
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-based
7 economic development revolving fund to include
8 operational funding and a funding mechanism for the
9 enterprise zone program.

10 SECTION 2. Chapter 201, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 "§201- Effectiveness of the motion picture, digital
14 media, and film production tax credit; reporting requirement.

15 The department of business, economic development, and tourism
16 shall use the information collected and maintained pursuant to
17 section 235-17(h) and (i), to evaluate the effectiveness of the
18 motion picture, digital media, and film production tax credit.

19 The department shall report on the aggregate amounts of all
20 qualified production costs per qualified production and per
21 qualified production per taxable year, jobs created by category
22 and by county, compensation levels, and other factors as the

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

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

6 "~~[+]S201-113[+]~~ ~~Hawaii [television and film development]~~
7 **film office special fund.** (a) There is established in the
8 state treasury the Hawaii ~~[television and film development]~~ film
9 office special fund, into which shall be deposited:

- 10 (1) Appropriations by the legislature;
- 11 (2) Rents from usage of the Hawaii film studio operated by
12 the Hawaii film office;
- 13 (3) Fees collected by the department for processing
14 taxpayer letters pursuant to section 235-17;
- 15 (4) Any other fees for processing certifications for tax
16 credits authorized by the legislature;
- 17 ~~[+2+]~~ (5) Donations and contributions made by private
18 individuals or organizations for deposit into the
19 fund; and
- 20 ~~[+3+]~~ (6) Grants provided by governmental agencies or any
21 other source ~~[; and~~

1 ~~(4) Any profits or other amounts received from venture~~
2 ~~capital investments.]~~

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

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

17 ~~(A) The grant shall be used exclusively for eligible~~
18 ~~Hawaii projects;~~

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

21 ~~(C) The applicant shall comply with applicable~~
22 ~~federal and state laws prohibiting discrimination~~

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

1 ~~(H) The applicant, to the satisfaction of the board,~~
2 ~~shall establish that sufficient funds are~~
3 ~~available for the completion of the project for~~
4 ~~the purpose for which the grant is awarded; and~~

5 ~~(2) A venture capital program. The board shall adopt~~
6 ~~rules pursuant to chapter 91 to provide conditions and~~
7 ~~qualifications for venture capital investments in~~
8 ~~eligible Hawaii projects. The program may include a~~
9 ~~written agreement between the borrower and the board,~~
10 ~~as the representative of the State, that as~~
11 ~~consideration for the venture capital investment made~~
12 ~~under this part, the borrower shall share any~~
13 ~~royalties, licenses, titles, rights, or any other~~
14 ~~monetary benefits that may accrue to the borrower~~
15 ~~pursuant to terms and conditions established by the~~
16 ~~board by rule pursuant to chapter 91. Venture capital~~
17 ~~investments may be made on such terms and conditions~~
18 ~~as the board shall determine to be reasonable,~~
19 ~~appropriate, and consistent with the purposes and~~
20 ~~objectives of this part].~~

21 (b) In determining the amount of tax revenue attributable

22 to the economic development impact of the motion picture,

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1 digital media, and film production tax credit established under
2 section 235-17, the department of business, economic
3 development, and tourism shall measure the degree of economic
4 activity generated directly or indirectly from the motion
5 picture, digital media, and film production tax credit,
6 including but not limited to, job creation, hotel room
7 occupancy, restaurant sales, and other sources of related income
8 generating activities.

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

15 (d) For purposes of this section, the department of
16 business, economic development, and tourism shall report
17 annually to the legislature, beginning January 1, 2011, on the
18 deposits, appropriations, and balance in the Hawaii film office
19 special fund."

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

1 "§210D-4 Hawaii community-based economic development
2 revolving fund; established[-]; funding of community-based
3 economic development program staff, nonprofit community-based
4 organizations, and for-profit entities in enterprise zones. (a)

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

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

16 (1) Fund the operations of the community-based economic
17 development program and the enterprise zone program
18 established under chapter 209E, and the personnel
19 costs of those programs' staff positions existing on
20 November 1, 2009; provided that the use of moneys from
21 the fund for current and future personnel costs shall
22 be limited to those employees performing specialized

1 duties and assigned solely to the community-based
2 economic development program or the enterprise zone
3 program; and

4 (2) Make grants and loans in accordance with this
5 chapter."

6 SECTION 5. Section 235-17, Hawaii Revised Statutes, is
7 amended by amending subsection (i) to read as follows:

8 "(i) The department of business, economic development, and
9 tourism shall:

10 (1) Maintain records of the names of the taxpayers and
11 qualified productions thereof claiming the tax credits
12 under subsection (a);

13 (2) Obtain and total the aggregate amounts of all
14 qualified production costs per qualified production
15 and per qualified production per taxable year; and

16 (3) Provide a letter to the director of taxation
17 specifying the amount of the tax credit per qualified
18 production for each taxable year that a tax credit is
19 claimed and the cumulative amount of the tax credit
20 for all years claimed.

21 Upon each determination required under this subsection, the
22 department of business, economic development, and tourism shall

1 issue a letter to the taxpayer, regarding the qualified
2 production, specifying the qualified production costs and the
3 tax credit amount qualified for in each taxable year a tax
4 credit is claimed. The department of business, economic
5 development, and tourism may establish a fee of \$ to process
6 the taxpayer letter, which shall be deposited in the Hawaii film
7 office special fund established pursuant to section 201-113.
8 The taxpayer for each qualified production shall file the letter
9 with the taxpayer's tax return for the qualified production to
10 the department of taxation. Notwithstanding the authority of
11 the department of business, economic development, and tourism
12 under this section, the director of taxation may audit and
13 adjust the tax credit amount to conform to the information filed
14 by the taxpayer."

15 SECTION 6. Section 201-111, Hawaii Revised Statutes, is
16 repealed.

17 ~~["~~§201-111~~ Definitions. As used in this part:~~

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

20 ~~"Board" means the Hawaii television and film development~~
21 ~~board.~~

1 ~~"Eligible Hawaii project" or "project" means an~~
2 ~~entertainment project in which at least seventy-five per cent of~~
3 ~~the budget for the production costs, excluding salaries and~~
4 ~~costs for the producer, director, writer, screenplay, and actors~~
5 ~~in the project, is dedicated for the purchase or lease of goods~~
6 ~~or services from a vendor or supplier who is located and doing~~
7 ~~business in the State.~~

8 ~~"Fund" means the Hawaii television and film development~~
9 ~~special fund.~~

10 ~~"Venture capital investment" means any of the following~~
11 ~~investments in a project:~~

- 12 ~~(1) Common or preferred stock and equity securities~~
13 ~~without a repurchase requirement for at least five~~
14 ~~years;~~
- 15 ~~(2) A right to purchase stock or equity securities;~~
- 16 ~~(3) Any debenture, whether or not convertible or having~~
17 ~~stock purchase rights, which is subordinated, together~~
18 ~~with security interests against the assets of the~~
19 ~~borrower, by their terms to all borrowings of the~~
20 ~~borrower from other institutional lenders, and that is~~
21 ~~for a term of not less than three years, and that has~~
22 ~~no part amortized during the first three years; and~~

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

2 SECTION 7. Section 201-112, Hawaii Revised Statutes, is
3 repealed.

4 ~~["~~§201-112~~ Hawaii television and film development board.~~

5 ~~(a) There is established the Hawaii television and film~~
6 ~~development board. The board shall be attached to the~~
7 ~~department of business, economic development, and tourism for~~
8 ~~administrative purposes only. The board shall administer the~~
9 ~~grant and venture capital investment programs and the Hawaii~~
10 ~~television and film development special fund established under~~
11 ~~this part. The board shall also assess and consider the overall~~
12 ~~viability and development of the television and film industries~~
13 ~~and make recommendations to appropriate state or county~~
14 ~~agencies.~~

15 ~~(b) The board shall be composed of nine members, four of~~
16 ~~whom shall be appointed by the governor pursuant to section~~
17 ~~26-34, and all of whom shall serve four-year staggered terms.~~
18 ~~One of the governor's appointments shall be made from a list of~~
19 ~~nominees submitted by the president of the senate and another~~
20 ~~appointment shall be made from a list of nominees submitted by~~
21 ~~the speaker of the house of representatives. The four appointed~~
22 ~~members shall possess a current working knowledge of the film,~~

1 ~~television, or entertainment industry. The director of~~
2 ~~business, economic development, and tourism, and the chairs of~~
3 ~~the four county film commissions or its equivalent, shall serve~~
4 ~~as ex officio voting members, who may be represented on the~~
5 ~~board by designees.~~

6 ~~The chairperson and vice chairperson of the board shall be~~
7 ~~selected by the board by majority vote. Five members shall~~
8 ~~constitute a quorum, whose affirmative vote shall be necessary~~
9 ~~for all actions by the board. The members shall serve without~~
10 ~~compensation but shall be reimbursed for expenses, including~~
11 ~~travel expenses, necessary for the performance of their duties.~~

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

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

16 SECTION 8. Section 201-114, Hawaii Revised Statutes, is
17 repealed.

18 ~~["**~~§201-114~~** **~~Inspection of premises and records.~~** The~~
19 ~~board shall have the right to inspect, at reasonable hours, the~~
20 ~~plant, physical facilities, equipment, premises, books, and~~
21 ~~records of any applicant in connection with the processing of a~~
22 ~~grant to the applicant."]~~

1 SECTION 9. There is appropriated out of the Hawaii film
2 office special fund under section 201-113, Hawaii Revised
3 Statutes, the sum of \$ or so much thereof as may be
4 necessary for fiscal year 2010-2011 for operations of the Hawaii
5 film office.

6 The sum appropriated shall be expended by the department of
7 business, economic development, and tourism for the purposes of
8 this Act.

9 SECTION 10. There is appropriated out of temporary
10 assistance for needy families funds the sum of \$ or so
11 much thereof as may be necessary for fiscal year 2010-2011 for
12 deposit into the Hawaii community-based economic development
13 revolving fund under section 210D-4, Hawaii Revised Statutes,
14 for the purposes of the fund.

15 The sum appropriated shall be expended by the department of
16 business, economic development, and tourism for the purposes of
17 this Act.

18 SECTION 11. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 12. This Act shall take effect on July 1, 2010.

21

Report Title:

Television and Film Development Special Fund; Community-Based Economic Development Revolving Fund: Appropriations

Description:

Requires the department of business, economic development, and tourism evaluate and report annually to the legislature on the effectiveness of the motion picture, digital media, and film production tax credit; renames the Hawaii television and film development special fund to the Hawaii film office special fund; authorizes additional revenues to be deposited into the special 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; authorizes a fee for preparation of Act 88 taxpayer letters; repeals unnecessary television and film development definitions, the Hawaii film and television development board, grant and venture capital programs, and other miscellaneous provisions; appropriates unspecified amounts. (SD1)

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