

JAN 26 2011

A BILL FOR AN ACT

RELATING TO DIGITAL MEDIA.

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

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PART I

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SECTION 1. The purpose of this Act is to leverage the unique opportunities for digital media industry development in Hawaii resulting from the groundbreaking of the long-awaited University of Hawaii-West Oahu campus in Kapolei and recent high-profile film projects in Hawaii, including the "Pirates of the Caribbean" in 2010.

The University of Hawaii-West Oahu campus will house the academy for creative media's student digital media production facility that will provide global-standard student facilities to anchor the premiere media school of the Pacific Rim. The facility will also include a state-of-the-art motion picture and digital media studio complex to serve film and video production (with four sound stages, two production support buildings, a mill/shop extension and extra stage, commissary/kitchen, festival pavilion and screening room to host events and conferences, back-lot retail/shopping/dining area and office buildings that may provide incubator space for new media



1 companies). The University of Hawaii-West Oahu Campus will also
2 house the Henry Ku'ualoha Giugni Digital Archives, which is
3 designed to preserve, digitize, and provide the moving image
4 history of Hawaii on the Internet.

5 The digital media tax incentive in this Act is designed to
6 align the strengths of the University of Hawaii system and its
7 multiple campuses with the creativity of University of Hawaii
8 academy for creative media graduates and the talented media
9 workforce from leeward Oahu emerging from the Waianae Seariders'
10 program since 1998, or from the schools and businesses that the
11 Seariders have helped to incubate. By requiring that
12 beneficiaries of the digital media production infrastructure tax
13 credit locate in enterprise zones in which some of the
14 University of Hawaii campuses are located, the tax credit
15 targets new media industry development, educational public-
16 private facility and infrastructure development, and job
17 creation with a focus on measurable economic benefits over time.

18 The current and proposed University of Hawaii-West Oahu
19 campuses are located in an existing enterprise zone covering
20 most of the Kapolei region. Leeward community college and
21 Honolulu community college are also located within existing
22 enterprise zones. Neighbor island community college campuses on



1 Maui, Kauai, and Hawaii are in enterprise zones, as is the
2 University of Hawaii at Hilo.

3 SECTION 2. Chapter 209E, Hawaii Revised Statutes, is
4 amended by adding a new part to be appropriately designated and
5 to read as follows:

6 "PART . DIGITAL MEDIA ENTERPRISE SUBZONES

7 §209E-A Definitions. As used in this part:

8 "Base investment" means the cost, including fabrication and
9 installation, paid or accrued in the taxable year, of tangible
10 assets of a type that are, or under the Internal Revenue Code
11 will become, eligible for depreciation, amortization, or
12 accelerated capital cost recovery for federal income tax
13 purposes; provided that the assets are physically located in
14 this State for use in a business activity in this State and are
15 not mobile tangible assets expended by a person in the
16 development of a qualified digital media infrastructure project.
17 Base investment does not include a direct production expenditure
18 or qualified personnel expenditure eligible for a tax credit
19 under section 235-17.

20 "Department" means the department of business, economic
21 development, and tourism.

22 "Digital media" has the same meaning as in section 235-17.



1 "Digital media enterprise subzone" means the geographic
2 area located within a mile radius of a University of
3 Hawaii campus, on or off campus, that is within an existing
4 enterprise zone established pursuant to part I of this chapter
5 or other delineated geographic area designated by the
6 legislature pursuant to this part; provided that effective from
7 July 1, 2011, to June 30, 2013, establishment of a subzone shall
8 be limited to an area within a mile radius, on or off
9 campus, of the University of Hawaii-West Oahu.

10 "Director" means the director of business, economic
11 development, and tourism.

12 "Qualified digital media infrastructure project" means the
13 development, construction, renovation, or operation of a digital
14 media production facility, a postproduction facility, or both,
15 that is located in this State within a digital media enterprise
16 subzone; provided that the facility may include a movie theater
17 or other commercial exhibition facility to assist in offsetting
18 operating costs of the production or postproduction facility,
19 but shall not include a facility used to produce pornographic
20 matter or a pornographic performance.

21 **§209E-B Digital media infrastructure tax credit. (a)**

22 There shall be allowed to each taxpayer qualifying for a tax



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

10 (b) No more than \$ in total tax credits under
11 this section shall be authorized in any one taxable year.

12 (c) If all or a portion of a qualified digital media
13 infrastructure project is a facility that may be used for
14 purposes unrelated to production or postproduction activities,
15 the project shall be eligible for the tax credit only if the
16 department determines that the facility will support and be
17 necessary to secure production or postproduction activity;
18 provided that the taxpayer agrees to both of the following:

19 (1) The facility will be used as a state-of-the-art
20 production or postproduction facility or as support
21 and as a component of the facility for the useful life
22 of the facility; and



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

3 (d) A taxpayer shall be eligible for certification by the
4 department to qualify for a tax credit if the taxpayer:

5 (1) Receives from the department a written certification
6 that the taxpayer has undertaken, or will undertake
7 within one hundred eighty days of the issuance of the
8 certification, the development, construction,
9 renovation, or operation of a qualified digital media
10 infrastructure project within a digital media
11 enterprise subzone; provided that, upon request
12 submitted by the taxpayer based on good cause, the
13 department may extend the period for commencement of
14 work for up to an additional ninety days;

15 (2) Before July 1, 2012, shall expend not less than
16 \$100,000 on the base investment for a qualified
17 digital media infrastructure project within a digital
18 media enterprise subzone, and the taxpayer, after July
19 1, 2012, shall expend not less than \$250,000 on the
20 base investment for a qualified digital media
21 infrastructure project in a digital media enterprise
22 subzone;



- 1 (3) Enters into an agreement as provided in this section;
- 2 (4) Receives an investment expenditure certificate from
- 3 the department under subsection (i);
- 4 (5) Submits the investment expenditure certificate issued
- 5 by the department under subsection (i) to the
- 6 department of taxation; and
- 7 (6) Shall not be delinquent in a tax or other obligation
- 8 owed to the State or be owned or under common control
- 9 of an entity that is delinquent in a tax or other
- 10 obligation owed to the State.

11 (e) To claim a tax credit under this section, a taxpayer
12 shall submit an investment expenditure certificate issued under
13 subsection (i) to the department.

14 If the tax credit allowed under this section exceeds the
15 amount of taxes owed by the taxpayer, that portion of the tax
16 credit that exceeds the tax liability of the taxpayer for the
17 tax year shall not be refunded but may be carried forward to
18 offset net income tax liability under chapter 235 in subsequent
19 tax years for a period not to exceed ten tax years or until
20 exhausted, whichever occurs first.

21 (f) The tax credit under this section shall be claimed
22 after all other tax credits available to the taxpayer have been



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

15 (g) In order to qualify for the tax credit established
16 under this section, the taxpayer shall submit an application to
17 enter into an agreement with the department. The application
18 shall be submitted in a form prescribed by the department and
19 shall be accompanied by a \$100 application fee and all of the
20 information and records requested by the department. The
21 application fee received by the department under this subsection
22 shall be deposited in the Hawaii film office special fund



1 established pursuant to section 201-113. The department shall
2 not process an application until it is complete. The agreement
3 shall provide for all of the following:

- 4 (1) A unique number assigned to the qualified digital
5 media infrastructure project;
- 6 (2) A detailed description of the qualified digital media
7 infrastructure project;
- 8 (3) A detailed business plan and market analysis for the
9 qualified digital media infrastructure project;
- 10 (4) A projected budget for the qualified digital media
11 infrastructure project;
- 12 (5) An estimated start date and completion date for the
13 qualified digital media infrastructure project;
- 14 (6) A requirement that the taxpayer not file a claim for
15 the credit under this section until at least twenty-
16 five per cent of the base investment in the qualified
17 digital media infrastructure project identified in the
18 agreement has been expended; and
- 19 (7) A requirement that the taxpayer provide the department
20 with the information and independent certification the
21 department deems necessary to verify investment



1 expenditures and eligibility for the credit under this
2 section.

3 (h) In determining whether to enter into an agreement
4 under this section, the department shall consider all of the
5 following:

6 (1) The potential that in the absence of the tax credit
7 allowed under this section, the qualified digital
8 media infrastructure project will be constructed in a
9 location other than this State;

10 (2) The extent to which the qualified digital media
11 infrastructure project may have the effect of
12 promoting economic development or job creation in this
13 State;

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

18 (4) The extent to which the tax credit will encourage the
19 development of film, video, television, and digital
20 media production and postproduction facilities in this
21 State.



1 (i) The taxpayer shall submit a request to the department
2 for an investment expenditure certificate on a form prescribed
3 by the department, along with any information or independent
4 certification the department deems necessary. The department
5 shall process each request within sixty days after the request
6 is complete. However, the department may request additional
7 information or independent certification before issuing an
8 investment expenditure certificate and need not issue the
9 investment expenditure certificate until satisfied that
10 investment expenditures and eligibility are adequately
11 established. The additional information requested may include a
12 report of expenditures audited and certified by an independent
13 certified public accountant. If the department determines that
14 a taxpayer has complied with the terms of an agreement entered
15 into under this section, the department shall issue an
16 investment expenditure certificate to the taxpayer. Each
17 investment expenditure certificate shall be signed by the
18 director and shall include the following information:

- 19 (1) The name of the taxpayer;
20 (2) A description of the qualified digital media
21 infrastructure project;



- 1 (3) The taxpayer's eligible base investment for the
2 qualified digital media infrastructure project;
- 3 (4) The unique number assigned to the qualified digital
4 media infrastructure project by the department under
5 subsection (g) (1);
- 6 (5) The taxpayer's federal employer identification number
7 or state taxpayer identification number; and
- 8 (6) Any independent certification required by the
9 department.
- 10 (j) In addition to the \$100 application fee established
11 under subsection (g), the department may establish, assess, and
12 collect a tax credit application and redemption fee to cover the
13 costs of administering the tax credit certification program
14 established under this part. The fee shall not exceed one-half
15 of one per cent of the tax credit claimed, and shall be paid to
16 the department by the taxpayer prior to filing for the tax
17 credit. The department shall deposit any proceeds derived from
18 the fee in the Hawaii film office special fund established under
19 section 201-113.
- 20 (k) If at the close of any taxable year:



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

4 (2) The digital media infrastructure project or an
5 interest in the digital media infrastructure project
6 has been sold by the taxpayer making a base investment
7 in the qualified digital media infrastructure project;
8 or

9 (3) The taxpayer has withdrawn the taxpayer's base
10 investment wholly or partially from the qualified
11 digital media infrastructure project,

12 the tax credit claimed under this section shall be recaptured.
13 The recapture shall be equal to twenty-five per cent of the
14 amount of the total tax credit claimed under this section in the
15 preceding two taxable years. The amount of the tax credit
16 recaptured shall apply only to the investment in the particular
17 digital media infrastructure project that meets the requirements
18 of paragraph (1), (2), or (3). The amount of the recaptured tax
19 credit determined under this subsection shall be added to the
20 taxpayer's tax liability for the taxable year in which the
21 recapture occurs under this subsection.



1 SECTION 4. Chapter 431, Hawaii Revised Statutes, is
2 amended by adding a new section to part II of article 7 to be
3 appropriately designated and to read as follows:

4 "§431:7- Digital media infrastructure tax credit. The
5 digital media tax infrastructure tax credit provided under
6 section 209E-B shall apply to this article on July 1, 2011."

7 PART II

8 SECTION 5. Section 201-111, Hawaii Revised Statutes, is
9 amended by amending the definitions of "board" and "fund" to
10 read as follows:

11 "'Board" means the Hawaii [~~television and film development~~]
12 film office board.

13 "Fund" means the Hawaii [~~television and film development~~]
14 film office special fund."

15 SECTION 6. Section 201-112, Hawaii Revised Statutes, is
16 amended by amending the title and subsection (a) to read as
17 follows:

18 "[+]§201-112[+] Hawaii [~~television and film development~~]
19 film office board. (a) There is established the Hawaii
20 [~~television and film development~~] film office board. The board
21 shall be attached to the department of business, economic
22 development, and tourism for administrative purposes only. The



1 board shall administer the grant and venture capital investment
2 programs and the Hawaii [~~television and film development~~] film
3 office special fund established under this part. The board
4 shall also assess and consider the overall viability and
5 development of the television and film industries and make
6 recommendations to appropriate state or county agencies."

7 SECTION 7. Section 201-113, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[+]§201-113[+] Hawaii [~~television and film development~~]
10 film office special fund. (a) There is established in the
11 state treasury the Hawaii [~~television and film development~~] film
12 office special fund into which shall be deposited:

- 13 (1) Appropriations by the legislature;
- 14 (2) Rent from usage of the Hawaii film studio operated by
15 the film office branch;
- 16 (3) Fees collected by the department for processing
17 taxpayer letters pursuant to section 235-17 and the
18 tax credit certification program pursuant to section
19 209E-B;
- 20 [-2-] (4) Donations and contributions made by private
21 individuals or organizations for deposit into the
22 fund; and



- 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 (b) Moneys in the fund shall be used for the operations of
2 the Hawaii film office, including personnel costs of staff
3 positions existing on November 1, 2010; provided that the use of
4 the fund for personnel costs shall be limited to those employees
5 performing specialized duties who are assigned solely to the
6 Hawaii film office."

7 SECTION 8. Section 201-113, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§201-113 Hawaii film office special fund. (a) There is
10 established in the state treasury the Hawaii film office special
11 fund into which shall be deposited:

- 12 (1) Appropriations by the legislature;
- 13 ~~[-(2) Rent from usage of the Hawaii film studio operated by~~
14 ~~the film office branch;~~
- 15 ~~[-(3) Fees collected by the department for processing~~
16 ~~taxpayer letters pursuant to sections 235 and~~
17 ~~235-17;~~
- 18 ~~[-(4)]~~ (2) Donations and contributions made by private
19 individuals or organizations for deposit into the
20 fund; [and]
- 21 ~~[-(5)]~~ (3) Grants provided by governmental agencies or any
22 other source ~~[-]~~; and



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

3 ~~[(b) Moneys in the fund shall be used for the operations~~
4 ~~of the Hawaii film office, including personnel costs of staff~~
5 ~~positions existing on November 1, 2010; provided that the use of~~
6 ~~the fund for personnel costs shall be limited to those employees~~
7 ~~performing specialized duties who are assigned solely to the~~
8 ~~Hawaii film office.]~~

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

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



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



1 (G) The applicant shall make available to the board
2 all records the applicant may have relating to
3 the project, to allow the board to monitor the
4 applicant's compliance with the purpose of this
5 chapter; and

6 (H) The applicant, to the satisfaction of the board,
7 shall establish that sufficient funds are
8 available for the completion of the project for
9 the purpose for which the grant is awarded; and

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



1 as the board shall determine to be reasonable,
2 appropriate, and consistent with the purposes and
3 objectives of this part."
4

5 SECTION 9. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 10. In codifying the new sections added by section
9 2 of this Act, the revisor of statutes shall substitute
10 appropriate section numbers for the letters used in designating
11 the new sections in this Act.

12 SECTION 11. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 12. This Act shall take effect on July 1, 2011;
15 provided that:

16 (1) Sections 2, 3, and 4 shall be repealed on June 30,
17 2021;

18 (2) Section 7 shall be effective until June 30, 2021; and



1 (3) Section 8 shall take effect on July 1, 2021.

2

INTRODUCED BY:

Mike Hubbard

Carol Fink

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Ronny H. Paul

Franne Ann Caldwell



Report Title:

Digital Media Enterprise Subzones; 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.

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

