined under section 235-110.

9 (b) The tax credit allowed under this section shall be
10 claimed against the net income tax liability for the taxable
11 year. For the purposes of this section, "net income tax
12 liability" means net income tax liability reduced by all other
13 credits allowed under this chapter and chapter 209E.

14 (c) If the tax credit under this section exceeds the
15 taxpayer's income tax liability, the excess of credits over
16 liability shall be refunded to the taxpayer; provided that no
17 refunds or payment on account of the tax credits allowed by this
18 section shall be made for amounts less than \$1. All claims,
19 including any amended claims, for tax credits under this section
20 shall be filed on or before the end of the twelfth month
21 following the close of the taxable year for which the credit may



1 be claimed. Failure to comply with the foregoing provision
2 shall constitute a waiver of the right to claim the credit.

3 (d) To qualify for this tax credit, a business shall:

4 (1) Meet the definition of a qualified animation or visual
5 effects business specified in subsection (j);

6 (2) Have qualified animation or visual effects labor costs
7 totaling at least \$200,000;

8 (3) Provide evidence of reasonable efforts to hire Hawaii
9 residents as animation or visual effects personnel;

10 (4) Keep accurate records of all animation or visual
11 effects hires who are Hawaii residents whose wages may
12 qualify for the tax credit; and

13 (5) Require any wages attributable to minimum cost
14 thresholds for which the wage reimbursement tax credit
15 does not apply to have Hawaii income tax withheld;
16 provided that the wage and tax information is subject
17 to verification by the department of taxation.

18 (e) The director of taxation shall prepare forms as may be
19 necessary to claim a tax credit under this section. The
20 director may also require the taxpayer to furnish information to
21 ascertain the validity of the claim for credit made under this



1 section and may adopt rules necessary to effectuate the purposes
2 of this section pursuant to chapter 91.

3 (f) Every taxpayer claiming a tax credit under this
4 section for a qualified animation or visual effects business
5 shall submit, no later than ninety days following the end of
6 each taxable year in which qualified labor costs were expended,
7 a written, sworn statement to the department of business,
8 economic development, and tourism, identifying:

9 (1) All qualified labor costs as provided by subsection
10 (a), if any, incurred in the previous taxable year;

11 (2) The amount of tax credits claimed pursuant to this
12 section, if any, in the previous taxable year; and

13 (3) The number of hires working in Hawaii by category
14 (i.e., department) and by county.

15 (g) The department of business, economic development, and
16 tourism shall:

17 (1) Maintain records of the names of the taxpayers and
18 qualified animation or visual effects businesses
19 thereof claiming the tax credits under subsection (a);

20 (2) Obtain and total the aggregate amounts of all
21 qualified labor costs per qualified animation or
22 visual effects business per taxable year; and



1 (3) Provide a letter to the director of taxation
2 specifying the amount of the tax credit per qualified
3 animation or visual effects business for each taxable
4 year that a tax credit is claimed and the cumulative
5 amount of the tax credit for all years claimed.

6 Upon each determination required under this subsection, the
7 department of business, economic development, and tourism shall
8 issue a letter to the taxpayer, regarding the qualified
9 animation or visual effects business, specifying the qualified
10 labor costs and the tax credit amount qualified for in each
11 taxable year a tax credit is claimed. The taxpayer for each
12 qualified animation or visual effects business shall file the
13 letter with the taxpayer's tax return for the qualified
14 animation or visual effects business to the department of
15 taxation. Notwithstanding the authority of the department of
16 business, economic development, and tourism under this section,
17 the director of taxation may audit and adjust the tax credit
18 amount to conform to the information filed by the taxpayer.

19 (h) Total tax credits claimed per qualified production
20 shall not exceed \$ in any given tax year.

21 (i) Qualified animation or visual effects businesses shall
22 comply with subsections (d), (e), (f), and (g).



1 (j) For the purposes of this section:

2 "Animation or visual effects" means animation and visual
3 effects created primarily with digital technologies for
4 designing, modeling, rendering, lighting, painting, animating,
5 and composing for qualified productions as that term is defined
6 under section 235-17, but does not include:

7 (1) Audio effects;

8 (2) In-camera effects;

9 (3) Credit rolls;

10 (4) Subtitles;

11 (5) Animation or visual effects all or substantially all
12 of which are created by editing activities;

13 (6) Animation or visual effects for use in promotional
14 material for a production eligible for the tax credit
15 established under section 235-17; or

16 (7) Activities that are of a scientific or experimental
17 nature.

18 "Digital media" means production methods and platforms
19 directly related to the creation of cinematic imagery and
20 content, specifically using digital means, including but not
21 limited to digital cameras, digital sound equipment, and
22 computers, to be delivered via film, videotape, interactive game



1 platform, or other digital distribution media (excluding
2 Internet-only distribution).

3 "Qualified animation or visual effects business" means a
4 business, with expenditures in the State, for the total or
5 partial production of animation or visual effects that are to be
6 used in a feature-length motion picture, short film, made-for-
7 television movie, commercial, music video, interactive game,
8 television series pilot, single season of a television series
9 regularly filmed in the State, television special, single
10 television episode that is not part of a television series
11 regularly filmed or based in the State, national magazine show,
12 or national talk show.

13 "Qualified labor costs" means the costs incurred by a
14 qualified animation or visual effects business within the State
15 that attributable to wages or salaries paid by the qualified
16 animation or visual effects business to animation or visual
17 effects personnel who are residents of the State of Hawaii,
18 subject to taxation under this chapter, and for whom the
19 qualified animation or visual effects business otherwise incurs
20 tax liability under chapter 383."



1 SECTION 4. Chapter 431:6, part III, Hawaii Revised
2 Statutes, is amended by adding a new section to be appropriately
3 designated and to read as follows:

4 "§431:6- Qualified digital media infrastructure project.
5 If an insurer utilizes the in lieu provisions of section
6 431:7-204, an insurer may invest any of its funds that would
7 have been used to pay its tax liability as required under
8 section 431:7-201 to section 431:7-204 in an amount equal to all
9 or any portion of that tax liability in a qualified digital
10 media infrastructure project as defined in section 209E-A."

11 SECTION 5. Section 431:7-204, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§431:7-204 In lieu provision. (a) As to insurers, the
14 taxes and fees imposed by section 431:7-201 to section 431:7-
15 204, and the fees imposed by this code, when paid shall be in
16 settlement of and in lieu of all demands for taxes, licenses, or
17 fees of every character imposed by the laws of this State, the
18 ordinances or other laws, rules, or regulations of any county of
19 this State, except:

- 20 (1) As expressly otherwise provided;
- 21 (2) Taxes on real property;



1 (3) Taxes on the purchase, use, or ownership of tangible
2 personal property; and

3 (4) Taxes on gross income, gross proceeds, gross rental,
4 or gross rental proceeds under chapter 237 or 237D.

5 Nothing in this section shall be deemed to exempt insurers from
6 liability for withholding taxes payable by their employees and
7 paying the same to the proper collection officers, or from
8 keeping such records, and making such returns and reports, as
9 may be required in the case of other persons enjoying tax
10 exemption.

11 (b) Notwithstanding subsection (a), for any tax liability
12 owing under section 431:7-201 to section 431:7-204, an insurer
13 may opt to invest an amount equal to all or any portion of that
14 tax liability in a qualified digital media infrastructure
15 project as defined in section 209E-A. Any investment made
16 pursuant to this subsection shall be in lieu of and not in
17 addition to the tax liability owing under section 431:7-201 to
18 section 431:7-204 for the tax year in which the investment is
19 made."

20 **PART II**

21 SECTION 6. Section 201-113, Hawaii Revised Statutes, is
22 amended to read as follows:



1 " ~~[+] §201-113 [+] Hawaii [television and film development]~~
2 film office special fund. (a) There is established in the
3 state treasury the Hawaii ~~[television and film development]~~ film
4 office special fund, into which shall be deposited:

5 (1) Appropriations by the legislature;

6 (2) Donations and contributions made by private
7 individuals or organizations for deposit into the
8 fund;

9 (3) Grants provided by governmental agencies or any other
10 source; and

11 ~~[-(4) Any profits or other amounts received from venture
12 capital investments.]~~

13 (4) Application fees for digital media infrastructure tax
14 credits received under section 209E-C.

15 ~~[-(b) The fund shall be used by the board to assist in, and
16 provide incentives for, the production of eligible Hawaii
17 projects that are in compliance with criteria and standards
18 established by the board in accordance with rules adopted by the
19 board pursuant to chapter 91. In particular, the board shall
20 adopt rules to provide for the implementation of the following
21 programs:]~~



- 1 ~~(1) A grant program. The board shall adopt rules pursuant~~
2 ~~to chapter 91 to provide conditions and qualifications~~
3 ~~for grants. Applications for grants shall be made to~~
4 ~~the board and shall contain such information as the~~
5 ~~board shall require by rules adopted pursuant to~~
6 ~~chapter 91. At a minimum, the applicant shall agree~~
7 ~~to the following conditions:~~
- 8 ~~(A) The grant shall be used exclusively for eligible~~
9 ~~Hawaii projects;~~
- 10 ~~(B) The applicant shall have applied for or received~~
11 ~~all applicable licenses and permits;~~
- 12 ~~(C) The applicant shall comply with applicable~~
13 ~~federal and state laws prohibiting discrimination~~
14 ~~against any person on the basis of race, color,~~
15 ~~national origin, religion, creed, sex, age, or~~
16 ~~physical handicap;~~
- 17 ~~(D) The applicant shall comply with other~~
18 ~~requirements as the board may prescribe;~~
- 19 ~~(E) All activities undertaken with funds received~~
20 ~~shall comply with all applicable federal, state,~~
21 ~~and county statutes and ordinances;~~



1 ~~(F) The applicant shall indemnify and save harmless~~
2 ~~the State of Hawaii and its officers, agents, and~~
3 ~~employees from and against any and all claims~~
4 ~~arising out of or resulting from activities~~
5 ~~carried out or projects undertaken with funds~~
6 ~~provided hereunder, and procure sufficient~~
7 ~~insurance to provide this indemnification if~~
8 ~~requested to do so by the department;~~

9 ~~(G) The applicant shall make available to the board~~
10 ~~all records the applicant may have relating to~~
11 ~~the project, to allow the board to monitor the~~
12 ~~applicant's compliance with the purpose of this~~
13 ~~chapter; and~~

14 ~~(H) The applicant, to the satisfaction of the board,~~
15 ~~shall establish that sufficient funds are~~
16 ~~available for the completion of the project for~~
17 ~~the purpose for which the grant is awarded; and~~

18 ~~(2) A venture capital program. The board shall adopt~~
19 ~~rules pursuant to chapter 91 to provide conditions and~~
20 ~~qualifications for venture capital investments in~~
21 ~~eligible Hawaii projects. The program may include a~~
22 ~~written agreement between the borrower and the board,~~



1 SECTION 7. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

4 SECTION 8. In codifying the new part added by this Act,
5 the revisor shall designate appropriate section numbers for the
6 letters used in designating the new sections in this Act.

7 SECTION 9. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 10. This Act shall take effect on July 1, 2010;
10 provided that sections 1 through 5 shall be repealed on June 30,
11 2020, and section 431:7-204, Hawaii Revised Statutes, shall be
12 reenacted in the form in which it read on the day before the
13 effective date of this Act.

14

[Signature] INTRODUCED BY: [Signature]

[Signature] Ricki Curbadla [Signature]

[Signature] [Signature]

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Report Title:

Digital Media Enterprise Subzones; Digital Media; Tax
Incentives; Investments

Description:

Establishes digital media enterprise subzones as unspecified geographic areas surrounding University of Hawaii campuses that are also designated as enterprise zones; establishes tax benefits for digital media infrastructure development and operation and local workforce employment; authorizes insurance companies to invest in qualified digital media infrastructure projects in lieu of pay certain state taxes; renames and amends the Hawaii television and film development special fund to the Hawaii film office special fund; sunsets on 6/30/2020.

