
A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM.

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

1 **PART I**

2 SECTION 1. The purpose of this part is to assign
3 television and film industry activities to the Hawaii tourism
4 authority.

5 SECTION 2. Chapter 201B, Hawaii Revised Statutes, is
6 amended by adding a new part to be appropriately designated and
7 to read as follows:

8 "PART . HAWAII FILM OFFICE

9 §201B-A Definitions. As used in this part:

10 "Applicant" means a person who proposes to make a motion
11 picture, television show, television commercial, or other
12 visually recorded production at one or more sites on state or
13 county lands.

14 "Authority" means the Hawaii tourism authority.

15 "Office" means the Hawaii film office.

16 §201B-B Hawaii film office; consolidated film permit

17 processing. (a) There is established in the authority a Hawaii



1 film office that shall be the central agency to coordinate film
2 permit activities in the State. The office shall consult with
3 state and county agencies to identify sites that can be used for
4 making visually recorded productions under terms and conditions
5 as may be determined by the state or county agency having
6 jurisdiction over the sites.

7 (b) The office may accept an application from any person
8 who proposes to make a motion picture, television show,
9 television commercial, or other visually recorded production at
10 one or more sites on state or county lands, whether or not set
11 aside under section 171-11.

12 (c) The applicant shall identify the sites to be covered
13 by the permit and provide other information as may be required
14 by the office.

15 (d) The office may approve and issue a permit to film at
16 any of the sites identified by the appropriate state or county
17 agency under subsection (a). If any site requested for use by
18 the applicant is not identified in accordance with subsection
19 (a), the office shall consult with the appropriate state or
20 county agency having jurisdiction over the site to obtain a
21 permit. If the matter of a permit cannot be resolved in this



1 manner, the office shall refer the application to the
2 appropriate state or county agency to obtain a permit.

3 (e) The office is authorized to make changes to, and
4 extensions of, any approved permits so long as the changes and
5 extensions do not conflict with the policies, terms, and
6 conditions set forth by the agency having jurisdiction over the
7 site in question.

8 (f) Nothing in this section shall be construed as waiving
9 the authority of any county or the authority of transportation
10 of the State to require a person to obtain a permit from the
11 authority or county where the production takes place on or from
12 a public highway.

13 (g) A vessel engaged in temporary use for film production
14 purposes in accordance with a film permit issued by the office
15 shall not be considered to be a "commercial vessel" within the
16 meaning of section 200-9, 200-10, or 200-39; provided that:

17 (1) The period of temporary use does not exceed fourteen
18 hours per day, five days per week, excluding weekends,
19 and for a period not to exceed thirty calendar days;
20 and



1 (2) The office may make allowances to include weekends for
2 film production purposes due to inclement weather
3 conditions during the weekday period.

4 **§201B-C Hawaii film office special fund.** (a) There is
5 established in the state treasury the Hawaii film office special
6 fund, into which shall be deposited:

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

19 (b) Moneys in the fund shall be used for the operations of
20 the Hawaii film office, including the costs of processing
21 taxpayer letters pursuant to section 235-17.



1 (c) For purposes of this section, the Hawaii tourism
2 authority shall report annually to the legislature, beginning
3 January 1, 2011, on the deposits, appropriations, and balance in
4 the Hawaii film office special fund."

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

7 "**§201-3 Specific research and promotional functions of the**
8 **department.** Without prejudice to its general functions and
9 duties, the department of business, economic development, and
10 tourism shall have specific functions in the following areas:

11 (1) Industrial development. The department shall:

12 (A) Determine through technical and economic surveys
13 the profit potential of new or expanded
14 industrial undertakings;

15 (B) Develop through research projects and other means
16 new and improved industrial products and
17 processes;

18 (C) Promote studies and surveys to determine consumer
19 preference as to design and quality and to
20 determine the best methods of packaging,
21 transporting, and marketing the State's
22 industrial products;



- 1 (D) Disseminate information to assist the present
2 industries of the State, to attract new
3 industries to the State, and to encourage capital
4 investment in present and new industries in the
5 State;
- 6 (E) Assist associations of producers and distributors
7 of industrial products to introduce these
8 products to consumers; and
- 9 (F) Make grants or contracts as may be necessary or
10 advisable to accomplish the foregoing;
- 11 (2) Land development. The department shall:
- 12 (A) Encourage the most productive use of all land in
13 the State in accordance with a general plan
14 developed by the department;
- 15 (B) Encourage the improvement of land tenure
16 practices on leased private lands;
- 17 (C) Promote an informational program directed to
18 landowners, producers of agricultural and
19 industrial commodities, and the general public
20 regarding the most efficient and most productive
21 use of the lands in the State; and



- 1 (D) Make grants or contracts as may be necessary or
2 advisable to accomplish the foregoing;
- 3 (3) Credit development. The department shall:
- 4 (A) Conduct a continuing study of agricultural and
5 industrial credit needs;
- 6 (B) Encourage the development of additional private
7 and public credit sources for agricultural and
8 industrial enterprises;
- 9 (C) Promote an informational program to acquaint
10 financial institutions with agricultural and
11 industrial credit needs and the potential for
12 agricultural and industrial expansion, and inform
13 producers of agricultural and industrial products
14 as to the manner in which to qualify for loans;
15 and
- 16 (D) Make grants or contracts as may be necessary or
17 advisable to accomplish the foregoing;
- 18 (4) Promotion. The department shall:
- 19 (A) Disseminate information developed for or by the
20 department pertaining to economic development to
21 assist present industry in the State;



- 1 (B) Attract new industry and investments to the
2 State; and
- 3 (C) Assist new and emerging industry with good growth
4 potential or prospects in jobs, exports, and new
5 products.

6 The industrial and economic promotional activities of
7 the department may include the use of literature,
8 advertising, demonstrations, displays, market testing,
9 lectures, travel, motion picture and slide films, and
10 other promotional and publicity devices as may be
11 appropriate; and

- 12 (5) Self-sufficiency standard. The department shall
13 establish and update biennially a self-sufficiency
14 standard that shall incorporate existing methods of
15 calculation, and shall reflect, at a minimum, costs
16 relating to housing, food, child care, transportation,
17 health care, clothing and household expenses, federal
18 and state tax obligations, family size, children's
19 ages, geography, and the number of household wage
20 earners. The department shall report to the
21 legislature concerning the self-sufficiency standard
22 no later than twenty days prior to the convening of



1 the regular session of 2009, and every odd-numbered
2 year thereafter. The recommendations shall address,
3 among other things, the use of any federal funding
4 that may be available for the purposes of establishing
5 and updating the self-sufficiency standard.

6 ~~[The department shall be the central agency to coordinate~~
7 ~~film permit activities in the State.] "~~

8 SECTION 4. Section 235-17, Hawaii Revised Statutes, is
9 amended as follows:

10 1. By amending subsection (f) to read:

11 "(f) To receive the tax credit, the taxpayer shall first
12 prequalify the production for the credit by registering with the
13 ~~[department of business, economic development, and tourism]~~
14 Hawaii film office during the development or preproduction
15 stage. Failure to comply with this provision may constitute a
16 waiver of the right to claim the credit."

17 2. By amending subsections (h) and (i) to read:

18 "(h) Every taxpayer claiming a tax credit under this
19 section for a qualified production shall, no later than ninety
20 days following the end of each taxable year in which qualified
21 production costs were expended, submit a written, sworn



1 statement to the [~~department of business, economic development,~~
2 ~~and tourism,~~] Hawaii film office, identifying:

3 (1) All qualified production costs as provided by
4 subsection (a), if any, incurred in the previous
5 taxable year;

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

8 (3) The number of total hires versus the number of local
9 hires by category (i.e., department) and by county.

10 (i) The [~~department of business, economic development, and~~
11 ~~tourism~~] Hawaii film office shall:

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

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

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



1 Upon each determination required under this subsection, the
2 ~~[department of business, economic development, and tourism]~~
3 Hawaii film office shall issue a letter to the taxpayer,
4 regarding the qualified production, specifying the qualified
5 production costs and the tax credit amount qualified for in each
6 taxable year a tax credit is claimed. The taxpayer for each
7 qualified production shall file the letter with the taxpayer's
8 tax return for the qualified production to the department of
9 taxation. Notwithstanding the authority of the ~~[department of~~
10 ~~business, economic development, and tourism]~~ Hawaii film office
11 under this section, the director of taxation may audit and
12 adjust the tax credit amount to conform to the information filed
13 by the taxpayer."

14 3. By amending the definition of "qualified production
15 costs" in subsection (1) to read:

16 ""Qualified production costs" means the costs incurred by a
17 qualified production within the State that are subject to the
18 general excise tax under chapter 237 or income tax under this
19 chapter and that have not been financed by any investments for
20 which a credit was or will be claimed pursuant to section
21 235-110.9. Qualified production costs include but are not
22 limited to:



- 1 (1) Costs incurred during preproduction such as location
2 scouting and related services;
- 3 (2) Costs of set construction and operations, purchases or
4 rentals of wardrobe, props, accessories, food, office
5 supplies, transportation, equipment, and related
6 services;
- 7 (3) Wages or salaries of cast, crew, and musicians;
- 8 (4) Costs of photography, sound synchronization, lighting,
9 and related services;
- 10 (5) Costs of editing, visual effects, music, other post-
11 production, and related services;
- 12 (6) Rentals and fees for use of local facilities and
13 locations;
- 14 (7) Rentals of vehicles and lodging for cast and crew;
- 15 (8) Airfare for flights to or from Hawaii, and interisland
16 flights;
- 17 (9) Insurance and bonding;
- 18 (10) Shipping of equipment and supplies to or from Hawaii,
19 and interisland shipments; and
- 20 (11) Other direct production costs specified by the
21 department in consultation with the ~~[department of~~



1 ~~business, economic development, and tourism.] Hawaii~~
2 ~~film office.~~"

3 SECTION 5. Section 201-14, Hawaii Revised Statutes, is
4 repealed.

5 [~~"§201-14 Consolidated film permit processing. (a) The~~
6 ~~department shall consult with state and county agencies in order~~
7 ~~to identify sites that can be used for making visually recorded~~
8 ~~productions under terms and conditions as may be determined by~~
9 ~~the state or county agency having jurisdiction over the sites.~~

10 ~~(b) The department may accept an application from any~~
11 ~~person who proposes to make a motion picture, television show,~~
12 ~~television commercial, or other visually recorded production at~~
13 ~~one or more sites on state or county lands, whether or not set~~
14 ~~aside under section 171-11.~~

15 ~~(c) The applicant shall identify the sites to be covered~~
16 ~~by the permit and provide other information as may be required~~
17 ~~by the department.~~

18 ~~(d) The department may approve and issue a permit to film~~
19 ~~at any of the sites identified by the appropriate state or~~
20 ~~county agency under subsection (a). If any site requested for~~
21 ~~use by the applicant is not identified under subsection (a), the~~
22 ~~department shall consult with the appropriate state or county~~



1 ~~agency having jurisdiction over the site to obtain a permit. If~~
2 ~~the matter of a permit cannot be resolved in this manner, the~~
3 ~~department shall refer the application to the appropriate state~~
4 ~~or county agency to obtain a permit.~~

5 ~~(e) The department is authorized to make changes to, and~~
6 ~~extensions of, any approved permits so long as the changes and~~
7 ~~extensions do not conflict with the policies, terms, and~~
8 ~~conditions set forth by the agency having jurisdiction over the~~
9 ~~site in question.~~

10 ~~(f) The department may establish memoranda of agreement or~~
11 ~~adopt rules to implement the intent and purposes of this~~
12 ~~section.~~

13 ~~(g) Nothing in this section shall be construed as waiving~~
14 ~~the authority of any county or the department of transportation~~
15 ~~of the State to require a person to obtain a permit from the~~
16 ~~department or county where the production takes place on or from~~
17 ~~a public highway.~~

18 ~~(h) A vessel engaged in temporary use for film production~~
19 ~~purposes in accordance with a film permit issued by the~~
20 ~~department shall not be considered to be a "commercial vessel"~~
21 ~~within the meaning of section 200-9, 200-10, or 200-39; provided~~
22 ~~that:~~



1 ~~(1) The period of temporary use does not exceed fourteen~~
2 ~~hours per day, five days per week, excluding weekends,~~
3 ~~and for a period not to exceed thirty calendar days,~~
4 ~~and~~

5 ~~(2) The department may make allowances to include weekends~~
6 ~~for film production purposes due to inclement weather~~
7 ~~conditions during the weekday period."]~~

8 SECTION 6. Part IX of chapter 201, Hawaii Revised
9 Statutes, is repealed.

10 SECTION 7. All rights, powers, functions, and duties
11 related to Hawaii television and film development are
12 transferred from the department of business, economic
13 development, and tourism to the Hawaii tourism authority.

14 All officers and employees whose functions are transferred
15 by this part shall be transferred with their functions and shall
16 continue to perform their regular duties upon their transfer;
17 provided that the transferred officers and employees shall be
18 subject to the provisions of section 201B-3(7), Hawaii Revised
19 Statutes.

20 No officer or employee of the State having tenure shall
21 suffer any loss of salary, seniority, prior service credit,
22 vacation, sick leave, or other employee benefit or privilege as



1 a consequence of this part; provided that no break in service
2 has occurred.

3 If an office or position held by an officer or employee
4 having tenure is abolished, the officer or employee shall not
5 thereby be separated from public employment, but shall remain in
6 the employment of the State with the same pay and classification
7 and shall be transferred to some other office or position for
8 which the officer or employee is eligible under the personnel
9 laws of the State as determined by the head of the department or
10 the governor.

11 SECTION 8. All appropriations, records, equipment,
12 machines, files, supplies, contracts, memoranda of agreement in
13 existence prior to the effective date of this part, books,
14 papers, documents, maps, and other personal property heretofore
15 made, used, acquired, or held by the department of business,
16 economic development, and tourism relating to the functions
17 transferred to the department of Hawaii tourism authority shall
18 be transferred with the functions to which they relate.

19 **PART II**

20 SECTION 9. The purpose of this part is to amend the uses
21 of the Hawaii community-based economic development revolving



1 fund to include operational funding and a funding mechanism for
2 the enterprise zone program.

3 SECTION 10. 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 **PART III**

11 SECTION 11. The purpose of this part is to ensure the
12 stability of the small business regulatory review board, by:

- 13 (1) Transferring the board, with its statutory duties and
14 powers, from the department of business, economic
15 development, and tourism to the department of commerce
16 and consumer affairs;
- 17 (2) Authorizing the board to employ a small business
18 advocate; and
- 19 (3) Authorizing the expenses of the board to be funded
20 entirely from the compliance resolution fund.

21 SECTION 12. Section 201M-5, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§201M-5 **Small business regulatory review board; powers.**

2 (a) There shall be established within the department of
3 ~~[business, economic development, and tourism,~~] commerce and
4 consumer affairs, for administrative purposes [7] only, a small
5 business regulatory review board to review any proposed new or
6 amended rule or to consider any request from small business
7 owners for review of any rule adopted by a state agency and to
8 make recommendations to the agency or the legislature regarding
9 the need for a rule change or legislation. For requests
10 regarding county ordinances, the board may make recommendations
11 to the county council or the mayor for appropriate action.

12 (b) The board shall consist of eleven members, who shall
13 be appointed by the governor pursuant to section 26-34.
14 Nominations to fill vacancies shall be made from names submitted
15 by the review board. The appointments shall reflect
16 representation of a variety of businesses in the State; provided
17 that no more than two members shall be representatives from the
18 same type of business, and that there shall be at least two
19 representatives from each county.

20 (c) All members of the board shall be either a current or
21 former owner or officer of a business and shall not be an
22 officer or employee of the federal, state, or county government.



1 A majority of the board shall elect the chairperson. The
2 chairperson shall serve a term of not more than one year, unless
3 removed earlier by a two-thirds vote of all members to which the
4 board is entitled.

5 (d) A majority of all the members to which the board is
6 entitled shall constitute a quorum to do business, and the
7 concurrence of a majority of all the members to which the board
8 is entitled shall be necessary to make any action of the board
9 valid.

10 (e) In addition to any other powers provided by this
11 chapter, the board may:

12 (1) Adopt any rules necessary to implement this chapter;

13 (2) Organize and hold conferences on problems affecting
14 small business; [and]

15 (3) Employ a small business advocate, who shall serve at
16 the pleasure of the board and shall be exempt from
17 chapter 76; provided that the salary of the small
18 business advocate shall be set by the board; and

19 ~~[-(3)]~~ (4) Do any and all things necessary to effectuate the
20 purposes of this chapter.

21 (f) The board shall submit an annual report to the
22 legislature twenty days prior to each regular session detailing



1 any requests from small business owners for review of any rule
2 adopted by a state agency, and any recommendations made by the
3 board to an agency or the legislature regarding the need for a
4 rule change or legislation. The report shall also contain a
5 summary of the comments made by the board to agencies regarding
6 its review of proposed new or amended rules.

7 (g) The expenses of the board may be funded from the
8 compliance resolution fund; provided that this provision shall
9 not require the board to charge any fee for its service. The
10 director of commerce and consumer affairs may include, as part
11 of any other fee charged to a person or organization, an amount
12 with a reasonable nexus to the small business regulatory review
13 activities of the board.

14 For the purpose of this subsection, "expenses" includes
15 operating expenses, personnel expenses, cash capital expenses,
16 and debt service attributable to the board."

17 SECTION 13. All rights, powers, functions, and duties of
18 the small business regulatory review board are transferred to
19 the department of commerce and consumer affairs.

20 All officers and employees whose functions are transferred
21 by this part shall be transferred with their functions and shall



1 continue to perform their regular duties upon their transfer,
2 subject to the state personnel laws and this part.

3 No officer or employee of the State having tenure shall
4 suffer any loss of salary, seniority, prior service credit,
5 vacation, sick leave, or other employee benefit or privilege as
6 a consequence of this part, and such officer or employee may be
7 transferred or appointed to a civil service position without the
8 necessity of examination; provided that the officer or employee
9 possesses the minimum qualifications for the position to which
10 transferred or appointed; and provided that subsequent changes
11 in status may be made pursuant to applicable civil service and
12 compensation laws.

13 An officer or employee of the State who does not have
14 tenure and who may be transferred or appointed to a civil
15 service position as a consequence of this part shall become a
16 civil service employee without the loss of salary, seniority,
17 prior service credit, vacation, sick leave, or other employee
18 benefits or privileges and without the necessity of examination;
19 provided that such officer or employee possesses the minimum
20 qualifications for the position to which transferred or
21 appointed.



1 If an office or position held by an officer or employee
2 having tenure is abolished, the officer or employee shall not
3 thereby be separated from public employment, but shall remain in
4 the employment of the State with the same pay and classification
5 and shall be transferred to some other office or position for
6 which the officer or employee is eligible under the personnel
7 laws of the State as determined by the head of the department or
8 the governor.

9 SECTION 14. All appropriations, records, equipment,
10 machines, files, supplies, contracts, books, papers, documents,
11 maps, electronic communications systems such as RegAlert, and
12 other personal property heretofore made, used, acquired, or held
13 by the small business regulatory review board relating to the
14 functions transferred to the department of commerce and consumer
15 affairs shall be transferred with the functions to which they
16 relate.

17 SECTION 15. This part shall not affect the membership or
18 term of any appointed member of the small business regulatory
19 review board, and any member shall continue to serve on the
20 board for the member's term without necessity of reappointment.

21 **PART IV**



1 SECTION 16. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

4 SECTION 17. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 18. This Act shall take effect on July 1, 2010.

7



Report Title:

Hawaii Television and Film Development; Hawaii Tourism Authority; Community-Based Economic Development Revolving Fund; Small Business Regulatory Review Board

Description:

Part I transfers the television and film industry activities and responsibilities and special fund under the department of business, economic development, and tourism to the Hawaii tourism authority and establishes the Hawaii film office under the authority; authorizes the Hawaii film office to administer the tax credits under section 235-17, Hawaii Revised Statutes; deletes unnecessary provisions; part II 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; part III transfers the small business regulatory review board from the department of business, economic development, and tourism to the department of commerce and consumer affairs; authorizes the board to employ and set the salary of a small business advocate; and authorizes the expenses of the board to be funded entirely from the compliance resolution fund. (SD1)

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