DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
RICHARD C. LIM
Director
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON FINANCE

Monday, February 27, 2012
1:00 p.m.
State Capitol, Conference Room 308
in consideration of

HB2869 HD1
RELATING TO THE ECONOMY

Chair Oshiro, Vice Chair Lee, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) offers the following comments on HB2869 HD1, which extends the sunset date for Act 88 (HRS 235-17) from 1/1/16 to 1/1/25; raises qualified production credit ceiling from $8 million to $10 million; separates the calculation of the credit amount based on wages and salaries from the credit amount based on other qualified productions costs; flattens the base credit for wages at 20%; and adds an additional 5% credit amount on wages and salaries of cast, crew and musicians who are state residents.

DBEDT appreciates the legislature's support of our film industry and the recognition of the importance of the Act 88 program. We support the intent of this measure, particularly as it broadens the qualifying criteria of the credit to include the music industry, but are concerned about the cost implications of the increases proposed.

We note that should there be any increases to our existing tax credit for film and digital media it will significantly increase the volume of production and digital media business, thereby

increasing the need for additional funding to efficiently staff and manage the workload of the State's film program.

Thank you for the opportunity to testify on this measure.

L E G I S L A T I V E

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SUBJECT: INCOME, Extend motion picture, digital media and film production credit; increase credit/credit ceiling, expand credit

BILL NUMBER: HB 2869, HD-1

INTRODUCED BY: House Committee on Economic Development and Business

BRIEF SUMMARY: Amends HRS section 235-17 to provide that the motion picture, digital media, and film production income tax credit shall consist of the sum of all of the applicable: (1) 20% of the qualified production costs, other than wages and salaries of cast, crew, and musicians, incurred by a qualified production in any county with a population of over 700,000; (2) 20% of the qualified production costs, other than wages and salaries of cast, crew, and musicians, incurred by a qualified production in any county of 700,000 or less; (3) 15% of the wages and salaries of all cast, crew, and musicians that are included in the qualified production costs incurred by a qualified production in any county with a population of over 700,000; (4) 20% of the wages and salaries of all cast, crew, and musicians that are included in the qualified production costs incurred by a qualified production in any county with a population of 700,000; or less; and (5) 5% of the wages and salaries of cast, crew, and musicians who are Hawaii residents and are included in the qualified production costs incurred by a qualified production in the state.

Requires the department of business, economic development, and tourism (DBEDT) to submit a report to the governor and legislature at least 20 days prior to the convening of the regular sessions of 2015, 2020, 2025, and 2030 on the economic impact of the tax credit, with an estimate of the following for each year since 2012 or the last year covered by the preceding report: (1) capital from out-of-state expended in the state on qualified production costs; (2) total expenditures for qualified production costs in the state; (3) total full-time equivalent jobs created by qualified productions in the state; (4) number of those full-time equivalent jobs filled by residents of the state; (5) total wages and salaries paid in the state for qualified productions; (6) amount of the total wages and salaries paid in the state to residents of the state for qualified productions; and (7) any contributions resulting from qualified productions that DBEDT deems necessary including donations to improve the education and communities of the state. The report shall also include any other information that DBEDT deems necessary.

Increases the qualified production credit ceiling from $8 million to $10 million.

Amends the definition of "production" to include animation or special and visual effects and adds a definition of "animation."

Amends Act 88, SLH 2006, to extend its repeal date from January 1, 2016 to January1, 2025.

EFFECTIVE DATE: Tax years beginning after December 31, 2112

STAFF COMMENTS: The legislature by Act 107, SLH 1997, enacted an income tax credit of 4% for costs incurred as a result of producing a motion picture or television film in the state and 7.25% for transient accommodations rented in connection with such activity. The credit was adopted largely to address the impost of the state's general excise tax on goods and services used by film producers. The exclusion of income received from royalties was initially established by Act 178, SLH 1999, as an incentive to attract high technology businesses to Hawaii. The original proposal would have applied to royalties and other income received from high technology businesses. This section of the law was later amended in 2000 by Act 297 which added the inclusion of royalties from "performing arts products" and was again amended by Act 221, SLH 2001, to include authors of "performing arts products."

The legislature by Act 88, SLH 2006, increased the 4% credit to 15% in a county with a population over 700,000 and to 20% in a county with a population of 700,000 or less. Act 88 also repealed the income tax credit for transient accommodations and expanded the credit to include commercials and digital media productions, and limited the credit to $8 million per qualified production. While Act 88, SLH 2006, is scheduled to be repealed on January 1, 2016, this measure extends the repeal date to January 1, 2025. This measure also increases the motion picture, digital media, and film production income tax credit, increases the credit ceiling from $8 million to $10 million, and expands the definition of production to include animation.

The motion picture, digital media and film production credits have been morphing and expanding into full-blown tax credits since they "got their foot in the door" in 1997. It should be remembered that the perpetuation and expansion of motion picture credits are a drain on the state treasury. It is incredulous how lawmakers can bemoan the fact that there are insufficient resources to catch up on the backlog of school repairs and maintenance, to fund social programs and not being able to provide tax relief to residents and yet they are willing to throw additional public resources at a subsidy of film production and media infrastructure as proposed in this measure. Taxpayers should be insulted that lawmakers can provide breaks for film productions but refuse to provide tax relief for residents, many of whom work two or three jobs just to keep a roof over their head and food on the table.

There is absolutely no rational basis for increasing and continuing these tax credits other than that other states are offering similar tax credits. Then again, those states can't offer paradise, year-round good weather during which to film. Instead of utilizing back door subsidies through tax credits, film industry advocates need to promote the beauty that is synonymous with Hawaii.

Income tax credits are designed to reduce the tax burden by providing relief for taxes paid. Tax credits are justified on the basis that taxpayers with a lesser ability to pay should be granted relief for state taxes imposed. Sponsors try to make an argument that Hawaii needs to enact such incentives to compete for this type of business, one has to ask "at what price?" Promoters of the film industry obviously don't give much credit to Hawaii's natural beauty and more recently its relative security. Just ask the actors of "Lost" or "Hawaii 5-0" who have bought homes here if they would like to work elsewhere. While film producers may moan that they will lose money without the proposed tax credits, is there any offer to share the wealth when a film makes millions of dollars? If promoters of the film industry would just do their job in outlining the advantages of doing this type of work in Hawaii and address some of the costly barriers by correcting them, such tax incentives would not be necessary. From permitting to skilled labor to facilitating transportation of equipment, there are ways that could reduce the cost of filming in Hawaii. Unless these intrinsic elements are addressed, movie makers will

probably demand subsidies, such as this incentive. Unfortunately, they come at the expense of all taxpayers and industries struggling to survive in Hawaii. While lawmakers look like a ship of fools, movie producers and promoters are laughing all the way to the bank and the real losers in this scenario are the poor taxpayers who continue to struggle to make ends meet, a scenario akin to the bread and circus of ancient Rome.

So while there may be 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 that due in large part to the irresponsibility of handling state finances in the past, taxpayers cannot afford proposals like this. Thanks to the gushing generosity of those lawmakers who gave the state's bank away in all sorts of tax incentive schemes in recent years, taxpayers have had to bear increasing tax burdens.

It should be noted that this measure would make the film tax credit a permanent part of the state's tax code for just over 20 years with no opportunity to put the brakes on the credit should it be abused or should it not live up to the unbridled promises that the film industry has made to state policymakers. The real question is whether or not the state can sustain the kind of losses that such productions will claim against the state and will there be a way to alter the law should any of the criteria that is required to be reported under this measure not be met. It would appear more prudent to extend the credit for a shorter duration that would allow lawmakers to assess and evaluate whether incentives are still needed for these productions.

Instead of creating sustainable economic development incentives, the film tax credits waste moneys that could otherwise create an environment that is nurturing for all business activity, activity that lasts more than the six or eight months of a production. The overall tax burden could be lowered not only for families but for the businesses that provide long-term employment for Hawaii's people. Even national observers of the tax climate in the states criticize the effort to attract media productions with such tax incentives, noting that the jobs created are temporary and are usually low-paying for but the lead actors and the professional crew that is brought into the state from outside the state. Advocates, on the other hand, argue that these productions help to promote Hawaii as a visitor destination. While that may be true, it is the natural beauty of Hawaii that stands heads and shoulders above other locations and, therefore, the tax incentive is just the gravy, gravy that comes at the expense of all taxpayers in Hawaii.

Digested 2/26/12