

JAN 20 2010

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# A BILL FOR AN ACT

RELATING TO ECONOMIC DEVELOPMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. In September 2009, the legislature held  
2 informational briefings relating to the potential impacts on  
3 Hawaii businesses and the film industry arising from the  
4 anticipated position reductions in three programs under the  
5 purview of the department of business, economic development, and  
6 tourism: the film industry branch, the community-based economic  
7 development program:, and the enterprise zone-partnership. In  
8 their findings and recommendations, legislators stressed that  
9 these three programs are important economic generators for the  
10 State, and program staff provide direct services to the public -  
11 services that will be severely curtailed or eliminated if the  
12 positions are vacant.

13           Of particular concern is the department's stated intent to  
14 reassign "generalists" to perform functions currently performed  
15 by technically-competent "specialists" in mandated programs that  
16 produce significant contributions to the State's economy. The  
17 legislature finds that these actions will provide limited



1 savings and the loss of considerable income to the State,  
2 particularly with respect to the film office program, which is  
3 responsible for the mandate to certify the Act 88 (Session Laws  
4 of Hawaii 2006) tax credits pursuant to section 235-17, Hawaii  
5 Revised Statutes. This requirement was intended to assure that  
6 the tax credits would be administered effectively, using the  
7 film office's detailed knowledge of film, television, and  
8 animation production operations to manage and market the program  
9 efficiently, combined with the specific tax expertise provided  
10 through continuous coordination with the department of taxation.  
11 In the case of the community-based economic development program  
12 and the enterprise zone-partnership, the loss of personnel with  
13 specialized expertise will make it difficult, if not impossible,  
14 to meet the mandates of Acts 124 and 174, Session Laws of Hawaii  
15 2009, which expanded the scope and responsibilities of both  
16 programs.

17 In addition, the legislature believes that these three  
18 critical income-generating programs can achieve a greater level  
19 of self-sufficiency that reflects their contribution to the  
20 State's economy.

21 The purpose of this Act is to retain existing, specialized  
22 staff in programs that have substantially contributed to the



1 State's economic well-being and ensure greater program  
2 self-sufficiency by:

3 (1) Redirecting the income, purposes, and uses of the  
4 Hawaii television and film development special fund;  
5 and

6 (2) Amending the uses of the Hawaii community development  
7 revolving fund to include operational funding and a  
8 funding mechanism for the enterprise zone program.

9 SECTION 2. Chapter 231, Hawaii Revised Statutes, is  
10 amended by adding a new section to be appropriately designated  
11 and to read as follows:

12 "§231- Effectiveness of the motion picture, digital  
13 media, and film production tax credit; reporting requirement.

14 The department of taxation shall use the information collected  
15 and maintained pursuant to section 235-17(h) and (i), to study  
16 the effectiveness of the motion picture, digital media, and film  
17 production income tax credit. The department shall report on  
18 the aggregate amounts of all qualified production costs per  
19 qualified production and per qualified production per taxable  
20 year, jobs created by category and by county, compensation  
21 levels, and other factors as the department of taxation



1 determines. The department shall report the results of its  
2 study to the legislature by December 1 of each year."

3 SECTION 3. Section 201-113, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "~~[+]§201-113[+] Hawaii [television and film development]~~  
6 film office special fund. (a) There is established in the  
7 state treasury the Hawaii ~~[television and film development]~~ film  
8 office special fund, into which shall be deposited:

- 9 (1) Appropriations by the legislature;
- 10 (2) Donations and contributions made by private  
11 individuals or organizations for deposit into the  
12 fund;
- 13 (3) Grants provided by governmental agencies or any other  
14 source; and
- 15 ~~[(4) Any profits or other amounts received from venture~~  
16 ~~capital investments.]~~
- 17 (4) The first \$500,000 or \_\_\_\_\_ per cent of the net tax  
18 revenue realized by the State in each calendar year  
19 from the economic development impact of the motion  
20 picture, digital media, and film production income tax  
21 credit established under section 235-17.



1 Any moneys realized by the State under paragraph (4) shall be  
2 deposited in the Hawaii film office special fund by no later  
3 than July 1 of the year immediately succeeding the close of the  
4 taxable year from which the tax revenue is derived.

5 ~~[(b) The fund shall be used by the board to assist in, and~~  
6 ~~provide incentives for, the production of eligible Hawaii~~  
7 ~~projects that are in compliance with criteria and standards~~  
8 ~~established by the board in accordance with rules adopted by the~~  
9 ~~board pursuant to chapter 91. In particular, the board shall~~  
10 ~~adopt rules to provide for the implementation of the following~~  
11 ~~programs:~~

12 ~~(1) A grant program. The board shall adopt rules pursuant~~  
13 ~~to chapter 91 to provide conditions and qualifications~~  
14 ~~for grants. Applications for grants shall be made to~~  
15 ~~the board and shall contain such information as the~~  
16 ~~board shall require by rules adopted pursuant to~~  
17 ~~chapter 91. At a minimum, the applicant shall agree~~  
18 ~~to the following conditions:~~

19 ~~(A) The grant shall be used exclusively for eligible~~  
20 ~~Hawaii projects;~~

21 ~~(B) The applicant shall have applied for or received~~  
22 ~~all applicable licenses and permits;~~



- 1           ~~(C) The applicant shall comply with applicable~~
- 2           ~~federal and state laws prohibiting discrimination~~
- 3           ~~against any person on the basis of race, color,~~
- 4           ~~national origin, religion, creed, sex, age, or~~
- 5           ~~physical handicap;~~
- 6           ~~(D) The applicant shall comply with other~~
- 7           ~~requirements as the board may prescribe;~~
- 8           ~~(E) All activities undertaken with funds received~~
- 9           ~~shall comply with all applicable federal, state,~~
- 10           ~~and county statutes and ordinances;~~
- 11           ~~(F) The applicant shall indemnify and save harmless~~
- 12           ~~the State of Hawaii and its officers, agents, and~~
- 13           ~~employees from and against any and all claims~~
- 14           ~~arising out of or resulting from activities~~
- 15           ~~carried out or projects undertaken with funds~~
- 16           ~~provided hereunder, and procure sufficient~~
- 17           ~~insurance to provide this indemnification if~~
- 18           ~~requested to do so by the department;~~
- 19           ~~(G) The applicant shall make available to the board~~
- 20           ~~all records the applicant may have relating to~~
- 21           ~~the project, to allow the board to monitor the~~



1                    applicant's compliance with the purpose of this  
2                    chapter; and  
3            (H)    ~~The applicant, to the satisfaction of the board,~~  
4                    shall establish that sufficient funds are  
5                    available for the completion of the project for  
6                    the purpose for which the grant is awarded; and  
7            (2)    ~~A venture capital program. The board shall adopt~~  
8                    rules pursuant to chapter 91 to provide conditions and  
9                    qualifications for venture capital investments in  
10                    eligible Hawaii projects. The program may include a  
11                    written agreement between the borrower and the board,  
12                    as the representative of the State, that as  
13                    consideration for the venture capital investment made  
14                    under this part, the borrower shall share any  
15                    royalties, licenses, titles, rights, or any other  
16                    monetary benefits that may accrue to the borrower  
17                    pursuant to terms and conditions established by the  
18                    board by rule pursuant to chapter 91. Venture capital  
19                    investments may be made on such terms and conditions  
20                    as the board shall determine to be reasonable,  
21                    appropriate, and consistent with the purposes and  
22                    objectives of this part.



1 ~~(3) Operations of the department's film industry branch.]~~

2 (b) In determining the amount of tax revenue attributable  
3 to the economic development impact of the motion picture,  
4 digital media, and film production income tax credit established  
5 under section 235-17 for purpose of determining the amount of  
6 tax revenue to be deposited into the Hawaii film office special  
7 fund pursuant to subsection (a)(4), the department of taxation  
8 shall measure the degree of economic activity generated directly  
9 or indirectly from the motion picture, digital media, and film  
10 production income tax credit, including but not limited to, job  
11 creation, hotel room occupancy, restaurant sales, and other  
12 sources of related income generating activities.

13 (c) Moneys in the fund shall be used for the operations of  
14 the Hawaii film office, including personnel costs of staff  
15 positions existing on November 1, 2009; provided that the use of  
16 moneys from the fund for current and future personnel costs  
17 shall be limited to those employees performing specialized  
18 duties and assigned solely to the Hawaii film office operations.

19 (d) For purposes of this section, the department of  
20 taxation shall report annually to the legislature, beginning  
21 July 1, 2011, on the deposits, appropriations, and balance in





1 the Hawaii film office special fund for the immediately  
2 preceding fiscal year ending June 30."

3 SECTION 4. Section 210D-4, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§210D-4 Hawaii community-based economic development  
6 revolving fund; established[-]; funding of community-based  
7 economic development program staff, nonprofit community-based  
8 organizations, and for-profit entities in enterprise zones. (a)

9 There is established a revolving fund to be known as the Hawaii  
10 community-based economic development revolving fund from which  
11 moneys shall be loaned or granted by the department under this  
12 chapter. All moneys appropriated to the fund by the  
13 legislature, received as repayments of loans, payments of  
14 interest or fees, and all other moneys received by the fund from  
15 any other source shall be deposited into the revolving fund and  
16 used for the purposes of this chapter.

17 (b) The department [~~may~~] shall use all appropriations and  
18 other moneys in the revolving fund not appropriated for a  
19 designated purpose to [~~make grants or loans.~~]:

20 (1) Fund the operations of the community-based economic  
21 development program and the enterprise zone program  
22 established under chapter 209E, and the personnel



1 costs of those programs' staff positions existing on  
2 November 1, 2009; provided that the use of moneys from  
3 the fund for current and future personnel costs shall  
4 be limited to those employees performing specialized  
5 duties and assigned solely to the community-based  
6 economic development program or the enterprise zone  
7 program; and

8 (2) Make grants and loans in accordance with this  
9 chapter."

10 SECTION 5. Section 201-111, Hawaii Revised Statutes, is  
11 repealed.

12 ~~["§201-111] Definitions. As used in this part:~~

13 ~~"Applicant" means a person applying for a grant or venture~~  
14 ~~capital investment from the board under this part.~~

15 ~~"Board" means the Hawaii television and film development~~  
16 ~~board.~~

17 ~~"Eligible Hawaii project" or "project" means an~~  
18 ~~entertainment project in which at least seventy five per cent of~~  
19 ~~the budget for the production costs, excluding salaries and~~  
20 ~~costs for the producer, director, writer, screenplay, and actors~~  
21 ~~in the project, is dedicated for the purchase or lease of goods~~



1 ~~or services from a vendor or supplier who is located and doing~~  
2 ~~business in the State.~~

3 ~~"Fund" means the Hawaii television and film development~~  
4 ~~special fund.~~

5 ~~"Venture capital investment" means any of the following~~  
6 ~~investments in a project:~~

7 ~~(1) Common or preferred stock and equity securities~~  
8 ~~without a repurchase requirement for at least five~~  
9 ~~years;~~

10 ~~(2) A right to purchase stock or equity securities;~~

11 ~~(3) Any debenture, whether or not convertible or having~~  
12 ~~stock purchase rights, which is subordinated, together~~  
13 ~~with security interests against the assets of the~~  
14 ~~borrower, by their terms to all borrowings of the~~  
15 ~~borrower from other institutional lenders, and that is~~  
16 ~~for a term of not less than three years, and that has~~  
17 ~~no part amortized during the first three years; and~~

18 ~~(4) General or limited partnership interests." ]~~

19 SECTION 6. Section 201-112, Hawaii Revised Statutes, is  
20 repealed.

21 ~~[ "§201-112] Hawaii television and film development board.~~

22 ~~(a) There is established the Hawaii television and film~~



1 ~~development board. The board shall be attached to the~~  
2 ~~department of business, economic development, and tourism for~~  
3 ~~administrative purposes only. The board shall administer the~~  
4 ~~grant and venture capital investment programs and the Hawaii~~  
5 ~~television and film development special fund established under~~  
6 ~~this part. The board shall also assess and consider the overall~~  
7 ~~viability and development of the television and film industries~~  
8 ~~and make recommendations to appropriate state or county~~  
9 ~~agencies.~~

10 ~~(b) The board shall be composed of nine members, four of~~  
11 ~~whom shall be appointed by the governor pursuant to section~~  
12 ~~26-34, and all of whom shall serve four year staggered terms.~~  
13 ~~One of the governor's appointments shall be made from a list of~~  
14 ~~nominees submitted by the president of the senate and another~~  
15 ~~appointment shall be made from a list of nominees submitted by~~  
16 ~~the speaker of the house of representatives. The four appointed~~  
17 ~~members shall possess a current working knowledge of the film,~~  
18 ~~television, or entertainment industry. The director of~~  
19 ~~business, economic development, and tourism, and the chairs of~~  
20 ~~the four county film commissions or its equivalent, shall serve~~  
21 ~~as ex-officio voting members, who may be represented on the~~  
22 ~~board by designees.~~



1       ~~The chairperson and vice chairperson of the board shall be~~  
2       ~~selected by the board by majority vote. Five members shall~~  
3       ~~constitute a quorum, whose affirmative vote shall be necessary~~  
4       ~~for all actions by the board. The members shall serve without~~  
5       ~~compensation but shall be reimbursed for expenses, including~~  
6       ~~travel expenses, necessary for the performance of their duties.~~

7       ~~(c) The film industry branch development manager shall~~  
8       ~~serve as the executive secretary of the board.~~

9       ~~(d) The board may adopt rules pursuant to chapter 91 to~~  
10       ~~effectuate the purposes of this part." ]~~

11       SECTION 7. Section 201-114, Hawaii Revised Statutes, is  
12       repealed.

13       ~~["§201-114 Inspection of premises and records. The~~  
14       ~~board shall have the right to inspect, at reasonable hours, the~~  
15       ~~plant, physical facilities, equipment, premises, books, and~~  
16       ~~records of any applicant in connection with the processing of a~~  
17       ~~grant to the applicant." ]~~

18       SECTION 8. Statutory material to be repealed is bracketed  
19       and stricken. New statutory material is underscored.

20



S.B. NO. 2144

1 SECTION 9. This Act shall take effect on July 1, 2010.

2

INTRODUCED BY: Carol Johnson

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**Report Title:**

Television/Film Development Special Fund; Community-Based Economic Development Revolving Fund

**Description:**

Renames the Hawaii television and film development special fund to the Hawaii film office special fund; requires the first \$500,000 or an unspecified per cent of tax revenues realized from the effect of the motion picture, digital media, and film production income tax credit to be deposited into the fund; includes personnel costs as uses of the fund moneys; amends the Hawaii community-based economic development revolving fund uses to require that moneys in the revolving fund be used to fund the community-based economic development program and enterprise zone program operational and staff costs; repeals unnecessary television and film development definitions, the Hawaii film and television development board, grant and venture capital programs, and other miscellaneous provisions; requires DOTAX to report annually to the legislature on the effectiveness of the motion picture, digital media, and film production income tax credit.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

