NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
INTERIM DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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STATEMENT OF

RICHARD C. LIM
Interim Director
Department Of Business, Economic Development, and Tourism

before the

HOUSE COMMITTEE ON FINANCE

Wednesday, March 2, 2011
10:00am.
State Capitol, Conference Room 308

in consideration of

HB1551 HD1
RELATING TO TAX CREDITS

Chair Oshiro and Vice-Chair Lee and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) supports the intent of SB1551 HD1 and appreciates this measure retains the existing HRS235-17 percentages of credits at 15% and 20% while including new sections that further define the parameters for qualifications for the infrastructure and workforce development credits. DBEDT will continue to confer with Department of Taxation and industry to thoroughly analyze the impacts and economic benefits of this proposed measure as discussions move forward.

In 2010, an estimated $416 million in production expenditures were generated in film and television ; $395 million through Act 88 and $21 million in non-Act 88 related production activity, providing over $683 million in estimated economic impact for our state. Since its inception in 2006, Act 88 has generated $774 million of estimated production expenditures, providing annual job growth of 500 to 3300 jobs, with an estimated cumulative economic impact of $1 billion. This credit remains crucial to Hawaii's competitive advantage in the global entertainment industry and HB1551 HD1 has key elements which assist the state in growing this advantage.

We do have concerns with increasing the minimum qualified production costs for Act 88 applicants from $200,000 to $300,000. This change may adversely impact local Hawaii-based productions that tend to have smaller budgets and could potentially be excluded. We realize the $300,000 figure relates to the infrastructure credit component and perhaps this can be addressed in amended language.

We also bring to your attention a possible technical error in Section 2 (c)(5)(C). The date of "July 1, 2011" would effectively prevent any company from qualifying and applying for the infrastructure tax credit unless they had already expended 30% of the total base investment prior to the enactment of this law.

With the interest and commitment of companies like Relativity Media, RelativityREAL, Shangri-La , Hawaii Animation Studios, Avatar Reality, Blue Water Multimedia, Prox13 and our local production community, together these businesses are helping to define Hawaii as a vibrant hub of creative industry development. Coupled with the creative talent of Hawaii's visual storytellers and our educational programs in creative media, the state has an unprecedented opportunity to build a sustainable sector through a broad spectrum of strategic partnerships for scalable industry growth.

The ideas and programs proposed in HB1551 HD1 (SB318 SD2 proposed) could provide an important flash point for establishing Hawaii as a major production center, as well as other measures this session that enhance support for digital media education, expanded training programs and facilities development.

DBEDT and its Creative Industries Division encourage continued dialogue between lawmakers, the administration and industry leaders to fully vet the opportunities as well as the impacts of this measure.

Thank you for the opportunity to testify.

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Qualified media infrastructure projects

BILL NUMBER: HB 1551, HD-1

INTRODUCED BY: House Committee on Economic Revitalization and Business

BRIEF SUMMARY: Amends HRS section 235-17 to allow taxpayers, between July1, 2011 and December 31, 2015, to claim a credit of 25% of the qualified costs incurred for qualified media infrastructure projects in any county with a population over 700,000; or 40% of the qualified costs incurred for qualified media infrastructure projects in any county with a population of 700,000 or less. To qualify for the credit: (1) the base investment for a qualified media infrastructure project shall be in excess of $300,000; (2) the qualified media infrastructure project tax credit shall be non-refundable with any tax credit that exceeds the tax liability of the taxpayer for the tax year carried forward to offset net income tax liability in subsequent tax years for up to 10 years or until exhausted, whichever occurs first. The director of taxation may require the tax credits to be taken or assigned in the tax period in which the credit is earned or may structure the tax credit in the initial certification of the project to provide that only a portion of the tax credit be taken over the course of two or more years; (3) the total qualified media infrastructure project tax credit allowed for any state-certified infrastructure project shall not exceed $25 million; (4) if any portion of an infrastructure project is a facility that may be used for other purposes unrelated to production or post production activities, then the project shall be approved only if a determination is made that the multiple use facility will support and will be necessary to secure production or post production activity for the production and post production facility; provided that no tax credits shall be earned on such multiple use facilities until the production or post production facility is complete; (5) tax credits for infrastructure projects shall be earned only if: (a) construction of the infrastructure project begins within six months of the initial certification and shall be completed within a five-year time frame; (b) expenditures shall be certified by the director of taxation and credits shall not be earned until that certification; (c) no tax credit shall be allowed for expenditures made for any infrastructure project after July 1, 2011 unless 30% of the total base investment provided for in the initial certification of the project has been expended prior to that date; provided that the expenditures may be finally certified at a later date; and (d) the tax credits shall be deemed earned at the time the expenditures are made, provided that all requirements of this subsection have been met and the tax credits have been certified; (6) for state-certified infrastructure projects, the application for a qualified media infrastructure project tax credit shall include: (a) a detailed description of the infrastructure project; (b) a preliminary budget; (c) a complete detailed business plan and market analysis; (d) estimated start and completion dates; and (e) if the application is incomplete, additional information may be requested prior to further action by the director of taxation; (7) an application fee shall be submitted with the application for a qualified media infrastructure project tax credit; (8) prior to any final certification of a tax credit for a state-certified infrastructure project, the applicant for the infrastructure project tax credit shall submit to the director of taxation an audit of the expenditures audited and certified by an independent certified public accountant as determined by rule. Upon approval of the audit, the director of taxation shall issue a final tax credit certification letter indicating the amount of tax credits certified for the state-certified infrastructure project to the investors. Bank loan finance fees applicable to the qualified media infrastructure project expenditures, as certified by the director of taxation, and any general excise taxes that have been paid on the bank loan finance fees and remitted to the state may be included as part of the tax credit.

There shall be a qualified persons crew training program rebate equal to 50% of the hourly wages of each resident participant in a qualified local crew training program up to the first nine hundred hours physically worked by the qualifying crew member in a specialized craft position.

Amends HRS section 235-17(d) to provide that a qualified production shall be eligible for the motion picture tax credit if the qualified production has costs of at least $300,000.

Delineates eligibility and filing requirements to claim the qualified media infrastructure project tax credit, including the pledge of a lien in the favor of the state in the amount of $40 million or collateral security in the amount of $40 million.

Deletes the $8 million limit of the total production tax credits that may be claimed under this section per qualified production and provides that the qualified media infrastructure project income tax credits shall be capped at $25,000,000 in the aggregate.

Allows a taxpayer eligible to claim a tax credit under this section to assign all or a portion of a tax credit under this section to any assignee. A tax credit assignment under this section shall be irrevocable and shall be made on a form prescribed by the director of taxation. A taxpayer claiming a tax credit under this section shall send a copy of the completed assignment form to the department of taxation in the tax year in which the assignment is made and shall attach a copy of the form to the tax return on which the tax credit is claimed.

Adds definitions of "base investment," "director," "qualified media infrastructure project," "qualified person" and "qualified persons crew training programs" for purposes of the measure.

Amends the definition of "qualified production costs" to include: (1) costs for equipment or items not readily obtainable in the state which are passed through a qualified resident vendor and upon which a mark-up and general excise tax are paid; and (2) bank loan finance fees applicable to the qualified production expenditures as finally certified by the director of taxation to the extent that a general excise tax is paid and remitted to the state. For the purposes of this section, banks providing loans to qualified productions shall be considered service vendors that are providing services to a production company where the motion picture film product consists in part of the value of services provided and shall be subject to the one-half of one per cent tax rate under HRS section 237-18(c).

EFFECTIVE DATE: July 1, 2112

STAFF COMMENTS: The legislature by Act 107, SLH 1997, enacted an income tax credit of 4% for costs incurred as a result of producing a motion picture or television film in the state and 7.25% for transient accommodations rented in connection with such activity. The credit was adopted largely to address the impost of the state's general excise tax on goods and services used by film producers. The exclusion of income received from royalties was initially established by Act 178, SLH 1999, as an incentive to attract high technology businesses to Hawaii. The original proposal would have applied to royalties and other income received from high technology businesses. This section of the law was later amended in 2000 by Act 297 which added the inclusion of royalties from "performing arts products" and again amended by Act 221, SLH 2001, to include authors of "performing arts products."

The legislature by Act 88, SLH 2006, increased the 4% credit to 15% in a county with a population over 700,000 and to 20% in a county with a population of 700,000 or less. Act 88 also repealed the income tax credit for transient accommodations and expanded the credit to include commercials and digital media productions, and limited the credit to $8 million per qualified production.

These credits have been morphing and expanding into full-blown tax credits since they "got their foot in the door" in 1997. This measure proposes to expand the existing motion picture, digital media and film production income tax credits to media infrastructure projects which may include certain equipment costs, bank loan finance fees attributable to a qualified production, and other direct production costs. A qualified persons crew training program rebate equal to 50% of the hourly wages of each resident participant in a qualified local crew training program up to the first nine hundred hours physically worked by the qualifying crew member in a specialized craft position is also proposed. This measure would also eliminate the $8 million cap of the tax credits which may be claimed by a qualified production.

It should be remembered that the perpetuation and expansion of the motion picture credits are a drain on the state treasury. It is incredulous how lawmakers can bemoan the fact that there are insufficient resources to catch up on the backlog of school repairs and maintenance, to fund social programs and not being able to provide tax relief to residents and yet they are willing to throw additional public resources at a subsidy of film production and media infrastructure as proposed in this measure. Taxpayers should be insulted that lawmakers can provide breaks for film productions but refuse to provide tax relief for residents, many of whom work two or three jobs just to keep a roof over their head and food on the table.

There is absolutely no rational basis for this proposal that the credit be expanded to include media infrastructure projects. Instead of utilizing back door subsidies through tax credits, film industry advocates need to promote the beauty that is synonymous with Hawaii.

Income tax credits are designed to reduce the tax burden by providing relief for taxes paid. Tax credits are justified on the basis that taxpayers with a lesser ability to pay should be granted relief for state taxes imposed. While the sponsors try to make an argument that Hawaii needs to enact such an incentive to compete for this type of business, one has to ask "at what price?" Promoters of the film industry obviously don't give much credit to Hawaii's natural beauty and more recently its relative security. Just ask the actors of "Lost" or "Hawaii 5-0" who have bought homes here if they would like to work elsewhere. While film producers may moan that they will lose money without the proposed tax credits, is there any offer to share the wealth when a film makes millions of dollars? If promoters of the film industry would just do their job in outlining the advantages of doing this type of work in Hawaii and address some of the costly barriers by correcting them, such tax incentives would not be necessary. From permitting to skilled labor to facilitating transportation of equipment, there are ways that could reduce the cost of filming in Hawaii. Unless these intrinsic elements are addressed, movie makers will probably demand subsidies, such as this incentive. Unfortunately, they come at the expense of all taxpayers and industries struggling to survive in Hawaii. While lawmakers look like a ship of fools, movie producers and promoters are laughing all the way to the bank and the real losers in this scenario are the poor taxpayers who continue to struggle to make ends meet.

This, along with proposals from film producers, seems to have caught the eye and excitement of lawmakers. Certainly the promise of the land of milk and honey seems all too good to be true especially amidst the doom and gloom of an $850 million budget shortfall. However, the harsh reality is that on the other end taxpayers are looking at proposals to raise taxes, tax pensions, raise alcohol taxes, slap new taxes on sugary drinks and yet another round of fee and user charge increases. With the loss of millions of dollars in tax breaks and tax credits, how can local taxpayers buy into proposals like these, especially in light of the fact that lawmakers are unwilling to make cuts in other programs? Before lawmakers go off on the deep end entranced by all of these wonderful offers to bring the state to the land of milk and honey, they need to address the fiscal realities on the road before them. On top of this all, lawmakers have yet to address the unfunded liability of the state's retirement and health system.

So while there may be the promise of a new industry and increased career opportunities, lawmakers must return to the cold hard reality of solving the problems at hand. The long and short of it is that due in large part to the irresponsibility of handling state finances in the past, taxpayers cannot afford proposals like this. Thanks to the gushing generosity of those lawmakers who gave the state's bank away in all sorts of tax incentive schemes in recent years, taxpayers cannot afford what looks like a promising opportunity.

Robert Tannenwald, a senior fellow at the Center for Budget and Policy Priorities, drew the following conclusions in a report entitled "State Film Subsidies Offer 'Little Bang for the Buck'," published in State Tax Notes Magazine, December 13, 2010:

> "State film subsidies are a wasteful, ineffective, and unfair instrument of economic development. While they appear to be a "quick fix" that provides jobs and businesses to state residents with only a short lag, in reality they benefit mostly nonresidents, especially well-paid nonresident film and TV professionals. Some residents benefit from these subsidies, but most end up paying for them in the form of fewer services - such as education, healthcare and police and fire protection - or higher taxes elsewhere. The benefits to the few are highly visible; the costs to the majority are hidden because they are spread so widely and detached from the subsidies.
>
> State governments cannot afford to fritter away scarce public funds on film subsidies, or, for that matter, any other wasteful tax break. Instead, policymakers should broaden the base of their taxes to create a fairer and more neutral tax system. Economic development funds should be targeted on programs that are much more likely to e effective in the long run, such as support of education and training, enhancement of public safety, and maintenance and improvement of public infrastructure. Effective public support of economic development may not be glamorous, but at its best, it creates lasting benefits for residents from all walks of life."

Digested 3/1/11

Testimony of Clyde T. Hayashi
Director
Hawaii LECET
1617 Palama Street
Honolulu, HI 96817

HOUSE COMMITTEE ON FINANCE
Wednesday, March 2, 2011
10:00 a.m., Conference Room 308

HB1551 HD1 - RELATING TO TAX CREDITS

Aloha Chair Oshiro, Vice-Chair Lee, and Members of the Committee:

My name is Clyde Hayashi and I am the director of Hawaii LECET (Laborers-Employers Cooperation and Education Trust). Hawaii LECET is a partnership between the Hawaii Laborers' Union, Local 368 and our union contractors.

I am submitting this testimony in **strong support** of the intent and purpose of HB 1551 HD1.

HB 1551 HD1 will provide the needed incentives that will allow for an expansion and development of our important film industry, an industry with tremendous potential.

HB 1551 HD1 will allow for expansion of the film industry to a point that it will have the infrastructure and facilities which will provide a much more attractive package to producers and film companies. This package added to the lure of our beautiful state will attract many more to film here.

As the film industry is built & expanded, construction opportunities and jobs will be created. This comes at a time when our industry is struggling. Our benches are filled with unemployed construction workers and our contractors are struggling to survive the awful construction downturn. We also expect a stable and growing film industry to continue to provide construction opportunities and jobs over the coming years.

HB 1551 HD1 will to help establish training programs so that Hawaii can provide the film industry with the trained, skilled workforce that it needs.

HB 1551 HD1 will help to provide a needed boost to our economy and create a stable film industry to which will benefit Hawaii over the coming years.

Thank you for the opportunity to submit this testimony.

RELATIVITY

Ryan Kavanaugh, CEO, Relativity Media LLC
Kenneth Halsband, President, Physical Production, Relativity Media LLC
Ramon Wilson, EVP, Business Development, Relativity Media LLC

Testimony presented before the Committee of Ways and Means

March 2, 2011, 10:00 am

HB 1551 Relating to Tax Credits

Dear Chair Oshiro, Vice Chair Lee, and Members of the Committee:

We submit this testimony in support of HB 1551 and are honored to have the opportunity to participate in improving the film tax incentive program in Hawaii.

Hawaii is a beautiful state, with a well trained local film crew and filming-friendly weather year round. As a result of these fundamental elements, Hawaii is poised to experience significant and sustainable growth in the amount of film-related production, infrastructure, job/career opportunities and economic activity, if it improves its film tax incentive program.

Currently, most films come to Hawaii for its natural beauty, unique exteriors and film-friendly weather year round as it also has among the highest film union labor rates in the country, high cost to travel crew and ship equipment, and limited local infrastructure. If Hawaii was to improve its film tax incentive program, based on the proposed amendments, it would mitigate these factors and attract both major Hollywood and independent film/television productions, which currently do not film in Hawaii, thereby creating a lasting surge of film production and related economic activity.

As Hawaii has very limited production space, it needs additional film stages in order to support the growth of its film industry. Relativity, with the support of Steve Bing's Shangri-La Industries and JP Morgan, is prepared to build 180,000 square feet, state-of-the-art, first-class production facilities, on Oahu, Maui and potentially other neighbor islands, budgeted at $300-500 million with the capacity to house multiple film/television productions simultaneously. These facilities will be built "green" and to qualify as two of very few LEED Platinum Certified (the highest environmentally friendly rating awarded) buildings in Hawaii. The proposed amendment makes building these facilities financially viable and will drive economic development associated with major construction projects. It will also drastically increase the economic activity associated with film production generally as more production dollars will be spent in Hawaii.

Hawaii has a thriving group of local film makers, film production crew and businesses that benefit from the limited number of films currently shot in Hawaii. An improved film tax incentive program, coupled with a formal local film crew training program, would drive growth of this film community and further development of the local film industry. This would give more local residents the opportunity to work in the high-paying film-related jobs. Over time, a majority of the jobs on each film production, including department heads, would be filled by State residents as opposed to out-of-state workers. And the training program, as proposed, would not cost the state a penny, but rather generate a surplus.

HB 1551 will set the stage to allow Hawaii's film industry to flourish, in a controlled way, and turn Hawaii into a major film production center leading to thousands of high-paying local jobs and major growth in local economic activity.

HB 1551 highlights the following improvements:

- an increase in the film tax credit (to 35% in counties with populations over 700,000 and to 40% in counties with populations under 700,000 – refundable and assignable) which will bring more production immediately and provide more job opportunities
- a 5% visual affects tax credit which will over time create a new post production industry in Hawaii
- establishes an infrastructure credit (25% in counties with populations over 700,000 and to 40% in counties with populations under 700,000 with a $25mm cap per project – refundable and assignable) which will allow the film industry to build state-of-the art production facilities with 10 Stage
- a Film Advancement Career Training (FACT) Program which will increase the local crew base and build careers for local state residents at no cost to the State (rebate equal to 50% of the hourly wages of each resident participant in a qualified local crew training program up to the first nine hundred hours physically worked by the qualifying crew member in a specialized craft position)
- an increased permit fees to productions which will help to fund the training program the first year as well as create a surplus of funds to oversee the film incentive programs. The fee is equal to ½ of 1 percent of the production spend for the administration, monitoring, auditing and certification of the tax credit with a cap of $75,000
- Allows for purchases and rentals not available in Hawaii to qualify for the tax credit if obtained through a resident production services company

We have done extensive research and analysis on how to make the film tax incentive financially competitive with other production centers in the United States of America and around the world. This analysis shows how the proposed amendments achieve this in a manner that is economically advantageous to Hawaii. We look forward to working with the State Legislature, the Department of Business, Economic Development and Tourism, the Department of Taxation and the local film community to increase film/television production, build stages and related infrastructure and create new job and career opportunities for state residents.

We thank the Committee for the opportunity to present testimony on this matter.

Sincerely,

Ryan Kavanaugh, CEO, Relativity Media LLC

Kenneth Halsband, President, Physical Production, Relativity Media LLC

Ramon Wilson, EVP, Business Development, Relativity Media LLC

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Reply Reply to All Forward

Wyatt Knight [stagesinfo2002@yahoo.com]
Sent: Tuesday, March 01, 2011 9:19 PM
To: Tom Loftus

My name is Wyatt Knight. I have been an actor in film and television for more than thirty years. I live in Hawaii and I am writing today about HB1551. Here in Hawaii we have many film industry professionals and an army of willing trainees. Building studios in Hawaii would create thousands of, much needed, new jobs and new business opportunities for Hawaiians. It would also create new revenue for existing hotels, restaurants and shops. Film makers would benefit from our "Aloha" spirit and; our vast and varied landscapes and climates. It's truly a win/win situation. Please vote to bring studios to this great state.
Sincerely,
Wyatt Knight