NEIL ABERCROMBIE
GOVERNOR
RICHARD C. LIM
DIRECTOR
MARY ALICE EVANS
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
RICHARD C. LIM
Director
Department of Business, Economic Development and Tourism
before the
HOUSE COMMITTEE VETERANS, MILITARY, & INTERNATIONAL AFFAIRS, & CULTURE AND THE ARTS

Wednesday, March 13, 2013
8:30 a.m.
State Capitol, Conference Room 312
in consideration of

SB463, SD2
RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

Chair Takai, Vice Chair Ito and Members of the Committee.

The Department of Business, Economic Development and Tourism (DBEDT) offers comments on SB463, SD 2, which extends the repeal date of Act 88, SLH 2006, from January 1, 2016, to January 1, 2023; repeals the $8 million cap on the tax credit that may be claimed per qualified production; and increases the amount of the credit. SB463, SD2 also introduces a new non-refundable credit equal to 25 percent of the qualified costs 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 requests the sunset date be extended to 2025.

We support the intent of a new infrastructure credit but we recommend eliminating the geographic restriction.

At this juncture, DBEDT is not able to support the 5 percent increase to the base credit as proposed in SB463, SD2. Given the State's current economic situation any increase would not be fiscally prudent at this time. Thank you for the opportunity to testify on this measure.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR

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To: The Honorable K. Mark Takai, Chair
and Members of the House Committee on Veterans, Military, & International Affairs, & Culture and the Arts

Date: Wednesday, March 13, 2013
Time: 8:30 a.m.
Place: Conference Room 312, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. 463, S.D. 2, Relating to Film and Digital Media Industry Development

The Department of Taxation (Department) **appreciates the intent** of S.B. 463, S.D. 2. As written, the Department is concerned that it will not be able to implement the provisions of the S.D. 2 due to its broad scope and lack of specific definitions.

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

Part II of S.B. 463, S.D. 2: (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 amendments made in Part II of S.B. 463, S.D. 2.

Media Infrastructure Project Tax Credit

Part III of S.B. 463, S.D. 2, 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.

Thank you for the opportunity to provide comments.

ALAN M. ARAKAWA
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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 HOUSE

COMMITTEE ON VETERANS, MILITARY & INTERNATIONAL AFFAIRS & CULTURE AND THE ARTS

Wednesday, March 13, 2013, 8:30 a.m., Conf Room 312

SENATE BILL 463, SD2
RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT

SENATE BILL 750, SD2
RELATING TO DIGITAL MEDIA INFRASTRUCTURE

The Honorable K. Mark Takai, Chair
The Honorable Ken Ito, Vice Chair
and Members of the Committee on Veterans, Military & International Affairs & Culture and the Arts

SUBJECT: **TESTIMONY OF MAUI COUNTY MAYOR ALAN ARAKAWA IN SUPPORT OF SB 463, SD2 RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT & SB 750, SD2 RELATING TO DIGITAL MEDIA INFRASTRUCTURE**

Thank you for this opportunity to offer our testimony in **support of SB 463, SD2** relating to Film and Digital Media Industry Development and **SB 750, SD2** relating to Digital Media Infrastructure. We believe that it is vital that the film and digital media production in the State of Hawaii be continued, as well as expanded and modernized, in order to preserve existing jobs and to create new jobs for our residents.

We support these bills 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 SB 750, SD2 and SB 463, SD2**.

Council Chair
Gladys C. Baisa

Vice-Chair
Robert Carroll

Council Members
Elle Cochran
Donald G. Couch, Jr.
Stacy Crivello
Don S. Guzman
G. Riki Hokama
Michael P. Victorino
Mike White

Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL

COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

March 12, 2013

TO: The Honorable K. Mark Takai, Chair
House Committee on Veterans, Military, & International Affairs, & Culture and the Arts

FROM: Gladys C. Baisa
Council Chair

SUBJECT: **HEARING OF WEDNESDAY, MARCH 13, 2013; TESTIMONY IN SUPPORT OF SB 463, SD2, RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT**

Thank you for the opportunity to testify in support this important measure. The primary purposes of this measure are to establish tax credits for (1) production costs incurred by a qualified production in any County in the State; and (2) infrastructure projects, with certain conditions, for qualified media projects in West Oahu or on the most populous island in a county with a population between 100,000 and 175,000.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I support this measure for the following reasons:

1. The film, television, and other creative arts industries in Hawaii are important components of a diversified economy. These industries attract large amounts of money, create much-needed jobs, and, with the proper incentives, provide long-term sustainable economic activity.

2. High production costs and limited infrastructure deter television and film productions from coming to Hawaii. Enhanced tax incentive programs will offset these obstacles, and attract more film and television productions to Hawaii.

3. Enactment of the bill will encourage growth of the film industry, thereby stimulating the economy, providing jobs for local people, and generating increased tax revenues.

For the foregoing reasons, I support this measure.

ocs:proj:legis:13legis:13testimony:sb463,sd2_paf13-096a_kcw

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: SB 463, SD-2

INTRODUCED BY: Senate Committee on Ways and Means

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 July1, 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; (c) 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; (c) 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: July 1, 2050, applicable to 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 3/11/13

<u>TESTIMONY OF NBC UNIVERSAL MEDIA, LLC. IN SUPPORT OF S.B. NO. 463, SD 2 RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT</u>

DATE: Wednesday, March 13, 2013
TIME: 8:30 am

To: Chairman K. Mark Takai and Members of the House Committee on Veterans, Military & International Affairs, & Culture 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 and the people of Hawaii have 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 which 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. SB 463, SD 2 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. NBC/U stands ready to work with the Hawaii Legislature, the Administration and local Film Industry stakeholders to improve and enhance Hawaii's film incentive program to help build a robust, stable and sustainable Film Industry in the State of Hawaii.

As an example, in the United Kingdom March 2012 Budget, the Chancellor of the Exchequer announced that the government will introduce tax incentives for animation, high-end television and video games to complement the already successful U.K tax incentives for feature films. The U.K. program is an example of the type of national level support for incentives in nations around the globe that poses a growing threat to the United States' retention of its signature knowledge- based industry.

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.

We feel that this bill will accomplish these goals. The provisions of this bill 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; and
4. Also acting to enhance Hawaii’s music industry and thereby introducing millions of people around the world to Hawaii’s recording artists, music, and dance.

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.

NBC/U supports the basic provisions of this bill relating to the qualified production tax credit and advocates for the following:

1. Although the percentage is left “blank”, increasing the refundable production credit (“RPC”) by 5%.
2. Removing the cap from the RFP or at least significantly increasing the per production RPC cap from $8,000,000.
3. Extending the sunset date of Act 88 to at least 2023 to assure certainty and predictability for long term production planning.

Hawaii’s Act 88 has protected and preserved Hawaii's status as one of the world's dynamic and stunning film production centers. By adjusting the cost of doing business in Hawaii slightly downward with a 5% credit increase, and establishing predictability through the program's extension, SB 463, SD 2 will now serve as a catalyst for growth in jobs, infrastructure development and the attraction of additional tourism dollars across the state.

Thank you for the opportunity to present this testimony in support of this bill.