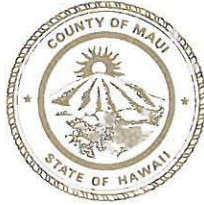


SB 2111

S.D. 1

EDT

ALAN M. ARAKAWA
MAYOR



200 South High Street
Wailuku, Hawai'i 96793-2155
Telephone (808) 270-7855
Fax (808) 270-7870
e-mail: mayors.office@mauicounty.gov

OFFICE OF THE MAYOR

Ke'ena O Ka Meia
COUNTY OF MAUI – Kalana O Maui

TO: Honorable Carol Fukunaga, Chair
Honorable Glenn Wakai, Vice Chair
Honorable Members of the Senate Committee on Economic Development
& Technology

FROM: Alan Arakawa, Mayor
County of Maui

HEARING: Economic Development & Technology
Monday, February 13, 2012
2:30 a.m.
Room 016

SUBJECT: TESTIMONY OF MAUI COUNTY MAYOR ALAN ARAKAWA ON SB 2111
RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT

Thank you for this opportunity to offer testimony on **SB2111** relating to Film and Digital Media Industry Development. While we **support** the spirit of this bill, my administration respectfully requests that this, and any bill relating to film and digital media industry development, include the following:

- A "Qualified media infrastructure project tax credit";
- A "Motion picture, digital media, film production, special or visual effects and animation production income tax credit";
- The establishment of a qualified Hawaii crew training program; and,
- That all neighbor counties should receive a 10% differential between themselves and the City & County of Honolulu (the existing differential is currently at 5%).

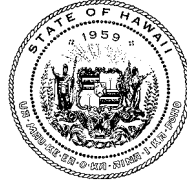
Justification:

- 1) In general, my administration can support bills relating to digital media industry development if the legislation includes the measures referenced herein-above in (a) – (d), based on the following:

- Legislation that includes a “qualified media infrastructure project tax credit”, a “motion picture, digital media, film production, special or visual effects and animation production income tax credit”, and the establishment of a “qualified Hawaii crew training program” will benefit the entire State of Hawaii by bringing a new industry to the state, and thereby diversifying and stimulating our economy, creating new jobs for our residents, and producing long-term opportunities for our children through training/deeming programs;
- An infrastructure tax credit is **especially important to Maui County** (and, the neighbor islands) as outside of the City & County of Honolulu, there isn’t a single soundstage, post-production facility, nor camera equipment rental houses, etc.;
- According to presentations made to the legislature during last year’s session, (a) each stage built in the State of Hawaii would inject nearly \$140 million into our economy via the hiring of local labor and purchasing materials locally over a two year period; and, (b) Each movie filmed in Hawaii (i.e. \$90 million budget) would create approximately 193 local jobs immediately.
- Our own research shows that on March 5, 2011, the governor of Puerto Rico signed a new law that increased the amount of its existing tax credits. In passing the law, the PR Film Commissioner announced that in 2010, 12 projects were filmed on the island, creating 17,528 jobs and 22,671 hotel nights. Nearly \$70 million was said to have been injected into their local economy through a dozen movies, TV series, and documentaries.
- 10% Differential – Currently the Neighbor Counties receive a 5% differential in the film and television tax incentive program over the City & County of Honolulu. The Chief Officer of the Creative Industries Division Film Office, released industry numbers at the latest Hawaii Film & Entertainment Board (HFEB) meeting in January, 2012. These numbers reinforced the disparity between the counties showing: (a) The City & County of Honolulu, with a 15% tax incentive, managed to file \$126,441,000 spending in 2011; while (b) the three neighboring counties, with a 20% tax incentive, filed \$5,183,245. The three neighbor counties combined managed a mere 4.09% of the market.

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1564

FREDERICK D. PABLO
INTERIM DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

To: The Honorable Carol Fukunaga, Chair,
and Members of the Senate Committee on Economic Development & Technology

Date: Monday, February 13, 2012

Time: 2:30 P.M.

Place: Conference Room 016, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. 2111 Proposed SD1 Relating to Film and Digital Media Industry Development

The Department of Taxation (Department) defers to the Department of Business Economic Development and Tourism (DBEDT) on the merits of S.B. 2111, Proposed SD1. However, as written, the Department is concerned that it will not be able to implement the provisions of the proposed SD1. Due to the anticipated difficulty in administering this bill, as well as the potential for a substantial increase in revenue loss resulting from the broadening of the scope of the tax credits in the bill, the Department would prefer adoption of S.B. 2741, which takes a more measured approach to supporting the creative media industry.

Proposed SD1 amends S.B.2111 by recommending the following: increases the amount of tax credit available for costs associated with productions qualifying for tax credit; broadens the types of costs which may be counted toward calculation of the tax credit; adds a new threshold for digital media productions; increases the cap per qualified production from \$8 million to \$16 million; and creates a new production infrastructure tax credit.

Subsection (a) proposes an increase in the percentages of production costs eligible for tax credit, from 15% to 25% for Oahu, and 20% to 30% for the neighbor islands. Not only is there an increase in percentages, the change in the definition expands the types of costs eligible for tax credit.

Currently, "production costs" means the costs incurred by a qualified production that are subject to the general excise tax (GET) or income tax, and has not been financed by any investments for which a credit was or will be claimed pursuant to section 235-110.9. Whereas, as proposed in Proposed SD1, "expenditure" does not require that the costs be subject to the GET or income tax, and has removed the requirement that the costs may not have been financed by any investments for which a credit was or will be claimed pursuant to section 235-110.9. This provision could potentially allow for the claiming of two tax credits for the same costs incurred.

A new threshold of \$50,000 for qualified digital media projects, while keeping the current threshold of \$200,000 for all other qualified projects, has been added to the measure. The total tax credit cap for each qualified production would increase from \$8 million to \$16 million.

S.B. 2111 Proposed SD1 also adds a new section to Chapter 235 of the Hawaii Revised Statutes (HRS), to create a motion picture, digital media, and film production infrastructure tax credit. The credit is a refundable tax credit equal to 50% of the qualified infrastructure costs, provided the minimum project cost is \$10 million and is able to provide proof of reasonable effort to hire Hawaii residents. The measure also requires a prequalification of the project by registering with DBEDT during the development stage; allows for all or a portion of the infrastructure project to be used for other purposes unrelated to production or post-production activities; provides a recapture up to 100% of the tax credit for the taxable year in which the recapture occurs; institutes an annual fee for administration of the tax credit, equal to 1% of the tax credit received by the taxpayer, payable to DBEDT; and requires DBEDT to report at the end of each taxable year in which qualified production costs were expended.

This measure would take effect on July 1, 2012; provided that Section 3 will apply to qualified expenditures incurred on or after January 1, 2012, and before January 1, 2027. An effective date of July 1, 2012, would effectively provide additional income tax credits (10% increase) for project that would have occurred anyway.

The Department notes that due to new proposed language in the SD1 that allows a partnership to claim the tax credit at the entity level, the Department would need to modify the tax form and computer system. Due to the lack of resources and staffing, the Department will not be able to implement this proposed change by its July 1, 2012 effective date.

Thank you for the opportunity to provide comments.

February 12th, 2012

TO: Senator Carol Fukunaga, Chair
Senator Glenn Wakai, Vice Chair
Members of the Committee on Economic Development and Technology

DATE: Monday, February 13th, 2012
TIME: 2:30pm
PLACE: Conference Room 016, State Capitol

Re: SB 2111 RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

FROM: Michael M. Varley, Co-Owner
Blue Water Multimedia, Ilc.

Blue Water Multimedia, Ilc is in support of the intent of SB 2111 relating to film and digital media industry development because we believe that such a bill will foster expanded growth of the film industry as well as development of a new and emerging digital media industry in Hawaii.

Blue Water Multimedia was founded in October of 2006, headquartered in Hawaii since its inception, produces and collaborates in digital media projects including animation, visual effects for television and film, as well as interactive media.

The digital media production workforce largely overlaps and supports the film industry through visual effects, animation, post-production and stereography and shows the greatest potential for growth within that industry in Hawaii. Digital media workers are those who are highly skilled and talented individuals. The digital media industry not only requires creative development teams to write scripts, create digital artwork and music, but employes technicians who are skilled in 3D technologies, information technology, computer science, engineering and programming.

The benefits that SB2111 will bring to Hawaii-based companies will help develop a new industry with a massive potential for growth and sustainability. The interactive media/game industry was measured at USD \$10.3 Billion domestically in 2004. The industry has shown rapid growth since then to UDS \$65 Billion in 2011. Fostering growth of this industry in Hawaii has the prospective to create a large volume of high quality jobs within an industry that can become a pillar of Hawaii's economy.

This bill with our proposed ammendments will help foster and grow a strong digital media industry that will provide opportunities to create high quality jobs within the state of Hawaii.

Thank you for the opportunity to testify.

Exhibit A:

The following digital media game projects are a few examples of how small teams with relatively low budgets can create large success, illustrating the need to lower the qualification threshold:

Title: *Minecraft*

Two-developer team, under one year of development.
1,717,096 sales as of march 28th 2011, USD\$32 million.
Current valuation of property is USD\$84.2 million.

Title: *Terraria*

Two-developer team.
Over 1,000,000 copies sold, USD\$10-15 million.

Title: *Limbo*

Two-developer team.
Over 1 million copies sold, USD\$15 million.

Title: *Amnesia: Dark Descent*

Two-developer team.
391,102 units sold, USD\$7.8 million.

February 12th, 2012

Re: Proposed Amendments to SB 2111 RELATING TO FILM AND DIGITAL MEDIA
INDUSTRY DEVELOPMENT.

Blue Water Multimedia feels that it is not only important to support the digital media industry with changes proposed in SB2111 SD1, but also believes that it would be important to make the following changes and additions to the bill:

1. In **Section 3.b.2, change** the statement [or \$50,000 for a qualified digital media project] to [or **\$10,000** for a qualified digital media **or qualified independent emerging media project**]
2. In **Section 3.p change** the statement [“Digital media” means production methods and platforms directly related to the creation of cinematic imagery and content, specifically using digital means, including but not limited to digital cameras, digital sound equipment, and computers, to be delivered via film, videotape, interactive game platform, or other digital distribution media] to [“Digital media” means production methods and platforms directly related to the creation of cinematic imagery and **interactive media content**, specifically using digital means, including but not limited to digital cameras, digital sound equipment, and computers, to be delivered via film, videotape, interactive game platform, **internet, wireless** or other digital distribution media]
3. In Section 3.p change the statement [“Qualified digital media project” means a production of interactive entertainment that is produced for distribution in commercial or educational markets, including a video game or production intended for internet or wireless distribution.] to [“Qualified digital media project” means **development of animation, graphics, visual effects, post-production, and interactive media for entertainment and/or education** that is produced for distribution in commercial or educational markets, including **but not limited to** a video game or production intended for **game platform, physical media**, internet or wireless distribution.”]
4. In **Section 3.p add** the statement “**Qualified independent and emerging media project**” means a qualified production of film, video, television, interactive entertainment that is produced for distribution in commercial or educational markets, including but not limited to feature film, short film, television show, television series, a video game or production intended for game platform, physical media, internet or wireless distribution.]

TO: Senator Carol Fukunaga, Chair
Senator Glenn Wakai, Vice Chair
Members of the Committee on Economic Development and Technology

DATE: Monday, February 13th, 2012

TIME: 2:30pm

PLACE: Conference Room 016, State Capitol

Re: SB 2111 RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

FROM: Gabriel Yanagihara, President/CEO

Cinderscape L.L.C

Cinderscape L.L.C is in support of the intent of SB 2111 relating to film and digital media industry development because we believe that such a bill will foster expanded growth of the film industry as well as development of a new and emerging digital media industry in Hawaii.

Cinderscape L.L.C founded in April 1996, has been headquartered in Hawaii since 1999 and produces digital media projects including animation, visual effects, interactive media and film. The company has produced award winning media for several Hawaii companies as well as large domestic and international projects, with a large portion of it's revenue coming from the export of digital media.

Cinderscape L.L.C is a new company focusing on crowd sourced animation and visual effects. It currently has a roster of 21 animators, 3D artists and developers. We hope to extend our services and workforce to neighboring businesses in Hawaii in the animation, film and game design industries on a contract basis to deal with larger projects that their standing workforce would otherwise be unable to fulfill. The majority of our work will be distributed on a global scale via the internet.

The digital media production workforce largely overlaps and supports the film industry through visual effects, animation, post-production and stereography and shows the greatest potential for growth within that industry in Hawaii. Digital media workers are those who are highly skilled and talented individuals. The digital media industry not only requires creative development teams to write scripts, create digital artwork and music, but employes technicians who are skilled in 3D technologies, information technology, computer science, engineering and programming.

The benefits that SB2111 will bring to Hawaii-based companies will help develop a new industry with a massive potential for growth and sustainability. The interactive media/game industry was measured at USD \$10.3 Billion domestically in 2004. The industry has shown rapid growth since then to UDS \$65 Billion in 2011. Fostering growth of this industry in Hawaii has the prospective to create a large volume of high quality jobs within an industry that can become a pillar of Hawaii's economy.

This bill with our proposed amendments will help foster and grow a strong digital media industry that will provide opportunities to create high quality jobs within the state of Hawaii.

Thank you very much for the opportunity to testify.

1. In **Section 3.b.2**, **change** the statement [or \$50,000 for a qualified digital media project] to [or **\$10,000** for a qualified digital media **or qualified independent emerging media project**]

2. In **Section 3.p** **change** the statement ["Digital media" means production methods and platforms directly related to the creation of cinematic imagery and content, specifically using digital means, including but not limited to digital cameras, digital sound equipment, and computers, to be delivered via film, videotape, interactive game platform, or other digital distribution media] to ["Digital media" means production methods and platforms directly related to the creation of cinematic imagery and **interactive media content**, specifically using digital means, including but not limited to digital

cameras, digital sound equipment, and computers, to be delivered via film, videotape, interactive game platform, **internet, wireless** or other digital distribution media]

3. In Section 3.p change the statement ["Qualified digital media project" means a production of interactive entertainment that is produced for distribution in commercial or educational markets, including a video game or production intended for internet or wireless distribution.] to ["Qualified digital media project" means **development of animation, graphics, visual effects, post-production, and interactive media for entertainment and/or education** that is produced for distribution in commercial or educational markets, including **but not limited to** a video game or production intended for **game platform, physical media**, internet or wireless distribution."]

4. In **Section 3.p** add the statement "**Qualified independent and emerging media project**" means a **qualified production of film, video, television, interactive entertainment that is produced for distribution in commercial or educational markets, including but not limited to feature film, short film, television show, television series, a video game or production intended for game platform, physical media, internet or wireless distribution.**]

fukunaga2 - Ashley-Jane

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 12, 2012 2:29 PM
To: EDTTestimony
Cc: dean@hawaiiimedia.com
Subject: Testimony for SB2111 on 2/13/2012 2:30:00 PM

Testimony for EDT 2/13/2012 2:30:00 PM SB2111

Conference room: 016
Testifier position: Support
Testifier will be present: Yes
Submitted by: Dean Des Jarlais
Organization: Hawaii Media Inc.
E-mail: dean@hawaiiimedia.com
Submitted on: 2/12/2012

Comments:

My company, Hawaii Media Inc., has supplied camera, grip, and lighting equipment for film and television productions in Hawaii for twenty years. In that process, we often act as a local agent for equipment vendors on the mainland or sub-rent equipment that is not available in the local market. We are the Hawaii representative for Otto Nemenz International, Tyler Aerial systems, and HydroFlex Underwater camera and lighting equipment. These companies are all based in Los Angeles.

This equipment, cameras, dollies, helicopter mounts, is rented by my company to productions like "Hawaii 5-0". In that process, my company receives a mark-up or commission, and that transaction becomes subject to Hawaii excise tax.

The revised definition of "qualified expenditures" contained in SB2111 would exclude this essential equipment from the tax credit rebate. The equipment used in production is so diverse and expensive, that no local company could possibly afford to purchase, house, and maintain the inventory that is required.

If equipment that is owned by out-of-state companies does not qualify as an expenditure, companies like mine will suffer a tremendous economic hardship. The tools of the trade will then be available only in Los Angeles, not here in the local market-available with a phone call on a moments notice.

Please include rebilled goods and services from out-of-state vendors as qualified expenditure, so that Hawaii businesses can prosper.

February 11th, 2012

TO: Senator Carol Fukunaga, Chair
Senator Glenn Wakai, Vice Chair
Members of the Committee on Economic Development and Technology

DATE: Monday, February 13th, 2012

TIME: 2:30pm

PLACE: Conference Room 016, State Capitol

Re: SB 2111 RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

From: Timothy Webb, Government Advocacy Representative
Honolulu Game Developers Association

The Honolulu Chapter of the International Game Developers Group is in support of the intent of SB2111. We believe that this bill will help develop a healthy and profitable game development industry in Hawaii. We also would like to propose the following changes:

1. In Section 3.b.2, change the statement [or \$50,000 for a qualified digital media project] to [or \$10,000 for a qualified digital media or qualified independent emerging media project]

The game industry in Hawaii is composed of essentially two entities, the Tetris family of businesses, and a growing community of independent developers. IGDAHNL feels that in order to create a stable industry of game developers in Hawaii, we must specifically cultivate these independent developers, to create a . Most of the independent developers in Hawaii do not currently work on projects over \$50,000, usually they work on multiple projects in the \$10,000 to \$20,000 range.

2. In Section 3.p change the statement ["Digital media" means production methods and platforms directly related to the creation of cinematic imagery and content, specifically using digital means, including but not limited to digital cameras, digital sound equipment, and computers, to be delivered via film, videotape, interactive game platform, or other digital distribution media] to ["Digital media" means production methods and platforms directly related to the creation of cinematic imagery and interactive media content, specifically using digital means, including but not limited to digital cameras, digital sound equipment, and computers, to be delivered via film, videotape, interactive game platform, internet, wireless or other digital distribution media]

3. In Section 3.p change the statement ["Qualified digital media project" means a production of interactive entertainment that is produced for distribution in commercial or educational markets, including a video game or production intended for internet or wireless distribution.] to ["Qualified digital media project" means development of animation, graphics, visual effects, post-production, and interactive media for entertainment and/or education that is produced for distribution in commercial or

educational markets, including but not limited to a video game or production intended for game platform, physical media, internet or wireless distribution.”]

4. In Section 3.p add the statement “Qualified independent and emerging media project” means a qualified production of film, video, television, interactive entertainment that is produced for distribution in commercial or educational markets, including but not limited to feature film, short film, television show, television series, a video game or production intended for game platform, physical media, internet or wireless distribution.]

February 12, 2012

TO: Senator Carol Fukunaga, Chair

Senator Glenn Wakai, Vice Chair

Members of the Committee on Economic Development and Technology

Date: Monday, February 13, 2012

Time: 2:30pm

Place: Conference Room 016, State Capitol

Re: SB 2111 RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

From: David Hotniansky, Technical Lead

Hyperspective Studios

I support the intent of SB 2111 relating to film and digital media industry development. The bill will aid in the expansion of continued growth of the film industry as well as a new emerging digital media industry in Hawaii.

I am born, raised, and educated in the islands. I am a product of the UH system and ACM and I have made a career for myself working within digital media since 2006. Digital media has provided me the opportunity to achieve the high-tech job I was pursuing but also allows me the flexibility to work from anywhere with a computer. Thanks to this I was able to remain in the islands where the rest of my family resides. Digital media can impact Hawaii's economy and can become a model for developing quality high tech jobs that no longer have to leave the state.

Digital media production workforce largely overlaps and integrates with film through visual effects, post production, and animation. Digital media working are highly skilled technicians that require not only a creative mind but a foundation rooted in technical ability as well.

The benefits with SB2111 provided to Hawaii-based companies will help to develop a new industry with a large potential for growth and sustainability. The interactive/game industry has grown from \$10.3 billion in 2004 to \$65 billion in 2011. Investing in the growth of this industry give Hawaii the potential to create a large volume of high quality jobs in an industry that can become a key part of Hawaii's economy.

This bill with the addition of our proposed amendments will help foster and grow a strong digital media industry that will provide opportunities to create high quality jobs within the state of Hawaii.

Thank you very much for the opportunity to testify.

February 11th, 2012

Re: Proposed Amendments to SB 2111 RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

It is not only important to support the digital media industry with changes proposed in SB2111 SD1, but also believes that it would be important to make the following changes and additions to the bill:

1. In **Section 3.b.2, change** the statement [or \$50,000 for a qualified digital media project] to [or **\$10,000** for a qualified digital media **or qualified independent emerging media project**]

The lower threshold with addition of qualified independent and emerging media will help support development and growth of a new industry with large potential for success as many local developers would require this lower threshold. Please see Exhibit A

2. In **Section 3.p change** the statement [“Digital media” means production methods and platforms directly related to the creation of cinematic imagery and content, specifically using digital means, including but not limited to digital cameras, digital sound equipment, and computers, to be delivered via film, videotape, interactive game platform, or other digital distribution media] to [“Digital media” means production methods and platforms directly related to the creation of cinematic imagery and **interactive media content**, specifically using digital means, including but not limited to digital cameras, digital sound equipment, and computers, to be delivered via film, videotape, interactive game platform, **internet, wireless** or other digital distribution media]

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4. In **Section 3.p add** the statement “**Qualified independent and emerging media project**” means a qualified production of film, video, television, interactive entertainment that is produced for distribution in commercial or educational markets, including but not limited to feature film, short film, television show, television series, a video game or production intended for game platform, physical media, internet or wireless distribution.]

Exhibit A:

The following digital media game projects are a few examples of how small teams with relatively low budgets can create large success, illustrating the need to lower the qualification threshold:

Title: *Minecraft*

Two-developer team, under one year of development.

1,717,096 sales as of march 28th 2011, USD\$32 million.

Current valuation of property is USD\$84.2 million.

Title: *Amnesia: Dark Descent*

Two-developer team.

391,102 units sold, USD\$7.8 million.

Title: *Terraria*

Two-developer team.

Over 1,000,000 copies sold, USD\$10-15 million.

Title: *Limbo*

Two-developer team.



February 11th, 2012

TO: Senator Carol Fukunaga, Chair
Senator Glenn Wakai, Vice Chair
Members of the Committee on Economic Development and Technology

DATE: Monday, February 13th, 2012
TIME: 2:30pm
PLACE: Conference Room 016, State Capitol

Re: SB 2111 RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

FROM: Todd J. Robertson, President/CEO
Hyperspective Studios, Inc.

Hyperspective Studios, Inc. is in support of the intent of SB 2111 relating to film and digital media industry development because we believe that such a bill will foster expanded growth of the film industry as well as development of a new and emerging digital media industry in Hawaii.

Hyperspective Studios, founded in April 1996, has been headquartered in Hawaii since 1999 and produces digital media projects including animation, visual effects, interactive media and film. The company has produced award winning media for several Hawaii companies as well as large domestic and international projects, with a large portion of it's revenue coming from the export of digital media.

Hyperspective currently employs eight specialists and technicians, is currently hiring two additional positions and regularly hires 10 or more subcontractors annually within the state of Hawaii. The company expects to increase it's workforce by 40% in 2012, with a steady increase of job openings over the next four years.

The digital media production workforce largely overlaps and supports the film industry through visual effects, animation, post-production and stereography and shows the greatest potential for growth within that industry in Hawaii. Digital media workers are those who are highly skilled and talented individuals. The digital media industry not only requires creative development teams to write scripts, create digital artwork and music, but employes technicians who are skilled in 3D technologies, information technology, computer science, engineering and programming.

The benefits that SB2111 will bring to Hawaii-based companies will help develop a new industry with a massive potential for growth and sustainability. The interactive media/game industry was measured at USD \$10.3 Billion domestically in 2004. The industry has shown rapid growth since then to UDS \$65 Billion in 2011. Fostering growth



of this industry in Hawaii has the prospective to create a large volume of high quality jobs within an industry that can become a pillar of Hawaii's economy.

This bill with these proposed changes will help foster and grow a strong digital media industry that will provide opportunities to create high quality jobs within the state of Hawaii.

Thank you very much for the opportunity to testify.

Todd J. Robertson, President/CEO
Hyperspective Studios, Inc.

Exhibit A:

The following digital media game projects are a few examples of how small teams with relatively low budgets can create large success, illustrating the need to lower the qualification threshold:

Title: *Minecraft*

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Two-developer team.
Over 1 million copies sold, USD\$15 million.



February 12, 2012

TO: Senate Committee on Economic Development and Technology
The Honorable Carol Fukunaga, Chair
The Honorable Glen Wakai, Vice Chair

FROM: Ricardo S. Galindez, Co-Owner, Island Film Group
Roy J. Tjioe, Co-Owner, Island Film Group

RE: Testimony In Support of SB 2111 SD1 with Amendments

Aloha Chair, Vice Chair, and Members of the Committee:

Thank you for the opportunity to testify in support of SB 2111 SD1 with Amendemnts

MOST FILM AND TELEVISION PROJECTS LOSE MONEY

It is important when debating the merits of film and television production incentives to keep in mind that although there are films and television series that highly profitable, the vast majority of them lose money for the studios or investors that financed them. The only groups that makes money on every film and television project are the cast, crew and vendors for the projects.

HAWAII WOULD BENEFIT FROM INCREASED PRODUCTION INCENTIVES

Increased production incentives mean increased production activities, resulting in more training and employment, more economic activity (the multiplier effect) and worldwide publicity for Hawaii ("Lost", "Hawaii 5-0", "Soul Surfer", "The Descendants", etc.). Even New York City, the busiest production location in the United States (excluding Hollywood) has a 30% tax incentive.

HAWAII NEEDS DEDICATED FILM AND TELEVISION PRODUCTION FACILITIES

- The **Diamond Head Studio** is too small for medium-large film productions and can only support one production at a time.

- The old **CompUSA** facility (used for the filming of “The Descendants”) is now a used car lot and was recently sold to A&B for redevelopment.
- The **Honolulu Advertiser** building property (currently used for the production of “Hawaii 5-0”) is scheduled for redevelopment.
- **Halawa Valley Studios** (the largest privately-owned production facility in Hawaii) was used by the producers of “Pirates of the Caribbean” but was only large enough to house the wardrobe department.

THE INFRASTRUCTURE PORTION OF THE TAX CREDIT IS FULLY SECURED

- The tax credit would be used to construct **permanent film and television production facilities**.
- The \$10m threshold targets the tax credit to **substantial construction projects**.
- The tax credit is subject to a **100% recapture (secured by a tax lien)** should a facility cease to be used for film and television production.
- The **1% annual administration fee** would support funding of the Hawaii Film Office.

CONCERNS WITH SB 2111 SD1 (AS FULLY SET FORTH IN THE BILL MARK-UP, WHICH IS ATTACHED)

- **The focus on cast and crew residency is misguided.** The real issue is that we are not training additional film and television workers necessary to meet current (and growing) demands. The cost to hire non-resident cast and crew is substantial and is only done when deemed necessary by the production. Non-residents are still subject to Hawaii income tax and spend money food, clothing and accommodations while in Hawaii. While not as economically beneficial as hiring residents, the non-resident hire does contribute to the local economy.
- **The new vendor residency requirements will adversely affect local vendors.** Many local equipment vendors sub-rent equipment from the mainland to supplement their local inventory of equipment (a common industry practice). Without the ability of productions to claim the tax credit on this “sub-rented” equipment, larger mainland equipment providers would set up businesses in Hawaii and would end up wiping out the local vendors.
- **The new requirements would create numerous administrative challenges.** The Department of Taxation is overburdened by the administration and auditing of the current tax credit. Adding additional requirements to the tax credit will increase this burden (and the time it takes for resolution of tax credit claims).
- **There are no incentives to assist independent productions,** which offer the greatest number of training opportunities for the film and television industry. SB 2464 (attached) would add an alternative tax credit based on W-2 wages only, which would be beneficial to local independent film and television projects.

About Island Film Group

Island Film Group (IFG) is one of the largest local film and television production companies in Hawaii. Since its formation in 2007, IFG has produced a television series (“Beyond the Break”), three television movies for Lifetime Television Network, countless national and international television commercials, and three independent feature films (“Soul Surfer”, “Princess Ka`iulani”, and “Knots”). Our projects have employed hundreds of Hawaii residents and spent millions of dollars on local goods and services. In addition, IFG, in partnership with Hawaii Media Inc., owns and operates Halawa Valley Studios, the largest private film and television production facility in Hawaii.

Thank you for the opportunity to testify on this important bill.

JAN 20 2012

S.B. NO. 2464

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The purpose of this Act is to promote the
2 motion picture, digital media, and film production industry in
3 Hawaii by establishing a wage tax credit of up to \$10,000 per
4 employee to provide:

5 (1) An effective tax incentive for local independent
6 filmmakers who need to raise investor financing, in
7 contrast to fully funded studio films that seek to
8 reduce the cost of production;

9 (2) A greater number of jobs and training for local film
10 industry workers by limiting the tax credit to the
11 first \$10,000 in wages, and excluding expenses such as
12 travel, hotel, per diem, and car rental; and

13 (3) Ease of review and transparency through the use of
14 state payroll reports to support tax credit claims.

15 SECTION 2. Section 235-17, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) Any law to the contrary notwithstanding, there shall
18 be allowed to each taxpayer subject to the taxes imposed by this



1 chapter, an income tax credit which shall be deductible from the
2 taxpayer's net income tax liability, if any, imposed by this
3 chapter for the taxable year in which the credit is properly
4 claimed. The amount of the credit shall be:

5 (1) Either:

6 (A) Fifteen per cent of the qualified production
7 costs incurred by a qualified production in any
8 county of the State with a population of over
9 seven hundred thousand; or

10 [~~+~~2] (B) Twenty per cent of the qualified production costs
11 incurred by a qualified production in any county
12 of the State with a population of seven hundred
13 thousand or less~~-~~; or

14 (2) One hundred percent of the first \$10,000 of wages, as
15 shown on a W-2 wage and tax statement, paid to an
16 individual as a qualified production cost under
17 subsection (1) incurred by a qualified production in
18 any county of the State.

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



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 SECTION 3. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect on July 1, 2012;
17 provided that:

18 (1) Section 2 of this Act shall apply to qualified
19 production costs incurred on or after January 1, 2012,
20 and before January 1, 2016; and

21 (2) This Act shall be repealed on January 1, 2016, and
22 section 235-17, Hawaii Revised Statutes, shall be



S.B. NO. 2464

1 reenacted in the form in which it read on the day
2 before the effective date of Act 88, Session Laws of
3 Hawaii 2006.

4

INTRODUCED BY: Carol Fukumaga



S.B. NO. 2464

Report Title:

Taxation; Film and Digital Media; Wage Tax Credit

Description:

Provides for a tax credit of one hundred percent of the first \$10,000 of wages, as shown on a W-2 wage and tax statement, and paid to an individual as a qualified production cost incurred by a qualified production in any county of the State; applies to qualified production costs incurred on or after 1/1/2012, and before 1/1/2016; repeals on 1/1/2016.

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



A BILL FOR AN ACT

RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

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

1 PART I

2 SECTION 1. The legislature finds that the film and digital
3 media industry in Hawaii is an important component of a
4 diversified economy and that its financial impact can be
5 strengthened significantly if existing incentives for the
6 industry are enhanced. The legislature further finds that the
7 industry has a strong desire to hire locally and invest in the
8 training and workforce development of island-based personnel.

9 The purpose of this Act is to encourage the use of Hawaii
10 as a site for filming, for the digital production of films, and
11 to develop and sustain the workforce and infrastructure for
12 film, digital media, and entertainment production.

13 PART II

14 SECTION 2. The purpose of this part is to:

15 (1) Increase the motion picture, digital media, and film
16 production income tax credit to twenty-five per cent
17 of qualified expenditures for any county with a
18 population over 700,000 and thirty per cent of



1 qualified expenditures for all other counties, and
 2 increase the total tax credit cap to \$16,000,000; and
 3 (2) Strengthen incentives for hiring greater numbers of
 4 residents and to support training and opportunities
 5 for those residents.

6 SECTION 3. Section 235-17, Hawaii Revised Statutes, is
 7 amended to read as follows:

8 **"§235-17 Motion picture, digital media, and film**
 9 **production income tax credit.** (a) Any law to the contrary
 10 notwithstanding, there shall be allowed to each taxpayer subject
 11 to the taxes imposed by this chapter, an income tax credit which
 12 shall be deductible from the taxpayer's net income tax
 13 liability, if any, imposed by this chapter for the taxable year
 14 in which the credit is properly claimed. The amount of the
 15 credit shall be:


- 16 (1) [~~Fifteen~~] Twenty-five per cent of the qualified
 17 [~~production costs~~] expenditures incurred by a
 18 qualified production in any county of the State with a
 19 population of over seven hundred thousand; or
 20 (2) [~~Twenty~~] Thirty per cent of the qualified [~~production~~
 21 ~~costs~~] expenditures incurred by a qualified production




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

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

7 In the case of a partnership, S corporation, estate, or
8 trust, the tax credit allowable is for qualified [~~production~~
9 ~~costs~~] expenditures incurred by the entity for the taxable year.

10 The cost upon which the tax credit is computed shall be
11 determined at the entity level. Distribution and share of
12 credit shall be determined by rule. Notwithstanding any
13 provision to the contrary, the credit may be recovered directly
14 by the entity that incurred the qualified expenditures. 

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

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

1 (b) The credit allowed under this section shall be claimed
2 against the net income tax liability for the taxable year. For
3 the purposes of this section, "net income tax liability" means
4 net income tax liability reduced by all other credits allowed
5 under this chapter.

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


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

- 17 (1) Meet the definition of a qualified production
18 specified in subsection ~~[(1)+]~~ (p);
- 19 (2) Have qualified ~~[production costs]~~ expenditures
20 totaling at least \$200,000~~[+]~~ for a qualified
21 production, or \$50,000 for a qualified digital media
22 project;



- 1 (3) Provide [~~the State, at a minimum, a shared card, end-~~
2 ~~title screen credit, where applicable;~~] marketing
3 materials promoting the State as a tourist destination
4 or film and digital media production destination, when
5 appropriate, at no cost to the State, which shall, at
6 a minimum, include placement of a "Filmed in Hawaii"
7 or "Produced in Hawaii" logo in the end credits; and
- 8 (4) Provide evidence [~~of reasonable efforts to hire local~~
9 ~~talent and crew; and~~
- 10 ~~(5) Provide evidence of financial or in-kind contributions~~
11 ~~or educational or workforce development efforts, in~~
12 ~~partnership with related local industry labor~~
13 ~~organizations, educational institutions, or both,~~
14 ~~toward the furtherance of the local film and~~
15 ~~television and digital media industries.] that for the
16 first two years of the production, at least fifty per
17 cent, and thereafter, at least sixty per cent, of the
18 positions that make up the production cast and below-
19 the-line production crew, or, in the case of digital
20 media projects, at least seventy-five per cent of the
21 positions, are filled by legal residents of this
22 State, whose residency is demonstrated by a valid~~



1 Hawaii driver's license or other state-issued
2 identification confirming residency, or students
3 enrolled full-time in a film-and-entertainment-related
4 course of study at an institution of higher education
5 in the State. 

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


10 (f) To receive the tax credit, the taxpayer shall first
11 prequalify the production for the credit by registering with the
12 department of business, economic development, and tourism during
13 the development or preproduction stage. Failure to comply with
14 this provision may constitute a waiver of the right to claim the
15 credit.

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

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

7 (1) All qualified [~~production costs~~] expenditures as
8 provided by subsection (a), if any, incurred in the
9 previous taxable year;

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

12 (3) [~~The number of total hires versus the number of local~~
13 ~~hires~~] An estimate of the full-time equivalent
14 positions for legal residents of this State created by
15 each production, by category (i.e., department), and
16 by county. 

17 (i) The department of business, economic development, and
18 tourism shall:

19 (1) Maintain records of the names of the taxpayers and
20 qualified productions thereof claiming the tax credits
21 under subsection (a);



1 (2) Obtain and total the aggregate amounts of all
2 qualified [~~production costs~~] expenditures per
3 qualified production and per qualified production per
4 taxable year; and

5 (3) Provide a letter to the director of taxation
6 specifying the amount of the tax credit per qualified
7 production for each taxable year that a tax credit is
8 claimed and the cumulative amount of the tax credit
9 for all years claimed.

10 Upon each determination required under this subsection, the
11 department of business, economic development, and tourism shall
12 issue a letter to the taxpayer, regarding the qualified
13 production, specifying the qualified [~~production costs~~]
14 expenditures and the tax credit amount qualified for in each
15 taxable year a tax credit is claimed. The taxpayer for each
16 qualified production shall file the letter with the taxpayer's
17 tax return for the qualified production to the department of
18 taxation. Notwithstanding the authority of the department of
19 business, economic development, and tourism under this section,
20 the director of taxation may audit and adjust the tax credit
21 amount to conform to the information filed by the taxpayer.




1 (j) Total tax credits claimed per qualified production
2 shall not exceed [~~\$8,000,000-~~] \$16,000,000.

3 (k) The director of taxation may revoke or modify any
4 written decision qualifying, certifying, or otherwise granting
5 eligibility for tax credits under this section if it is
6 discovered that the taxpayer submitted any false statement,
7 representation, or certification in any application, record,
8 report, plan, or other document filed in an attempt to receive
9 tax credits under this section. The director shall immediately
10 notify the department of business, economic development, and
11 tourism of any revoked or modified orders affecting previously
12 granted tax credits. Additionally, the taxpayer shall notify
13 the department of business, economic development, and tourism of
14 any change in its tax credit claimed.

15 (l) A determination by the director of taxation that a
16 taxpayer received tax credits pursuant to this section to which
17 the taxpayer was not entitled is grounds for forfeiture of
18 previously claimed and received tax credits. The taxpayer is
19 responsible for returning forfeited tax credits to the director
20 of taxation, and the funds shall be deposited in the general
21 fund.



1 (m) A taxpayer that submits fraudulent information under
 2 this section shall be liable to reimburse the reasonable costs
 3 and fees associated with the review, processing, investigation,
 4 and prosecution of the fraudulent claim. A taxpayer that
 5 obtains a credit payment under this section through a claim that
 6 is fraudulent shall be liable for reimbursement of the credit
 7 amount plus a penalty in an amount double the credit amount;
 8 provided that the penalty shall be in addition to any criminal
 9 penalty to which the taxpayer is liable for the same acts. 

10 (n) No later than December 31 of each year, the department
 11 of business, economic development, and tourism shall provide a
 12 report for the previous fiscal year to the governor and the
 13 legislature that outlines the return on investment and economic
 14 benefits of the tax credits to the State. The report shall also
 15 include an estimate of the full-time equivalent positions for
 16 legal residents of this State created by each production that
 17 received tax credits under this section and information relating
 18 to the distribution of productions receiving credits, by county
 19 and by type of production.

20 [~~+~~] (o) Qualified productions shall comply with
 21 subsections (d), (e), (f), and (h).

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



1 "Commercial":

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

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

8 (3) Does not include an advertising message with
9 Internet-only distribution.

10 "Digital media" means production methods and platforms
11 directly related to the creation of cinematic imagery and
12 content, specifically using digital means, including but not
13 limited to digital cameras, digital sound equipment, and
14 computers, to be delivered via film, videotape, interactive game
15 platform, or other digital distribution media [~~excluding~~
16 ~~Internet-only distribution~~].

17 "Legal resident" shall have the same meaning as "resident"
18 in section 235-1.


19 "Post production" means production activities and services
20 conducted after principal photography is completed, including
21 but not limited to editing, film and video transfers,
22 duplication, transcoding, dubbing, subtitling, credits, closed



1 captioning, audio production, special effects (visual and
2 sound), graphics, and animation.


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

11 "Production expenditures" means the costs of tangible and
12 intangible property used for, and services performed primarily
13 and customarily in, production, including preproduction and post
14 production, but excluding costs for development, marketing, and
15 distribution, including but not limited to:

- 16 (1) Wages, salaries, or other compensation paid to legal
17 residents of this State, including amounts paid
18 through payroll service companies, for technical and
19 production crews, directors, producers, and
20 performers; 

1 (2) Net expenditures for sound stages, backlots,
2 production editing, digital effects, sound recordings,
3 sets, and set construction;

4 (3) Net expenditures for rental equipment, including but
5 not limited to cameras and grip or electrical
6 equipment;

7 (4) Up to \$300,000 of the costs of newly purchased
8 computer software and hardware unique to the project,
9 including servers, data processing, and visualization
10 technologies, which are located in and used
11 exclusively in the State for the production of digital
12 media; and 

13 (5) Expenditures for meals, travel, and accommodations.
14 For purposes of this definition, the term "net
15 expenditures" means the actual amount of money a
16 qualified production spent for equipment or other
17 tangible personal property, after subtracting any
18 consideration received for reselling or transferring
19 the item after the qualified production ends, if
20 applicable.


21 "Qualified digital media project" means a production of
22 interactive entertainment that is produced for distribution in




1 commercial or educational markets, including a video game or
2 production intended for internet or wireless distribution.

3 "Qualified expenditures" means production expenditures
4 incurred in this State by a qualified production for:


5 (1) Goods purchased or leased or services, including but
6 not limited to insurance costs and bonding, payroll
7 services, and legal fees, that are provided by a
8 vendor or supplier in the State that is registered
9 with the State, has a physical location in the State,
10 and employs one or more legal residents of this State;
11 provided that:

12 (A) Qualified expenditures shall not include rebilled
13 goods or services provided by an in-state company
14 from out-of-state vendors or suppliers; and 


15 (B) When services provided by a vendor or supplier
16 include personal services or labor, only personal
17 services or labor provided by legal residents of
18 this State, evidenced by the required
19 documentation of residency, shall qualify; 

20 (2) Payments to legal residents of this State in the form
21 of salary, wages, or other compensation up to a
22 maximum of \$400,000 per resident; provided that a



1 completed declaration of legal residency in this State
2 shall accompany the documentation submitted to the
3 department for reimbursement; and 

4 (3) Other direct production costs specified by the
5 department in consultation with the department of
6 business, economic development, and tourism.

7 "Qualified expenditures" do not include expenditures
8 incurred before certification, with the exception of those
9 incurred for a commercial, a music video, or the pickup of
10 additional episodes of a high-impact television series within a
11 single season. 

12 "Qualified production":

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



1 television episode that is not part of a television
 2 series regularly filmed or based in the State,
 3 national magazine show, or national talk show. For
 4 the purposes of subsections (d) and (j), each of the
 5 aforementioned qualified production categories shall
 6 constitute separate, individual qualified
 7 productions[+]. Notwithstanding the foregoing, for
 8 purposes of satisfying the criteria of subsection (d),
 9 a taxpayer shall claim as part of a qualified
 10 production the creation of related content intended
 11 for distribution over the Internet, wireless network,
 12 or similar methods of distribution; and

13 (2) Does not include: daily news; public affairs
 14 programs; non-national magazine or talk shows;
 15 televised sporting events or activities; productions
 16 that solicit funds; productions produced primarily for
 17 industrial, corporate, institutional, or other private
 18 purposes; and productions that include any material or
 19 performance prohibited by chapter 712.

20 [~~Qualified production costs" means the costs incurred by a~~
 21 ~~qualified production within the State that are subject to the~~
 22 ~~general excise tax under chapter 237 or income tax under this~~



1 ~~chapter and that have not been financed by any investments for~~
2 ~~which a credit was or will be claimed pursuant to section~~
3 ~~235-110.9. Qualified production costs include but are not~~
4 ~~limited to:~~

5 ~~(1) Costs incurred during preproduction such as location~~
6 ~~scouting and related services;~~

7 ~~(2) Costs of set construction and operations, purchases or~~
8 ~~rentals of wardrobe, props, accessories, food, office~~
9 ~~supplies, transportation, equipment, and related~~
10 ~~services;~~

11 ~~(3) Wages or salaries of cast, crew, and musicians;~~

12 ~~(4) Costs of photography, sound synchronization, lighting,~~
13 ~~and related services;~~

14 ~~(5) Costs of editing, visual effects, music, other post-~~
15 ~~production, and related services;~~

16 ~~(6) Rentals and fees for use of local facilities and~~
17 ~~locations;~~

18 ~~(7) Rentals of vehicles and lodging for cast and crew;~~

19 ~~(8) Airfare for flights to or from Hawaii, and interisland~~
20 ~~flights;~~

21 ~~(9) Insurance and bonding;~~



- 1 ~~(10) Shipping of equipment and supplies to or from Hawaii,~~
- 2 ~~and interisland shipments; and~~
- 3 ~~(11) Other direct production costs specified by the~~
- 4 ~~department in consultation with the department of~~
- 5 ~~business, economic development, and tourism.]"~~

PART III

7 SECTION 4. The purpose of this part is to:

- 8 (1) Establish a motion picture, digital media, and film
- 9 production infrastructure tax credit of fifty per cent
- 10 of qualified infrastructure costs;
- 11 (2) Require the expenditure of at least \$10,000,000 in
- 12 qualified infrastructure costs;
- 13 (3) Provide for an annual payment to the Hawaii film
- 14 office equal to one per cent of the tax credit
- 15 received by the taxpayer; and
- 16 (4) Provide for a 100 per cent recapture of the tax credit
- 17 if the infrastructure project ceases to meet the
- 18 requirements of a qualified infrastructure project.

19 SECTION 5. Chapter 235, Hawaii Revised Statutes, is

20 amended by adding a new section to be appropriately designated

21 and to read as follows:



1 "§235- Motion picture, digital media, and film
2 production infrastructure income tax credit. (a) Any law to
3 the contrary notwithstanding, there shall be allowed to each
4 taxpayer subject to the taxes imposed by this chapter, an income
5 tax credit which shall be deductible from the taxpayer's net
6 income tax liability, if any, imposed by this chapter for the
7 taxable year in which the credit is properly claimed. The
8 amount of the credit shall be fifty per cent of the qualified
9 infrastructure costs incurred by a qualified taxpayer in any
10 county of the State.

11 In the case of a partnership, S corporation, estate, or
12 trust, the tax credit allowable is for qualified infrastructure
13 costs incurred by the entity for the taxable year. The cost
14 upon which the tax credit is computed shall be determined at the
15 entity level. Distribution and share of credit shall be
16 determined by rule.

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



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


11 (d) To qualify for this tax credit, a qualified
12 infrastructure project shall:

13 (1) Meet the definition of a qualified infrastructure
14 project specified in subsection (m);

15 (2) Have qualified infrastructure costs totaling at least
16 \$10,000,000; and

17 (3) Provide evidence that for the first two years of the
18 infrastructure project, at least sixty per cent, and
19 thereafter, at least seventy per cent, of the
20 positions are filled by legal residents of this State,
21 whose residency is demonstrated by a valid Hawaii
22 driver's license or other state-issued identification



1 confirming residency, or students enrolled in a
 2 construction or related course of study at an
 3 educational institution in the State. 

4 (e) To receive the tax credit, the taxpayer shall first
 5 prequalify the infrastructure project for the credit by
 6 registering with the department of business, economic
 7 development, and tourism during the development stage. Failure
 8 to comply with this provision may constitute a waiver of the
 9 right to claim the credit.

10 (f) If all or a portion of an infrastructure project is a
 11 facility that may be used for other purposes unrelated to
 12 production or post-production activities, then the project shall
 13 be approved only if a determination is made that the multiple-
 14 use facility will support and will be necessary to secure
 15 production or post-production activity.

16 The taxpayer may also request a comfort ruling from the
 17 department of taxation regarding the applicability of the tax
 18 credit to a specific qualified infrastructure project.

19 (g) The director of taxation shall prepare forms as may be
 20 necessary to claim a credit under this section. The director
 21 may also require the taxpayer to furnish information to
 22 ascertain the validity of the claim for credit made under this



1 section and may adopt rules necessary to effectuate the purposes
2 of this section pursuant to chapter 91.

3 (h) An annual fee for administration of the tax credit
4 shall be payable to the department of business, economic
5 development, and tourism Hawaii film office and shall be
6 submitted with the application for a qualified infrastructure
7 project tax credit. The annual fee shall be equal to one per
8 cent of the tax credit received by the taxpayer under this
9 section. The fee shall become first payable within thirty days
10 of the issuance of the determination letter specified in
11 subsection (k).

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

- 18 (1) All qualified infrastructure costs, if any, incurred
19 in the previous taxable year;
20 (2) The amount of tax credits claimed pursuant to this
21 section, if any, in the previous taxable year; and



1 (3) An estimate of the full-time equivalent positions for
2 legal residents of this State created by each project,
3 by job category and by county.

4 (j) The department of business, economic development, and
5 tourism shall:

6 (1) Maintain records of the names of the taxpayers and
7 qualified infrastructure projects thereof claiming the
8 tax credits under subsection (a);

9 (2) Obtain and total the aggregate amounts of all
10 qualified infrastructure costs per qualified
11 infrastructure project per taxable year; and

12 (3) Provide a letter to the director of taxation
13 specifying the amount of the tax credit per qualified
14 infrastructure project for each taxable year that a
15 tax credit is claimed and the cumulative amount of the
16 tax credit for all years claimed.

17 (k) Upon each determination required under this
18 subsection, the department of business, economic development,
19 and tourism shall issue a letter to the taxpayer, regarding the
20 qualified infrastructure project, specifying the qualified
21 infrastructure costs and the tax credit amount qualified for in
22 each taxable year a tax credit is claimed. The taxpayer for



1 each qualified infrastructure project shall file the letter with
2 the taxpayer's tax return for the qualified infrastructure
3 project to the department of taxation. Notwithstanding the
4 authority of the department of business, economic development,
5 and tourism under this section, the director of taxation may
6 audit and adjust the tax credit amount to conform to the
7 information filed by the taxpayer.

8 (l) No later than December 31 of each year, the department
9 of business, economic development, and tourism shall provide a
10 report for the previous fiscal year to the governor and the
11 legislature that outlines the return on investment and economic
12 benefits of the tax credits to the State. The report shall also
13 include an estimate of the full-time equivalent positions for
14 legal residents of this State created by each qualified
15 infrastructure project that received tax credits under this
16 section and information relating to the distribution of
17 qualified infrastructure projects receiving credits, by county
18 and by type of project.

19 (m) For the purposes of this section:

20 "Qualified infrastructure costs" means the total costs
21 incurred by a qualified infrastructure project within the State
22 that are subject to the general excise tax under chapter 237 or



1 income tax under this chapter and that have not been financed by
2 any investments for which a credit was or will be claimed
3 pursuant to section 235-110.9. Qualified infrastructure costs
4 shall not include the cost of purchasing or leasing real
5 property.

6 "Qualified infrastructure project" means a construction
7 project in the State, for the development, construction, or
8 renovation of a film, video, television, or media production or
9 post-production facility and the immovable property and
10 equipment related thereto, or any other facility that supports
11 and is a necessary component of such infrastructure project.

12 (n) If at any time the infrastructure project ceases to be
13 a qualified infrastructure project, the credit claimed under
14 this section shall be recaptured. The amount of the recaptured
15 tax credit determined under this subsection shall be added to
16 the taxpayer's tax liability, up to one hundred per cent of the
17 tax credit, for the taxable year in which the recapture occurs
18 under this subsection. The taxpayer shall consent to a tax lien
19 in the amount of the tax credit claimed under this section on
20 the property as a condition to receiving the tax credit under
21 this section."

PART III



1 SECTION 6. Act 88, Session Laws of Hawaii 2006, is amended
2 by amending section 4 to read as follows:

3 "SECTION 4. This Act shall take effect on July 1, 2006;
4 provided that[+

5 ~~(1) Section]~~ section 2 of this Act shall apply to
6 qualified [~~production costs~~] expenditures incurred on
7 or after July 1, 2006, and before January 1, [~~2016,~~
8 ~~and~~

9 ~~(2) This Act shall be repealed on January 1, 2016, and~~
10 ~~section 235-17, Hawaii Revised Statutes, shall be~~
11 ~~reenacted in the form in which it read on the day~~
12 ~~before the effective date of this Act.] 2012."~~

13 SECTION 7. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 8. This Act shall take effect on July 1, 2012;
16 provided that:

17 (1) Section 3 of this Act shall apply to qualified
18 expenditures incurred on or after January 1, 2012, and
19 before January 1, 2027;

20 (2) Section 5 of this Act shall apply to taxable years
21 beginning after December 31, 2011; and



1 (3) This Act shall be repealed on January 1, 2027;
2 provided further that section 235-17, Hawaii Revised
3 Statutes, shall be reenacted in the form in which it
4 read on the day before the effective date of Act 88,
5 Session Laws of Hawaii 2006.



Report Title:

Taxation; Motion Picture, Digital Media, and Film Production Credit; Infrastructure Tax Credit

Description:

Part I increases the motion picture, digital media, and film production income tax credit to twenty-five per cent of qualified expenditures for any county with a population over 700,000 and thirty per cent of qualified expenditures for all other counties; increases the total tax credit cap to \$16,000,000; requires annual report; increases requirements for hiring of legal residents of this State; applies to qualified expenditures incurred on or after January 1, 2012, and before January 1, 2027; repeals on January 1, 2027; part II establishes a motion picture, digital media, and film production infrastructure tax credit of fifty per cent of qualified infrastructure costs; requires qualified expenditure of at least \$10,000,000; increases requirements for hiring of legal residents of this State; provides for an annual payment to the department of business, economic development, and tourism Hawaii film office equal to one per cent of the tax credit received by the taxpayer; provides for a 100 per cent recapture of the tax credit if the facilities are no longer used for a qualified activity; requires annual report; applies to taxable years beginning after 12/31/2011. (SD1)

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



ONE THOUSAND ONE STORIES

February 11th, 2012

TO: Senator Carol Fukunaga, Chair
Senator Glenn Wakai, Vice Chair
Members of the Committee on Economic Development

DATE: Monday, February 13th, 2012
TIME: 1:15 pm
PLACE: Conference Room 016, State Capitol

Re: SB 2111 RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT

FROM: Johnathan Walk, COO of 1001 Stories, LLC.

1001 Stories LLC is in support of SB 2111 relating to film and digital media industry development because we believe that this measure would allow Hawaii to become more competitive in the film industry, thus encouraging the growth of the local film market in both the areas of production and post-production (3D, Visual Effects, Animation, Graphics, etc) that can be offered to any production coming to film in Hawaii.

I also believe that SB 2111 can support local film makers to own a market share of the film industry by means of *Intellectual Property* (IP). More often than not, when mainland productions come to Hawaii, most of the above the line talent/crew (Producers/Directors/Actors) are also from the mainland. Most of the jobs created for the local film workforce are below the line (Production Coordinators, Grips, Electricians). Once the production finishes shooting in Hawaii, the production leaves and in its wake a workforce of skillful laborers are generated but not a group of skillful creatives.

We have a strong workforce of below the line crew, but we must encourage the growth of above the line talent so Hawaii starts owning its share of IP. Local talent above the line also equals a majority of local hires below the line. Peter Jackson (Director: Lord of the Rings) of New Zealand, Tyler Perry (Director: Medea Films) of Georgia and Robert Rodriguez (Director: Desperado, Sin City) of Texas all represent major above the line, IP producing film makers who have helped to create an industry in their local film markets that are now also attractive to outside film makers. All these film makers received help from their residing state or country to grow their markets through bills like SB 2111.

SB 2111 will function as an infrastructure for local IP to become produced with some of the proposed changes I have listed below. Specifically, my interest is lowering the threshold qualifying value to make a production tax credit eligible as it would most support local film makers. As of now, the qualifying value is much too high for most local film makers to take advantage of.

It must also be noted that there is a symbiotic relationship with production and post-production: offering incentives in both areas is crucial for local film makers to produce their films. With the new digital workflows emerging, post-production represents anywhere between 40-60% of total costs on big

feature films and about 20-40% of total costs on independent films. These costs represent a large percentage of the cost of any production, thereby making SB 2111 an attractive bill to any production doing business or looking to do business in Hawaii.

If we want to grow Hawaii to a standard that rivals film communities like New Zealand in the areas of above the line and below the line talent, we must be in favor of SB 2111 with these proposed amendments.

fukunaga2 - Ashley-Jane

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 12, 2012 5:42 PM
To: EDTTestimony
Cc: john@onethousandone.com
Subject: Testimony for SB2111 on 2/13/2012 2:30:00 PM
Attachments: Johnathan Walk SB 2111 Testimony.pdf

Testimony for EDT 2/13/2012 2:30:00 PM SB2111

Conference room: 016
Testifier position: Support
Testifier will be present: Yes
Submitted by: Johnathan Walk
Organization: 1001 Stories
E-mail: john@onethousandone.com
Submitted on: 2/12/2012

Comments:
(Proposed amendments upload not working, submitting via Additional comments)

February 11th, 2012

TO: Senator Carol Fukunaga, Chair Senator Glenn Wakai, Vice Chair Members of the Committee on Economic Development

DATE: Monday, February 13th, 2012 TIME: 1:15 pm

PLACE: Conference Room 016, State Capitol

Re: Proposed Amendments to SB 2111 RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

FROM: Johnathan Walk, COO of 1001 Stories, LLC.

1001 Stories believes that it is not only important to support the digital media industry with changes proposed in SB 2111 SD1, but also believes that it would be important to make the following changes and additions to the bill:

1. In Section 3.b.2, change the statement [or \$50,000 for a qualified digital media project] to [or \$10,000 for a qualified digital media or qualified independent emerging media project]
2. In Section 3.p change the statement ["Digital media" means production methods and platforms directly related to the creation of cinematic imagery and content, specifically using digital means, including but not limited to digital cameras, digital sound equipment, and computers, to be delivered via film, videotape, interactive game platform, or other digital distribution media] to ["Digital media" means production methods and platforms directly related to the creation of cinematic imagery and interactive media content, specifically using digital means, including but not limited to digital cameras, digital sound equipment, and computers, to be delivered via film, videotape, interactive game platform, internet, wireless or other digital distribution media]
3. In Section 3.p change the statement ["Qualified digital media project" means a production of interactive entertainment that is produced for distribution in commercial or educational markets, including a video game or production intended for internet or wireless distribution.] to ["Qualified digital media project" means development of animation,

graphics, visual effects, post-production, and interactive media for entertainment and/or education that is produced for distribution in commercial or educational markets, including but not limited to a video game or production intended for game platform, physical media, internet or wireless distribution.”]

4. In Section 3.p add the statement “Qualified independent and emerging media project” means a qualified production of film, video, television, interactive entertainment that is produced for distribution in commercial or educational markets, including but not limited to feature film, short film, television show, television series, a video game or production intended for game platform, physical media, internet or wireless distribution.]

fukunaga2 - Ashley-Jane

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 12, 2012 2:31 PM
To: EDTTestimony
Cc: Danny@hawaiiimedia.com
Subject: Testimony for SB2111 on 2/13/2012 2:30:00 PM

Testimony for EDT 2/13/2012 2:30:00 PM SB2111

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Daniel Rosner
Organization: Individual
E-mail: Danny@hawaiiimedia.com
Submitted on: 2/12/2012

Comments:

As President of Hawaii Media Inc., I support the increase of the Production Tax Credit to 25% and 30%. However the provision disallowing rebilled goods or services provided by an in-state company from out-of-state vendors or suppliers, would make it impossible for a local company like ours to compete with the big Hollywood based equipment suppliers. These jobs are too big for a smaller company like ours to handle without support from larger vendors based out-of-state. Essentially, this provision would require mainland companies to have a local base of operation, which would push local vendors to the fringes.

Thank you,
Daniel Rosner

February 11th, 2012

To: Senator Carol Fukunaga, Chair
Senator Glenn Wakai, Chair
Members of the Committee on Economic Development and Technology

DATE: Monday, February 13th, 2012

TIME: 2:30pm

PLACE: Conference Room 016, State Capitol

Re: SB 2111 RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

FROM: Gerard Elmore, Filmmaker, Commercial director

I fully support SB 2111 relating to film and digital media industry development because I believe that such a bill will help foster emerging local talent and will provide opportunities for the emerging digital media industry.

As a filmmaker, I wrote and directed a feature film called All for Melissa. It's currently available nationally via Netflix, Hulu, and Amazon.com. It was made with a 100% local cast and crew. The film helped to build my career as a commercial director here in Hawaii.

I have directed commercials for clients such as McDonald's, All State, Oceanic Time Warner Cable, Central Pacific Bank, First Hawaiian Bank, Wet N Wild, Taco Bell, Kanu Hawaii, and many others. I have also directed music videos that have aired nationally on Fuse TV and Country Music Television. Additionally, I have directed the 2008 Hawaii International Film Festival Trailer and I'm the Executive director of a local short film showcase called the `Ohina Short Film Showcase. `Ohina showcases short films made by local directors or films with local subject matter. All the proceeds we raise at the event go to help benefit the Doris Duke Theatre at the Academy of Arts.

I mention all of this because a lot of it would have never happened if I didn't take the high risk bet of making my first feature length movie. It was my first feature film and I was told that I would never get funding to make it. I had no track record, no demo reel, and no proof that I could pull it off. I had a dream and a story to tell and nothing was going to stop me from making it. So, I did what you are never ever suppose to do. I used my own money.

I just wanted a chance.

After massive credit card debit, sleepless nights and a lot of hard work, we made a movie. It premiered at the 2007 Hawaii International Film Festival to a sold out crowd and was very well received.

Not only was the film a huge success, it did what I was hoping it would do, it helped me to get my foot in the door as a local director.

Currently, each commercial I direct employees 12-25 freelance individuals. The positions range from on-set technicians and cameramen to digital artists and editors in post production. The work we have done recently has attracted the attention of mainland clients and puts us in a position to bring in new sources of revenue, bigger budgets and new opportunities for our local team.

The benefits that SB2111 would bring to Hawaii-based companies, like myself, would be tremendous. Not only will other filmmakers have the incentive to go bigger with projects but it will help filmmakers/digital media artists chase bigger projects here and in the mainland. I definitely see future `Ohina filmmakers working on commercial spots for the next Superbowl. We can do it and we can build it. We just need to give local talent a chance to succeed.

I succeeded but only after taking a huge risk and I feel there's got to be an easier way. A way that will also help build our infrastructure and create new opportunities.

Every year we put on the `Ohina Short Film Showcase we get to know each of the filmmakers. All of them have stories to tell and a dream just like I had. They always ask what jobs are out there for them and I always tell them the same thing, chase your dreams. Make them happen.

This bill will make more dreams possible and it will help create new high quality jobs within the state. It will also help position our industry and our state for the future. A future where Hawaii leads the way in an exciting and vibrant emerging media industry.

Thanks you very much for the opportunity to testify.

Gerard Elmore

Filmmaker, Commercial director

February 11th, 2012

Re: Proposed Amendments to SB 2111 RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

I believe that it is not only important to support the digital media industry with changes proposed in SB2111 SD1, but I believe that it would be important to make the following changes and additions to the bill:

1. In **Section 3.b.2, change** the statement [or \$50,000 for a qualified digital media project] to [or **\$10,000** for a qualified digital media **or qualified independent emerging media project**]

I believe that a lower threshold with addition of qualified independent and emerging media will help support development and growth of a new industry with large potential for success as many local developers would require this lower threshold.

2. In **Section 3.p change** the statement ["Digital media" means production methods and platforms directly related to the creation of cinematic imagery and content, specifically using digital means, including but not limited to digital cameras, digital sound equipment, and computers, to be delivered via film, videotape, interactive game platform, or other digital distribution media] to ["Digital media" means production methods and platforms directly related to the creation of cinematic imagery and **interactive media content**, specifically using digital means, including but not limited to digital cameras, digital sound equipment, and computers, to be delivered via film, videotape, interactive game platform, **internet, wireless** or other digital distribution media]

3. In Section 3.p change the statement ["Qualified digital media project" means a production of interactive entertainment that is produced for distribution in commercial or educational markets, including a video game or production intended for internet or wireless distribution.] to ["Qualified digital media project" means **development of animation, graphics, visual effects, post-production, and interactive media for entertainment and/or education** that is produced for distribution in commercial or educational markets, including **but not limited to** a video game or production intended for **game platform, physical media**, internet or wireless distribution."]

4. In **Section 3.p add** the statement "**Qualified independent and emerging media project" means a qualified production of film, video, television, interactive entertainment that is produced for distribution in commercial or educational markets, including but not limited to feature film, short film, television show, television series, a video game or production intended for game platform, physical media, internet or wireless distribution.**]