HB 1308

HD2, SD1

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
INTERIM DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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STATEMENT OF

RICHARD C. LIM, INTERIM DIRECTOR
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

BEFORE THE

SENATE COMMITTEE ON WAYS AND MEANS

Wednesday, March 30, 2011
9:30 A.M.
State Capitol, Conference Room 221
In consideration of

HB1308 H.D. 2, S.D.1
RELATING TO DIGITAL MEDIA

Chair Ige, Vice Chair Kidani and members of the committee.

The Department of Business, Economic Development, and Tourism (DBEDT) offers the following comments on the latest amendments to HB1308 HD2 SD1, which seeks to establish a digital media enterprise zone, provide digital media infrastructure tax credit incentive, and renames the existing Hawaii Television and Film Development Special Fund (HRS 201-113) and Hawaii Television and Film Development Board (HRS 201-112) as the Hawaii Film Office Special Fund, to the Hawaii Film Office Development Special Fund and Hawaii Film Office board respectively.

We defer to Department of Taxation as to the fiscal impacts of the measure and any additional impacts to operations and staffing required.

As this measure has advanced through the session, we have offered support for the intent, and in particular, the additional components that address new revenue streams for a new Hawaii film office special fund, which would support operations and personnel of the Creative Industries Division's Hawaii Film Office (aka Hawaii Film Branch).

Relating to the use of the funds, we note that in HB1308, HD2, SD1, section 8, item b), lines 12 through 17, the committee has changed the date regarding "personnel costs of staff positions existing on November 1, 2010", to "personnel costs of staff positions existing on November 1, 2009."

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

This change increases the position count from 2 existing positions to 6 positions, changing the required funding from $115,000 to $279,000. We do bring to your attention that the administration has provided for 3 additional positions for the film branch in the Governor's budget message, requesting $178,572 to cover these positions which would provide increased capabilities in incentive and fund management, distribution and export development for the film, television and creative media sectors.

The department also respectfully requests that HB1308, HD2, SD1 be further amended to 1) insert language in Section 6 and 8 to provide the director of DBEDT the ability to designate the use of these funds rather than the board, due to the board's current inactivity and 2) requests the measure include appropriation language in order for the department to expend these funds:

There is appropriated out of the Hawaii Film Office Special Fund the sum of $______ Or so much thereof as may be necessary for fiscal year ________ to be expended for the purposes of §210-113, Hawaii Revised Statutes.

Thank you for the opportunity to provide these comments and recommended amendments.

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
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CATHY L. TAKASE
ACTING DIRECTOR

To: Senate Committee on Ways and Means

From: Cathy L. Takase, Acting Director

Hearing: Wednesday, March 30, 2011, 9:30 a.m.
State Capitol, Room 211

Re: Comments on H.B. No. 1308, H.D. 2, S.D. 1
Relating to Digital Media

The Office of Information Practices (OIP), which administers the State's public records law, the Uniform Information Practices Act (Modified), HRS chapter 92F (the UIPA), takes no position on the purpose of this bill, but offers the following comment on a proposed confidentiality provision.

A proposed new subsection (l) (page 13, line 19 thru page 14, line 7) provides that information submitted by a taxpayer applying for a tax credit shall not be subject to public disclosure when the information is "considered by the taxpayer and acknowledged by the department as confidential" under criteria set forth. The section then sets forth a standard for confidentiality that is nearly identical to the standard used to withhold confidential business and financial information under the frustration exception to disclosure under the UIPA.

The UIPA provides a uniform scheme to address public disclosure and protection of government records, including confidential commercial or financial information. The proposed confidentiality statute appears to afford slightly different treatment to information submitted for the proposed tax credit than is given to other similar commercial and financial information submitted to other government agencies, which may withhold information in accordance with standards adopted for this type of information under the UIPA.

For uniform treatment of similar records, OIP suggests that, if a confidentiality provision is desired, that it be worded to require the department to keep confidential commercial and financial information to the extent that this information falls within an exception to disclosure under chapter 92F.

Thank you for the opportunity to testify on this bill.

L E G I S L A T I V E

TAXBILLSERVICE

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

SUBJECT: INCOME, MISCELLANEOUS, Digital media infrastructure tax credit

BILL NUMBER: HB 1308, SD-1

INTRODUCED BY: Senate Committees on Economic Development and Technology and Education

BRIEF SUMMARY: Adds a new part to HRS chapter 209E to establish a digital media enterprise subzone as a geographic area located within an enterprise zone which is: (1) located within a_____ mile radius of a University of Hawaii campus, on or off campus; or (2) any other delineated geographic area designated as a digital media enterprise subzone by the legislature; provided that effective July 1, 2011 to June 30, 2013 the establishment of a subzone shall be limited to an area located within a_____mile radius, on or off campus, of the University of Hawaii-West Oahu.

Allows a taxpayer to claim a tax credit for investment expenditures made for all qualified digital media infrastructure projects within a digital media enterprise subzone in the amount of_____% of the taxpayer's base investment; provided that the tax credit shall be reduced by any credit claimed by the taxpayer under HRS chapter 235 for the same base investment. No more than $_____ in total tax credits under this section shall be authorized in any one taxable year.

Tax credits in excess of a taxpayer's tax liability shall not be refunded but may be carried forward to offset net income tax liability under HRS chapter 235 in subsequent tax years for a period not to exceed 10 tax years or until exhausted, whichever occurs first. Stipulates that the credit shall be claimed after all other tax credits available to the taxpayer have been claimed. Allows a taxpayer eligible to claim a tax credit under this section to assign all or a portion of a tax credit to any assignee. Allows an assignee to subsequently assign a tax credit or any portion of a tax credit to one or more assignees. A taxpayer may claim a portion of a tax credit and assign the remaining tax credit amount. A tax credit assignment under this subsection shall be irrevocable. The tax credit assignment under this subsection shall be made on a form prescribed by the department of taxation.

Further delineates procedures to qualify for the credit including the submission of a $100 application fee and a tax credit certification fee to cover the costs of administering the tax credit certification program by DBEDT. Also delineates conditions to qualify for the credit by the taxpayer. If, at the close of any taxable year: (1) the digital media infrastructure project no longer qualifies for the tax credit established under this section; (2) the digital media infrastructure project or an interest in the digital media infrastructure project has been sold by the taxpayer making a base investment in the qualified digital media infrastructure project; or (3) the taxpayer has withdrawn the taxpayer's base investment wholly or partially from the qualified digital media infrastructure project, the tax credit claimed under this section shall be recaptured in the amount equal to 25% of the amount of the total tax credit claimed in the preceding two taxable years. The amount of the recaptured tax credit shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs under this subsection.

The credit shall be repealed on June 30, 2021.

Amends HRS chapter 431 by adding Section 431:7- to provide that the digital media infrastructure tax credit shall be applicable to this article on July 1, 2011. Repeals this section on June 30, 2021.

Renames the Hawaii television and film development special fund as the Hawaii film office special fund, delineate moneys that shall be deposited into the fund and that the monies in the fund shall be used for operations of the Hawaii film office, including personnel costs of staff positions existing on November 1, 2010; provided that the use of the fund for personnel costs shall be limited to employees performing specialized duties and assigned solely to the Hawaii film office. This section shall be effective until June 30, 2021.

Amends HRS section 201-113 to delineate uses of the Hawaii film office special fund. This section shall take effect on July 1, 2021.

EFFECTIVE DATE: July 1, 2050

STAFF COMMENTS: The proposed measure establishes a digital media enterprise subzone within enterprise zones and surrounding areas of the University of Hawaii campuses. It also proposes a tax credit for investment expenditures made for all qualified digital media infrastructure projects within a digital media enterprise subzone in the amount of _____% of the taxpayer's base investment in addition to any other tax incentives afforded to businesses in an enterprise zone. While this measure proposes tax credits that would result in a payout of state funds, it is incredulous that a proposal such as this would be submitted given the financial crisis in state finances.

In addition, while the measure allows any excess tax credit for investment expenditures to be assigned to any assignee who subsequently may assign a tax credit to one or more assignees, this would create an administrative and record keeping nightmare for the department of taxation.

In an enterprise zone, businesses are attracted and encouraged to relocate to the zone through tax incentives, bonds, and other appropriate measures. Businesses located in an enterprise zone may claim a credit against taxes paid for a period of seven years and also allows the sale of items sold by such businesses to be exempt from the general excise tax.

While it appears that it is the intent of the legislature to encourage the development of digital media in the state, enterprise zones merely exacerbate what is already considered a poor climate in which to do business. Singling out businesses for preferential treatment merely confers preferences for those businesses at the expense of all other taxpayers.

Concurrent efforts must be made to improve Hawaii's business climate to enhance the economic prospects for all businesses. Enterprise zones are merely an abdication of government's responsibility to create a nurturing and supportive business climate so that all businesses can thrive in Hawaii and provide the jobs the people of Hawaii need.

Instead of expanding the enterprise zone program, the program should be repealed in favor of across-the-board tax relief for all businesses in Hawaii. For example, the consultant to the most recent Tax Review Commission suggested that all business-to-business transactions be exempt from the general excise tax as a means of reducing not only the cost of doing business in Hawaii but the overall cost of living.

Indeed, has there been a comprehensive evaluation of the program and do lawmakers know exactly how much enterprise zone businesses have benefitted and whether or not they have created the jobs promised when the program was first established? If, in fact, lawmakers believe that they need these special zones to attract businesses and to create jobs, what does that say about those areas of the state that are not so favored? Does, in fact, Hawaii's harsh business climate and poor reputation for a place to invest come as a result of providing such tax breaks at the expense of those businesses and individuals who cannot claim these tax incentives? Does the high burden of taxes have to be maintained because "tax relief" is extended to only a chosen few? This is the problem that lawmakers have created in recent years as they singled out zones like these or select industries for most favored status. If that is the case, then lawmakers should hang out a sign that says don't come to Hawaii or don't invest in Hawaii unless you can secure a tax break from the legislature.

Inasmuch as this proposal seems to benefit the University of Hawaii as the subzones would be located within an unspecified mile radius of a University campus, consideration should be given to offsetting the revenues losses with a reduction in general fund appropriations to the University. At least that trade off would insure revenue neutrality for the state general fund.

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

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

Digested 3/29/11