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# A BILL FOR AN ACT

RELATING TO TAX CREDITS.

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

1           SECTION 1. The legislature finds that the film industry in  
2 Hawaii is an important component of a diversified economy and  
3 that its financial impact can be strengthened significantly if  
4 existing incentives for the industry are adjusted.

5           The legislature also finds that there has been a dramatic  
6 increase in the number of state and local governments attempting  
7 to attract film productions. These jurisdictions have  
8 experienced dramatic increases in in-state spending and  
9 significant growth in workforce and infrastructure development.  
10 More productions in Hawaii would stimulate more direct and  
11 indirect tax revenue.

12           The legislature further finds that it is desirable to  
13 provide tools to the film industry to encourage similar dramatic  
14 growth in Hawaii because the film industry:

15           (1) Infuses significant amounts of new money into the  
16 economy, which is dispersed across many communities  
17 and businesses and which benefits a wide array of  
18 residents;



- 1           (2) Creates skilled, high-paying jobs;
- 2           (3) Has a natural dynamic synergy with Hawaii's top
- 3           industry, tourism, and is used as a destination
- 4           marketing tool for the visitor industry; and
- 5           (4) Is a clean, nonpolluting industry that values the
- 6           natural beauty of Hawaii and its diverse multicultural
- 7           population and wide array of architecture.

8           The legislature also finds that the industry has a strong  
9           desire to hire locally and invests in the training and workforce  
10           development of island-based personnel. It is the intent of this  
11           Act to continue to encourage this industry practice of hiring a  
12           significant number of residents and to support training and  
13           opportunities to those residents.

14           The legislature further finds that it is necessary to  
15           enhance the existing tax incentive programs that use the front-  
16           end budgeting methods normally used by the film industry and  
17           that lower production costs in order to allow Hawaii to compete  
18           with other film production centers in attracting a greater  
19           number of significant projects to the islands and to continue to  
20           build our local film industry infrastructure.

21           The purpose of this Act is to encourage the growth of the  
22           film industry by providing enhanced incentives that attract more



1 film and television productions to Hawaii, thereby generating  
2 increased tax revenues.

3 SECTION 2. Section 235-17, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§235-17 Motion picture, digital media, [~~and~~] film  
6 production, and media infrastructure project income tax  
7 credit[-]; qualified persons crew training program rebate. (a)

8 Any law to the contrary notwithstanding, there shall be allowed  
9 to each taxpayer subject to the taxes imposed by this chapter,  
10 an income tax credit which shall be deductible from the  
11 taxpayer's net income tax liability, if any, imposed by this  
12 chapter for the taxable year in which the credit is properly  
13 claimed. The amount of the credit shall be:

14 (1) Fifteen per cent of the qualified production costs  
15 incurred by a qualified production in any county of  
16 the State with a population of over seven hundred  
17 thousand; or

18 (2) Twenty per cent of the qualified production costs  
19 incurred by a qualified production in any county of  
20 the State with a population of seven hundred thousand  
21 or less.



1        (b) In addition to the credits described in subsection  
2 (a), beginning on or after July 1, 2011, and ending prior to  
3 January 1, 2016, the following credits shall apply:

4        (1) Twenty-five per cent of the qualified costs incurred  
5 for qualified media infrastructure projects in any  
6 county of the State with a population of over seven  
7 hundred thousand; or

8        (2) Forty per cent of the qualified costs incurred for  
9 qualified media infrastructure projects in any county  
10 of the State with a population of seven hundred  
11 thousand or less.

12        (c) The following shall apply to the qualified media  
13 infrastructure projects tax credits described in subsection (b):

14        (1) The base investment for a qualified media  
15 infrastructure project shall be in excess of \$300,000;

16        (2) The qualified media infrastructure project tax credit  
17 shall be non-refundable. The portion of the tax  
18 credit that exceeds the tax liability of the taxpayer  
19 for the tax year in which the credit was earned may be  
20 carried forward to offset net income tax liability in  
21 subsequent tax years for a period not to exceed ten  
22 taxable years or until exhausted, whichever occurs



1 first. The director of taxation may require the tax  
2 credits to be taken or assigned in the tax period in  
3 which the credit is earned or may structure the tax  
4 credit in the initial certification of the project to  
5 provide that only a portion of the tax credit be taken  
6 over the course of two or more years;

7 (3) The total qualified media infrastructure project tax  
8 credit allowed for any state-certified infrastructure  
9 project shall not exceed \$25,000,000;

10 (4) If all or a portion of an infrastructure project is a  
11 facility that may be used for other purposes unrelated  
12 to production or post production activities, then the  
13 project shall be approved only if a determination is  
14 made that the multiple use facility will support and  
15 will be necessary to secure production or post  
16 production activity for the production and post  
17 production facility and the applicant provides  
18 sufficient contractual assurances that the facility  
19 will be used as a state-of-the-art production or post  
20 production facility, or as a support and component  
21 thereof, for the useful life of the facility. No tax  
22 credits shall be earned on such multiple use



1 facilities until the production or post production  
2 facility is complete;

3 (5) Tax credits for qualified media infrastructure  
4 projects shall be earned only as follows:

5 (A) Construction of the infrastructure project shall  
6 begin within six months of the initial  
7 certification and shall be one hundred per cent  
8 completed within a five year time frame;

9 (B) Expenditures shall be certified by the director  
10 and credits shall not be earned until that  
11 certification;

12 (C) No tax credit shall be allowed for expenditures  
13 made for any infrastructure project after July 1,  
14 2011, unless thirty per cent of the total base  
15 investment provided for in the initial  
16 certification of the project has been expended  
17 prior to that date; provided that the  
18 expenditures may be finally certified at a later  
19 date; and

20 (D) For purposes of allowing tax credits against  
21 state income tax liability or assignment of the  
22 tax credits, the tax credits shall be deemed



1           earned at the time the expenditures are made,  
2           provided that all requirements of this subsection  
3           have been met and the tax credits have been  
4           certified;

5       (6) For state-certified infrastructure projects, the  
6       application for a qualified media infrastructure  
7       project tax credit shall include:

8       (A) A detailed description of the infrastructure  
9       project;

10      (B) A preliminary budget;

11      (C) A complete detailed business plan and market  
12      analysis;

13      (D) Estimated start and completion dates; and

14      (E) If the application is incomplete, additional  
15      information may be requested prior to further  
16      action by the director;

17      (7) An application fee shall be submitted with the  
18      application for a qualified media infrastructure  
19      project tax credit based on the following:

20      (A) Two-tenths of one per cent multiplied by the  
21      estimated total incentive tax credits; and



1           (B) The minimum application fee shall be \$400 and the  
2           maximum application fee shall be \$5,000; and  
3       (8) Prior to any final certification of a tax credit for a  
4       state-certified infrastructure project, the applicant  
5       for the infrastructure project tax credit shall submit  
6       to the director an audit of the expenditures audited  
7       and certified by an independent certified public  
8       accountant as determined by rule. Upon approval of  
9       the audit, the director shall issue a final tax credit  
10       certification letter indicating the amount of tax  
11       credits certified for the state-certified  
12       infrastructure project to the investors. Bank loan  
13       finance fees applicable to the qualified media  
14       infrastructure project expenditures, as certified by  
15       the director, and any general excise taxes that have  
16       been paid on the bank loan finance fees and remitted  
17       to the State may be included as part of the tax  
18       credit.

19       There shall be a qualified persons crew training program  
20       rebate that shall be equal to fifty per cent of the hourly wages  
21       of each resident participant in a qualified persons crew  
22       training program, and if incurred by a qualified production in





1 any county of the State, shall be reimbursed up to the first  
2 nine hundred hours physically worked by the qualifying crew  
3 member in a specialized craft position.

4 A qualified production occurring in more than one county  
5 may prorate its expenditures based upon the amounts spent in  
6 each county, if the population bases differ enough to change the  
7 percentage of tax credit.

8 In the case of a partnership, S corporation, estate, or  
9 trust, the tax credit allowable is for qualified production  
10 costs incurred by the entity for the taxable year. The cost  
11 upon which the tax credit is computed shall be determined at the  
12 entity level. Distribution and share of credit shall be  
13 determined by rule.

14 If a deduction is taken under section 179 (with respect to  
15 election to expense depreciable business assets) of the Internal  
16 Revenue Code of 1986, as amended, no tax credit shall be allowed  
17 for those costs for which the deduction is taken.

18 The basis for eligible property for depreciation of  
19 accelerated cost recovery system purposes for state income taxes  
20 shall be reduced by the amount of credit allowable and claimed.

21 Subsections (d) through (k) shall apply only to the production  
22 tax credits set forth in subsection (a).



1       ~~[(b)]~~ (d) The ~~[credit]~~ credits allowed under ~~[this~~  
2 ~~section]~~ subsection (a) shall be claimed against the net income  
3 tax liability for the taxable year~~[-]~~ in which the credit is  
4 claimed. For the purposes of this section, "net income tax  
5 liability" means net income tax liability reduced by all other  
6 credits allowed under this chapter.

7       ~~[(e)]~~ (e) If the production tax credit under ~~[this~~  
8 ~~section]~~ subsection (a) exceeds the taxpayer's income tax  
9 liability, the excess of credits over liability shall be  
10 refunded to the taxpayer; provided that no refunds or payment on  
11 account of the tax credits allowed by this section shall be made  
12 for amounts less than \$1. All claims, including any amended  
13 claims, for tax credits under ~~[this section]~~ subsection (a)  
14 shall be filed on or before the end of the twelfth month  
15 following the close of the taxable year for which the credit may  
16 be claimed. Failure to comply with the foregoing provision  
17 shall constitute a waiver of the right to claim the credit.

18       ~~[(d)]~~ (f) To qualify for ~~[this]~~ a tax [credit,] credit  
19 under subsection (a), a production shall:

20           (1) Meet the definition of a qualified production  
21           ~~[specified in subsection (1)];~~



- 1 (2) Have qualified production costs totaling at least  
2 [~~\$200,000;~~] \$300,000;
- 3 (3) Provide the State, at a minimum, a shared-card, end-  
4 title screen credit, where applicable;
- 5 (4) Provide evidence of reasonable efforts to hire local  
6 talent and crew; and
- 7 (5) Provide evidence of financial or in-kind contributions  
8 or educational or workforce development efforts, in  
9 partnership with related local industry labor  
10 organizations, educational institutions, or both,  
11 toward the furtherance of the local film and  
12 television and digital media industries.

13 [~~(e)~~] (g) On or after July 1, 2006, no qualified  
14 production cost that has been financed by investments for which  
15 a credit was claimed by any taxpayer pursuant to section  
16 235-110.9 is eligible for credits under this section.

17 [~~(f)~~] (h) To receive [~~the~~] a tax [~~credit~~] credit under  
18 subsection (a), the taxpayer shall first prequalify the  
19 production for the credit by registering with the department of  
20 business, economic development, and tourism during the  
21 development or preproduction stage. Failure to comply with this



1 provision may constitute a waiver of the right to claim the  
2 credit.

3       ~~[(g)]~~ (i) The director of taxation shall prepare forms as  
4 may be necessary to claim a credit under ~~[this section]~~  
5 subsection (a). The director may also require the taxpayer to  
6 furnish information to ascertain the validity of the claim for  
7 credit made under ~~[this section]~~ subsection (a) and may adopt  
8 rules necessary to effectuate the purposes of this section  
9 pursuant to chapter 91.

10       ~~[(h)]~~ (j) Every taxpayer claiming a tax credit under ~~[this~~  
11 ~~section]~~ subsection (a) for a qualified production shall, no  
12 later than ninety days following the end of each taxable year in  
13 which qualified production costs were expended, submit a  
14 written, sworn statement to the department of business, economic  
15 development, and tourism, identifying:

- 16       (1) All qualified production costs as provided by  
17             subsection (a), if any, incurred in the previous  
18             taxable year;
- 19       (2) The amount of tax credits claimed pursuant to ~~[this~~  
20             ~~section]~~ subsection (a), if any, in the previous  
21             taxable year; and



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

3 [~~(i)~~] (k) The department of business, economic  
4 development, and tourism shall:

5 (1) Maintain records of the names of the taxpayers and  
6 qualified productions thereof claiming the tax credits  
7 under subsection (a);

8 (2) Obtain and total the aggregate amounts of all  
9 qualified production costs per qualified production  
10 and per qualified production per taxable year; and

11 (3) Provide a letter to the director [~~of taxation~~]  
12 specifying the amount of the tax credit per qualified  
13 production for each taxable year that a tax credit is  
14 claimed under subsection (a) and the cumulative amount  
15 of the tax credit for all years claimed.

16 Upon each determination required under this subsection, the  
17 department of business, economic development, and tourism shall  
18 issue a letter to the taxpayer, regarding the qualified  
19 production, specifying the qualified production costs and the  
20 tax credit amount qualified for in each taxable year a tax  
21 credit is claimed. The taxpayer for each qualified production  
22 shall file the letter with the taxpayer's tax return for the



1 qualified production to the department of taxation.  
2 Notwithstanding the authority of the department of business,  
3 economic development, and tourism under this section, the  
4 director [~~of taxation~~] may audit and adjust the tax credit  
5 amount to conform to the information filed by the taxpayer.

6 (1) Any taxpayer eligible to claim a qualified media  
7 infrastructure project tax credit under subsection (b) shall:

8 (1) File an annual progress report with the department of  
9 business, economic development, and tourism on a  
10 calendar basis, that shall include the following  
11 information:

12 (A) Percentage of completion of each qualified media  
13 infrastructure project;

14 (B) Amount of moneys expended on, and amount  
15 remaining to complete, each qualified media  
16 infrastructure project; and

17 (C) Tax and labor clearances;

18 (2) Deliver to the department of business, economic  
19 development, and tourism a performance bond in a form  
20 prescribed by the department of business, economic  
21 development, and tourism by rule, executed by a surety  
22 company authorized to do business in this State or



1 otherwise secured in a manner satisfactory to the  
2 department of business, economic development, and  
3 tourism, in an amount equal to one hundred per cent of  
4 total projected expenditures determined upon initial  
5 certification; and

6 (3) Provide either of the following:

7 (A) Pledge of a lien on the qualified media  
8 infrastructure project in favor of the State in  
9 the amount of \$40,000,000; provided that the lien  
10 shall expire five years after completion of the  
11 project; or

12 (B) Collateral security in the amount of \$40,000,000;  
13 provided that the collateral security shall be  
14 released five years after completion of the  
15 qualified media infrastructure project.

16 (m) Any taxpayer eligible to claim a qualified media  
17 infrastructure project tax credit under subsection (b) shall  
18 file with the department of business, economic development, and  
19 tourism an annual report no later than March 1 following each  
20 taxable year for which the credit is claimed. The report shall  
21 include the following information:



- 1        (1) The amount of general excise tax paid under chapter
- 2                    237;
- 3        (2) The amount of transient accommodations tax paid under
- 4                    chapter 237D;
- 5        (3) The amount of tax credits claimed under this section,
- 6                    as amended by Act 88, Session Laws of Hawaii 2006;
- 7        (4) Gross proceeds of each project;
- 8        (5) Number of full-time employees employed on each
- 9                    qualified media infrastructure project;
- 10       (6) Number of part-time employees employed on each
- 11                   qualified media infrastructure project;
- 12       (7) Number of independent contractors contracted to work
- 13                   on each qualified media infrastructure project;
- 14       (8) Amount disbursed as payroll in the State on each
- 15                   qualified media infrastructure project; and
- 16       (9) List of job classifications with average wage level.
- 17       (n) Failure to complete a qualified media infrastructure
- 18 project for which a tax credit is claimed under subsection (b)
- 19 within five years of initial certification shall result in
- 20 ineligibility to claim the tax credit and recapture of any
- 21 credit already assigned by the taxpayer under subsection (p).
- 22 The amount of the recaptured tax credit shall be added to the



1 taxpayer's tax liability for the taxable year in which the  
2 recapture occurs.

3 ~~[(j)]~~ (o) Total production tax credits claimed under this  
4 section per qualified production shall not [exceed \$8,000,000.]  
5 be capped; provided that the qualified media infrastructure  
6 project income tax credits shall be capped at \$25,000,000 in the  
7 aggregate.

8 (p) A taxpayer eligible to claim a qualified media  
9 infrastructure project tax credit under subsection (b) may  
10 assign all or a portion of a tax credit under this section to  
11 any assignee. A taxpayer may claim a portion of a tax credit  
12 and assign the remaining amount. A tax credit assignment under  
13 this section shall be irrevocable. The tax credit assignment  
14 under this subsection shall be made on a form prescribed by the  
15 director. A taxpayer claiming a tax credit under this section  
16 shall send a copy of the completed assignment form to the  
17 department of taxation in the tax year in which the assignment  
18 is made and shall attach a copy of the form to the tax return on  
19 which the tax credit is claimed.

20 ~~[(k)]~~ (q) Qualified productions shall comply with  
21 subsections ~~[(d), (e), (f), and (h)].~~ (f), (g), (h), and (j).

22 ~~[(l)]~~ (r) For the purposes of this section:



1       "Base investment" means the costs incurred and financial  
2 investment made to operate and sustain a qualified media  
3 infrastructure project.

4       "Commercial":

- 5       (1) Means an advertising message that is filmed using  
6       film, videotape, or digital media, for dissemination  
7       via television broadcast or theatrical distribution;
- 8       (2) Includes a series of advertising messages if all parts  
9       are produced at the same time over the course of six  
10       consecutive weeks; and
- 11       (3) Does not include an advertising message with Internet-  
12       only distribution.

13       "Digital media" means production methods and platforms  
14 directly related to the creation of cinematic imagery and  
15 content, specifically using digital means, including but not  
16 limited to digital cameras, digital sound equipment, and  
17 computers, to be delivered via film, videotape, interactive game  
18 platform, or other digital distribution media (excluding  
19 Internet-only distribution).

20       "Director" means the director of taxation.

21       "Post production" means production activities and services  
22 conducted after principal photography is completed, including



1 but not limited to editing, film and video transfers,  
2 duplication, transcoding, dubbing, subtitling, credits, closed  
3 captioning, audio production, special effects (visual and  
4 sound), graphics, and animation.

5 "Production" means a series of activities that are directly  
6 related to the creation of visual and cinematic imagery to be  
7 delivered via film, videotape, or digital media and to be sold,  
8 distributed, or displayed as entertainment or the advertisement  
9 of products for mass public consumption, including but not  
10 limited to scripting, casting, set design and construction,  
11 transportation, videography, photography, sound recording,  
12 interactive game design, and post production.

13 "Qualified media infrastructure project" means the  
14 development, construction, renovation, or operation of a film,  
15 video, television, or media production or post-production  
16 facility and the immovable property and equipment related  
17 thereto, or any other facility which supports and is a necessary  
18 component of such proposed infrastructure project, that is  
19 located in an county of the State; provided that the facility  
20 may include a movie theater or other commercial exhibition  
21 facility to assist in offsetting operating costs of the  
22 production or postproduction facility, but shall not include a



1 facility used to produce pornographic matter or a pornographic  
2 performance.

3 "Qualified person" means a person who has been domiciled  
4 and filed a resident income tax return in the State for at least  
5 the preceding two years.

6 "Qualified persons crew training programs" means the  
7 development and operation of a training program for state job  
8 creation with a focus on film, video, television and digital  
9 media production or post-production, with a budget of \$1,000,000  
10 or greater. Commercials or other short form formats, with a  
11 shooting schedule of less than eighteen days shall be excluded  
12 from participation.

13 "Qualified production":

14 (1) Means a production, with expenditures in the State,  
15 for the total or partial production of a feature-  
16 length motion picture, short film, made-for-television  
17 movie, commercial, music video, interactive game,  
18 television series pilot, single season (up to twenty-  
19 two episodes) of a television series regularly filmed  
20 in the State (if the number of episodes per single  
21 season exceeds twenty-two, additional episodes for the  
22 same season shall constitute a separate qualified



1 production), television special, single television  
2 episode that is not part of a television series  
3 regularly filmed or based in the State, national  
4 magazine show, or national talk show. For the  
5 purposes of subsections (d) and (j), each of the  
6 aforementioned qualified production categories shall  
7 constitute separate, individual qualified productions;  
8 and

9 (2) Does not include: daily news; public affairs programs;  
10 non-national magazine or talk shows; televised  
11 sporting events or activities; productions that  
12 solicit funds; productions produced primarily for  
13 industrial, corporate, institutional, or other private  
14 purposes; and productions that include any material or  
15 performance prohibited by chapter 712.

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) Costs for equipment or items not readily obtainable in  
21 the State which are passed through a qualified



1           resident vendor and upon which a mark-up and general  
2           excise tax are paid;

3        (12) Bank loan finance fees applicable to the qualified  
4           production expenditures as finally certified by the  
5           director of taxation to the extent that a general  
6           excise tax is paid and remitted to the State. For the  
7           purposes of this section, banks providing loans to  
8           qualified productions shall be considered service  
9           vendors that are providing services to a production  
10          company where the motion picture film product consists  
11          in part of the value of services provided and shall be  
12          subject to the one-half of one per cent tax rate under  
13          section 237-18(c); and

14        ~~(11)~~ (13) Other direct production costs specified by the  
15           department in consultation with the department of  
16           business, economic development, and tourism."

17        SECTION 3. Statutory material to be repealed is bracketed  
18        and stricken. New statutory material is underscored.

19        SECTION 4. This Act shall take effect on July 1, 2112.

20



**Report Title:**

Film Production Tax Credits

**Description:**

Amends the motion picture, digital media, and film production tax credit to remove tax credit caps. Establishes a non-refundable tax credit with a carry forward period of up to ten years to encourage media infrastructure development. Permits certain production tax credits to be assigned. Effective 7/1/2112. (HD1)

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