HB726

Extends the motion picture, digital media, and film production income tax credit until 2023. Increases the credit ceiling to an unspecified amount. Increases, by an unspecified amount, the credit per cent both in counties with a population above or below 700,000. (HB726 HD1)

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

Telephone: (808) 586-2355
Fax: (808) 586-2377

Statement of
RICHARD C. LIM
Director
Department of Business, Economic Development and Tourism

before the
SENATE COMMITTEES ON ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING
AND
TECHNOLOGY AND THE ARTS

Monday, March 18, 2013
2:45 PM
State Capitol, Conference Room 16
In consideration of

HB726, HD1
RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

Chairs Dela Cruz and Wakai, Vice Chairs Slom and Nishihara and Members of the Committees.

The Department of Business, Economic Development and Tourism (DBEDT) appreciates the intent of HB726, HD1, which extends the repeal date of Act 88, SLH 2006 from January 1, 2016, to January 1, 2023, and repeals the credit ceiling to an unspecified amount. DBEDT requests the extension of the sunset date to 2025. We are concerned that any increase to the base credit over the exiting 15% on Oahu and 20% on neighbor islands may not be fiscally prudent, given the State's current economic situation.

Thank you for the opportunity to testify on this measure.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR

FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

To: The Honorable Donovan M. Dela Cruz, Chair
and Members of the Senate Committee on Economic Development, Government Operations and Housing

The Honorable Glen Wakai, Chair
and Members of the Senate Committee on Technology and the Arts

Date: Monday, March 18, 2013
Time: 2:45 p.m.
Place: Conference Room 016, State Capitol

Re: H.B. 726, H.D. 1, Relating to Film and Digital Media Industry Development

The Department of Taxation (Department) **appreciates the intent** of H.B. 726, H.D. 1 and provides the following information for your consideration.

H.B. 726, H.D. 1, amends the motion picture, digital media, and film production tax credit amount from fifteen per cent to an unspecified per cent of the qualified production costs incurred in a county with a population over 700,000, and from twenty per cent to an unspecified per cent of the qualified production costs incurred in a county with a population of 700,000 or less, amends the credit ceiling of $8 million to an unspecified amount per qualified production, and extends the sunset date of Act 88, Session Laws of Hawaii 2006, from January 1, 2016 to January 1, 2023.

The Department estimated that H.B. 726 would result in revenue loss of $11.8 million for fiscal year (FY) 2014, $25.6 million for FY 2015, $37.8 million for FY 2016, and $50.0 million per year for FY 2017 to FY 2023.

Thank you for the opportunity to provide comments.

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

TESTIMONY OF ALAN ARAKAWA, MAYOR
COUNTY OF MAUI

BEFORE THE SENATE

COMMITTEE ON ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING

AND

COMMITTEE ON TECHNOLOGY AND THE ARTS

Monday, March 18, 2013, 2:45 p.m., Conf. Room 16

HOUSE BILL 726, HD1
RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Sam Slom, Vice Chair
and Members of the Committee on Economic Development, Government Operations and Housing

The Honorable Glenn Wakai, Chair
The Honorable Clarence K. Nishihara, Vice Chair
and Members of the Committee on Technology and the Arts

SUBJECT: **TESTIMONY OF MAUI COUNTY MAYOR ALAN ARAKAWA IN SUPPORT OF HB 726, HD1 RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT**

Thank you for this opportunity to offer our testimony in **support of HB 726, HD1** relating to Film and Digital Media Industry Development. We believe that it is vital that the film and digital media production in the State of Hawaii be continued, expanded, and modernized in order to preserve existing jobs and to create new jobs for our residents.

We support this bill for the following reasons:

1. The expansion, modernization, and development of a new industry relating to motion picture, digital media, and film production, will:

   - Create new, higher-paying jobs, as well as training, advancement and new educational opportunities for our residents.

- Provide incentives for the construction of **new** infrastructure including new sound stages; and, lead to the renovation and modernization of existing infrastructure on Oahu.

- Benefit the entire State of Hawaii by diversifying and stimulating our economy. This is vital in light of the recent cuts in federal funding to our military services, the closure of numerous large businesses, and the ups and downs of our visitor industry.

2. We urge this committee to adopt an "infrastructure incentive credit" and to increase the existing "production credit" to rates that will make the State of Hawaii competitive with other leading venues in the film industry.

   - An "infrastructure incentive credit" is needed to attract construction of new stages, or to modernize existing stages. Currently, no other island except Oahu has any significant stages/studios; and leaders in the Hawaii film industry have reported of existing facilities being dilapidated and needing repair.

   - A significant increase in the "production tax credit" is needed to make Hawaii competitive with other venues. A mere 5% increase of the "production credit" will not create enough incentive to consistently attract film production in the state as other leading film venues offer significantly more "production tax incentives". Furthermore, it is difficult to attract development of stages in Hawaii as potential developers are hesitant to invest millions of dollars for new stages, or modernization of existing stages, unless they know films will be consistently shot on their stages.

Thank you for considering our testimony and respectfully offer our **support for HB 726, HD1**.

L E G I S L A T I V E

TAXBILLSERVICE

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

SUBJECT: INCOME, Extend and increase motion picture, digital media and film production credit

BILL NUMBER: HB 726, HD-1

INTRODUCED BY: House Committee on Economic Development & Business

BRIEF SUMMARY: Amends HRS section 235-17 to increase the motion picture, digital media, and film production tax credit from ___% to ___% for the costs incurred in a county with a population over 700,000 for qualified production costs incurred by a qualified production company; and from 20% to 25% for costs incurred in a county with a population of 700,000 or less.

The total tax credits that may be claimed per qualified production shall be limited to $_______ million.

Amends Act 88, SLH 2006, to extend the motion picture, digital media and film production credit from December 31, 2015 to December 1, 2022.

This act shall be applicable to qualified productions new to Hawaii that have commenced principal photography on or after January 1, 2013.

EFFECTIVE DATE: Upon approval

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

The legislature by Act 88, SLH 2006, increased the 4% credit to 15% in a county with a population over 700,000 and to 20% in a county with a population of 700,000 or less. Act 88 also repealed the income tax credit for transient accommodations and expanded the credit to include commercials and digital media productions, and limited the credit to $8 million per qualified production.

This measure proposes to increase the credit from15% to ___% in a county with a population over 700,000 and from 20% to ___% in a county with a population of 700,000 or less. The measure also increases the$8 million limit of tax credits that may be claimed per qualified production to $_______ and extends the motion picture, digital media and film production credits from December 31, 2015 to December 31, 2022.

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

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

Income tax credits are designed to reduce the tax burden by providing relief for taxes paid. Tax credits are justified on the basis that taxpayers with a lesser ability to pay should be granted relief for state taxes imposed. Sponsors try to make an argument that Hawaii needs to enact such incentives to compete for this type of business, one has to ask "at what price?" Promoters of the film industry obviously don't give much credit to Hawaii's natural beauty and more recently its relative security. Just ask the actors of "Lost" or "Hawaii 5-0" who have bought homes here if they would like to work elsewhere.

While film producers may moan that they will lose money without the proposed tax credits, is there any offer to share the wealth when a film makes millions of dollars? If promoters of the film industry would just do their job in outlining the advantages of doing this type of work in Hawaii and address some of the costly barriers by correcting them, such tax incentives would not be necessary. From permitting to skilled labor to facilitating transportation of equipment, there are ways that could reduce the cost of filming in Hawaii. Unless these intrinsic elements are addressed, movie makers will probably demand subsidies, such as this incentive. Unfortunately, they come at the expense of all taxpayers and industries struggling to survive in Hawaii. While lawmakers look like a ship of fools, movie producers and promoters are laughing all the way to the bank and the real losers in this scenario are the poor taxpayers who continue to struggle to make ends meet, a scenario akin to the bread and circus of ancient Rome.

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

Instead of creating sustainable economic development incentives, the film tax credits waste money that could otherwise create an environment that is nurturing for all business activity, activity that lasts more than the six or eight months of a production. The overall tax burden could be lowered not only for families but for the businesses that provide long-term employment for Hawaii's people.

Digested 2/20/13

HB726 SD1

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)

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR

FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

To: The Honorable Donovan M. Dela Cruz, Chair
and Members of the Senate Committee on Economic Development, Government Operations and Housing

The Honorable Glen Wakai, Chair
and Members of the Senate Committee on Technology and the Arts

Date: Monday, March 18, 2013
Time: 2:45 p.m.
Place: Conference Room 016, State Capitol

Re: H.B. 726, H.D. 1, Proposed S.D.1, Relating to Film and Digital Media Industry Development

The Department of Taxation (Department) **appreciates the intent** of H.B. 726, H.D. 1, Proposed S.D. 1. As written, the Department is concerned that it will not be able to implement the provisions of the Proposed S.D. 1 due to its broad scope and lack of specific definitions.

Motion Picture, Digital Media, and Film Production Income Tax Credit

Part II of H.B. 726, H.D. 1, Proposed S.D. 1: (1) changes the motion picture, digital media, and film production tax credit amount from 15% to an unspecified amount of the qualified production costs incurred in a county with a population over 700,000, and from 20% to an unspecified amount of the qualified production costs incurred in a county with a population of 700,000 or less, (2) repeals the credit ceiling of $8 million per qualified production, and (3) extends the sunset date of Act 88, Session Laws of Hawaii 2006, from January 1, 2016 to January 1, 2023.

The Department defers to the Department of Business Economic (DBEDT) on the merits of the amendments made in Part II of this bill.

Media Infrastructure Project Tax Credit

Part III of H.B. 726, H.D. 1, Proposed S.D. 1, adds a new section to Chapter 235, Hawaii Revised Statutes, to create a media infrastructure project tax credit. The credit is a nonrefundable tax credit of an unspecified percentage of the qualified infrastructure costs for a facility located in West Oahu or on the most populous island in a county with a population between 100,000 and 175,000, beginning July 1, 2013 and ending December 31, 2015.

The Department is concerned about the broad range of costs (the development, construction, renovation, or operation of a film, video, television, or media production or postproduction facility, or any other facility that supports the project, including a movie theater or other commercial exhibition facility) that could qualify for the tax credit. This broad scope and lack of specific definitions will create administration and enforcement difficulties for the Department.

This measure also requires DBEDT to approve an audit of the infrastructure tax credit conducted by an independent certified public accountant and certify the expenditures for the project, including: a detailed description of the project; a preliminary budget; a complete detailed business plan and market analysis; an estimated start and completion dates; and a letter from the mayor and council of the county. However, section 5 of this measure requires the Department of Taxation, not DBEDT, to collect data and submit an annual cost benefit analysis of the tax credit to the legislature. The Department suggests that DBEDT is the more appropriate agency to conduct the cost benefit analysis of the tax credit, as they are the agency which will approve and certify the expenditures. Moreover, the Department does not perform any cost benefit analysis based on taxpayer data.

The Department notes that the administration of the newly established Hawaii film office special fund should be with DBEDT, not the Department.

Thank you for the opportunity to provide comments.

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

Telephone: (808) 586-2355
Fax: (808) 586-2377

Statement of
RICHARD C. LIM
Director
Department of Business, Economic Development and Tourism
before the
SENATE COMMITTEES ON ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING
AND
TECHNOLOGY AND THE ARTS
Monday, March 18, 2013
2:45 PM
State Capitol, Conference Room 16
in consideration of
HB726, HD1, Proposed SD1
RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

Chairs Dela Cruz and Wakai, Vice Chairs Slom and Nishihara and Members of the Committee.

The Department of Business, Economic Development and Tourism (DBEDT) appreciates the intent of HB726, HD1, Proposed SD1, which extends the repeal date of Act 88, SLH 2006 from January 1, 2016, to January 1, 2023, and repeals the credit ceiling to an unspecified amount. DBEDT requests the extension of the sunset date to 2025. We are concerned that any increase to the base credit at this juncture may not be fiscally prudent, given the State's current economic situation.

With regard to Part III, Section 4 relating to a new non-refundable credit for qualified digital media infrastructure projects, specifically in West Oahu or the most populous island in a county with a population of 100,000 to 175,000, DBEDT supports the intent of such a credit but would recommend eliminating the geographic restriction. DBEDT supports the creation of the Hawaii Film Office Special Fund, and requests that the language in section (i), page 17 designate DBEDT to administer the fund, rather than the Department of Taxation, as noted.

The department also brings to your attention that should any of the infrastructure measures pass this session, DBEDT will require additional staffing to manage this program.

Thank you for the opportunity to testify on this measure.

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

Telephone: (808) 586-2355
Fax: (808) 586-2377

Statement of
RICHARD C. LIM
Director
Department of Business, Economic Development and Tourism
before the
SENATE COMMITTEES ON ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING
AND
TECHNOLOGY AND THE ARTS
Monday, March 18, 2013
2:45 PM
State Capitol, Conference Room 16
in consideration of
HB726, HD1, Proposed SD1

RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

Chairs Dela Cruz and Wakai, Vice Chairs Slom and Nishihara and Members of the Committee.

The Department of Business, Economic Development and Tourism (DBEDT) appreciates the intent of HB726, HD1, Proposed SD1, which extends the repeal date of Act 88, SLH 2006 from January 1, 2016, to January 1, 2023, and repeals the credit ceiling to an unspecified amount. DBEDT requests the extension of the sunset date to 2025. We are concerned that any increase to the base credit at this juncture may not be fiscally prudent, given the State's current economic situation.

With regard to Part III, Section 4 relating to a new non-refundable credit for qualified digital media infrastructure projects, specifically in West Oahu or the most populous island in a county with a population of 100,000 to 175,000, DBEDT supports the intent of such a credit but would recommend eliminating the geographic restriction. DBEDT supports the creation of the Hawaii Film Office Special Fund, and requests that the language in section (i), page 17 designate DBEDT to administer the fund, rather than the Department of Taxation, as noted.

The department also brings to your attention that should any of the infrastructure measures pass this session, DBEDT will require additional staffing to manage this program.

Thank you for the opportunity to testify on this measure.

THE SENATE
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION 2013

COMMITTEE ON ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS & HOUSING
Senator Donovan M. Dela Cruz, Chair
Senator Sam Slom, Vice Chair

COMMITTEE ON TECHNOLOGY & THE ARTS
Senator Glenn Wakai, Chair
Senator Clarence K. Nishihara, Vice Chair

HOUSE BILL 726, HD1, SD1
RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT

The film industry unions, SAG-AFTRA, the International Alliance of Theatrical Stage Employees (IATSE) Mixed Local 665, the American Federation of Musicians (AFM) Local 677 and the Hawaii Teamsters Local 996, collectively represent over 2,500 union members who work in the film, television, digital and new media industry.

We **support** the intent of HB 726, HD, SD1 as it would repeal the $8 million cap and extend the sunset date from 2016 to 2023, and it amends the current application of Act 88 to exclude advertising messages for internet distribution only. We suggest that if there is an increase to the tax credit, that any amount above the current 15% and 20% tax credit be applied specifically to local labor hires with respect to the application of Act 88 as it will ensure that rebated revenues would remain in the State.

We do not support portions the bill, specifically "Part III" as it includes language for a media infrastructure project tax credit that we have concerns with:

- The proposed HB 726, HD1, SD1 language restricts the development of a media infrastructure project to particular locations and excludes other areas within the State that could be feasible and suitable;
- The proposal of a special fund to manage and expend the infrastructure project tax credits is too vague and needs careful structural and accountability considerations;

- Act 88 has proven to be a fiscally responsible measure. It is an economic driver and continues to attract productions to the State and create jobs. **A media infrastructure project tax credit should not be part of Act 88.**

We appreciate your careful consideration of this measure. Thank you for giving us the opportunity to submit testimony on HB 726, HD, SD1.

Brenda Ching	Henry Fordham	Brien Matson	Jeanne Ishikawa
SAG-AFTRA Hawaii	IATSE, Local 665	AFM, Local 677	Teamsters, Local 996
596-0388	596-0227	596-2123	258-0358

TESTIMONY OF NBC UNIVERSAL MEDIA, LLC. IN SUPPORT OF H.B. NO. 726, HD 1, SD 1 PROPOSED RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT

DATE: Monday, March 18, 2013
TIME: 2:45 pm

To: Chairmen Donovan Dela Cruz and Glenn Wakai and Members of the Senate Committee on Economic Development, Government Operations and Housing and the Senate Committee on Technology and the Arts:

NBC Universal Media, LLC ("NBC/U") develops, produces, broadcasts and distributes motion pictures, television programs and related content around the world. Over the last several years the Hawaii Legislature has developed a clear consensus that the motion picture, television and related digital media industries (the "Film Industry") in Hawaii has become an important component of a diversified economy and has had a positive financial impact on the State of Hawaii. This industry can be strengthened significantly if Hawaii's existing incentives for the Film Industry are enhanced.

While Hawaii may be perceived as a highly desirable destination that would instinctively attract the Film Industry, the State needs to take affirmative steps to ensure Hawaii is at the top of the list and not left behind in the wake of other domestic and international locales. HB 726, HD 1, SD 1 PROPOSED will help to ensure that Hawaii is competitive with film destinations around the globe and does so in a manner that is sustainable and rational for the long term.

Film and television production companies are increasingly more conscious of cost when making location decisions. Accordingly, foreign and state governments are addressing film, television and digital media tax credits in order to attract jobs, investment and innovation.

NBC/U supports the basic underlying provisions outlined in this bill relating to the production tax credit and advocates specifically for increasing the current refundable production credit ("RPC") by 5%. It also is in support of removing the cap from the RFP as provided in this Proposed SD 1 as well as well as the extension of the sunset date of Act 88 to at least 2023 or 2025 to assure certainty and predictability for long term production planning.

NBC/U feels that as a result of the various film and television productions that the Film Industry has brought to Hawaii, there has been a significant increase in spending within the state and growth in workforce development due to these film and television productions. Further, such productions stimulate more direct and indirect tax revenue and that a properly designed tax incentive program can actually increase local tax revenues.

NBC/U strongly feels that in order to stimulate such dramatic growth it is necessary to enhance Hawaii's existing tax incentive program in order to allow Hawaii to effectively compete with other film production centers in attracting a greater number of significant projects to the islands and to continue to build Hawaii's local film industry.

An increase in the tax credit will result in:

1. An infusion of significant amounts of new money into the economy, which in turn will benefit Hawaii's businesses and residents; and
2. Creating skilled, high-paying jobs; and
3. Creating a natural synergy with Hawaii's top industry, tourism, and can be used as a destination marketing tool for the visitor industry.

The Film Industry also has a strong desire to hire locally and invest in the training and workforce development of island-based personnel and intends to continue the practice of hiring a significant number of residents and to support training and opportunities for those residents.

Thank you for the opportunity to present this testimony in support of the basic underlying provisions of this bill as it relates to the production tax credit and advocating for and requesting that the existing tax credit be increased by 5%.

L E G I S L A T I V E

TAXBILLSERVICE

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

SUBJECT: INCOME, Extend and increase motion picture, digital media and film production credit; media infrastructure project tax credit

BILL NUMBER: HB 726, Proposed SD-1

INTRODUCED BY: Senate Committees on Economic Development, Government Operations and Housing and Technology and the Arts

BRIEF SUMMARY: Amends HRS section 235-17 to increase the motion picture, digital media, and film production tax credit from 15% to ___% for the costs incurred in a county with a population over 700,000 for qualified production costs incurred by a qualified production company and from 20% to ___% for costs incurred in a county with a population of 700,000 or less.

Repeals the provision limiting the total tax credits that may be claimed per qualified production to $8 million.

Amends Act 88, SLH 2006, to extend the motion picture, digital media and film production credit from December 31, 2015 to December 1, 2022.

Adds a new section to HRS chapter 235 to allow taxpayers, between July 1, 2013 and December 31, 2015, to claim a credit of ___% of the qualified costs incurred for qualified media infrastructure projects situated in West Oahu or on the most populous island in a county with a population between 100,000 and 175,000.

To qualify for the credit: (1) the base investment for a qualified media infrastructure project shall be in excess of $_______; (2) the qualified media infrastructure project tax credit shall be non-refundable so any tax credit that exceeds the tax liability of the taxpayer may be carried forward to offset net income tax liability in subsequent tax years for up to ten years or until exhausted, whichever occurs first, the director of taxation may require the tax credits to be taken or assigned in the tax period in which the credit is earned or may structure the tax credit in the initial certification of the project to provide that only a portion of the tax credit be taken over the course of two or more years; (3) the total qualified media infrastructure project tax credit allowed for any state-certified infrastructure project shall not exceed $_______; (4) if any portion of an infrastructure project is a facility that may be used for other purposes unrelated to production or post production activities, then the project shall be approved only if a determination is made that the multiple use facility will support and will be necessary to secure production or post production activity for the production and post production facility; provided that no tax credits shall be earned on such multiple use facilities until the production or post production facility is complete; (5) tax credits for infrastructure projects shall be earned only if: (a) construction of the infrastructure project begins within six months of the initial certification and shall be ___% completed within a ___ year time frame; (b) expenditures shall be certified by the department of business, economic development and tourism (DBEDT) and credits shall not be earned until certification is received; © the tax credits shall be deemed earned at the time the expenditures are made, provided that all requirements of this subsection have been met and the tax credits have been certified; (6) for state-certified infrastructure projects, the application for a qualified media infrastructure project tax credit shall be submitted to the DBEDT and include: (a) a detailed description of the infrastructure project; (b) a preliminary budget; © a complete detailed business plan and market analysis; (d) estimated start and completion dates; and (e) if the application is incomplete, additional information may be requested prior to further action by the director of DBEDT; (7) an application fee of ___% times the estimated total incentive tax credits shall be submitted with the application for a qualified media infrastructure project tax credit; (8) prior to any final certification of a tax credit for a state-certified infrastructure project, the applicant for the infrastructure project tax credit shall submit to the director of DBEDT an audit of the expenditures certified by an independent certified public accountant as determined by rule. Upon approval of the audit, the director of DBEDT shall issue a final tax credit certification letter indicating the amount of tax credits certified for the state-certified infrastructure project to the investors. Bank loan finance fees applicable to the qualified media infrastructure project expenditures, as certified by the director of DBEDT, and any general excise taxes that have been paid on the bank loan finance fees and remitted to the state may be included as part of the qualifying media structure project expenses and qualify for the tax credit.

Further requires the taxpayer claiming the credit to file a progress report of a qualified media project with DBEDT, deliver a performance bond in a form prescribed by DBEDT in an amount equal to 100% of total projected expenditures determined upon initial certification; and either: (1) a pledge of a lien on the qualified media infrastructure project in favor of the state; or (2) collateral security.

Also requires any taxpayer eligible to claim a qualified media infrastructure project tax credit to file with DBEDT an annual report by March 1 following each taxable year for which the credit is claimed delineating: (1) the amount of general excise tax paid; (2) the amount of transient accommodations tax paid; (3) the amount of tax credits claimed under this section; (4) gross proceeds of each project; (5) number of full-time employees, part-time employees employed on each qualified media infrastructure project; (6) number of independent contractors contracted to work on each qualified media infrastructure project; (7) amount disbursed as payroll on each qualified media infrastructure project; and (8) list of job classifications with average wage level.

Defines "qualified media infrastructure project" as the development, construction, renovation, or operation of a film, video, television, or media production or post-production facility and the immovable property and equipment related thereto, or any other facility that supports and is a necessary component of the proposed infrastructure project, that is located in the state. The facility may include a movie theater or other commercial exhibition facility to assist in offsetting operating costs of the production or post-production facility, but shall not include a facility used to produce pornographic matter or a pornographic performance.

A taxpayer may claim the media infrastructure project tax credit for investments made on a qualified media infrastructure project prior to January 1, 2016 if construction of the media infrastructure project commenced prior to January 1, 2016. Delineates recapture provisions if the qualified media infrastructure project no longer qualifies for the tax credit and the recapture shall be equal to ___% of the amount of the tax credit claimed in the preceding five years.

Establishes a Hawaii film office special fund administered by the department of taxation into which shall be deposited all application fees collected pursuant to this section. The monies in the fund shall be expended for the purpose of managing infrastructure development credits and related programs.

Requires the department of taxation to submit an annual report to the legislature 20 days prior to each regular session beginning with the 2014 regular session which shall include a cost benefit analysis of the tax credit established in this part, and a report of the data collected under this section along with a cumulative total of tax credits granted for each qualified media infrastructure project.

EFFECTIVE DATE: Tax years beginning after December 31, 2012

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

The legislature by Act 88, SLH 2006, increased the 4% credit to 15% in a county with a population over 700,000 and to 20% in a county with a population of 700,000 or less. Act 88 also repealed the income tax credit for transient accommodations and expanded the credit to include commercials and digital media productions, and limited the credit to $8 million per qualified production.

This measure proposes to increase the credit from15% to ___% in a county with a population over 700,000 and from 20% to ___% in a county with a population of 700,000 or less. The measure also repeals the $8 million limit of tax credits that may be claimed per qualified production and extends the motion picture, digital media and film production credits from December 31, 2015 to December 31, 2022. The proposed measure would allow taxpayers to claim a media infrastructure project tax credit in West Oahu or on the island of Maui.

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

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

Income tax credits are designed to reduce the tax burden by providing relief for taxes paid. Tax credits are justified on the basis that taxpayers with a lesser ability to pay should be granted relief for state taxes imposed. Sponsors try to make an argument that Hawaii needs to enact such incentives to compete for this type of business, one has to ask "at what price?" Promoters of the film industry obviously don't give much credit to Hawaii's natural beauty and more recently its relative security. Just ask the actors of "Lost" or "Hawaii 5-0" who have bought homes here if they would like to work elsewhere.

While film producers may moan that they will lose money without the proposed tax credits, is there any offer to share the wealth when a film makes millions of dollars? If promoters of the film industry would just do their job in outlining the advantages of doing this type of work in Hawaii and address some of the costly barriers by correcting them, such tax incentives would not be necessary. From permitting to skilled labor to facilitating transportation of equipment, there are ways that could reduce the cost of filming in Hawaii. Unless these intrinsic elements are addressed, movie makers will probably demand subsidies, such as this incentive. Unfortunately, they come at the expense of all taxpayers and industries struggling to survive in Hawaii. While lawmakers look like a ship of fools, movie producers and promoters are laughing all the way to the bank and the real losers in this scenario are the poor taxpayers who continue to struggle to make ends meet, a scenario akin to the bread and circus of ancient Rome.

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

Instead of creating sustainable economic development incentives, the film tax credits waste money that could otherwise create an environment that is nurturing for all business activity, activity that lasts more than the six or eight months of a production. The overall tax burden could be lowered not only for families but for the businesses that provide long-term employment for Hawaii's people.

Instead of handing out a tax credit to build the film infrastructure, be it a studio or a sound stage, lawmakers should appropriate a specific sum of money and put a request for proposals to build such a project and see which bidder would come forward with the best proposal and offer to match the state's share. This way, each bidder could be evaluated as to what they have to offer and what benefit the state would get. Inasmuch as the state would probably be able to offer the land for such a facility, it could also offer a streamlined permitting process which would also be an in-kind contribution. Based on the responses to the request, a careful review done by experts in the field could be made and the best proposal selected. The persons responsible for making the final selection would then be held accountable for their selection and provide the justification for the selection. Another alternative would be the use of special purpose revenue bonds. These alternatives would be far more efficient and transparent than by the tax credit proposed by this measure. Lawmakers need to exert a little creativity if indeed they believe that such infrastructure is necessary to the development of this industry in the islands. Consideration should be given to the many assets the state brings to the table including land availability, streamlined permitting, tax free interest debt financing and the like. Instead of just handing out a tax credit, lawmakers need to take a more active role in the development of this infrastructure and should be held accountable for the success or failure of such an initiative.

Digested 3/16/13