

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

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HONOLULU, HAWAII 96809

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

**Before the House Committee on
ECONOMIC DEVELOPMENT AND BUSINESS**

**Friday, March 14, 2014
9:00 AM
State Capitol, Conference Room 312**

**In consideration of
SENATE BILL 2079, SENATE DRAFT 2
RELATING TO MOTION PICTURES, DIGITAL MEDIA, AND FILM PRODUCTION
INCOME TAX CREDIT**

Senate Bill 2079, Senate Draft 2, 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

JESSE SOUKI
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
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LAND
STATE PARKS

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SUBJECT: INCOME, Motion picture, digital media, film production tax credit qualifications

BILL NUMBER: SB 2079, SD-2

INTRODUCED BY: Senate Committee on Ways and Means

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) secure all necessary film permit approvals with appropriate state or county film offices or agencies if the production takes place on property under the jurisdiction of a state or county agency.

No qualified production cost that has been financed by state funds is eligible for this credit on or after July 1, 2014. The bill amends the definition of “qualified production” to exclude productions that are reality television programming.

EFFECTIVE DATE: July 1, 2050; applicable to tax years beginning after December 31, 2013

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. The measure also requires a production to secure all necessary film permit approvals with appropriate state or county film offices or agencies if the production takes place on property under their jurisdiction.

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 3/13/14



**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
HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS
Friday, March 14, 2014
9:00 AM
State Capitol, Conference Room 312

in consideration of
SB2079, SD2
**RELATING TO THE MOTION PICTURES, DIGITAL MEDIA, AND
FILM PRODUCTION INCOME TAX CREDIT**

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

The Department of Business, Economic Development and Tourism (DBEDT) supports SB2079, SD2, 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.

DBEDT believes these 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.

DBEDT recommends the following amendment to Section 1, paragraph 2, to exclude production costs paid by state funds:

2. By amending subsection (e) to read:

"(e) On or after July 1, 2006, no qualified production cost that has been financed by investments for which a credit was claimed by any taxpayer pursuant to section 235-110.9 is eligible for credits under this section. For taxable years beginning after December 31, 2013, amounts received from any State agency or body, including the Hawaii Tourism Authority, shall be deducted from total qualified production costs prior to calculating the credit."

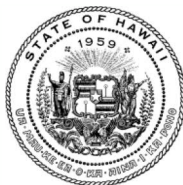
DBEDT also notes that the measure has a defective effective date, but is applicable to taxable years beginning after December 31, 2013. The Department notes that if the Legislature adopts an effective date of July 1, 2014, but is applicable to taxable years beginning after December 31, 2013, this measure will impact productions already taking place. The Department notes that the amount of the credit is based on the qualified production costs *incurred* by a qualified production; therefore, the Department suggests amending Section 3 as follows:

"Section 3. This Act shall take effect on July 1, _____. ~~and apply to taxable years beginning after December 31, 2013.~~"

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
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DEPARTMENT OF TAXATION

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To: The Honorable Clift Tsuji, Chair
and Members of the House Committee on Economic Development & Business

Date: Friday, March 14, 2014
Time: 9:00 a.m.
Place: Conference Room 312, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. No. 2079, S.D. 2, Relating to The Motion Pictures, Digital Media, and
Film Production Income Tax Credit

The Department of Taxation (Department) supports S.B 2079, S.D.2, defers to the Department of Business Economic Development and Tourism (DBEDT) on the merits of the measure, and provides the following comments for your consideration.

S.B. 2079, S.D.2, 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) secure all necessary permit approvals from any 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 measure also amends section 235-17 (e), HRS, to exclude production costs that have been financed by state funds from qualifying for the credit under section 235-17, HRS, beginning July 1, 2014. Finally, the measure amends the definition of "qualified production" to exclude reality television. The measure, if adopted, will take effect on July 1, 2015 and apply to taxable years beginning after December 31, 2013.

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 secure 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 and 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.

The Department suggests the following amendment to Section 1, paragraph 2, to exclude amounts received by productions from State agencies from being qualified production costs for purposes of claiming the credit under section 235-17, HRS:

2. By amending subsection (e) to read:

"(e) On or after July 1, 2006, no qualified production cost that has been financed by investments for which a credit was claimed by any taxpayer pursuant to section 235-110.9 is eligible for credits under this section. For taxable years beginning after December 31, 2013, amounts received from any State agency or body, including the Hawaii Tourism Authority, shall be deducted from total qualified production costs prior to claiming the credit."

S.D.2, has a defective effective date, but is applicable to taxable years beginning after December 31, 2013. The Department notes that an effective date of July 1, 2014, with the measure applicable to taxable years beginning after December 31, 2013, will impact productions already taking place. Since the credit is based on the qualified production costs *incurred* by a qualified production; the Department suggests amending Section 3 as follows in order to remedy the retroactive application and for consistency with the amendment proposed above to subsection (e):

"Section 3. This Act shall take effect on July 1, _____. ~~and apply to taxable years beginning after December 31, 2013.~~"

Thank you for the opportunity to provide comments.

ward2-Robin

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 13, 2014 8:17 AM
To: edbtestimony
Cc: rgalindez@islandfilmgroup.com
Subject: Submitted testimony for SB2079 on Mar 14, 2014 09:00AM

SB2079

Submitted on: 3/13/2014

Testimony for EDB on Mar 14, 2014 09:00AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Ricardo Galindez	Island Film Group	Oppose	Yes

Comments: 1. This bill is an attempt to control content of certain television productions under the guise of legal compliance. 2. The Hawaii Film Office does not have, nor should it have, the authority to determine when a law has been violated. 3. Violations of law and the economic benefit that the state derives from television production are two separate thing and should remain so. 4. The reality shows "Survivor" and "American Idol" both have viewership of over 10 million per episode (even after all of these years). This legislation would foreclose the possibility of such economic opportunity for Hawaii.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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