

S .B. NO. 2802

JAN 23 2014

A BILL FOR AN ACT

RELATING TO FUNDING FOR FILM AND DIGITAL MEDIA DEVELOPMENT.

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

1 SECTION 1. Hawaii's film industry brings in an estimated
2 \$250,000,000 in production revenues per year, providing the
3 State with an estimated economic impact of over \$400,000,000
4 annually. The Hawaii film office in the creative industries
5 division of the department of business, economic development,
6 and tourism is involved with all aspects of this industry,
7 including those statutory mandates for film permitting, tax
8 incentive management, and studio operations and management.

9 With the passage of Act 89, Session Laws of Hawaii 2013,
10 and enhancements to the tax credit program, production activity
11 is increasing and with it the demands on an office that has been
12 operating with limited staff and resources since the reduction
13 in force in 2009. While positions and some funding have been
14 restored, the costs to support productions, manage the motion
15 picture, digital media, and film production tax credit program,
16 and maintain the Hawaii film studio far exceed the existing
17 general fund allocations.

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1 This Act broadens the sources of revenue for and renames
2 the special fund created in section 201-113, Hawaii Revised
3 Statutes. By capturing revenues from the studio and other
4 sources, the special fund will provide a necessary funding
5 mechanism for ongoing repair and maintenance of the Hawaii film
6 studio, which averages \$150,000 per year. With anticipated
7 revenues generated by film studio rental of \$500,000 annually,
8 the department of business, economic development, and tourism
9 will have the means to maintain the studio facility and support
10 programs that are not currently possible with the existing
11 general fund allocation.

12 SECTION 2. Chapter 201, Hawaii Revised Statutes, is
13 amended by amending the title of part IX to read as follows:
14 "[+]PART IX. [+] HAWAII [~~TELEVISION AND~~] FILM AND DIGITAL MEDIA
15 DEVELOPMENT".

16 SECTION 3. Section 201-113, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "[+]§201-113[+] Hawaii [~~television and~~] film and digital
19 media development special fund. (a) There is established in
20 the state treasury the Hawaii [~~television and~~] film and digital
21 media development special fund into which shall be deposited:

22 (1) Appropriations by the legislature;

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- 1 (2) Donations and contributions made by private
2 individuals or organizations for deposit into the
3 fund;
- 4 (3) Grants provided by governmental agencies or any other
5 source; [and
6 ~~(4) Any profits or other amounts received from venture~~
7 ~~capital investments.]~~
- 8 (4) Revenues, fees, and charges from the rental and
9 operation of the Hawaii film studio;
- 10 (5) Revenues, fees, and charges from the processing of
11 film permits pursuant to section 201-14; and
- 12 (6) Revenues, fees, and charges from the processing of the
13 motion picture, digital media, and film production
14 income tax credit pursuant to section 235-17.
- 15 (b) The fund shall be used by the [~~board to assist in, and~~
16 ~~provide incentives for, the production of eligible Hawaii~~
17 ~~projects that are in compliance with criteria and standards~~
18 ~~established by the board in accordance with rules adopted by the~~
19 ~~board pursuant to chapter 91. In particular, the board shall~~
20 ~~adopt rules to provide for the implementation of the following~~
21 ~~programs:~~

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1 ~~(1) A grant program. The board shall adopt rules pursuant~~
2 ~~to chapter 91 to provide conditions and qualifications~~
3 ~~for grants. Applications for grants shall be made to~~
4 ~~the board and shall contain such information as the~~
5 ~~board shall require by rules adopted pursuant to~~
6 ~~chapter 91. At a minimum, the applicant shall agree~~
7 ~~to the following conditions:~~
8 ~~(A) The grant shall be used exclusively for eligible~~
9 ~~Hawai'i projects;~~
10 ~~(B) The applicant shall have applied for or received~~
11 ~~all applicable licenses and permits;~~
12 ~~(C) The applicant shall comply with applicable~~
13 ~~federal and state laws prohibiting discrimination~~
14 ~~against any person on the basis of race, color,~~
15 ~~national origin, religion, creed, sex, age, or~~
16 ~~physical handicap;~~
17 ~~(D) The applicant shall comply with other~~
18 ~~requirements as the board may prescribe;~~
19 ~~(E) All activities undertaken with funds received~~
20 ~~shall comply with all applicable federal, state,~~
21 ~~and county statutes and ordinances;~~

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1 ~~(F) The applicant shall indemnify and save harmless~~
2 ~~the State of Hawaii and its officers, agents, and~~
3 ~~employees from and against any and all claims~~
4 ~~arising out of or resulting from activities~~
5 ~~carried out or projects undertaken with funds~~
6 ~~provided hereunder, and procure sufficient~~
7 ~~insurance to provide this indemnification if~~
8 ~~requested to do so by the department;~~

9 ~~(G) The applicant shall make available to the board~~
10 ~~all records the applicant may have relating to~~
11 ~~the project, to allow the board to monitor the~~
12 ~~applicant's compliance with the purpose of this~~
13 ~~chapter; and~~

14 ~~(H) The applicant, to the satisfaction of the board,~~
15 ~~shall establish that sufficient funds are~~
16 ~~available for the completion of the project for~~
17 ~~the purpose for which the grant is awarded; and~~

18 ~~(2) A venture capital program. The board shall adopt~~
19 ~~rules pursuant to chapter 91 to provide conditions and~~
20 ~~qualifications for venture capital investments in~~
21 ~~eligible Hawaii projects. The program may include a~~
22 ~~written agreement between the borrower and the board,~~

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1 ~~as the representative of the State, that as~~
 2 ~~consideration for the venture capital investment made~~
 3 ~~under this part, the borrower shall share any~~
 4 ~~royalties, licenses, titles, rights, or any other~~
 5 ~~monetary benefits that may accrue to the borrower~~
 6 ~~pursuant to terms and conditions established by the~~
 7 ~~board by rule pursuant to chapter 91. Venture capital~~
 8 ~~investments may be made on such terms and conditions~~
 9 ~~as the board shall determine to be reasonable,~~
 10 ~~appropriate, and consistent with the purposes and~~
 11 ~~objectives of this part.] department of business,~~
 12 economic development, and tourism to provide for:

- 13 (1) Operations, repair, and maintenance of the Hawaii film
 14 studio;
- 15 (2) Support for the operations of the Hawaii film office;
- 16 (3) Programs and initiatives for digital media industry
 17 development; and
- 18 (4) Internships and training programs which expand the
 19 skill sets of Hawaii's resident workforce and the film
 20 and digital media industry."

21 SECTION 4. Section 201-111, Hawaii Revised Statutes, is
 22 repealed.

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1 ~~["§201-111] Definitions. As used in this part:~~

2 ~~"Applicant" means a person applying for a grant or venture~~
3 ~~capital investment from the board under this part.~~

4 ~~"Board" means the Hawaii television and film development~~
5 ~~board.~~

6 ~~"Eligible Hawaii project" or "project" means an~~
7 ~~entertainment project in which at least seventy five per cent of~~
8 ~~the budget for the production costs, excluding salaries and~~
9 ~~costs for the producer, director, writer, screenplay, and actors~~
10 ~~in the project, is dedicated for the purchase or lease of goods~~
11 ~~or services from a vendor or supplier who is located and doing~~
12 ~~business in the State.~~

13 ~~"Fund" means the Hawaii television and film development~~
14 ~~special fund.~~

15 ~~"Venture capital investment" means any of the following~~
16 ~~investments in a project:~~

17 ~~(1) Common or preferred stock and equity securities~~
18 ~~without a repurchase requirement for at least five~~
19 ~~years;~~

20 ~~(2) A right to purchase stock or equity securities;~~

21 ~~(3) Any debenture, whether or not convertible or having~~
22 ~~stock purchase rights, which is subordinated, together~~

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1 ~~with security interests against the assets of the~~
2 ~~borrower, by their terms to all borrowings of the~~
3 ~~borrower from other institutional lenders, and that is~~
4 ~~for a term of not less than three years, and that has~~
5 ~~no part amortized during the first three years; and~~
6 ~~(4) General or limited partnership interests."]~~

7 SECTION 5. Section 201-112, Hawaii Revised Statutes, is
8 repealed.

9 ~~["§201-112] Hawaii television and film development board.~~

10 ~~(a) There is established the Hawaii television and film~~
11 ~~development board. The board shall be attached to the~~
12 ~~department of business, economic development, and tourism for~~
13 ~~administrative purposes only. The board shall administer the~~
14 ~~grant and venture capital investment programs and the Hawaii~~
15 ~~television and film development special fund established under~~
16 ~~this part. The board shall also assess and consider the overall~~
17 ~~viability and development of the television and film industries~~
18 ~~and make recommendations to appropriate state or county~~
19 ~~agencies.~~

20 ~~(b) The board shall be composed of nine members, four of~~
21 ~~whom shall be appointed by the governor pursuant to section 26-~~
22 ~~34, and all of whom shall serve four-year staggered terms. One~~

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1 ~~of the governor's appointments shall be made from a list of~~
2 ~~nominees submitted by the president of the senate and another~~
3 ~~appointment shall be made from a list of nominees submitted by~~
4 ~~the speaker of the house of representatives. The four appointed~~
5 ~~members shall possess a current working knowledge of the film,~~
6 ~~television, or entertainment industry. The director of~~
7 ~~business, economic development, and tourism, and the chairs of~~
8 ~~the four county film commissions or its equivalent, shall serve~~
9 ~~as ex officio voting members, who may be represented on the~~
10 ~~board by designees.~~

11 ~~The chairperson and vice chairperson of the board shall be~~
12 ~~selected by the board by majority vote. Five members shall~~
13 ~~constitute a quorum, whose affirmative vote shall be necessary~~
14 ~~for all actions by the board. The members shall serve without~~
15 ~~compensation but shall be reimbursed for expenses, including~~
16 ~~travel expenses, necessary for the performance of their duties.~~

17 ~~(c) The film industry branch development manager shall~~
18 ~~serve as the executive secretary of the board.~~

19 ~~(d) The board may adopt rules pursuant to chapter 91 to~~
20 ~~effectuate the purposes of this part."]~~

21 SECTION 6. Section 201-114, Hawaii Revised Statutes, is
22 repealed.

1 ~~["§201-114] Inspection of premises and records. The board~~
2 ~~shall have the right to inspect, at reasonable hours, the plant,~~
3 ~~physical facilities, equipment, premises, books, and records of~~
4 ~~any applicant in connection with the processing of a grant to~~
5 ~~the applicant."]~~

6 SECTION 7. There is appropriated out the general revenues
7 of the State of Hawaii the sum of \$ or so much
8 thereof as may be necessary for fiscal year 2014-2015 to be
9 deposited into the Hawaii film and digital media development
10 special fund.

11 The sum appropriated shall be expended by the department of
12 business, economic development, and tourism for the purposes of
13 this Act.

14 SECTION 8. There is appropriated out of the Hawaii film
15 and digital media development special fund the sum of
16 \$ or so much thereof as may be necessary for fiscal year
17 2014-2015 for the purposes of the fund.

18 The sum appropriated shall be expended by the department of
19 business, economic development, and tourism for the purposes of
20 this Act.

21 SECTION 9. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

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1 SECTION 10. This Act, upon its approval, shall take effect
2 on July 1, 2014.

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INTRODUCED BY: *Simon Merendo K.*

6

BY REQUEST

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Report Title:

Hawaii Film and Digital Media Development Special Fund;
Appropriation

Description:

Amends section 201-113, Hawaii Revised Statutes (HRS), to expand funding sources to support creative industries development within the Department of Business, Economic Development, and Tourism. Repeals sections 201-111, 201-112, and 201-114, HRS. Appropriates funds.

JUSTIFICATION SHEET

DEPARTMENT: Department of Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO FUNDING FOR FILM AND DIGITAL MEDIA DEVELOPMENT.

PURPOSE: To provide a dedicated source of funds for the operations, repair, and maintenance of the Hawaii film studio and to further support programs of the Hawaii Film Office within the Creative Industries Division.

MEANS: Amend the title of part IX of chapter 201 and section 201-113, Hawaii Revised Statutes, and repeal sections 201-111, 201-112, and 201-114, Hawaii Revised Statutes.

JUSTIFICATION: The Hawaii film and digital media development special fund is necessary to capture rental fees from the Hawaii film studio tenants to continue operations of the aging facility and to enable the Department of Business, Economic Development, and Tourism to carry out its statutory mandates to support the consolidated film permitting process and the motion picture, digital media, and film production tax credit program under section 235-17, Hawaii Revised Statutes. Sections 201-111, 201-112, and 201-114, Hawaii Revised Statutes, need to be repealed because the board created and governed by these sections has been inactive for nearly 10 years and no longer has the function and purpose it was originally intended to have as a funding mechanism for entertainment projects.

Impact on the public: Strengthens the film industry which contributes to the State's economy and enhances quality of life through creative sector growth and by supporting a clean industry that protects the natural environment and provides well-paying jobs for Hawaii's people.

Impact on the department and other agencies:

The Department of Business, Economic Development, and Tourism, and the Department of Taxation will coordinate fees that will be assessed for processing the motion picture, digital media, and film production tax credits. The Department of Budget and Finance will be impacted because film studio revenue will no longer be going into the general fund.

GENERAL FUND: Reduction of \$600,000, film studio rental income of \$50,000/month per year

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: BED 105.

OTHER AFFECTED
AGENCIES: Department of Taxation, Department of Budget and Finance.

EFFECTIVE DATE: July 1, 2014.