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

6 There has been a dramatic increase in the number of state
7 and local governments attempting to attract film productions.
8 These jurisdictions have experienced dramatic increases in in-
9 state spending and significant growth in workforce and
10 infrastructure development. In Hawaii, infrastructure
11 developers have shown interest in West Oahu and neighbor islands
12 to develop facilities. More facilities would increase
13 production in Hawaii and would stimulate more direct and
14 indirect tax revenue.

15 The legislature also finds that it is desirable to provide
16 tools to the film industry to encourage similar dramatic growth
17 in Hawaii because the film industry:



- 1 (1) Infuses significant amounts of new money into the
2 economy, which are dispersed across many communities
3 and businesses and which benefit a wide array of
4 residents;
- 5 (2) Creates skilled, high-paying jobs;
- 6 (3) Has a natural dynamic synergy with Hawaii's top
7 industry, tourism, and is used as a destination
8 marketing tool for the visitor industry;
- 9 (4) Is a clean, nonpolluting industry that values the
10 natural beauty of Hawaii and its diverse multicultural
11 population and wide array of architecture; and
- 12 (5) Has the potential to create jobs in construction and
13 media industries on Oahu and the neighbor islands.

14 It is necessary to enhance existing tax incentive programs
15 that use front-end budgeting methods normally used by the film
16 industry, lower production costs to allow Hawaii to compete with
17 other film production centers in attracting a greater number of
18 significant projects to the State, and continue to build the
19 State's local film industry infrastructure.

20 The purpose of this Act is to encourage the growth of the
21 film and creative media industries by providing enhanced
22 incentives for infrastructure development that attract more film



1 and television productions to Hawaii and develop opportunities
2 for locally developed productions, thereby generating increased
3 creative media development and tax revenues.

4 **PART II**

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

7 "**§235-17 Motion picture, digital media, and film**
8 **production income tax credit.** (a) Any law to the contrary
9 notwithstanding, there shall be allowed to each taxpayer subject
10 to the taxes imposed by this chapter, an income tax credit which
11 shall be deductible from the taxpayer's net income tax
12 liability, if any, imposed by this chapter for the taxable year
13 in which the credit is properly claimed. The amount of the
14 credit shall be:

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

19 (2) [~~Twenty~~] _____ per cent of the qualified
20 production costs incurred by a qualified production in
21 any county of the State with a population of seven
22 hundred thousand or less.



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

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

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

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

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

- 12 (1) Meet the definition of a qualified production
13 specified in subsection [~~(l)~~] (k);
- 14 (2) Have qualified production costs totaling at least
15 \$200,000;
- 16 (3) Provide the State, at a minimum, a shared-card, end-
17 title screen credit, where applicable;
- 18 (4) Provide evidence of reasonable efforts to hire local
19 talent and crew; and
- 20 (5) Provide evidence of financial or in-kind contributions
21 or educational or workforce development efforts, in
22 partnership with related local industry labor



1 organizations, educational institutions, or both,
2 toward the furtherance of the local film and
3 television and digital media industries.

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

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

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

20 (h) Every taxpayer claiming a tax credit under this
21 section for a qualified production shall, no later than ninety
22 days following the end of each taxable year in which qualified



1 production costs were expended, submit a written, sworn
2 statement to the department of business, economic development,
3 and tourism, identifying:

4 (1) All qualified production costs as provided by
5 subsection (a), if any, incurred in the previous
6 taxable year;

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

9 (3) The number of total hires versus the number of local
10 hires by category (i.e., department) and by county.

11 (i) The department of business, economic development, and
12 tourism shall:

13 (1) Maintain records of the names of the taxpayers and
14 qualified productions thereof claiming the tax credits
15 under subsection (a);

16 (2) Obtain and total the aggregate amounts of all
17 qualified production costs per qualified production
18 and per qualified production per taxable year; and

19 (3) Provide a letter to the director of taxation
20 specifying the amount of the tax credit per qualified
21 production for each taxable year that a tax credit is



1 claimed and the cumulative amount of the tax credit
2 for all years claimed.

3 Upon each determination required under this subsection, the
4 department of business, economic development, and tourism shall
5 issue a letter to the taxpayer, regarding the qualified
6 production, specifying the qualified production costs and the
7 tax credit amount qualified for in each taxable year a tax
8 credit is claimed. The taxpayer for each qualified production
9 shall file the letter with the taxpayer's tax return for the
10 qualified production to the department of taxation.
11 Notwithstanding the authority of the department of business,
12 economic development, and tourism under this section, the
13 director of taxation may audit and adjust the tax credit amount
14 to conform to the information filed by the taxpayer.

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

17 ~~(k)]~~ (j) Qualified productions shall comply with
18 subsections (d), (e), (f), and (h).

19 ~~[(l)]~~ (k) For the purposes of this section:

20 "Commercial":



- 1 (1) Means an advertising message that is filmed using
2 film, videotape, or digital media, for dissemination
3 via television broadcast or theatrical distribution;
- 4 (2) Includes a series of advertising messages if all parts
5 are produced at the same time over the course of six
6 consecutive weeks; and
- 7 (3) Does not include an advertising message with Internet-
8 only distribution.

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

16 "Post production" means production activities and services
17 conducted after principal photography is completed, including
18 but not limited to editing, film and video transfers,
19 duplication, transcoding, dubbing, subtitling, credits, closed
20 captioning, audio production, special effects (visual and
21 sound), graphics, and animation.



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

9 "Qualified production":

10 (1) Means a production, with expenditures in the State,
11 for the total or partial production of a feature-
12 length motion picture, short film, made-for-television
13 movie, commercial, music video, interactive game,
14 television series pilot, single season (up to twenty-
15 two episodes) of a television series regularly filmed
16 in the State (if the number of episodes per single
17 season exceeds twenty-two, additional episodes for the
18 same season shall constitute a separate qualified
19 production), television special, single television
20 episode that is not part of a television series
21 regularly filmed or based in the State, national
22 magazine show, or national talk show. For the



1 purposes of [~~subsections~~] subsection (d) [~~and (j)~~],
2 each of the aforementioned qualified production
3 categories shall constitute separate, individual
4 qualified productions; and

- 5 (2) Does not include: daily news; public affairs programs;
6 non-national magazine or talk shows; televised
7 sporting events or activities; productions that
8 solicit funds; productions produced primarily for
9 industrial, corporate, institutional, or other private
10 purposes; and productions that include any material or
11 performance prohibited by chapter 712.

12 "Qualified production costs" means the costs incurred by a
13 qualified production within the State that are subject to the
14 general excise tax under chapter 237 or income tax under this
15 chapter and that have not been financed by any investments for
16 which a credit was or will be claimed pursuant to section
17 235-110.9. Qualified production costs include but are not
18 limited to:

- 19 (1) Costs incurred during preproduction such as location
20 scouting and related services;

- 21 (2) Costs of set construction and operations, purchases or
22 rentals of wardrobe, props, accessories, food, office



- 1 supplies, transportation, equipment, and related
2 services;
- 3 (3) Wages or salaries of cast, crew, and musicians;
- 4 (4) Costs of photography, sound synchronization, lighting,
5 and related services;
- 6 (5) Costs of editing, visual effects, music, other post-
7 production, and related services;
- 8 (6) Rentals and fees for use of local facilities and
9 locations;
- 10 (7) Rentals of vehicles and lodging for cast and crew;
- 11 (8) Airfare for flights to or from Hawaii, and interisland
12 flights;
- 13 (9) Insurance and bonding;
- 14 (10) Shipping of equipment and supplies to or from Hawaii,
15 and interisland shipments; and
- 16 (11) Other direct production costs specified by the
17 department in consultation with the department of
18 business, economic development, and tourism."

19 SECTION 3. Act 88, Session Laws of Hawaii 2006, is amended
20 by amending section 4 to read as follows:

21 "SECTION 4. This Act shall take effect on July 1, 2006;
22 provided that:



1 (1) Section 2 of this Act shall apply to qualified
2 production costs incurred on or after July 1, 2006,
3 and before January 1, [~~2016~~] 2023; and

4 (2) This Act shall be repealed on January 1, [~~2016~~] 2023,
5 and section 235-17, Hawaii Revised Statutes, shall be
6 reenacted in the form in which it read on the day
7 before the effective date of this Act."

8 **PART III**

9 SECTION 4. Chapter 235, Hawaii Revised Statutes, is
10 amended by adding a new section to be appropriately designated
11 and to read as follows:

12 "§235- Media infrastructure project tax credit. (a) In
13 addition to the credits described in section 235-17, beginning
14 on or after July 1, 2013, and ending prior to January 1, 2016,
15 there shall be allowed to each taxpayer subject to the taxes
16 imposed by this chapter, a media infrastructure project tax
17 credit that shall be deductible from the taxpayer's net income
18 tax liability, if any, imposed by this chapter for the taxable
19 year in which the credit is properly claimed. The amount of the
20 credit shall be equal to per cent of the qualified costs
21 incurred for qualified media infrastructure projects situated in



1 West Oahu or on the most populous island in a county with a
2 population between 100,000 and 175,000.

3 For the purposes of this section, "net income tax
4 liability" means net income tax liability reduced by all other
5 credits allowed under this chapter.

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

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

15 (b) The following shall apply to the qualified media
16 infrastructure project tax credit described in subsection (a):

17 (1) The base investment for a qualified media
18 infrastructure project shall be in excess of

19 \$ _____ ;

20 (2) The qualified media infrastructure project tax credit
21 shall be nonrefundable. The portion of the tax credit
22 that exceeds the tax liability of the taxpayer for the



1 tax year in which the credit was earned may be carried
2 forward to offset net income tax liability in
3 subsequent tax years for a period not to exceed ten
4 taxable years or until exhausted, whichever occurs
5 first. The director of taxation may require the tax
6 credit to be taken in the tax period in which the
7 credit is earned or may structure the tax credit to
8 provide that only a portion of the tax credit be taken
9 over the course of two or more years;

10 (3) The total qualified media infrastructure project tax
11 credit allowed for any state-certified infrastructure
12 project shall not exceed \$ _____ ;

13 (4) If all or a portion of an infrastructure project is a
14 facility that may be used for other purposes unrelated
15 to production or post production activities, then the
16 project shall be approved only if a determination is
17 made that the multiple-use facility will support and
18 will be necessary to secure production or post
19 production activity for the production and post
20 production facility and the applicant provides
21 sufficient contractual assurances that the facility
22 will be used as a state-of-the-art production or post



1 production facility, or as a support and component
2 thereof, for the useful life of the facility; provided
3 that no tax credits described in subsection (a) shall
4 be earned on a multiple-use facility until the
5 production or post production facility is complete;

6 (5) Tax credits for qualified media infrastructure

7 projects shall be earned only as follows:

8 (A) Construction of the infrastructure project shall
9 begin within six months of the initial
10 certification and shall be _____ per cent
11 complete within a _____ year time frame;

12 (B) Expenditures shall be certified by the department
13 of business, economic development, and tourism,
14 and credits shall not be earned until that
15 certification is made; and

16 (C) For purposes of allowing tax credits against
17 state income tax liability, the tax credits shall
18 be deemed earned at the time the expenditures are
19 made; provided that all requirements of this
20 subsection have been met and the tax credits have
21 been certified;



- 1 (6) For state-certified infrastructure projects, an
- 2 application for a qualified media infrastructure
- 3 project tax credit shall be submitted to the
- 4 department of business, economic development, and
- 5 tourism and shall include:
- 6 (A) A detailed description of the infrastructure
- 7 project;
- 8 (B) A preliminary budget;
- 9 (C) A complete detailed business plan and market
- 10 analysis;
- 11 (D) Estimated start and completion dates;
- 12 (E) A letter issued by the mayor and council of the
- 13 county in which the infrastructure project is to
- 14 be located indicating that the project has been
- 15 approved; and
- 16 (F) If the application is incomplete, additional
- 17 information may be requested prior to further
- 18 action by the department of business, economic
- 19 development, and tourism;
- 20 (7) An application fee shall be submitted with the
- 21 application for a qualified media infrastructure
- 22 project tax credit. The amount of the fee shall be



1 equal to _____ per cent multiplied by the estimated
2 total incentive tax credits; provided that the minimum
3 application fee shall be \$ _____ and the maximum
4 application fee shall be \$ _____ ; and

5 (8) Prior to any final certification of a tax credit for a
6 state-certified infrastructure project, the applicant
7 for the qualified media infrastructure project tax
8 credit shall submit to the department of business,
9 economic development, and tourism an audit of the
10 expenditures that is performed and certified by an
11 independent certified public accountant pursuant to
12 rule. Upon approval of the audit, the department of
13 business, economic development, and tourism shall
14 issue a final tax credit certification letter
15 indicating the amount of tax credit certified for the
16 state-certified infrastructure project to the taxpayer
17 and investors. Bank loan finance fees applicable to
18 the qualified media infrastructure project
19 expenditures, as certified by the department of
20 business, economic development, and tourism, and any
21 general excise taxes that have been paid on the bank
22 loan finance fees and remitted to the State may be



1 included as part of the qualifying media
2 infrastructure project expenses that qualify for the
3 tax credit. The taxpayer for each qualified media
4 infrastructure project shall file the letter with the
5 taxpayer's tax return for the qualified media
6 infrastructure project to the department of taxation.
7 Notwithstanding the authority of the department of
8 business, economic development, and tourism under this
9 section, the director of taxation may audit and adjust
10 the tax credit amount to conform to the information
11 filed by the taxpayer.

12 (c) Any taxpayer eligible to claim a tax credit under
13 subsection (a) shall:

14 (1) File an annual progress report with the department of
15 business, economic development, and tourism on a
16 calendar basis, which shall include the following
17 information:

18 (A) Percentage of completion of each qualified media
19 infrastructure project;

20 (B) Amount of moneys expended on, and amount
21 remaining to complete, each qualified media
22 infrastructure project; and



- 1 (C) Tax and labor clearances;
- 2 (2) Deliver to the department of business, economic
- 3 development, and tourism a performance bond, in a form
- 4 prescribed by the department of business, economic
- 5 development, and tourism by rule, executed by a surety
- 6 company authorized to do business in this State or
- 7 otherwise secured in a manner satisfactory to the
- 8 department of business, economic development, and
- 9 tourism, in an amount equal to per cent of total
- 10 projected expenditures determined upon initial
- 11 certification; and
- 12 (3) Provide either of the following:
- 13 (A) Pledge of a lien on the qualified media
- 14 infrastructure project in favor of the State in
- 15 the amount of \$; provided that the lien
- 16 shall expire five years after completion of the
- 17 project; or
- 18 (B) Collateral security in the amount of \$;
- 19 provided that the collateral security shall be
- 20 released five years after completion of the
- 21 qualified media infrastructure project.



1 (d) Any taxpayer eligible to claim a qualified media
2 infrastructure project tax credit under subsection (a) shall
3 file with the department of business, economic development, and
4 tourism an annual report no later than March 1 following each
5 taxable year for which the credit is claimed. The report shall
6 include the following information:

- 7 (1) The amount of general excise tax paid under chapter
8 237;
- 9 (2) The amount of transient accommodations tax paid under
10 chapter 237D;
- 11 (3) The amount of tax credits claimed under this section;
- 12 (4) Gross proceeds of each project;
- 13 (5) Number of full-time employees employed on each
14 qualified media infrastructure project;
- 15 (6) Number of part-time employees employed on each
16 qualified media infrastructure project;
- 17 (7) Number of independent contractors contracted to work
18 on each qualified media infrastructure project;
- 19 (8) Amount disbursed as payroll in the State on each
20 qualified media infrastructure project; and
- 21 (9) List of job classifications with average wage level.
- 22 (e) For purposes of this section:



1 "Production" and "post production" shall have the same
2 meaning as defined in section 235-17.

3 "Qualified media infrastructure project" means the
4 development, construction, renovation, or operation of a film,
5 video, television, or media production or post-production
6 facility and the immovable property and equipment related
7 thereto, or any other facility that supports and is a necessary
8 component of the proposed infrastructure project, that is
9 located in the State; provided that the facility may include a
10 movie theater or other commercial exhibition facility to assist
11 in offsetting operating costs of the production or post
12 production facility, but shall not include a facility used to
13 produce pornographic matter or a pornographic performance.

14 (f) A taxpayer shall not be prohibited from claiming the
15 media infrastructure project tax credit for qualifying
16 investments made prior to the reenactment of section 235-17
17 pursuant to section 4 of Act 88, Session Laws of Hawaii 2006.

18 A taxpayer may claim the media infrastructure project tax
19 credit for investments made on a qualified media infrastructure
20 project prior to January 1, 2016; provided that:

21 (1) Construction of the media infrastructure project shall
22 commence prior to January 1, 2016; and



1 (2) The claim for the media infrastructure project tax
2 credit shall be properly filed on or before the end of
3 the twelfth month following the close of the taxable
4 year for which the tax credit may be claimed.

5 Failure to comply with either of the foregoing provisions shall
6 constitute a waiver of the right to claim the tax credit.

7 (g) If at the close of any taxable year:

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

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

15 (3) The taxpayer has withdrawn the taxpayer's base
16 investment wholly or partially from the qualified
17 media infrastructure project,

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

19 The recapture shall be equal to per cent of the
20 amount of the total tax credit claimed under this section in the
21 preceding five taxable years. The amount of the tax credit
22 recaptured shall apply only to the investment in the particular



1 qualified media infrastructure project that meets the conditions
2 of paragraph (1), (2), or (3). The amount of the recaptured tax
3 credit determined under this subsection shall be added to the
4 taxpayer's tax liability for the taxable year in which the
5 recapture occurs under this subsection.

6 (h) Failure to complete a qualified media infrastructure
7 project for which a tax credit is claimed under subsection (a)
8 within five years of initial certification shall result in
9 ineligibility to claim the tax credit.

10 (i) There is established a Hawaii film office special
11 fund, to be administered by the department of taxation, into
12 which shall be deposited all application fees collected pursuant
13 to this section. The moneys in the special fund shall be
14 expended for the purposes of managing infrastructure development
15 credits and related programs."

16 SECTION 5. The department of taxation shall submit an
17 annual report to the legislature no later than twenty days prior
18 to the convening of each regular session beginning with the 2014
19 regular session. The report shall contain a cost benefit
20 analysis of the tax credit established in this part. The
21 department of taxation shall report the data collected under



1 this section along with a cumulative total of tax credits
2 granted for each qualified media infrastructure project.

3 **PART IV**

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act, upon its approval, shall apply to
7 taxable years beginning after December 31, 2012.

8



Report Title:

Film Tax Credits; Amendments; Media Infrastructure Project Tax Credit

Description:

Extends the motion picture, digital media, and film production income tax credit from 01/01/2016 to 01/01/2023. Repeals the credit ceiling per qualified production. Changes the credit amount from 15% to an unspecified amount in a county with a population over 700,000, and from 20% to an unspecified amount in a county with a population of 700,000 or less. Creates a tax credit for media infrastructure projects in West Oahu or the most populous island in a county with a population of 100,000 to 175,000, from 07/01/13 to 01/01/16. Provides for recapture of the media infrastructure project tax credit. Establishes a special fund for management of media infrastructure project tax credits and related programs. Requires analysis and reporting by DOTAX on the effectiveness of the media infrastructure project tax credit. (Proposed SD1)

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