

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 workforce development tax
13 credit for animation and special effects locate in enterprise
14 zones in which some of the University of Hawaii campuses are
15 located, the tax credit targets new media industry development
16 and job creation with a focus on measurable economic benefits
17 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 section to be appropriately designated
5 and to read as follows:

6 "§209E- Digital media enterprise subzone; defined. As
7 used in this chapter:

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

9 "Digital media enterprise subzone" means the geographic
10 area located within a mile radius of a University of
11 Hawaii campus, on or off campus, that is within an enterprise
12 zone established pursuant to this chapter or other delineated
13 geographic area designated by the legislature pursuant to this
14 part; provided that effective from July 1, 2011, to June 30,
15 2013, establishment of a subzone shall be limited to an area
16 within a mile radius, on or off campus, of the
17 University of Hawaii-West Oahu."

18 SECTION 3. Chapter 235, Hawaii Revised Statutes, is
19 amended by adding a new section to be appropriately designated
20 and to read as follows:

21 "§235- Digital media enterprise subzone workforce
22 development tax credit. (a) Any law to the contrary



1 notwithstanding, there shall be allowed to each taxpayer that
2 operates a qualified animation or visual effects business that
3 is located within a digital media enterprise subzone as defined
4 in section 209E- and who is subject to the taxes imposed by
5 this chapter, a digital media enterprise subzone workforce
6 development income tax credit that shall be deductible from the
7 taxpayer's net income tax liability, if any, imposed by this
8 chapter for the taxable year in which the tax credit is properly
9 claimed. The amount of the tax credit shall be per cent
10 of the wages paid to animation or visual effects personnel who
11 are Hawaii residents.

12 In the case of a partnership, S corporation, estate, or
13 trust, the tax credit shall be for qualified labor costs
14 incurred by the entity for the taxable year. The cost upon
15 which the tax credit is computed shall be determined at the
16 entity level. Distribution and share of the tax credit shall be
17 determined under section 235-110.

18 (b) The tax credit shall be claimed against the net income
19 tax liability for the taxable year. For the purposes of this
20 section, "net income tax liability" means net income tax
21 liability reduced by all other credits allowed under this
22 chapter and chapter 209E.



1 (c) If the tax credit exceeds the taxpayer's income tax
2 liability, the excess of credits over liability shall be
3 refunded to the taxpayer; provided that no refunds or payment on
4 account of the tax credits allowed by this section shall be made
5 for amounts less than \$1.

6 All claims, including any amended claims, for tax credits
7 under this section shall be filed on or before the end of the
8 twelfth month following the close of the taxable year for which
9 the credit may be claimed. Failure to comply with the foregoing
10 provision shall constitute a waiver of the right to claim the
11 credit.

12 (d) To qualify for this tax credit, a qualified animation
13 or visual effects business shall:

- 14 (1) Operate in a digital media enterprise subzone;
- 15 (2) Have qualified labor costs totaling at least \$200,000
16 in the year the tax credit is properly claimed;
- 17 (3) Provide evidence of reasonable efforts to hire Hawaii
18 residents as animation or visual effects personnel;
- 19 (4) Keep accurate records of all animation or visual
20 effects personnel who are Hawaii residents; and
- 21 (5) Require any wages attributable to minimum cost
22 thresholds for which the wage reimbursement tax credit



1 does not apply to have Hawaii income tax withheld;
2 provided that the wage and tax information is subject
3 to verification by the department of taxation.

4 (e) The director of taxation shall prepare forms as may be
5 necessary to claim a tax credit under this section. The
6 director may also require the taxpayer to furnish information to
7 ascertain the validity of the claim for credit and may adopt
8 rules necessary to effectuate this section pursuant to chapter
9 91.

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

15 (1) All qualified labor costs, if any, incurred in the
16 previous taxable year;

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

19 (3) The number of resident personnel working in Hawaii by
20 category (i.e., department) and by county.

21 (g) The department of business, economic development, and
22 tourism shall:



- 1 (1) Maintain records of the names of the taxpayers and
2 qualified animation or visual effects businesses
3 claiming the tax credits;
- 4 (2) Obtain and total the aggregate amounts of all
5 qualified labor costs for each qualified animation or
6 visual effects business for each taxable year; and
- 7 (3) Provide a letter to the director of taxation
8 specifying the amount of the tax credit for each
9 qualified animation or visual effects business for
10 each taxable year that a tax credit is claimed and the
11 cumulative amount of the tax credit for all years
12 claimed.

13 Upon each determination required under this subsection, the
14 department of business, economic development, and tourism shall
15 issue a letter to the taxpayer specifying the qualified labor
16 costs and the tax credit amount qualified for in each taxable
17 year a tax credit is properly claimed.

18 The department of business, economic development, and
19 tourism may establish a fee of \$ to process the
20 taxpayer letter, which shall be deposited in the Hawaii film
21 office special fund established in section 201-113. The
22 taxpayer for each qualified animation or visual effects business



1 shall file the letter with the taxpayer's tax return for the
2 qualified animation or visual effects business to the department
3 of taxation. The director of taxation may audit and adjust the
4 tax credit amount to conform to the information filed by the
5 taxpayer.

6 (h) The total tax credits claimed for each qualified
7 production shall not exceed \$ _____ in any given tax year.

8 (i) For purposes of this section:

9 "Animation or visual effects" means animation and visual
10 effects created primarily with digital technologies for
11 designing, modeling, rendering, lighting, painting, animating,
12 and composing for qualified productions as that term is defined
13 under section 235-17, but does not include:

14 (1) Audio effects;

15 (2) In-camera effects;

16 (3) Credit rolls;

17 (4) Subtitles;

18 (5) Animation or visual effects, all or substantially all
19 of which are created by editing activities;

20 (6) Animation or visual effects for use in promotional
21 material for a production eligible for the tax credit
22 established under section 235-17; or



1 (7) Activities that are of a scientific or experimental
2 nature.

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

4 "Hawaii resident" means any person residing in Hawaii who
5 has paid Hawaii general excise taxes within the prior six months
6 or Hawaii income taxes in the last calendar year.

7 "Qualified animation or visual effects business" means a
8 business, with expenditures in the State, for the entire or
9 partial production of animation or visual effects that are used
10 in a feature-length motion picture, short film, made-for-
11 television movie, commercial, music video, interactive game,
12 television series pilot, single season of a television series
13 regularly filmed in the State, television special, single
14 television episode that is not part of a television series
15 regularly filmed or based in the State, national magazine show,
16 or national talk show.

17 "Qualified labor costs" means the costs incurred by a
18 qualified animation or visual effects business within the State
19 that are attributable to wages or salaries paid by the qualified
20 animation or visual effects business to animation or visual
21 effects personnel who are residents of the State subject to
22 taxation under this chapter, and for whom the qualified



1 animation or visual effects business otherwise incurs tax
2 liability under chapter 383."

3 PART II

4 SECTION 4. Section 201-111, Hawaii Revised Statutes, is
5 amended by amending the definitions of "board" and "fund" to
6 read as follows:

7 "Board" means the Hawaii [~~television and film development~~]
8 film office board.

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

11 SECTION 5. Section 201-112, Hawaii Revised Statutes, is
12 amended by amending the title and subsection (a) to read as
13 follows:

14 "[+]§201-112[+] Hawaii [~~television and film development~~]
15 film office board. (a) There is established the Hawaii
16 [~~television and film development~~] film office board. The board
17 shall be attached to the department of business, economic
18 development, and tourism for administrative purposes only. The
19 board shall administer the grant and venture capital investment
20 programs and the Hawaii [~~television and film development~~] film
21 office special fund established under this part. The board
22 shall also assess and consider the overall viability and



1 development of the television and film industries and make
2 recommendations to appropriate state or county agencies."

3 SECTION 6. Section 201-113, Hawaii Revised Statutes, is
4 amended to read as follows:

5 " ~~[+]§201-113[+]~~ Hawaii ~~[television and film development]~~
6 film office special fund. (a) There is established in the
7 state treasury the Hawaii ~~[television and film development]~~ film
8 office special fund into which shall be deposited:

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



1 ~~(b) The fund shall be used by the board to assist in, and~~
2 ~~provide incentives for, the production of eligible Hawaii~~
3 ~~projects that are in compliance with criteria and standards~~
4 ~~established by the board in accordance with rules adopted by the~~
5 ~~board pursuant to chapter 91. In particular, the board shall~~
6 ~~adopt rules to provide for the implementation of the following~~
7 ~~programs:~~

8 ~~(1) A grant program. The board shall adopt rules pursuant~~
9 ~~to chapter 91 to provide conditions and qualifications~~
10 ~~for grants. Applications for grants shall be made to~~
11 ~~the board and shall contain such information as the~~
12 ~~board shall require by rules adopted pursuant to~~
13 ~~chapter 91. At a minimum, the applicant shall agree~~
14 ~~to the following conditions:~~

15 ~~(A) The grant shall be used exclusively for eligible~~
16 ~~Hawaii projects;~~

17 ~~(B) The applicant shall have applied for or received~~
18 ~~all applicable licenses and permits;~~

19 ~~(C) The applicant shall comply with applicable~~
20 ~~federal and state laws prohibiting discrimination~~
21 ~~against any person on the basis of race, color,~~



- 1 ~~national origin, religion, creed, sex, age, or~~
- 2 ~~physical handicap;~~
- 3 ~~(D) The applicant shall comply with other~~
- 4 ~~requirements as the board may prescribe;~~
- 5 ~~(E) All activities undertaken with funds received~~
- 6 ~~shall comply with all applicable federal, state,~~
- 7 ~~and county statutes and ordinances;~~
- 8 ~~(F) The applicant shall indemnify and save harmless~~
- 9 ~~the State of Hawaii and its officers, agents, and~~
- 10 ~~employees from and against any and all claims~~
- 11 ~~arising out of or resulting from activities~~
- 12 ~~carried out or projects undertaken with funds~~
- 13 ~~provided hereunder, and procure sufficient~~
- 14 ~~insurance to provide this indemnification if~~
- 15 ~~requested to do so by the department;~~
- 16 ~~(G) The applicant shall make available to the board~~
- 17 ~~all records the applicant may have relating to~~
- 18 ~~the project, to allow the board to monitor the~~
- 19 ~~applicant's compliance with the purpose of this~~
- 20 ~~chapter; and~~
- 21 ~~(H) The applicant, to the satisfaction of the board,~~
- 22 ~~shall establish that sufficient funds are~~



1 ~~available for the completion of the project for~~
2 ~~the purpose for which the grant is awarded; and~~
3 ~~(2) A venture capital program. The board shall adopt~~
4 ~~rules pursuant to chapter 91 to provide conditions and~~
5 ~~qualifications for venture capital investments in~~
6 ~~eligible Hawaii projects. The program may include a~~
7 ~~written agreement between the borrower and the board,~~
8 ~~as the representative of the State, that as~~
9 ~~consideration for the venture capital investment made~~
10 ~~under this part, the borrower shall share any~~
11 ~~royalties, licenses, titles, rights, or any other~~
12 ~~monetary benefits that may accrue to the borrower~~
13 ~~pursuant to terms and conditions established by the~~
14 ~~board by rule pursuant to chapter 91. Venture capital~~
15 ~~investments may be made on such terms and conditions~~
16 ~~as the board shall determine to be reasonable,~~
17 ~~appropriate, and consistent with the purposes and~~
18 ~~objectives of this part].~~

19 (b) Moneys in the fund shall be used for the operations of
20 the Hawaii film office, including personnel costs of staff
21 positions existing on November 1, 2010; provided that the use of
22 the fund for personnel costs shall be limited to those employees



1 performing specialized duties who are assigned solely to the
2 Hawaii film office."

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

5 "§201-113 Hawaii film office special fund. (a) There is
6 established in the state treasury the Hawaii film office special
7 fund into which shall be deposited:

8 (1) Appropriations by the legislature;

9 ~~[(2) Rent from usage of the Hawaii film studio operated by~~
10 ~~the film office branch;~~

11 ~~-(3) Fees collected by the department for processing~~
12 ~~taxpayer letters pursuant to sections 235 and~~
13 ~~235-17;~~

14 ~~-(4)]~~ (2) Donations and contributions made by private
15 individuals or organizations for deposit into the
16 fund; ~~[and]~~

17 ~~[-(5)]~~ (3) Grants provided by governmental agencies or any
18 other source ~~[-];~~ and

19 (4) Any profits or other amounts received from venture
20 capital investments.

21 ~~[-(b) Moneys in the fund shall be used for the operations~~
22 ~~of the Hawaii film office, including personnel costs of staff~~



1 ~~positions existing on November 1, 2010; provided that the use of~~
2 ~~the fund for personnel costs shall be limited to those employees~~
3 ~~performing specialized duties who are assigned solely to the~~
4 ~~Hawaii film office.]~~

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

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

19 (A) The grant shall be used exclusively for eligible
20 Hawaii projects;

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



- 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."



PART III

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 10. This Act shall take effect on July 1, 2011; provided that:

- (1) Sections 2 and 3 shall be repealed on June 30, 2021;
- (2) Section 6 shall be effective until June 30, 2021; and
- (3) Section 7 shall take effect on July 1, 2021.

INTRODUCED BY:

Erinanne O'Brien Callahan

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Report Title:

Digital Media Enterprise Subzones; Tax Incentives

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 businesses that employ Hawaii residents.

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

