NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

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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 ON ECONOMIC DEVELOPMENT & BUSINESS**

Friday, January 31, 2014
9:00 AM
State Capitol, Conference Room 312
in consideration of
**HB2088**
**RELATING TO MEDIA INFRASTRUCTURE**

Chair Tsuji, Vice Chair Ward, and Members of the Committee.

The Department of Business, Economic Development & Tourism (DBEDT) supports the intent of HB2088 which would amend Section 235-17, Hawaii Revised Statutes to include an infrastructure tax credit to the existing statute. DBEDT defers to the Department of Taxation on the substantive issues and specific structure of this measure, which as currently written is rather broad in scope.

The Legislature appropriated $250,000 in CIP funds to DBEDT in FY14 for the purposes of conducting a feasibility study including site recommendations, facility recommendations and a business plan for a Creative Media/Film Studio Facility. This feasibility and market analysis is in the process of being allotted. As this feasibility study directly addresses infrastructure development, direct and indirect tax revenue and market viability, DBEDT would defer to the recommendations of this study prior to amending the existing statute that would add an infrastructure tax credit.

Thank you for the opportunity to offer comments on this measure.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR

FREDERICK D. PABLO
DIRECTOR OF TAXATION

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**DEPARTMENT OF TAXATION**
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To: The Honorable Cliff Tsuji, Chair
and Members of the House Committee on Economic Development & Business

Date: Friday, January 31, 2014
Time: 9:00 a.m.
Place: Conference Room 312, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. No. 2088 Relating to Digital Media Infrastructure

The Department of Taxation (Department) defers to the Department of Business, Economic Development, and Tourism (DBEDT) on the merits of H.B. 2088, and provides the following comments for the committee's consideration.

H.B. 2088 amends section 235-17, Hawaii Revised Statutes, to create a media infrastructure project income tax credit. The credit is a nonrefundable tax credit equal to an unspecified percent of the qualified infrastructure costs. The measure, if adopted, will take effect on July 1, 2014, and will apply to taxable years beginning after December 31, 2013.

The Department is concerned that it allows for a broad range of costs (the development, construction, renovation, or operation of a film, video, television, or media production or post-production facility, or any other facility that supports the project, including a movie theater or other commercial exhibition facility) to quality for the credit. This broad scope and lack of definitions will create administration and enforcement difficulties for the Department.

The measure also requires the Department to: (1) 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, and (2) issue a final tax credit certification letter indicating the amount of tax credits certified for the infrastructure project to the investors. The Department is unable to comply with requirements of this provision. We believe DBEDT is the more appropriate agency to do any certifications relating to this credit.

Furthermore, the measure requires the taxpayers claiming the media infrastructure credit to file an annual report with DBEDT, including information on the amount of GET and TAT paid. The Department notes that the GET on the construction of the infrastructure project is most likely paid by the contractors, and the TAT is most likely paid by the hotels, likely not the taxpayers claiming the media infrastructure credit.

The measure also requires the taxpayers claiming the media infrastructure credit to provide either a pledge of a lien on the qualified media infrastructure project in favor of the State in an unspecified amount or a collateral security in an unspecified amount. It is unclear which agency the taxpayers are required to provide the information.

The Department offers the following technical comments for your consideration regarding the effective date of the media infrastructure credit.

The Department suggests that the period during which the credit is available be clarified. Section 2, subsection (b) which states that the media infrastructure credit is available beginning on or after July 1, 2014 and ending prior to January 1, 2019 and Section 5 which states that the Act shall apply to taxable years beginning after December 31, 2013 are not consistent. Furthermore, in order to provide the credit for fiscal year taxpayers for the same number of taxable years that calendar year taxpayers would be eligible, the Department suggests the following amendments to provide clarification:

The Department suggests that the subsection (b) of Section 2 be amended to read:

(b) In addition to the credits described in subsection (a), for taxable years beginning on or after [~~July 1, 2014~~] January 1, 2015, and [~~ending prior to January 1, 2019~~] on or before December 31, 2018, there shall be allowed to each taxpayer subject to the taxes imposed by this chapter, a media infrastructure project tax credit that shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed. The amount of the credit shall be equal to     per cent of the qualified costs incurred by the taxpayer during the taxable year for qualified media infrastructure projects in any county of the State. The following shall apply to the qualified media infrastructure project tax credit:

The Department also suggests amending Section 5 to read:

This Act shall take effect on July 1, 2014, and shall apply to for taxable years beginning [~~after December 31, 2013~~] on or after January 1, 2015, and not apply to taxable years beginning after December 31, 2019.

Thank you for the opportunity to provide comments.

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, Media infrastructure project tax credit

BILL NUMBER: HB 2088

INTRODUCED BY: Har, Choy, Oshiro, Say, Tokioka, and 1 Democrat

BRIEF SUMMARY: Amends HRS section 235-17 to allow taxpayers, between July1, 2014 and December 31, 2018, to claim a nonrefundable credit of ___% of the qualified costs incurred for qualified media infrastructure projects in any county of the state; provided the credit shall not exceed $______.

Further delineates requirements to qualify for and certification of the credit.

Further requires the taxpayer claiming the credit to file a progress report of a qualified media project with the department of business, economic development and tourism (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) 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; provided that 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. The facility may not be 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, 2019 if construction of the media infrastructure project commenced prior to January 1, 2019.

EFFECTIVE DATE: 7/1/14; applicable to tax years beginning after December 31, 2013

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 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. Last year Act 89, increased the motion picture, digital media, and film production tax credit from 15% to 20% for the costs incurred in a county with a population over 700,000 and from 20% to 25% for costs incurred in a county with a population of 700,000 or less. Act 89 also increased the total tax credits that may be claimed per qualified production from $8 million to $15 million. In addition to the existing credits, the proposed measure would allow taxpayers to claim a media infrastructure project tax credit in any county of the state.

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 issue 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 the tax credit proposed by this measure.

Merely handing out a tax credit to entice an economic activity is the "easy way" out for lawmakers. To really insure the success of this venture, it will take creative thinking and hard work. An appropriation of funds, perhaps the issuance of special purpose revenue bonds, a joint venture, contributions of land or acceleration of the permitting process are but a few ways government could incentivize such a project without spending one cent of cold hard cash. If, in fact, lawmakers believe this infrastructure to be critical to the development of this industry, then lawmakers need to take a more active role as opposed to sitting back and letting the tax credit drive the activity.

Digested 1/30/14

Testimony to

House Committee on Economic Development and Business

Friday, January 31, 2014

By: Stephan D. Smith

President, SHM Partners/Film Studio Group

**HB 2088—Relating to Media Infrastructure**

Rep. Clift Tsuji, Chair; Rep. Gene Ward, Vice Chair

As Section 1 of HB 2088 correctly recites, the positive impact of film and television production on the State is irrefutable. The primary reason that there's not more of it is the lack of studio space. Given a stable production tax credit regime, there's no reason that production expenditures in Hawaii would not meet or exceed the high-water level of 2010, over $400 million, <u>every year</u> if the proper infrastructure were built. Without it, production expenditures in the State will continue its seesaw pattern as it is so heavily based on location-based shooting, thereby missing many project entirely and losing over half the spending of others that leave the Islands for their stage work.

Passage of HB 2088, <u>with the following revisions</u>, would provide an essential building block for providing the proper studio infrastructure and ensuring the long-term viability of the film industry in the State:

1) The qualified media infrastructure project tax credit <u>must be refundable</u>. The pool of qualified, and interested, taxpayers to utilize the credits is not deep enough to impose this restriction, and the discount on the 25% credit becomes steeper as the limited taxpayer demand is satiated. In addition, the taxpayer loses the federal tax deduction on State the tax credits taken which reduces their benefit by at least a third, further depressing demand.

2) A 100% performance bond together with the lien on the project or collateral security should be flexible and left to the discretion of DBEDT. While it is understandable that the State may want assurances that the infrastructure project's use will remain as intended for at least five years, these measures, especially when applied together, may inhibit the ability to obtain financing.

3) Related educational facilities should be in included in the definition of "Qualified media infrastructure project". A studio-related film school and crew training facility are both needed in order to fill the jobs created and build the State's industry.

Thank you.

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TESTIMONY IN SUPPORT OF HB 2088

HOUSE OF REPRESENTATIVES, THE 27TH LEGISLATURE, REGULAR SESSION OF 2014

COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS
Rep. Clift Tsuji, Chair
Rep. Gene Ward, Vice Chair

Friday, January 31, 2014
Conference Room 312
9:00a

Chair Tsuji, Vice Chair Ward, Members of the Committee,

Mahalo for the opportunity to testify today in support of HB 2088.

My name is Chris Lee and I am the Founder and Director of the Academy for Creative Media System at the University of Hawaii. I testify today as an individual and not on behalf of the University.

Hawaii is blessed with a vibrant and growing entertainment economy. The motion picture, television, and digital media industry employs our people with living wage jobs, keeps our graduates of the Academy for Creative Media here in the islands in the career of their choice, doesn't pollute or endanger our fragile ecology, and dramatically compliments our visitor industry providing priceless marketing exposure on a global scale throughout the year.

Production in all its forms is a leading new growth industry even when the overall economy falters due to external forces. For example, in 2010 during the depths of the recent Great Recession, the motion picture and television industry in Hawaii reached a high water mark of over $400 million in direct spend.

Last year the Legislature raised the Production Tax Credit which has kept Hawaii competitive with film and television friendly production hubs around the globe. But we continue to limit the amount of business we could realize for the simple reason that we do not have a proper studio complex capable of handling multiple shows and the interior production that big budget pictures need to complement the location shooting they do here.

For example, *Pirates of the Caribbean, Battleship*, and *Journey to the Center of the Earth* all came and did their exteriors here in Hawaii, but then headed to Los Angeles, London, and North Carolina to build their massive and expensive sets because there are no available stages to accommodate productions of their size.

Similarly, *Jurassic Park 4* will soon come to Hawaii to shoot their exteriors, but the interiors will be done in Louisiana. Quite simply, we are missing out on half the pie.

Actually, we 're missing out on more than half the pie, because where there are stages, there is post-production. The tertiary industries of large set construction, post-production sound, visual effects and the living wage jobs they create all follow from the foundation of a studio complex. The Diamond Head Studio, owned by the State, has been a valuable resource for, most recently, *Hawaii Five-0* and before that *Lost*. But it has only one stage and can only accommodate one show at a time. Moreover, none of the big budget films mentioned above could have done their interiors on that single, relatively small stage. And neither *Hawaii Five-0* nor *Lost* nor virtually any tv show or movie has ever done their post-production here in Hawaii.

There are technical aspects of this bill that should be looked at, including the continuing inclusion of Act 88's prohibition on production for internet distribution which is an odd hang over from the days before audiences used platforms like Netflix to watch shows such as *House of Cards*.

The qualified media infrastructure project tax credit must be refundable. The pool of qualified, and interested, taxpayers to utilize the credits is not deep enough to impose this restriction, and the discount on the 25% credit becomes steeper as the limited taxpayer demand is satiated. In addition, the taxpayer loses the federal tax deduction on State the tax credits taken which reduces their benefit by at least a third, further depressing demand.

A 100% performance bond together with the lien on the project or collateral security should be flexible and left to the discretion of DBEDT. While it is understandable that the State may want assurances that the infrastructure project's use will remain as intended for at least five years, these measures, especially when applied together, may inhibit the ability to obtain financing.

And any responsible tax credit should address the need to increase our local work force and provide educational opportunities for our students through programs such as the Academy for Creative Media and others. A related educational facility should be in included in the definition of "Qualified media infrastructure project". A studio-related creative media school and crew training facility are both needed in order to fill the jobs created and build the State's industry.

Hawaii has wisely invested in this industry, both through educational efforts and the existing Production Tax Credits. The results are clear and positive. SB 2088 is a chance to build upon this rare economic diversification success story.

Mahalo for the opportunity to testify.

LATE

OFFICE OF THE MAYOR
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KIRK CALDWELL
MAYOR

WALEA CONSTANTINAU
FILM COMMISSIONER

Testimony of Walea Constantinau, Film Commissioner
Honolulu Film Office - Office of the Mayor
City and County of Honolulu

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS

January 31, 2014
State Capitol, Conference Room 312, 9:00 AM

RE: HB2088 - Relating to the Media Infrastructure

Dear Chair Tsuji, Vice-chair Ward and members of the committee:

The Honolulu Film Office **supports the intent of HB2088**, which seeks to provide a tax credit to spark media infrastructure investment in Hawaii. We offer the following comments for the committee's consideration:

The next phase to develop the industry, continue the momentum of growth and building towards a self-sustaining industry is infrastructure development. We **respectfully recommend that the measure be a stand-alone bill** and not be combined with the Production Tax Credit. The two measures would work in tandem to support the industry but are different in their nature so are best separated.

The Production Tax Credit, also known as Act 88/89 has successfully increased production work in the islands and generated growth in the segment. The industry finds itself in the position of not having the necessary infrastructure to accommodate the scope and scale of productions that could shoot in Hawaii. Great strides have been made to attract more production work to Hawaii and there is much success in this area but we are still seeing viable production work leave the islands for other locales with better infrastructure (such as purpose-built soundstages). Better infrastructure would allow more work to be done in Hawaii for longer, prompting more spending in the State, creating more jobs, **stronger roots in the community and increased economic impact.**

This is an important discussion for the film and television industry. We thank the committee for hearing the measure and respectfully request the measure be passed out of committee to allow the discussion to continue. Thank you for the opportunity to provide these comments.

# HAWAII FILM & ENTERTAINMENT BOARD



House of Representatives
The Twenty-seventh Legislature
Regular Session of 2014

To: Committee on Economic Development
Representative Clift Tsuji, Chair
Representative Gene Ward, Vice Chair
Members of the Committee

Re: Relating to Media Infrastructure
House Bill 2088

The Hawaii Film and Entertainment Board (HFEB) is comprised of film and television industry unions, commissions and industry organizations that collectively represent over 2500 technicians and artisans who work in the film, television, digital and new media industries.

Act 88/89 is a fiscally responsible bill that has proven to be an economic driver that continues to grow and create jobs.

We support the intent of HB 2088 however, we disagree that it should be added to Act 88/89.

Thank you for giving us the opportunity to submit testimony on HB 2088.


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