
A BILL FOR AN ACT

RELATING TO BUSINESS DEVELOPMENT IN HAWAII.

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

1 PART I

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

6 The legislature also finds that there has been a dramatic
7 increase in the number of state and local governments attempting
8 to attract film productions. These jurisdictions have
9 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 tools to the film industry to encourage similar dramatic
15 growth in Hawaii because the film industry:

16 (1) Infuses significant amounts of new money into the
17 economy, which are dispersed across many communities



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

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

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



1 The purpose of this part is to encourage the growth of the
2 film industry by providing enhanced incentives to attract more
3 film and television productions to Hawaii, thereby generating
4 increased tax revenues.

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

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

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

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

20 (2) Twenty per cent of the qualified production costs
21 incurred by a qualified production in any county of



1 the State with a population of seven hundred thousand
2 or less.

3 (b) In addition to the credit in subsection (a), beginning
4 on July 1, 2011, and ending prior to January 1, 2016, the
5 following credit shall apply:

6 (1) per cent of the qualified costs incurred for a
7 qualified media infrastructure project in any county
8 of the State with a population of over seven hundred
9 thousand; or

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

14 (c) The following shall apply to the qualified media
15 infrastructure project tax credit in subsection (b):

16 (1) The base investment for a qualified media
17 infrastructure project shall be in excess of \$;

18 (2) per cent of the qualified media infrastructure
19 project tax credit shall be funded by the transient
20 accommodations tax allocation of the county in which
21 the qualified media infrastructure project is to be
22 located; provided that the qualified media



1 infrastructure project shall be subject to prior
2 approval by the mayor and council of the county;

3 (3) The qualified media infrastructure project tax credit
4 shall be non-refundable. The portion of the tax
5 credit that exceeds the tax liability of the taxpayer
6 for the tax year in which the credit was earned may be
7 carried forward to offset net income tax liability in
8 subsequent tax years for a period not to exceed ten
9 taxable years or until exhausted, whichever occurs
10 first. The director may require the tax credit to be
11 taken in the tax period in which the credit is earned
12 or may structure the tax credit in the initial
13 certification of the project to provide that only a
14 portion of the tax credit shall be taken over the
15 course of two or more years;

16 (4) The total amount of the qualified media infrastructure
17 project tax credit allowed for any state-certified
18 infrastructure project shall not exceed \$ _____ ;

19 (5) If all or a portion of an infrastructure project is a
20 facility that may be used for other purposes unrelated
21 to production or post-production activities, then the
22 project shall be approved only if a determination is



1 made that the multiple-use facility will support and
2 will be necessary to secure production or post-
3 production activity for the production and post-
4 production facility and the applicant provides
5 sufficient contractual assurances that the facility
6 will be used as a state-of-the-art production or post-
7 production facility, or as a support and component
8 thereof, for the useful life of the facility.

9 No tax credits shall be earned on a multiple-use facility until
10 the production or post-production facility is complete;

11 (6) Tax credits for qualified media infrastructure
12 projects shall be earned only as follows:

13 (A) Construction of the infrastructure project shall
14 begin within six months of the initial
15 certification and shall be _____ per cent
16 completed within a _____ year time frame;

17 (B) Expenditures shall be certified by the director,
18 and credits shall not be earned until that
19 certification;

20 (C) No tax credit shall be allowed for expenditures
21 made for any infrastructure project after July 1,
22 2011, unless _____ per cent of the total base



1 investment provided for in the initial
2 certification of the project has been expended
3 prior to that date; provided that the
4 expenditures may receive a final certification at
5 a later date; and

6 (D) For purposes of allowing tax credits against
7 state income tax liability, the tax credits shall
8 be deemed earned at the time the expenditures are
9 made; provided that all requirements of this
10 subsection have been met and the tax credits have
11 been certified;

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

15 (A) A detailed description of the infrastructure
16 project;

17 (B) A preliminary budget;

18 (C) A complete detailed business plan and market
19 analysis;

20 (D) Estimated start and completion dates;

21 (E) A letter issued by the mayor and council of the
22 county in which the infrastructure project is to



1 be located indicating that the project has been
2 approved; and

3 (F) If the application is incomplete, additional
4 information may be requested prior to further
5 action by the director;

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

9 (A) _____ per cent multiplied by the estimated total
10 incentive tax credits; and

11 (B) The minimum application fee shall be \$ _____ and
12 the maximum application fee shall be \$ _____ ;

13 (9) Prior to any final certification of a tax credit for a
14 state-certified infrastructure project, the applicant
15 for the qualified media infrastructure project tax
16 credit shall submit to the director an audit of the
17 expenditures audited and certified by an independent
18 certified public accountant, as determined by rule.

19 Upon approval of the audit, the director shall issue a
20 final tax credit certification letter indicating the
21 amount of tax credits certified for the state-
22 certified infrastructure project to the investors.



1 Bank loan finance fees applicable to the qualified
2 media infrastructure project expenditures, as
3 certified by the director, and any general excise
4 taxes that have been paid on the bank loan finance
5 fees and remitted to the State may be included as part
6 of the tax credit; and

7 (10) A taxpayer who claims a qualified media infrastructure
8 project tax credit for a state-certified
9 infrastructure project shall transmit fifteen per cent
10 of the gross revenues derived from the project or
11 \$1,000, whichever is greater, to the department for
12 deposit into the general fund.

13 There shall be a qualified persons crew-training program
14 rebate that shall be equal to per cent of the hourly wages
15 of each resident participant in a qualified persons crew-
16 training program, and if incurred by a qualified production in
17 any county of the State, shall be reimbursed up to the first
18 hours physically worked by the qualifying crew member in a
19 specialized craft position.

20 A qualified production occurring in more than one county may
21 prorate its expenditures based upon the amounts spent in each



1 county, if the population bases differ enough to change the
2 percentage of tax credit.

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

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

13 The basis for eligible property for depreciation of
14 accelerated cost recovery system purposes for state income taxes
15 shall be reduced by the amount of credit allowable and claimed.
16 Subsections (d) through (k) shall apply only to the production
17 tax credit set forth in subsection (a).

18 [~~(b)~~] (d) The [~~credit~~] credits allowed under [~~this~~
19 ~~section~~] subsection (a) shall be claimed against the net income
20 tax liability for the taxable year~~[-]~~ in which the credit is
21 claimed. For the purposes of this section, "net income tax



1 liability" means net income tax liability reduced by all other
2 credits allowed under this chapter.

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

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

- 16 (1) Meet the definition of a qualified production
17 ~~[specified in subsection (1)]~~;
- 18 (2) Have qualified production costs totaling at least
19 ~~[\$200,000,]~~ \$ _____;
- 20 (3) Provide the State, at a minimum, a shared-card, end-
21 title screen credit, where applicable;



1 (4) Provide evidence of reasonable efforts to hire local
2 talent and crew; and

3 (5) Provide evidence of financial or in-kind contributions
4 or educational or workforce development efforts, in
5 partnership with related local industry labor
6 organizations, educational institutions, or both,
7 toward the furtherance of the local film and
8 television and digital media industries.

9 [~~e~~] (g) On or after July 1, 2006, no qualified
10 production cost that has been financed by investments for which
11 a credit was claimed by any taxpayer pursuant to section
12 235-110.9 is eligible for credits under this section.

13 [~~f~~] (h) To receive [~~the~~] a tax [credit,] credit under
14 subsection (a), the taxpayer shall first prequalify the
15 production for the credit by registering with the department of
16 business, economic development, and tourism during the
17 development or preproduction stage. Failure to comply with this
18 provision may constitute a waiver of the right to claim the
19 credit.

20 [~~g~~] (i) The director of taxation shall prepare forms as
21 may be necessary to claim a credit under [~~this section.~~]
22 subsection (a). The director may also require the taxpayer to



1 furnish information to ascertain the validity of the claim for
2 credit made under [~~this section~~] subsection (a) and may adopt
3 rules necessary to effectuate the purposes of this section
4 pursuant to chapter 91.

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

- 11 (1) All qualified production costs as provided by
12 subsection (a), if any, incurred in the previous
13 taxable year;
- 14 (2) The amount of tax credits claimed pursuant to [~~this~~
15 ~~section,~~] subsection (a), if any, in the previous
16 taxable year; and
- 17 (3) The number of total hires versus the number of local
18 hires by category (i.e., department) and by county.

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



- 1 (1) Maintain records of the names of the taxpayers and
2 qualified productions thereof claiming the tax credits
3 under subsection (a);
- 4 (2) Obtain and total the aggregate amounts of all
5 qualified production costs per qualified production
6 and per qualified production per taxable year; and
- 7 (3) Provide a letter to the director [~~of taxation~~]
8 specifying the amount of the tax credit per qualified
9 production for each taxable year that a tax credit is
10 claimed under subsection (a) and the cumulative amount
11 of the tax credit for all years claimed.

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

20 Notwithstanding the authority of the department of business,
21 economic development, and tourism under this section, the



1 director [~~of taxation~~] may audit and adjust the tax credit
2 amount to conform to the information filed by the taxpayer.

3 [~~(j) Total tax credits claimed per qualified production~~
4 ~~shall not exceed \$8,000,000.~~]

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

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

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

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

16 (C) Tax and labor clearances;

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



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

5 and

6 (3) Provide:

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

12 (B) Collateral security in the amount of \$ _____ ;
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.
- 21 [~~k~~] (o) Qualified productions shall comply with
22 subsections [~~d~~], [~~e~~], [~~f~~], and [~~h~~].] (f), (g), (h), and (j).



1 [~~1+~~] (p) For the purposes of this section:

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

5 "Commercial":

6 (1) Means an advertising message that is filmed using
7 film, videotape, or digital media, for dissemination
8 via television broadcast or theatrical distribution;

9 (2) Includes a series of advertising messages if all parts
10 are produced at the same time over the course of six
11 consecutive weeks; and

12 (3) Does not include an advertising message with Internet-
13 only distribution.

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

21 "Director" means the director of taxation.



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

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

15 "Qualified media infrastructure project" means the
16 development, construction, renovation, or operation of a film,
17 video, television, or media production or post-production
18 facility and the immovable property and equipment related
19 thereto, or any other facility that supports and is a necessary
20 component of the proposed infrastructure project, that is
21 located in the State; provided that the facility may include a
22 movie theater or other commercial exhibition facility to assist



1 in offsetting operating costs of the production or post-
2 production facility, but shall not include a facility used to
3 produce pornographic matter or a pornographic performance.

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

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

14 "Qualified production":

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



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

10 (2) Does not include: [~~daily~~]

11 (A) Daily news; [~~public~~]

12 (B) Public affairs programs; [~~non-national~~]

13 (C) Non-national magazine or talk shows; [~~televised~~]

14 (D) Televised sporting events or activities;

15 [~~productions~~]

16 (E) Productions that solicit funds; [~~productions~~]

17 (F) Productions produced primarily for industrial,

18 corporate, institutional, or other private

19 purposes; and [~~productions~~]

20 (G) Productions that include any material or

21 performance prohibited by chapter 712.



1 "Qualified production costs" means the costs incurred by a
2 qualified production within the State that are subject to the
3 general excise tax under chapter 237 or income tax under this
4 chapter and that have not been financed by any investments for
5 which a credit was or will be claimed pursuant to section
6 235-110.9. Qualified production costs include but are not
7 limited to:

- 8 (1) Costs incurred during preproduction such as location
9 scouting and related services;
- 10 (2) Costs of set construction and operations, purchases or
11 rentals of wardrobe, props, accessories, food, office
12 supplies, transportation, equipment, and related
13 services;
- 14 (3) Wages or salaries of cast, crew, and musicians;
- 15 (4) Costs of photography, sound synchronization, lighting,
16 and related services;
- 17 (5) Costs of editing, visual effects, music, other post-
18 production, and related services;
- 19 (6) Rentals and fees for use of local facilities and
20 locations;
- 21 (7) Rentals of vehicles and lodging for cast and crew;



1 (8) Airfare for flights to or from Hawaii, and interisland
2 flights;

3 (9) Insurance and bonding;

4 (10) Shipping of equipment and supplies to or from Hawaii,
5 and interisland shipments; [and]

6 (11) Costs for equipment or items not readily obtainable in
7 the State that are passed through a qualified resident
8 vendor and upon which a mark-up and general excise tax
9 are paid; and

10 [~~11~~] (12) Other direct production costs specified by the
11 department in consultation with the department of
12 business, economic development, and tourism."

13 PART II

14 SECTION 3. The purpose of this part is to leverage the
15 unique opportunities for digital media industry development in
16 Hawaii resulting from the groundbreaking of the long-awaited
17 University of Hawaii-West Oahu campus in Kapolei and recent
18 high-profile film projects in Hawaii, including the *Pirates of*
19 *the Caribbean* in 2010.

20 The University of Hawaii-West Oahu campus will house the
21 academy for creative media's student digital media production
22 facility that will provide world-caliber student facilities to



1 anchor the premier media school of the Pacific Rim. The
2 facility will also include a state-of-the-art motion picture and
3 digital media studio complex to serve film and video production
4 (with four sound stages, two production support buildings, a
5 mill/shop extension and extra stage, commissary/kitchen,
6 festival pavilion and screening room to host events and
7 conferences, back-lot retail/shopping/dining area, and office
8 buildings that may provide incubator space for new media
9 companies). The University of Hawaii-West Oahu campus will also
10 house the Henry Ku'ualoha Giugni Digital Archives, which is
11 designed to preserve, digitize, and provide the moving image
12 history of Hawaii on the Internet.

13 The digital media tax incentive in this part is designed to
14 align the strengths of the University of Hawaii system and its
15 multiple campuses with the creativity of the University of
16 Hawaii academy for creative media graduates and the talented
17 media workforce from leeward Oahu emerging from the Waianae
18 Seariders' program since 1998, and from the schools and
19 businesses that the Seariders have helped to incubate. By
20 requiring beneficiaries of the digital media production
21 infrastructure tax credit to locate in enterprise zones in which
22 some of the University of Hawaii campuses are located, the tax



1 credit targets new media industry development, educational
2 public-private facility and infrastructure development, and job
3 creation with a focus on measurable economic benefits over time.

4 The current and proposed University of Hawaii-West Oahu
5 campuses are located in an existing enterprise zone covering
6 most of the Kapolei region. Leeward community college and
7 Honolulu community college are also located within existing
8 enterprise zones. Neighbor island community college campuses on
9 Maui, Kauai, and Hawaii are in enterprise zones, as is the
10 University of Hawaii at Hilo.

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

14 "PART . DIGITAL MEDIA ENTERPRISE SUBZONES

15 **§209E-A Definitions.** As used in this part:

16 "Base investment" means the cost, including fabrication and
17 installation, paid or accrued in the taxable year, of tangible
18 assets of a type that are, or under the Internal Revenue Code
19 will become, eligible for depreciation, amortization, or
20 accelerated capital cost recovery for federal income tax
21 purposes; provided that the assets are physically located in
22 this State for use in a business activity in this State and are



1 not mobile tangible assets expended by a person in the
2 development of a qualified digital media infrastructure project.
3 Base investment does not include a direct production expenditure
4 or qualified personnel expenditure eligible for a tax credit
5 under section 235-17.

6 "Department" means the department of business, economic
7 development, and tourism.

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

18 "Director" means the director of business, economic
19 development, and tourism.

20 "Qualified digital media infrastructure project" means the
21 development, construction, renovation, or operation of a digital
22 media production facility, a post-production facility, or both,



1 that is located in this State within a digital media enterprise
2 subzone; provided that the facility may include a movie theater
3 or other commercial exhibition facility to assist in offsetting
4 operating costs of the production or post-production facility,
5 but shall not include a facility used to produce pornographic
6 matter or a pornographic performance.

7 **§209E-B Digital media production infrastructure tax**
8 **credit; certification program.** (a) There shall be allowed to
9 each taxpayer qualifying for a tax credit under this part and
10 subject to the taxes imposed under chapter 235, a digital media
11 production infrastructure tax credit that shall be deductible
12 from the taxpayer's net state income tax liability for
13 investment expenditures made by the taxpayer for all qualified
14 digital media infrastructure projects within a digital media
15 enterprise subzone. The tax credit shall be equal to per
16 cent of the taxpayer's base investment. The tax credit under
17 this section shall be reduced by any credit claimed by the
18 taxpayer under chapter 235 for the same base investment. A
19 taxpayer who claims a tax credit for a qualified digital media
20 infrastructure project shall transmit fifteen per cent of the
21 gross revenues derived from the project or \$1,000, whichever is



1 greater, to the department of taxation for deposit into the
2 general fund.

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

5 (c) If all or a portion of a qualified digital media
6 infrastructure project is a facility that may be used for
7 purposes unrelated to production or post-production activities,
8 the project shall be eligible for the tax credit only if the
9 department determines that the facility will support and be
10 necessary to secure production or post-production activity;
11 provided that the taxpayer agrees to both of the following:

12 (1) The facility will be used as a state-of-the-art
13 production or post-production facility or as support
14 and as a component of the facility for the useful life
15 of the facility; and

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

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

20 (1) Receives from the department a written certification
21 that the taxpayer has undertaken, or will undertake
22 within one hundred eighty days of the issuance of the



1 certification, the development, construction,
2 renovation, or operation of a qualified digital media
3 infrastructure project within a digital media
4 enterprise subzone; provided that, upon request
5 submitted by the taxpayer based on good cause, the
6 department may extend the period for commencement of
7 work for up to an additional ninety days;

8 (2) Before July 1, 2012, expends not less than \$100,000 on
9 the base investment for a qualified digital media
10 infrastructure project within a digital media
11 enterprise subzone, and the taxpayer, after July 1,
12 2012, expends not less than \$250,000 on the base
13 investment for a qualified digital media
14 infrastructure project in a digital media enterprise
15 subzone;

16 (3) Enters into an agreement as provided in this section;

17 (4) Receives an investment expenditure certificate from
18 the department under subsection (i);

19 (5) Submits the investment expenditure certificate issued
20 by the department under subsection (i) to the
21 department of taxation; and



1 (6) Is not delinquent in a tax or other obligation owed to
2 the State or owned or under common control of an
3 entity that is delinquent in a tax or other obligation
4 owed to the State.

5 (e) If the tax credit allowed under this section exceeds
6 the amount of taxes owed by the taxpayer, that portion of the
7 tax credit that exceeds the tax liability of the taxpayer for
8 the taxable year shall not be refunded but may be carried
9 forward to offset net income tax liability under chapter 235 in
10 subsequent taxable years for a period not to exceed ten taxable
11 years or until exhausted, whichever occurs first.

12 (f) The tax credit under this section shall be claimed
13 after all other tax credits available to the taxpayer have been
14 claimed. A taxpayer eligible to claim a tax credit under this
15 section may assign all or a portion of a tax credit under this
16 section to any assignee. An assignee may subsequently assign a
17 tax credit or any portion of a tax credit assigned under this
18 subsection to one or more assignees. A taxpayer may claim a
19 portion of a tax credit and assign the remaining tax credit
20 amount. A tax credit assignment under this subsection shall be
21 irrevocable. The tax credit assignment under this subsection
22 shall be made on a form prescribed by the department of



1 taxation. A taxpayer claiming a tax credit under this section
2 shall submit a copy of the completed assignment form to the
3 department in the tax year in which the assignment is made and
4 shall attach a copy of the form to the tax return on which the
5 tax credit is claimed.

6 (g) To qualify for the tax credit established under this
7 section, the taxpayer shall submit an application to enter into
8 an agreement with the department. The application shall be
9 submitted in a form prescribed by the department and shall be
10 accompanied by a \$100 application fee and all of the information
11 and records requested by the department. The application fee
12 received by the department under this subsection shall be
13 deposited in the Hawaii film office special fund established
14 pursuant to section 201-113. The department shall not process
15 an application until it is complete. The agreement shall
16 provide for all of the following:

- 17 (1) A unique number assigned to the qualified digital
18 media infrastructure project;
- 19 (2) A detailed description of the qualified digital media
20 infrastructure project;
- 21 (3) A detailed business plan and market analysis for the
22 qualified digital media infrastructure project;



- 1 (4) A projected budget for the qualified digital media
2 infrastructure project;
- 3 (5) An estimated start date and completion date for the
4 qualified digital media infrastructure project;
- 5 (6) A requirement that the taxpayer not file a claim for
6 the credit under this section until at least twenty-
7 five per cent of the base investment in the qualified
8 digital media infrastructure project identified in the
9 agreement has been expended; and
- 10 (7) A requirement that the taxpayer provide the department
11 with the information and independent certification the
12 department deems necessary to verify investment
13 expenditures and eligibility for the credit under this
14 section.
- 15 (h) In determining whether to enter into an agreement
16 under this section, the department shall consider all of the
17 following:
- 18 (1) The potential that in the absence of the tax credit
19 allowed under this section, the qualified digital
20 media infrastructure project will be constructed in a
21 location other than this State;



1 (2) The extent to which the qualified digital media
2 infrastructure project may have the effect of
3 promoting economic development or job creation in this
4 State;

5 (3) The extent to which the tax credit will attract
6 private investment for the production of motion
7 pictures, videos, television programs, and digital
8 media in this State; and

9 (4) The extent to which the tax credit will encourage the
10 development of film, video, television, and digital
11 media production and post-production facilities in
12 this State.

13 (i) The taxpayer shall submit a request to the department
14 for an investment expenditure certificate on a form prescribed
15 by the department, along with any information or independent
16 certification the department deems necessary. The department
17 shall process each request within sixty days after the request
18 is complete. However, the department may request additional
19 information or independent certification before issuing an
20 investment expenditure certificate and need not issue the
21 investment expenditure certificate until satisfied that
22 investment expenditures and eligibility are adequately



1 established. The additional information requested may include a
2 report of expenditures audited and certified by an independent
3 certified public accountant. If the department determines that
4 a taxpayer has complied with the terms of an agreement entered
5 into under this section, the department shall issue an
6 investment expenditure certificate to the taxpayer. Each
7 investment expenditure certificate shall be signed by the
8 director and shall include the following information:

- 9 (1) The name of the taxpayer;
- 10 (2) A description of the qualified digital media
11 infrastructure project;
- 12 (3) The taxpayer's eligible base investment for the
13 qualified digital media infrastructure project;
- 14 (4) The unique number assigned to the qualified digital
15 media infrastructure project by the department under
16 subsection (g) (1);
- 17 (5) The taxpayer's federal employer identification number
18 or state taxpayer identification number; and
- 19 (6) Any independent certification required by the
20 department.

21 (j) In addition to the \$100 application fee established
22 under subsection (g), the department may establish, assess, and



1 collect a tax credit application and redemption fee to cover the
2 costs of administering the tax credit certification program
3 established under this part. The fee shall not exceed one-half
4 of one per cent of the tax credit claimed and shall be paid to
5 the department by the taxpayer prior to filing for the tax
6 credit. The department shall deposit any proceeds derived from
7 the fee in the Hawaii film office special fund established under
8 section 201-113.

9 (k) If at the close of any taxable year:

10 (1) The qualified digital media infrastructure project no
11 longer qualifies for the tax credit established under
12 this section;

13 (2) The qualified digital media infrastructure project or
14 an interest in the qualified digital media
15 infrastructure project has been sold by the taxpayer
16 making a base investment in the qualified digital
17 media infrastructure project; or

18 (3) The taxpayer has withdrawn the taxpayer's base
19 investment wholly or partially from the qualified
20 digital media infrastructure project,

21 the tax credit claimed under this section shall be recaptured.

22 The recapture shall be equal to ninety per cent of the amount of



1 the total tax credit claimed under this section in the preceding
2 five taxable years. The amount of the tax credit recaptured
3 shall apply only to the investment in the particular qualified
4 digital media infrastructure project that meets the conditions
5 of paragraph (1), (2), or (3). The amount of the recaptured tax
6 credit determined under this subsection shall be added to the
7 taxpayer's tax liability for the taxable year in which the
8 recapture occurs under this subsection.

9 (1) Information, records, or other data received,
10 prepared, used, or retained by the department under this section
11 that are submitted by an eligible taxpayer and considered by the
12 taxpayer and acknowledged by the department as confidential
13 shall not be subject to public disclosure. Information,
14 records, or other data shall only be considered confidential to
15 the extent that the information or records describe the
16 commercial and financial operations or intellectual property of
17 the taxpayer, the information or records have not been publicly
18 disseminated at any time, and disclosure of the information or
19 records may put the taxpayer at a competitive disadvantage.

20 (m) A taxpayer who wilfully submits information under this
21 section that the taxpayer knows to be fraudulent or false, in
22 addition to any other penalties provided by law, shall be liable



1 for a civil penalty equal to the amount of the taxpayer's credit
2 under this section. A penalty collected under this section
3 shall be deposited in the Hawaii film office special fund
4 established under section 201-113."

5 SECTION 5. Chapter 209E, Hawaii Revised Statutes, is
6 amended by designating sections 209E-1 through 209E-14 as
7 follows:

8 "PART I. ENTERPRISE ZONES"

9 SECTION 6. Chapter 431, Hawaii Revised Statutes, is
10 amended by adding a new section to part II of article 7 to be
11 appropriately designated and to read as follows:

12 "§431:7- Digital media production infrastructure tax
13 credit. The digital media production infrastructure tax credit
14 provided under section 209E-B shall apply to this article on
15 July 1, 2011."

16 PART III

17 SECTION 7. Section 201-111, Hawaii Revised Statutes, is
18 amended by amending the definitions of "board" and "fund" to
19 read as follows:

20 "Board" means the Hawaii [~~television and film development~~]
21 film office board.



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

3 SECTION 8. Section 201-112, Hawaii Revised Statutes, is
4 amended by amending the title and subsection (a) to read as
5 follows:

6 "[~~§~~201-112[~~§~~] Hawaii [~~television and film development~~]
7 film office board. (a) There is established the Hawaii
8 [~~television and film development~~] film office board. The board
9 shall be attached to the department of business, economic
10 development, and tourism for administrative purposes only. The
11 board shall administer [~~the grant and venture capital investment~~
12 ~~programs and~~] the Hawaii [~~television and film development~~] film
13 office special fund established under this part. The board
14 shall also assess and consider the overall viability and
15 development of the television and film industries and make
16 recommendations to appropriate state or county agencies."

17 PART IV

18 SECTION 9. Chapter 201, Hawaii Revised Statutes, is
19 amended by adding a new section to be appropriately designated
20 and to read as follows:



1 "§201- Hawaii film office special fund. (a) There is
2 established in the state treasury the Hawaii film office special
3 fund into which shall be deposited:

4 (1) Appropriations by the legislature;

5 (2) Donations and contributions made by private
6 individuals or organizations for deposit into the
7 fund;

8 (3) Grants provided by governmental agencies or any other
9 source; and

10 (4) Any profits or other amounts received from venture
11 capital investments.

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

19 (1) A grant program. The board shall adopt rules pursuant
20 to chapter 91 to provide conditions and qualifications
21 for grants. Applications for grants shall be made to
22 the board and shall contain such information as the



1 board shall require by rules adopted pursuant to
2 chapter 91. At a minimum, the applicant shall agree
3 to the following conditions:

4 (A) The grant shall be used exclusively for eligible
5 Hawaii projects;

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

8 (C) The applicant shall comply with applicable
9 federal and state laws prohibiting discrimination
10 against any person on the basis of race, color,
11 national origin, religion, creed, sex, age, or
12 physical handicap;

13 (D) The applicant shall comply with other
14 requirements as the board may prescribe;

15 (E) All activities undertaken with funds received
16 shall comply with all applicable federal, state,
17 and county statutes and ordinances;

18 (F) The applicant shall indemnify and hold harmless
19 the State of Hawaii and its officers, agents, and
20 employees from and against any and all claims
21 arising out of or resulting from activities
22 carried out or projects undertaken with funds



1 provided pursuant to this section, and procure
2 sufficient insurance to provide this
3 indemnification if requested to do so by the
4 department;

5 (G) The applicant shall make available to the board
6 all records the applicant may have relating to
7 the project, to allow the board to monitor the
8 applicant's compliance with the purpose of this
9 chapter; and

10 (H) The applicant, to the satisfaction of the board,
11 shall establish that sufficient funds are
12 available for the completion of the project for
13 the purpose for which the grant is awarded;

14 and

15 (2) A venture capital program. The board shall adopt
16 rules pursuant to chapter 91 to provide conditions and
17 qualifications for venture capital investments in
18 eligible Hawaii projects. The program may include a
19 written agreement between the borrower and the board,
20 as the representative of the State, that as
21 consideration for the venture capital investment made
22 under this part, the borrower shall share any



1 royalties, licenses, titles, rights, or any other
2 monetary benefits that may accrue to the borrower
3 pursuant to terms and conditions established by the
4 board by rule pursuant to chapter 91. Venture capital
5 investments may be made on such terms and conditions
6 as the board shall determine to be reasonable,
7 appropriate, and consistent with the purposes and
8 objectives of this part."

9 SECTION 10. Section 201-113, Hawaii Revised Statutes, is
10 amended to read as follows:

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

- 15 (1) Appropriations by the legislature;
- 16 (2) Rent from usage of the Hawaii film studio operated by
17 the Hawaii film office;
- 18 (3) Fees collected by the department of business, economic
19 development, and tourism for processing taxpayer
20 letters pursuant to section 235-17 and the tax credit
21 certification program pursuant to section 209E-B;



1 ~~[+2]~~ (4) Donations and contributions made by private
2 individuals or organizations for deposit into the
3 fund; and

4 ~~[+3]~~ (5) Grants provided by governmental agencies or any
5 other source~~[-and~~

6 ~~(4) Any profits or other amounts received from venture~~
7 ~~capital investments.~~

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

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



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



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

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

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



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

4 (b) Moneys in the fund shall be used for the operations of
5 the Hawaii film office, including personnel costs of staff
6 positions existing on November 1, 2009; provided that the use of
7 the fund for personnel costs shall be limited to those employees
8 performing specialized duties who are assigned solely to the
9 Hawaii film office."

10 PART V

11 SECTION 11. This Act does not affect rights and duties
12 that matured, penalties that were incurred, and proceedings that
13 were begun before its effective date.

14 SECTION 12. In codifying the new sections added by section
15 4 of this Act, the revisor of statutes shall substitute
16 appropriate section numbers for the letters used in designating
17 the new sections in this Act.

18 SECTION 13. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 14. This Act shall take effect on July 1, 2050;
21 provided that:



- 1 (1) Sections 4, 5, 6, and 10 shall be repealed on June 30,
2 2021; and
3 (2) Section 9 shall take effect on July 1, 2021.



Report Title:

Tax Credits; Film Production; Media Infrastructure; Digital Media Subzones; Hawaii Film Office Special Fund

Description:

Provides a tax credit for qualified media infrastructure projects. Establishes a qualified persons crew-training program rebate. Establishes digital media enterprise subzones as unspecified geographic areas surrounding University of Hawaii campuses that are also designated as enterprise zones. Establishes tax benefits for digital media infrastructure development and operation. Effective July 1, 2050. (SB318 HD2)

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

