

JAN 25 2012

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## A BILL FOR AN ACT

RELATING TO CREATIVE MEDIA DEVELOPMENT.

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

1           SECTION 1. The legislature finds that the film,  
2 television, and digital media industries in Hawaii are important  
3 components of a diversified economy and that their financial  
4 impact can be strengthened significantly if existing incentives  
5 for the industries are adjusted.

6           The legislature also finds that nearly every country and  
7 state has implemented tax incentives to attract film,  
8 television, and digital media productions. These jurisdictions  
9 have experienced dramatic increases in in-state spending and  
10 significant growth in workforce and infrastructure development.  
11 More productions in Hawaii would stimulate more direct and  
12 indirect tax revenue.

13           The legislature further finds that it is desirable to  
14 provide incentives to the film, television, and digital media  
15 industries to encourage similar dramatic growth in Hawaii  
16 because the film, television, and digital media industries:

17           1) Infuse significant amounts of new money into the

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1 economy, which are dispersed across many communities  
2 and businesses and which benefit a wide array of  
3 residents;

4 (2) Create skilled, high-paying jobs;

5 (3) Have a natural dynamic synergy with Hawaii's top  
6 industry (tourism) and are used as a destination  
7 marketing tool for the visitor industry; and

8 (4) Are clean, nonpolluting industries that value the  
9 natural beauty of Hawaii and its diverse multicultural  
10 population and wide array of architecture.

11 The purpose of this Act is to continue to encourage the  
12 film, television, and digital media industries, to allow Hawaii  
13 to compete with other film production centers in attracting a  
14 greater number of significant projects to the islands, and to  
15 continue to build the State's local film, television, and  
16 digital media industries. The purpose of this Act is also to  
17 encourage the growth of the film, television, and digital media  
18 industries by providing enhanced incentives to attract more  
19 film, television, and digital media productions to Hawaii,  
20 thereby generating increased tax revenues.

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

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1           "§235-17 Motion picture, digital media, [~~and~~] television,  
2 film, and animation or special and visual effects production  
3 income tax credit. (a) Any law to the contrary  
4 notwithstanding, there shall be allowed to each taxpayer subject  
5 to the taxes imposed by this chapter, an income tax credit which  
6 shall be deductible from the taxpayer's net income tax  
7 liability, if any, imposed by this chapter for the taxable year  
8 in which the credit is properly claimed. The amount of the  
9 credit shall be:

10           (1) Fifteen per cent of the qualified production costs  
11                 incurred by a qualified production in any county of  
12                 the State with a population of over seven hundred  
13                 thousand; or

14           (2) Twenty per cent of the qualified production costs  
15                 incurred by a qualified production in any county of  
16                 the State with a population of seven hundred thousand  
17                 or less.

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

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1           In the case of a partnership, S corporation, estate, or  
2 trust, the tax credit allowable is for qualified production  
3 costs incurred by the entity for the taxable year. The cost  
4 upon which the tax credit is computed shall be determined at the  
5 entity level. Distribution and share of credit shall be  
6 determined by rule.

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

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

14           (b) The credit allowed under this section shall be claimed  
15 against the net income tax liability for the taxable year. For  
16 the purposes of this section, "net income tax liability" means  
17 net income tax liability reduced by all other credits allowed  
18 under this chapter.

19           (c) If the tax credit under this section exceeds the  
20 taxpayer's income tax liability, the excess of credits over  
21 liability shall be refunded to the taxpayer; provided that no  
22 refunds or payment on account of the tax credits allowed by this

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1 section shall be made for amounts less than \$1. All claims,  
2 including any amended claims, for tax credits under this section  
3 shall be filed on or before the end of the twelfth month  
4 following the close of the taxable year for which the credit may  
5 be claimed. Failure to comply with the foregoing provision  
6 shall constitute a waiver of the right to claim the credit.

7 (d) To qualify for this tax credit, a production shall:

8 (1) Meet the definition of a qualified production

9 [~~specified in subsection (1)~~];

10 (2) Have qualified production costs totaling at least  
11 \$200,000;

12 (3) Provide the State, at a minimum, a shared-card, end-  
13 title screen credit, where applicable;

14 (4) Provide evidence of reasonable efforts to hire local  
15 talent and crew; and

16 (5) Provide evidence of financial or in-kind contributions  
17 or educational or workforce development efforts, in  
18 partnership with related local industry labor  
19 organizations, educational institutions, or both,  
20 toward the furtherance of the local film [~~and~~],  
21 television [~~and~~], digital media, and animation or  
22 special and visual effects industries.

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1 (e) On or after July 1, 2006, no qualified production cost  
2 that has been financed by investments for which a credit was  
3 claimed by any taxpayer pursuant to section 235-110.9 is  
4 eligible for credits under this section.

5 (f) To receive the tax credit, the taxpayer shall first  
6 prequalify the production for the credit by registering with the  
7 department [~~of business, economic development, and tourism~~]  
8 during the development or preproduction stage. Failure to  
9 comply with this provision may constitute a waiver of the right  
10 to claim the credit.

11 (g) The director of taxation shall prepare forms as may be  
12 necessary to claim a credit under this section. The director of  
13 taxation may also require the taxpayer to furnish information to  
14 ascertain the validity of the claim for credit made under this  
15 section and may adopt rules necessary to effectuate the purposes  
16 of this section pursuant to chapter 91.

17 (h) Every taxpayer claiming a tax credit under this  
18 section for a qualified production shall, no later than ninety  
19 days following the end of each taxable year in which qualified  
20 production costs were expended, submit a written, sworn  
21 statement to the department [~~of business, economic development,~~  
22 ~~and tourism~~], identifying:

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- 1       (1) All qualified production costs as provided by
- 2             subsection (a), if any, incurred in the previous
- 3             taxable year;
- 4       (2) The amount of tax credits claimed pursuant to this
- 5             section, if any, in the previous taxable year; and
- 6       (3) The number of total hires versus the number of local
- 7             hires by category [~~i.e., department~~] and by county.
- 8       (i) The department [~~of business, economic development,~~
- 9     ~~and Tourism~~] shall:
  - 10       (1) Maintain records of the names of the taxpayers and
  - 11             qualified productions thereof claiming the tax credits
  - 12             under subsection (a);
  - 13       (2) Obtain and total the aggregate amounts of all
  - 14             qualified production costs per qualified production
  - 15             and per qualified production per taxable year; and
  - 16       (3) Provide a letter to the director of taxation
  - 17             specifying the amount of the tax credit per qualified
  - 18             production for each taxable year that a tax credit is
  - 19             claimed and the cumulative amount of the tax credit
  - 20             for all years claimed.

21       Upon each determination required under this subsection, the  
22     department [~~of business, economic development, and tourism~~]

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1 shall issue a letter to the taxpayer, regarding the qualified  
2 production, specifying the qualified production costs and the  
3 tax credit amount qualified for in each taxable year a tax  
4 credit is claimed. The taxpayer for each qualified production  
5 shall file the letter with the taxpayer's tax return for the  
6 qualified production to the department of taxation.

7 Notwithstanding the authority of the department [~~of business,~~  
8 ~~economic development, and tourism~~] under this section, the  
9 director of taxation may audit and adjust the tax credit amount  
10 to conform to the information filed by the taxpayer.

11 (j) Total tax credits claimed per qualified production  
12 shall not exceed \$8,000,000.

13 (k) Qualified productions shall comply with subsections  
14 (d), (e), (f), and (h).

15 (l) For the purposes of this section:

16 "Animation or special and visual effects" means animation  
17 or special and visual effects created primarily with digital  
18 technologies for designing, modeling, rendering, lighting,  
19 painting, animating, motion capture, and compositing for  
20 qualified productions, but does not include:

21 (1) Audio effects;

22 (2) In-camera effects;



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- 1        (3) Credit rolls;
- 2        (4) Subtitles; or
- 3        (5) Animation or special and visual effects for use in
- 4                promotional material for a production eligible for the
- 5                tax credit established under this section.

6        "Commercial":

7        (1) Means an advertising message that is filmed using

8                film, videotape, or digital media, for dissemination

9                via television broadcast [~~or~~], theatrical

10                distribution[~~+~~], or Internet distribution; and

11        (2) Includes a series of advertising messages if all parts

12                are produced at the same time over the course of six

13                consecutive weeks[~~+~~ and

14        ~~(3) Does not include an advertising message with Internet-~~

15                ~~only distribution].~~

16        "Department" means the department of business, economic

17        development, and tourism.

18        "Director" means the director of business, economic

19        development, and tourism.

20        "Digital media" means production methods and platforms

21        directly related to the creation of cinematic imagery and

22        content, specifically using digital means, including but not

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1 limited to digital cameras, digital sound equipment, and  
2 computers, to be delivered via film, videotape, audio recording,  
3 interactive game platform, or other digital distribution media  
4 (excluding Internet-only distribution).

5 [~~"Post-production"~~] "Post-production" means production  
6 activities and services conducted after principal photography is,  
7 completed, including but not limited to editing, film and video  
8 transfers, duplication, transcoding, dubbing, subtitling,  
9 credits, closed captioning, audio production, [~~special effects~~  
10 ~~(visual and sound)~~], sound effects, graphics, and animation or  
11 special and visual effects.

12 "Production" means a series of activities that are directly  
13 related to the creation of visual and cinematic imagery to be  
14 delivered via film, videotape, or digital media and to be sold,  
15 distributed, or displayed as entertainment or the advertisement  
16 of products for mass public consumption, including but not  
17 limited to preproduction related activities, scripting, casting,  
18 set design and construction, transportation, videography,  
19 photography, sound recording, interactive game design, animation  
20 or special and visual effects, and [~~post-production.~~] post-  
21 production.

22 "Qualified production":

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- 1 (1) Means a production, with expenditures in the State,  
2 for the total or partial production of a feature-  
3 length motion picture, short film, made-for-television  
4 movie, commercial, music video, interactive game,  
5 television series pilot, single season (up to twenty-  
6 two episodes) of a television series regularly filmed  
7 in the State (if the number of episodes per single  
8 season exceeds twenty-two, additional episodes for the  
9 same season shall constitute a separate qualified  
10 production), television special, single television  
11 episode that is not part of a television series  
12 regularly filmed or based in the State, national  
13 magazine show, [~~or~~] national talk show[-], or short or  
14 long-form productions for Internet distribution. For  
15 the purposes of subsections (d) and (j), each of the  
16 aforementioned qualified production categories shall  
17 constitute separate, individual qualified productions;  
18 and
- 19 (2) Does not include: [~~daily~~]  
20 (A) Daily news; [~~public~~]  
21 (B) Public affairs programs; [~~non-national~~]  
22 (C) Non-national magazine or talk shows; [~~televised~~]

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- 1           (D) Televised sporting events or activities;
- 2                           [~~productions~~]
- 3           (E) Productions that solicit funds; [~~productions~~]
- 4           (F) Productions produced primarily for industrial,
- 5                           corporate, institutional, or other private
- 6                           purposes; and [~~productions~~]
- 7           (G) Productions that include any material or
- 8                           performance prohibited by chapter 712.

9           "Qualified production costs" means the costs incurred by a  
10 qualified production within the State that are subject to the  
11 general excise tax under chapter 237 or income tax under this  
12 chapter and that have not been financed by any investments for  
13 which a credit was or will be claimed pursuant to section  
14 235-110.9. Qualified production costs include but are not  
15 limited to:

- 16           (1) Costs incurred during preproduction such as location
- 17                           scouting and related services;
- 18           (2) Costs of set construction and operations, purchases or
- 19                           rentals of wardrobe, props, accessories, food, office
- 20                           supplies, transportation, equipment, and related
- 21                           services;
- 22           (3) Wages or salaries of cast, crew, and musicians;

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- 1           (4)   Costs of photography, sound synchronization, lighting,  
2                   and related services;
- 3           (5)   Costs of editing, animation or special and visual  
4                   effects, music, other post-production, and related  
5                   services;
- 6           (6)   Rentals and fees for use of local facilities and  
7                   locations;
- 8           (7)   Rentals of vehicles and lodging for cast and crew;
- 9           (8)   Airfare for flights to or from Hawaii, and interisland  
10                  flights;
- 11           (9)   Insurance and bonding;
- 12           (10)  Shipping of equipment and supplies to or from Hawaii,  
13                  and interisland shipments; [~~and~~]
- 14           (11)  Costs for equipment or items not readily obtainable in  
15                  the State that are passed through a vendor registered  
16                  to do business in the State of Hawaii and upon which a  
17                  mark-up and general excise tax are paid; and
- 18           [~~(11)~~] (12)  Other direct production costs specified by the  
19                  department of taxation in consultation with the  
20                  department of business, economic development, and  
21                  tourism."

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1 SECTION 3. The department of taxation shall submit an  
2 annual report to the legislature twenty days prior to each  
3 regular session beginning with the 2013 regular session. The  
4 report shall contain a cost benefit analysis of the tax credits  
5 established in this Act including but not limited to the  
6 following:

- 7 (1) The total number of full-time, part-time, and contract  
8 personnel on the payroll necessary to administer this  
9 Act; and  
10 (2) The average wage of each of the above personnel groups  
11 and total earnings for the year.

12 The department of taxation shall report the data collected  
13 under this section along with a cumulative total of tax credits  
14 granted for each qualified production. The legislature may use  
15 the information to determine whether the tax credits are meeting  
16 the objectives of this Act.

17 SECTION 4. Act 88, Session Laws of Hawaii 2006, is amended  
18 by amending section 4 to read as follows:

19 "SECTION 4. This Act shall take effect on July 1, 2006;  
20 provided that[÷

21 ~~(1) Section]~~ section 2 of this Act shall apply to  
22 qualified

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1 production costs incurred on or after July 1, 2006[7

2 and before January 1, 2016; and

3 ~~(2) This Act shall be repealed on January 1, 2016,~~

4 ~~and section 235-17, Hawaii Revised Statutes, shall be~~

5 ~~reenacted in the form in which it read on the day~~

6 ~~before the effective date of this Act]."~~

7 SECTION 5. Statutory material to be repealed is bracketed

8 and stricken. New statutory material is underscored.

9 SECTION 6. This Act shall take effect on July 1, 2012;

10 provided that:

11 (1) This Act is repealed on January 1, 2020, and

12 section 235-17, Hawaii Revised Statutes, shall be

13 reenacted in the form in which it read on the day

14 before the effective date of Act 88, Session Laws of

15 Hawaii 2006; and

16 (2) This Act shall apply to taxable years beginning after

17 December 31, 2011, and before January 1, 2020.

18 INTRODUCED BY: 

19 BY REQUEST

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**Report Title:**

Creative Media Development

**Description:**

Amends section 235-17, Hawaii Revised Statutes, by expanding the definitions of qualified productions to include animation or special and visual effects and productions for internet distribution and providing the sunset date for the tax credit as amended by this Act as January 1, 2020.

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



## JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

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

PURPOSE: To stimulate creative media industry growth in Hawaii by enhancing film production tax incentives.

MEANS: Amends section 235-17, Hawaii Revised Statutes and Act 88, Session Laws of Hawaii 2006.

JUSTIFICATION: It is the intent of this bill to increase industry and job growth and to support the development of Hawaii's creative media industries. From 2006-2011, the film production tax credit program has generated over \$1.1 billion in estimated production revenues and \$1.7 billion in estimated economic impact. The consistency of the production tax incentive has positioned Hawaii as one of the top destinations for location filming. Together with infrastructure development, the proposed amendments to the existing credit will provide an improved competitive advantage over other countries and states, stimulating more direct and indirect spending throughout the State.

Impact on the public: The proposed amendments to the existing incentive will increase Hawaii jobs, provide economic stimulation through business attraction and local industry development, translating to more tax revenues and jobs.

Impact on the department and other agencies: Minimal impact on other departments. The only affected agency is the Department of Taxation. Although there is an extended sunset date it should not require additional resources than what is currently in place to manage the program.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM

DESIGNATION: BED 105.

OTHER AFFECTED

AGENCIES: Department of Taxation.

EFFECTIVE DATE: July 1, 2012.