

S.B. NO. 2682

IAN 25 2010

A BILL FOR AN ACT

RELATING TO CREATIVE MEDIA.

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

1 SECTION 1. Hawaii's creative economy is dependent on the
2 vibrancy of its arts, culture, music, film, television, and
3 digital and new media sectors. In 2008, Hawaii's creative
4 sectors collectively contributed \$4,000,000,000 to Hawaii's
5 gross domestic product. Hawaii's film industry branch within
6 the department of business, economic development, and tourism
7 was established in 1978 and has been the central agency to
8 manage functions relating to the development and expansion of
9 the film industry.

10 The film industry branch has provided production services,
11 marketing, film permitting services, and recently tax incentive
12 co-management with the department of taxation. However, Hawaii
13 must find new ways to fund and support key initiatives that are
14 the cornerstones of developing our innovation infrastructure.

15 The purpose of this Act is to establish the Hawaii creative
16 media commission, which formally provides a foundation for
17 expanding the resources and potential of this lucrative sector
18 in our economy. This Act also renames and expands the Hawaii

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1 television and film development special fund into the creative
2 media development special fund, which helps the commission to
3 carry out its creative industries functions in a self-sufficient
4 manner.

5 SECTION 2. Part IX and section 201-111, Hawaii Revised
6 Statutes, are amended to read as follows:

7 " ~~[+] PART IX. [.]~~ ~~[HAWAII TELEVISION AND FILM]~~ CREATIVE MEDIA
8 DEVELOPMENT

9 ~~[+] §201-111 [.]~~ Definitions. As used in this part:

10 "Applicant" means a person applying for a grant ~~[or venture~~
11 ~~capital investment from the board]~~ from the commission under
12 this part.

13 ~~["Board"]~~ "Commission" means the Hawaii ~~[television and~~
14 ~~film development board.]~~ creative media commission.

15 "Department" means the department of business, economic
16 development, and tourism.

17 "Eligible Hawaii-based 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

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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~~] creative
4 media development 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 3. Section 201-112, Hawaii Revised Statutes, is
20 amended to read as follows:

21 " ~~[+] §201-112 [+~~ Hawaii [~~television and film development~~
22 ~~board]~~ film and digital media commission. (a) There is

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1 established [~~the Hawaii television and film development board.~~]
2 a Hawaii creative media commission to assist the department in
3 developing and promoting film, television, digital media, and
4 related creative industries in Hawaii. The [~~board~~] commission
5 shall be attached to the department [~~of business, economic~~
6 ~~development, and tourism~~] for administrative purposes only. The
7 [~~board~~] commission shall administer the grant [~~and venture~~
8 ~~capital investment programs and the Hawaii television and film~~
9 ~~development special fund~~] program established under this part [-]
10 and advise the department on the uses of the film and digital
11 media development special fund. The [~~board~~] commission shall
12 also [~~assess and consider the overall viability and~~] assist and
13 help to promote the development of the film, television [~~and~~
14 ~~film,~~] digital media, and other creative industries and make
15 recommendations to the department and other appropriate state or
16 county agencies.

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

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1 nominees submitted by the speaker of the house of
2 representatives. The four appointed members shall possess a
3 current working knowledge of the film, television, digital
4 media, or ~~[entertainment]~~ creative industry~~[-]~~ sectors,
5 including financial management. The director of business,
6 economic development, and tourism, and the chairs of the four
7 county film ~~[commissions]~~ offices or ~~[its]~~ their equivalent,
8 shall serve as ex officio voting members, who may be represented
9 on the ~~[board]~~ commission by designees.

10 The chairperson and vice chairperson of the ~~[board]~~
11 commission shall be selected by ~~[the board by]~~ majority vote.
12 Five members shall constitute a quorum, whose affirmative vote
13 shall be necessary for all actions by the ~~[board-]~~ commission.
14 The members shall serve without compensation but shall be
15 reimbursed for expenses, including travel expenses, necessary
16 for the performance of their duties.

17 (c) ~~[The film industry branch development manager shall~~
18 ~~serve as the executive secretary of the board.~~

19 ~~-(d)]~~ The ~~[board]~~ commission may adopt rules pursuant to
20 chapter 91 to effectuate the purposes of this part."

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

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1 " ~~[+] §201-113 [+] [Hawaii television and film]~~ Creative
2 media development special fund. (a) There is established in
3 the state treasury the ~~[Hawaii television and film]~~ creative
4 media development 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.]~~ All revenues, fees, rents, and
13 charges, including but not limited to, from tenants
14 and other users of the Hawaii film studio, and from
15 the consolidated film permit processing provided in
16 section 201-14, and the motion picture, digital media,
17 and film production income tax credit provided in
18 section 235-17.

19 (b) The fund shall be used by the ~~[board to assist in, and~~
20 ~~provide incentives for, the production of eligible Hawaii~~
21 ~~projects that are in compliance with criteria and standards~~
22 ~~established by the board in accordance with rules adopted by the~~

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1 ~~board pursuant to chapter 91. In particular, the board shall~~
2 ~~adopt rules to provide for the implementation of the following~~
3 ~~programs.]~~ department to carry out its functions and operations
4 in developing, promoting, and assisting film, television,
5 digital media, and other creative industries in Hawaii.

6 ~~[(1) A grant program.]~~ (c) The fund may be used to assist
7 in, and provide incentives for, the production of eligible
8 Hawaii-based projects that are in compliance with criteria and
9 standards established by the Hawaii creative media commission.

10 The ~~[board]~~ commission shall adopt rules pursuant to chapter 91
11 to provide conditions and qualifications for grants~~[-]~~ to film,
12 television, digital media, and other creative industries
13 entities. Applications for grants shall be made to the ~~[board]~~
14 commission and shall contain such information as the ~~[board]~~
15 commission shall require by rules adopted pursuant to chapter
16 91. At a minimum, the applicant shall agree to the following
17 conditions:

18 ~~[(A)]~~ (1) The grant shall be used exclusively for eligible
19 Hawaii-based projects[-] that support the development
20 and export of Hawaii creative media products;

21 ~~[(B)]~~ (2) The applicant shall have applied for or received
22 all applicable licenses and permits;

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- 1 [~~(E)~~] (3) 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)~~] (4) The applicant shall comply with other
7 requirements as the [~~board~~] commission may prescribe;
- 8 [~~(E)~~] (5) All activities undertaken with funds received
9 shall comply with all applicable federal, state, and
10 county statutes and ordinances;
- 11 [~~(F)~~] (6) 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 arising
14 out of or resulting from activities carried out or
15 projects undertaken with funds provided hereunder, and
16 procure sufficient insurance to provide this
17 indemnification if requested to do so by the
18 department;
- 19 [~~(G)~~] (7) The applicant shall make available to the [~~board~~]
20 commission all records the applicant may have relating
21 to the project, to allow the [~~board~~] commission to

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1 monitor the applicant's compliance with the purpose of
2 this chapter; and

3 ~~[(H)]~~ (8) The applicant, to the satisfaction of the
4 ~~[board,~~ commission, shall establish that sufficient
5 funds are available for the completion of the project
6 for 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]."~~

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1 SECTION 4. Section 201-114, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§201-114[+] Inspection of premises and records. The
4 [~~board~~] commission shall have the right to inspect, at
5 reasonable hours, the plant, physical facilities, equipment,
6 premises, books, and records of any applicant in connection with
7 the processing of a grant to the applicant."

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:

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BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO CREATIVE MEDIA.

PURPOSE: Replaces the Hawaii Television and Film Development Board with the Hawaii Creative Media Commission and renames and expands the Hawaii Television and Film Development Special Fund into the Creative Media Development Special Fund.

MEANS: Amend sections 201-111, 201-112, 201-113, and 201-114, Hawaii Revised Statutes.

JUSTIFICATION: Hawaii's creative economy is dependent on the vibrancy of its arts, culture, music, film, television, digital, and new media sectors. In 2008, Hawaii's creative sectors collectively contributed \$4,000,000,000 to Hawaii's gross domestic product. Hawaii's Film Industry Branch within the Department of Business, Economic Development, and Tourism was established in 1978 and has been the central agency to manage functions relating to the development and expansion of the film industry.

This bill recognizes the importance of the creative industries in Hawaii by replacing the Hawaii Television and Film Development Board with the Hawaii Creative Media Commission, an advisory commission attached to the Department of Business, Economic Development, and Tourism (DBEDT).

Additionally, this bill also expands the Hawaii Television and Film Development Special Fund into the Creative Media Development Special Fund. The Hawaii Television and Film Development Special Fund was originally established to provide a mechanism to support grants for local Hawaii filmmakers. However, in light of the

State's economic conditions, it is necessary to rename and expand the scope of this fund to support the operations of DBEDT's film and related programs.

This bill allows DBEDT to deposit into the Creative Media Development Special Fund various revenues earned through creative industries operations, such as fees, facility lease rents, etc., which in turn will be used by the Department to support a broader spectrum of creative sector development.

Impact on the public:

Improves support for small businesses and entrepreneurs in Hawaii's creative industries by expanding DBEDT's resources.

Impact on the department and other agencies:

Improves the operations of DBEDT by increasing its self-sufficiency.

- GENERAL FUND: None.
- OTHER FUNDS: Renames and Expands the Hawaii Television and Film Development Special Fund.
- PPBS PROGRAM DESIGNATION: BED-105.
- OTHER AFFECTED AGENCIES: Department of Taxation and Department of Commerce and Consumer Affairs.
- EFFECTIVE DATE: July 1, 2010.