



DAVID Y. IGE
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LUIS P. SALAVERIA
DIRECTOR

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DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
Luis P. Salaveria
Director

Department of Business, Economic Development, and Tourism
**SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND
TECHNOLOGY**

Friday, February 10, 2017
1:15 PM

State Capitol, Conference Room 414

In consideration of
SB 1086

RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

Chair Wakai, Vice Chair Taniguchi, and Members of the Senate Committee on Economic Development, Tourism, and Technology.

The Department of Business, Economic Development and Tourism (DBEDT) supports some provisions and offers comments on others in SB 1086, which 1) extends the Motion Picture, Digital Media, and Film Production Income Tax Credit sunset date to January 1, 2024; 2) places a cap on the aggregate amount for all tax credits is \$50 million; and 3) adds clarifying language that only production costs expended within the state are claimable for the credit.

In regards to Sections 5, 6 and 7, DBEDT's film office already provides an annual report on estimated expenditures for the year prior to the Legislative year, followed by an update report on the actual claimed expenditures. DBEDT requests clarification regarding "activities" to ensure we will be implementing the requirement as intended.

Section 6 requires DBEDT to engage an independent third party to conduct a financial audit of each production claiming the credit (35 to 44 filings annually). The Film Office currently verifies and certifies the validity of tax credit applications submitted by productions. In order to conduct audits of annual claims, in addition to third party verification, DBEDT will require additional \$100,000 in funding plus a staff member to oversee the process. Since audits have to be done on actual, not estimated, expenditures, Section 6, on line 20, would need to be amended as follows: "preceding year, beginning with the actuals report for 2016 calendar year."

If the bill's intent in Section 7 is to report the number of jobs created in the State, DBEDT suggests "employees hired per production" rather than jobs will be a more accurate picture of the economic impact.

The requirement to report on the fiscal impact to the State of "every film production in the State" would be a significant increase in workload and cost to verify all productions vs. those applying for the tax credit. There are hundreds of small productions every year that do not meet the minimum threshold of \$200,000 in qualified expenditures to file for the tax credit. DBEDT would need additional staff to report on all productions.

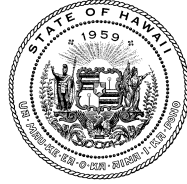
Without additional funding to contract for an audit firm, and with requirements to report on all productions, not just those which qualify for the credit, along with the new system to track the non-qualified "spend", jobs and impacts, DBEDT will not be able to comply with these mandates with current funding and staffing levels.

We look forward to working with the committee to further discuss these areas to come to a mutually agreeable recommendation for consideration.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
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To: The Honorable Glenn Wakai, Chair
and Members of the Senate Committee on Economic Development, Tourism, and
Technology

Date: Friday, February 10, 2017
Time: 1:15 P.M.
Place: Conference Room 414, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 1086, Relating to the Motion Picture, Digital Media,
and Film Production Income Tax Credit

The Department of Taxation (Department) defers to the Department of Business Economic Development and Tourism on the merits of S.B. 1086, and provides the following comments for your consideration.

S.B. 1086 extends the sunset date of the motion picture, digital media, and film production income tax credit (film credit) from January 1, 2019 to January 1, 2024; creates an aggregate cap of \$50 million for the film credit; requires a financial audit of each film production; and requires an annual report to the Legislature. S.B. 1086 is effective on July 1, 2017.

First, the Department defers to the Hawaii Film Office on the administration of the \$50 million aggregate cap on the film credit. Every taxpayer claiming the film credit is required to prequalify for the credit by registering with the Film Office. The Film Office reviews each prequalification registration and issue a prequalification letter to each production that meets the Film Office's requirements. In addition, the Film Office certifies the amount of qualified production costs, and the taxpayer must attach a copy of the certificate to the taxpayer's income tax return to claim the film credit, along with other required forms. Failure to attach the certificate from the Film Office may result in denial of the film credit.

Second, Section 7 of the measure requires the Department to collaborate with the Department of Business Economic Development and Tourism (DBEDT) and report to the Legislature annually, beginning January 1, 2018, on the number of jobs created in the State and the fiscal impact to the State of every film production in the State. The Department is willing to collaborate with DBEDT, but notes that it has no expertise in determining the number of jobs

created in the State and the fiscal impact to the State of every film production in the State other than to provide a revenue estimate of the film credit amount.

In order to assist DBEDT in obtaining necessary information from the production companies, the Department suggests that the Committee consider requiring the production companies to file online surveys with DBEDT similar to section 235-110.91 (i), (j), (k), and (l), Hawaii Revised Statutes.

Third, section 235-17(i), HRS, should be amended to add a provision instructing DBEDT to cease certifying credits once the aggregate cap in the amended subsection (j) is reached.

Fourth, the Department suggests clarifying the term “expended within the State” in sections 235-17(a)(1) and (2). If this provision is intended to only allow purchases from local vendors, it may violate the Commerce Clause of the United States Constitution. The Department defers to the Department of the Attorney General on this issue.

Finally, the Department notes that the effective date as written, may cause some ambiguity and may result in a windfall for productions that have already started. Thus, the Department suggests changing the effective date to apply to taxable years beginning after December 31, 2017. This will allow for proper administration of the aggregate cap by DBEDT and allow sufficient time for the necessary form, instruction, and computer system changes.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Aggregate Cap on Motion Picture, Digital Media, and Film Production Credit

BILL NUMBER: SB 1086

INTRODUCED BY: WAKAI, ESPERO, IHARA, KEITH-AGARAN, S. Chang, Gabbard, Harimoto, Kim, Nishihara

EXECUTIVE SUMMARY: Limits the aggregate motion picture, digital media, and film production income tax credit to \$50,000,000 per taxable year. Clarifies that qualified expenditures are required to be expended within this State. Amends Act 88, Session Laws of Hawaii 2006, to extend the sunset date from January 1, 2019, to January 1, 2024. Requires DBEDT to submit an annual report to the legislature regarding the activities and expenditures of the tax credit. Clarifies that no rule shall be adopted to expand the scope of the tax credit where the rule conflicts with legislative intent. Requires DBEDT to conduct a financial audit of every film production in the State.

BRIEF SUMMARY: Amends HRS section 235-17(a) to require the creditable production costs be incurred and expended within the State.

Amends HRS section 235-17(j) to impose an aggregate annual cap of \$50 million.

Extends the sunset date of the credit to January 1, 2024.

Provides that no rule shall be adopted to expand the scope of the tax credit where the rule conflicts with legislative intent.

Requires DBEDT, in collaboration with Department of Taxation (DOTAX), to submit to the governor and the legislature a report on the number of jobs created in the State and the fiscal impact of every film production in the State; provided that each report shall be independently verified and audited for accuracy.

EFFECTIVE DATE: July 1, 2017

STAFF COMMENTS: Several the changes proposed in the bill appear to be reactions to the State Auditor's Report No. 16-08, "Audit of Hawai'i's Motion Picture, Digital Media, and Film Production Income Tax Credit."

The auditor's report, for example, accused DOTAX of broadening the scope of the film tax credit by including out-of-state expenses as qualified production costs. The auditor charged that this action is inconsistent with the plain language of the statute and the legislative intent of the initiative. Similarly, DOTAX allowed insurance premium costs to qualify as production costs because they were explicitly mentioned in the statute. The auditor took DOTAX to task on that one as well, citing a requirement in the statute that all qualified production costs be subject either

to the net income or general excise tax, and noting that insurance premiums were subject to insurance premium tax.

DOTAX replied by saying that it had obtained an opinion from the Office of the Attorney General that the general excise tax and use tax are complementary taxes, concluding that the “inclusion of the use tax as a qualified production cost in spite of its exclusion from the plain language of the statute and the inclusion of insurance premiums in the plain language of the statute appear to be proper. The Director’s treatment of both costs are grounded in well-established case law... To avoid subjecting the Film Credit to constitutional challenge, the Director has correctly recommended the inclusion of the use tax as a qualified production cost. The Director appears to be appropriately reading the plain language of the Film Credit in including insurance premiums.”

Often, DOTAX will be asked to enforce tax statutes that may not have been perfectly drafted. The film credit statute is one of these. In such cases, the enforcing agency needs to make calls to resolve the ambiguities. The Attorney General concluded that DOTAX did so here, and we cannot find fault with that conclusion.

On the broader policy question of whether the credit is justified, we call attention to the findings of California’s Legislative Analyst’s Office (LAO).

Perhaps the most startling is the LAO’s conclusion that \$1 out of every \$3 in credits went to productions that would have shot in California anyway. It turns out that California’s credit was limited, the production companies applied for more credits than were available, and the state had to conduct a lottery to determine which of the productions would be awarded credit. But several productions began shooting even before lottery results were announced.

This result supports what Hawaii credit opponents have been saying over the years, namely, “They’ll come anyway, so why do we need to pay them to come? We have great weather, blue sky, pristine beaches, and more.”

The hard reality, however, is that productions are businesses and most do take a hard look at the bottom line, evidenced by the companies accounting for the other two-thirds of credits. Indeed, although the LAO lamented that industry-specific tax credits were “inappropriate public policy because they (1) give some businesses an unequal advantage at the expense of others and (2) promote unhealthy competition among states in a way that does not benefit the nation as a whole,” LAO concluded that California shouldn’t be giving up its production credit program while other states (including Hawaii) are actively competing with it for the production dollars. LAO recommended that California should consider scaling its program back when other states do.

At the same time, we in Hawaii need to remember that this interstate competition does affect us. We don’t have a monopoly on beaches, sand, sunshine, forested hills, overgrown jungle, or other natural wonders. Productions can and do find comparable locations in Puerto Rico, New Zealand, and elsewhere.

Next, the LAO concluded that the tax credit program boosted California's economy only minimally, if at all. Because of the way California credits work, they saw state revenue benefits in the early years of the credit but found that the program cost more as time went on. We in Hawaii have had our production credit since 1997, so it's been almost twenty years. Have there been any studies about what the program has done for Hawaii's economy or Hawaii's tax revenue? None were cited to the Legislature when the Hawaii production tax credit was increased in 2013. Maybe we don't care as much about the hard dollars as we do about other intangible effects like local jobs, the development of a skilled workforce, or robust media education programs that simply weren't around at the turn of the century. Even if so, lawmakers should have data on these intangibles, and other cost-benefit information, so they can make intelligent decisions on this matter.

Digested 2/8/2017



UNIVERSITY
of HAWAII®
MĀNOA

Academy for Creative Media

February 8, 2017

The Senate
The Twenty-Ninth Legislature
Regular Session of 2017

Committee on Economic Development, Tourism, and Technology
Senator Glenn Wakai, Chair
Senator Brain T. Tanaguchi, Vice Chair

RE: SB – 1086 RELATING TO THE MOTION PICTUREE, IDGITAL MEDIA, AND FILM PRODUCTION INCOME TAX CREDIT

Date: FRIDAY, February 10, 2017

Time: 1:15 PM

Conference Room 414

State Capitol, 415 South Beretania Street, Honolulu, HI

Aloha Chair Wakai, Vice Chair Tanaguchi and members of the committee,

I strongly support SB1086 to extend the tax credit in Hawaii. Hawaii already offers a smaller tax credit than many other comparable locals who we compete with for business. With locations such as the Dominican Republic, Malaysia, Fiji and Puerto Rico offering incentives that are more generous than our own, Hawaii stands to loose big if we do not stay competitive. Productions such as Tropic Thunder, Indiana Jones, Pirates of The Caribbean, Battleship, The Descendents, King Kong, Jumanji, LOST, and Hawaii Five-O all came here BECAUSE OF OUR TAX INCENTIVE. If we do not continue to offer this tax credit, our local entertainment industry will suffer dramatically.

Please support SB1086

Sincerely,

Joel Moffett
Associate Professor
Academy for Creative Media
University of Hawaii, Manoa

The Twenty-Ninth Legislature
Regular Session of 2017

THE SENATE

Committee on Economic Development, Tourism, and Technology
Senator Glenn Wakai, Chair
Senator Brian T. Taniguchi, Vice Chair
State Capitol, Room 414
Friday, February 10, 2017; 1:15 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 1086
RELATING TO THE MOTION PICTURE, DIGITAL MEDIA,
AND FILM PRODUCTION INCOME TAX CREDIT**

The ILWU Local 142 supports S.B. 1086, which Limits the aggregate motion picture, digital media, and film production income tax credit to \$50,000,000 per taxable year and clarifies that qualified expenditures are required to be expended within this State. The bill further extends the sunset date from January 1, 2019 to January 1, 2024, and requires DBEDT to submit an annual report to the legislature regarding the activities and expenditures of the tax credit. S.B. 1086 also clarifies that no rule shall be adopted to expand the scope of the tax credit where the rule conflicts with legislative intent, and requires DBEDT to conduct a financial audit of every film production in the State.

It is well recognized that the film industry not only is a significant component of Hawaii's economy, but also plays a crucial role in promoting Hawaii as a visitor destination. Moreover, at times film development and production may take much longer than anticipated, and delay the time for when a decision of where to film is made. Because of the strong competition with other jurisdictions, the film tax credit may become a key economic factor in making this decision.

H.B. 1086 would extend the film tax credit for another five years, and to that degree would provide stability and predictable economic incentives for the film industry. This will allow Hawaii to remain competitive with other jurisdictions in attracting qualified productions that will generate additional revenue, jobs, and tourism marketing exposure.

S.B. 1086 also attempts to increase accountability in processing the film tax credit by providing (1) that no rule shall be adopted to expand the scope of the tax credit where the rule conflicts with legislative intent, and (2) that DBEDT shall submit an annual report to the legislature reporting on the activities and expenditures of the film tax credit to the legislature. The bill also requires that DBEDT, working with the Department of Taxation, submit an annual report to the Governor and Legislature of the number of jobs created in the State and the fiscal impact of every film production.

S.B. 1086 also imposes an aggregate limit on the film tax credit of \$50,000,000 per taxable year. In light of the positive goals of this bill and the benefits reflected in the use of the tax credit, the ILWU would support an even longer extension, that would send a clear message to the industry.

The ILWU urges passage of S.B. 1086. Thank you for the opportunity to share our views on this matter.



Randy Perreira
President

HAWAII STATE AFL-CIO

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The Twenty-Ninth Legislature, State of Hawaii
Hawaii State Senate
Committee on Economic Development, Tourism, and Technology

Testimony by
Hawaii State AFL-CIO
February 10, 2017

S.B. 1086 – RELATING TO THE MOTION
PICTURE, DIGITAL MEDIA, AND FILM
PRODUCTION INCOME TAX CREDIT

The Hawaii State AFL-CIO supports S.B. 1086 which limits the aggregate motion picture, digital media, and film production income tax credit to \$50,000,000 per taxable year, clarifies that qualified expenditures are required to be expended within this State and amends Act 88, Session Laws of Hawaii 2006, to extend the sunset date from January 1, 2019, to January 1, 2024.

The film industry is a significant economic driver for the state of Hawaii. Many popular television shows such as Hawaii Five-0 and Lost have been produced in Hawaii including a number of box office hits such as Jurassic Park, Pirates of the Caribbean, and 50 First Dates. These movies and television shows help promote Hawaii's tourism industry and provide high-quality jobs to a number of Hawaii residents. By extending the film tax credit it will continue to encourage production companies to film and produce movies and shows in the State of Hawaii and allow Hawaii to remain competitive with other states and countries that have enacted a similar film tax credit.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira
President



MOTION PICTURE ASSOCIATION OF AMERICA

TESTIMONY IN SUPPORT

OF HAWAII SENATE BILL 1086

BEFORE THE SENATE COMMITTEE

ON ECONOMIC DEVELOPMENT TOURISM & TECHNOLOGY

Friday, February 10, 2017

State Capitol

Honolulu

The Motion Picture Association of America, Inc. (MPAA) submits this written testimony regarding Hawaii Senate Bill 1086. MPAA members include the leading producers and distributors of television programs and motion pictures worldwide. In addition to CBS, which as you are well aware produces the locally based Hawaii 5-0 television series, MPAA members include Disney, Fox, Paramount, NBC Universal, Sony Pictures and Warner Bros.

MPAA and its member companies supports the extension of the production tax credit for five additional years in the legislation. However, the bill makes additional changes to the program that may discourage television and motion picture producers from choosing Hawaii as a production location. SB 1086 establishes a cap on the program of \$50 million annually. The imposition of a cap may cause producers to view Hawaii's program as a limited program that may not be available when they want to locate their production in Hawaii. It may also cause the Hawaii Film Office to have to tell a production that the tax credit program is fully subscribed and that producer would have to go elsewhere to shoot his movie or TV series. MPAA opposes the imposition of the \$50 million cap on the program.

SB 1086 bill would also limit qualified expenditures to only those purchases made in Hawaii. This is a significant change that may adversely affect the production tax credit program. Production companies will always prefer to buy or rent goods and services for production locally. However, there may be items that may not be available in Hawaii, or may be in use by other productions and unavailable. Producers will make best efforts to source goods and services locally but limiting qualified expenditures to only those goods and services purchased/rented locally will unduly burden productions and may make the Hawaii's production tax credit program less appealing to some productions. MPAA also opposes this provision in SB 1086.

Extending the production tax incentive program for five more years provides enhanced stability and predictability for motion picture and television producers who want to bring projects to Hawaii. This, in turn, extends Hawaii's economic reach into the world. Both the state and the industry will benefit.

Today, cost is the single most important factor for a producer in determining where a project will be located. Hawaii competes, successfully against other states, as well as nations worldwide, in attracting its share of motion picture and television productions.

The vision of the Hawaii legislature to create jobs and stimulate the economy is being realized by attracting Hawaii 5-0 and sustaining the production, which is now in its seventh season. The series currently employs 300 cast and crew members and about 250 local background performers per episode. In addition, Hawaii has been the location recently for *Jurassic World*, *Aloha*, *Godzilla* and *The Hunger Games*. NBCUniversal will soon begin production of a sequel to *Jurassic World*. The major motion picture production will employ scores of Hawaii residents and spend millions of dollars into the state economy with small businesses that provide goods and services.

Hawaii Senate Bill 1086 enhances that stability and paves the way for 5-0 in future years upon renewal, as well as, potentially, new television series and motion picture productions.

In addition to stimulating the economy, which is estimated to be \$400 million total spend over the past five years, and this year will be an additional \$87 million

dollars, Hawaii 5-0 has been a Hawaiian showcase that has also stimulated tourism to the islands from visitors around the world. 5-0 is not only popular in the US, it has found enormous audiences worldwide.

Mister Chairman and members of the committee, we urge you to approve Senate Bill 1086. On behalf of MPAA and our member company studios and television companies, we look forward to the continuation of a long and successful partnership with Hawaii, and being part of your welcoming and dynamic community for years to come.



The Senate
The Twenty-Ninth Legislature
Regular Session of 2017

Committee on Economic Development, Tourism and Technology
Senator Glenn Wakai, Chair
Senator Brian T. Taniguchi, Vice Chair

RE: SB 1086 - RELATING TO THE MOTION PICTURE, DIGITAL MEDIA,
AND FILM PRODUCTION INCOME TAX CREDIT

Date: Friday, February 10, 2017
Time: 1:15 PM
Conference Room 414
State Capitol, 415 South Beretania Street, Honolulu, HI

Aloha Chair Wakai, Vice Chair Taniguchi and Members of the Committee,

We are the representatives of the film and entertainment industry unions, Brenda Ching, SAG-AFTRA Hawaii Local, Irish Barber, I.A.T.S.E. Local 665, Steve Pearson, American Federation of Musicians' Local 677 and Wayne Kaululaau, Hawaii Teamsters & Allied Workers Local 996. Collectively, we represent over 1700 members who work in film, television and new media productions as performers, crew, musicians and drivers in Hawaii.

We **support** SB 1086 portion of the bill that would extend the sunset date to January 1, 2024. Today, we are competing in a global market and without tax credits we are at risk of losing jobs and productions. It is vital to extend the tax credit.

We'd also like to add the following comments. We agree that there needs to be oversight regarding the activities and expenditures of the tax credit. However, we don't believe it is necessary for DBEDT to conduct a financial audit of every film production in the State. May we suggest that DBEDT hire a certified production accountant that would oversee and account for every film production in the State and present an annual report of this data to the Legislature and, further that a financial audit be done every five years.

We also **do not support** a cap of \$50 million per taxable year. A cap could hinder the growth of the industry. However, based on the annual report from DBEDT's certified production accountant, the Legislature can review the report and make the necessary amendments if it is needed.

The film industry is a *vibrant* and *creative* industry. At its core, it promotes the State, provides numerous jobs and business opportunities for a broad spectrum of local companies and is a proven business and economic driver for our State.

We appreciate the legislature's strong support of the industry. Thank you for giving us the opportunity to offer testimony on this measure.

Brenda Ching
SAG-AFTRA Hawaii

Irish Barber
I.A.T.S.E. Local 665

Steve Pearson
A.F.M. Local 677

Wayne Kaululaau
Teamsters Local 996

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 6, 2017 3:24 PM
To: ETT Testimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB1086 on Feb 10, 2017 13:15PM*

SB1086

Submitted on: 2/6/2017

Testimony for ETT on Feb 10, 2017 13:15PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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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The Senate
The Twenty-Ninth Legislature
Regular Session of 2017

Committee on Economic Development, Tourism, and Technology
Senator Glenn Wakai, Chair
Senator Brian T. Taniguchi, Vice Chair

RE: SB – 1086 RELATING TO THE MOTION PICTURE, DIGITAL MEDIA, AND FILM
PRODUCTION INCOME TAX CREDIT.

Date: Friday, February 10, 2017, Time: 1:15 PM

Conference Room 414

State Capitol, 415 South Beretania Street, Honolulu, HI

From: Anne Misawa

Via: 2550 Campus Rd., Crawford 210, Honolulu, HI 96822

Office: 808-956-7736

Email: amisawa@hawaii.edu

Aloha Chair Wakai, Vice Chair Taniguchi and Members of the Committee,

I support SB 1086. I would like to share the comment that the motion picture, digital media, and film production income tax credit sunset date should be extended, at least to Jan. 1, 2024. The current sunset date will discourage productions from planning to anchor or continue here.

I have taught digital cinema at the Academy for Creative Media at the University of Hawai'i Mānoa ("ACM UHM") since 2004, and as an industry professional for over 18 years, I have also worked with many of the film industry professionals and organizations here and abroad and have witnessed the growth of Hawai'i's film and TV industry.

As we are housed in close proximity to the O'ahu urban core, our ACM UHM students have direct access to TV (LOST, HAWAII 5-0), feature film (such as THE DESCENDANTS), production and equipment company internships that ready them to interface professionally. Our HAWAII 5-0 internship program saw over the years near 100 student interns learn in both the production office and on set. Many of the students, when they graduated, were hired by the show. This has happened on the majority of internship programs we have had. If the tax credit is not extended, it will have a disastrous effect, not only on the local industry and crew, but also on the next generation of this hopeful industry who need a steady flow of film and TV employment.

We all aim for the future film, TV, and creative media industry here to be a viable and thriving one. This bill can assist to pave the way for that future. Thank you for the opportunity to comment on this bill.

Me ke aloha, Anne Misawa
Associate Professor, ACM Mānoa, UHM
Producer, Director, Cinematographer