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To: The Honorable David Y. Ige, Chair
and Members of the Senate Committee on Ways and Means

Date: Wednesday, February 26, 2014
Time: 9:00 a.m.
Place: Conference Room 211, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. No. 2079, S.D. 1, Relating to The Motion Pictures, Digital Media, and
Film Production Income Tax Credit

The Department of Taxation (Department) supports and defers to the Department of Business Economic Development and Tourism (DBEDT) on the merits of S.B. 2079, S.D.1, and provides the following comments for your consideration.

S.B. 2079, S.D.1, amends section 235-17, Hawaii Revised Statutes (HRS), to require a production to (1) comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and (2) work with the Hawaii Film Office and any appropriate State or County agencies if production takes place on property under jurisdiction of a state or county agency in order to qualify for the motion pictures, digital media, and film production income tax credit. The measure also amends section 235-17 (e), HRS, to exclude production cost that has been financed by state funds from qualifying for the credit under section 235-17, beginning July 1, 2014. Furthermore, the measure amends the definition of "qualified production" to exclude productions that are unscripted or reality television programming. The measure, if adopted, will take effect on July 1, 2014.

The Department supports the reiteration that all taxpayers must comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments. It is not burdensome in any way to ask the recipient of any tax incentive provided by the State to comply with all applicable laws. Therefore, it is logical that noncompliance with applicable laws will result in disqualification from being able to claim the credit.

The Department also supports the requirement set forth in paragraph (7), which requires taxpayers, whose production takes place on property under state or county jurisdiction, to work with the Hawaii Film Office and any other appropriate government agency as a condition for

claiming the credit. For any production interested in filming in Hawaii, the Hawaii Film Office is the coordination center for film and photographic use of state-administered parks, beaches, highways, and facilities. After further review and further consultation with DBEDT, the Department believes that the term "work with" is too broad; hence, the Department supports DBEDT's request to amend paragraph (7) to the following:

~~"[Work with the Hawaii film office and any]~~ Secured all necessary film permit approvals with appropriate state or county film offices and any appropriate state or county agencies if production takes place on property under the jurisdiction of a state or county agency."

The Department believes that the amendments will provide the Hawaii film office and appropriate State or County agencies with the tools necessary to ensure communication between the production companies and the relevant government agencies, as well as compliance with all regulatory provisions.

Thank you for the opportunity to provide comments.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

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Statement of
RICHARD C. LIM
Director

Department of Business, Economic Development, and Tourism
before the

SENATE COMMITTEE ON WAYS & MEANS

Wednesday, February 26, 2014

9:00 AM

State Capitol, Conference Room 211

in consideration of

SB2079, SD1

**RELATING TO THE MOTION PICTURES, DIGITAL MEDIA, AND
FILM PRODUCTION INCOME TAX CREDIT**

Chair Ige, Vice Chair Kidani, and Members of the Committee.

The Department of Business, Economic Development and Tourism (DBEDT) supports SB2079, SD1, which would amend Section 235-17, Hawaii Revised Statutes, to mandate that productions applying for the Motion Pictures, Digital Media and Film Production tax credit comply with all applicable statutes, ordinances, rules, and regulations of the federal, state and county governments; and that these production companies secure necessary film permits from state and county film offices and appropriate state or county agencies if production takes place on property under the jurisdiction of the state or county agency.

The measure also provides that reality television be excluded from qualifying for the tax credit and also that production expenditures financed with state funds cannot be claimed as qualified expenditures under §235-17 Hawaii Revised Statutes.

After receiving feedback from the industry we are requesting that the reality television exclusion be very simply stated in statute so as not to disqualify other unscripted productions and documentary films.

DBEDT proposes the following amendment to §237-17:

(H) ~~Productions that are unscripted, soft scripted, or reality television,~~
programming. Reality television.

DBEDT also requests a slight change to item (7) under subsection (d) to specifically state that productions must secure necessary film permits. The section should read as follows:

(7) Productions that have secured all necessary film permit approvals with appropriate state or county film offices. ~~Work with the Hawaii film office and any appropriate state or county agencies if production takes place on property under the jurisdiction of a state or county agency.~~

Thank you for the opportunity to testify on this measure.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Wednesday, February 26, 2014
9:00 a.m
State Capitol, Conference Room 211**

**In consideration of
SENATE BILL 2079, SENATE DRAFT 1
RELATING TO MOTION PICTURES, DIGITAL MEDIA, AND FILM PRODUCTION
INCOME TAX CREDIT**

Senate Bill 2079, Senate Draft 1 proposes to require film productions to comply with federal, state and county laws in order to be eligible for the motion pictures, digital media and film production tax credit. **The Department of Land and Natural Resources (Department) supports this measure.**

In the recent past, the Department has dealt with film productions who have engaged in film production without proper permits and thus have violated the state's laws and administrative rules. The Department believes that this measure will promote greater compliance with state laws and rules and will serve to encourage closer collaboration between the Department, other State regulatory agencies such as the State Film Office and with motion picture, digital media and film production companies. The Department urges your strong support of this measure.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
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LAND
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SUBJECT: INCOME, Motion picture, digital media, film production tax credit qualifications

BILL NUMBER: SB 2079, SD-1

INTRODUCED BY: Senate Committee on Economic Development, Government Operations and Housing

BRIEF SUMMARY: Amends HRS section 235-17 to provide that in order to qualify for the motion picture, digital media, film production tax credit, a production shall also: (1) comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments; and (2) work with the Hawaii film office and any appropriate state or county agencies if production takes place on property under the jurisdiction of a state or county agency.

Provides that no qualified production cost that has been financed by state funds is eligible for this credit.

Amends the definition of “qualified production” to exclude productions that are unscripted or reality television programming.

EFFECTIVE DATE: July 1, 2014

STAFF COMMENTS: This measure adds qualifications to claim the motion picture, digital media, film production tax credit by also requiring the production to comply with all federal, state and county laws with regard to noise, air and water pollution and public health safety. The measure also requires a production to work with the Hawaii film office and the appropriate state or county agencies.

Of these requirements, the first seems impossible to administer. How can any production prove, and how can any agency verify, that a production has complied with all federal, state and county laws, rules and regulations? Does a violation of one regulation, however slight, result in wholesale forfeiture of a credit which the production has relied upon when they made the decision to shoot in Hawaii? Generally, the federal, state, and county laws, rules and regulations will provide for their own processes and sanctions for noncompliance. Those should be plenty, and dangling the sword of credit forfeiture on top of those sanctions may well be excessive. Lawmakers should consider deleting this requirement.

As for the second requirement, apparently some productions have gone onto state property without proper permits. This requirement could serve to remind the productions that there are rules to follow.

Digested 2/24/14