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# A BILL FOR AN ACT

RELATING TO ECONOMIC DEVELOPMENT.

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

1           SECTION 1. The legislature finds that the film industry in  
2 Hawaii is an important component of a diversified economy. The  
3 legislature also finds that the motion picture, digital media,  
4 and film production income tax credit has been effective in  
5 stimulating the economy and creating quality jobs while  
6 promoting Hawaii as a visitor destination.

7           The legislature further finds that the film production  
8 process can extend over several years, due to extensive planning  
9 and development in the preproduction stage. Act 143, Session  
10 Laws of Hawaii 2017, extended to January 1, 2026, the sunset  
11 date of certain amendments made to the motion picture, digital  
12 media, and film production income tax credit and added an annual  
13 \$35,000,000 cap on the tax credit. After January 1, 2026, the  
14 credit will be reenacted, in a different form and without the  
15 cap, as the motion picture and film production income tax  
16 credit. Although the annual \$35,000,000 cap was placed on the  
17 tax credit, it was a "rolling cap" so that any claims for a



1 credit that exceeded \$35,000,000 in one year could be applied  
2 toward the following year's cap, except for the final, seventh  
3 year of the tax credit in the year 2026.

4 The legislature finds that this cap has created some  
5 uncertainty in the industry and may act as a disincentive for  
6 new and longer-term productions that may be in the development  
7 and preproduction phases. Therefore, the cap should be removed  
8 even before it is scheduled to repeal on January 1, 2026.

9 The purpose of this part is to remove the annual  
10 \$35,000,000 cap on the motion picture, digital media, and film  
11 production income tax credit.

12 PART II

13 SECTION 2. Section 235-17, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 **"§235-17 Motion picture, digital media, and film**  
16 **production income tax credit.** (a) Any law to the contrary  
17 notwithstanding, there shall be allowed to each taxpayer subject  
18 to the taxes imposed by this chapter, an income tax credit that  
19 shall be deductible from the taxpayer's net income tax  
20 liability, if any, imposed by this chapter for the taxable year



1 in which the credit is properly claimed. The amount of the  
2 credit shall be:

3 (1) Twenty per cent of the qualified production costs  
4 incurred by a qualified production in any county of  
5 the State with a population of over seven hundred  
6 thousand; or

7 (2) Twenty-five per cent of the qualified production costs  
8 incurred by a qualified production in any county of  
9 the State with a population of seven hundred thousand  
10 or less.

11 A qualified production occurring in more than one county may  
12 prorate its expenditures based upon the amounts spent in each  
13 county, if the population bases differ enough to change the  
14 percentage of tax credit.

15 In the case of a partnership, S corporation, estate, or  
16 trust, the tax credit allowable is for qualified production  
17 costs incurred by the entity for the taxable year. The cost  
18 upon which the tax credit is computed shall be determined at the  
19 entity level. Distribution and share of credit shall be  
20 determined by rule.



1           If a deduction is taken under section 179 (with respect to  
2 election to expense depreciable business assets) of the Internal  
3 Revenue Code of 1986, as amended, no tax credit shall be allowed  
4 for those costs for which the deduction is taken.

5           The basis for eligible property for depreciation of  
6 accelerated cost recovery system purposes for state income taxes  
7 shall be reduced by the amount of credit allowable and claimed.

8           (b) The credit allowed under this section shall be claimed  
9 against the net income tax liability for the taxable year. For  
10 the purposes of this section, "net income tax liability" means  
11 net income tax liability reduced by all other credits allowed  
12 under this chapter.

13           (c) If the tax credit under this section exceeds the  
14 taxpayer's income tax liability, the excess of credits over  
15 liability shall be refunded to the taxpayer; provided that no  
16 refunds or payment on account of the tax credits allowed by this  
17 section shall be made for amounts less than \$1. All claims,  
18 including any amended claims, for tax credits under this section  
19 shall be filed on or before the end of the twelfth month  
20 following the close of the taxable year for which the credit may



1 be claimed. Failure to comply with the foregoing provision  
2 shall constitute a waiver of the right to claim the credit.

3 (d) To qualify for this tax credit, a production shall:

4 (1) Meet the definition of a qualified production  
5 specified in subsection ~~[(m)-]~~ (1);

6 (2) Have qualified production costs totaling at least  
7 \$200,000;

8 (3) Provide the State a qualified Hawaii promotion, which  
9 shall be at a minimum, a shared-card, end-title screen  
10 credit, where applicable;

11 (4) Provide evidence of reasonable efforts to hire local  
12 talent and crew;

13 (5) Provide evidence when making any claim for products or  
14 services acquired or rendered outside of this State  
15 that reasonable efforts were unsuccessful to secure  
16 and use comparable products or services within this  
17 State; and

18 (6) Provide evidence of financial or in-kind contributions  
19 or educational or workforce development efforts, in  
20 partnership with related local industry labor  
21 organizations, educational institutions, or both,



1           toward the furtherance of the local film and  
2           television and digital media industries.

3           (e) On or after July 1, 2006, no qualified production cost  
4 that has been financed by investments for which a credit was  
5 claimed by any taxpayer pursuant to section 235-110.9 is  
6 eligible for credits under this section.

7           (f) To receive the tax credit, the taxpayer shall first  
8 prequalify the production for the credit by registering with the  
9 department of business, economic development, and tourism during  
10 the development or preproduction stage.

11          (g) The director of taxation shall prepare forms as may be  
12 necessary to claim a credit under this section. The director  
13 may also require the taxpayer to furnish information to  
14 ascertain the validity of the claim for credit made under this  
15 section and may adopt rules necessary to effectuate the purposes  
16 of this section pursuant to chapter 91.

17          (h) Every taxpayer claiming a tax credit under this  
18 section for a qualified production shall, no later than ninety  
19 days following the end of each taxable year in which qualified  
20 production costs were expended, submit a written, sworn  
21 statement to the department of business, economic development,



1 and tourism, together with a verification review by a qualified  
2 certified public accountant using procedures prescribed by the  
3 department of business, economic development, and tourism,  
4 identifying:

- 5 (1) All qualified production costs as provided by  
6 subsection (a), if any, incurred in the previous  
7 taxable year;
- 8 (2) The amount of tax credits claimed pursuant to this  
9 section, if any, in the previous taxable year; and
- 10 (3) The number of total hires versus the number of local  
11 hires by category and by county.

12 This information may be reported from the department of  
13 business, economic development, and tourism to the legislature  
14 in redacted form pursuant to subsection (i)(4).

15 (i) The department of business, economic development, and  
16 tourism shall:

- 17 (1) Maintain records of the names of the taxpayers and  
18 qualified productions thereof claiming the tax credits  
19 under subsection (a);



- 1 (2) Obtain and total the aggregate amounts of all  
2 qualified production costs per qualified production  
3 and per qualified production per taxable year;
- 4 (3) Provide a letter to the director of taxation  
5 specifying the amount of the tax credit per qualified  
6 production for each taxable year that a tax credit is  
7 claimed and the cumulative amount of the tax credit  
8 for all years claimed; and
- 9 (4) Submit a report to the legislature no later than  
10 twenty days prior to the convening of each regular  
11 session detailing the non-aggregated qualified  
12 production costs that form the basis of the tax credit  
13 claims and expenditures, itemized by taxpayer, in a  
14 redacted format to preserve the confidentiality of the  
15 taxpayers claiming the credit.

16 Upon each determination required under this subsection, the  
17 department of business, economic development, and tourism shall  
18 issue a letter to the taxpayer, regarding the qualified  
19 production, specifying the qualified production costs and the  
20 tax credit amount qualified for in each taxable year a tax  
21 credit is claimed. The taxpayer for each qualified production





1 shall file the letter with the taxpayer's tax return for the  
2 qualified production to the department of taxation.  
3 Notwithstanding the authority of the department of business,  
4 economic development, and tourism under this section, the  
5 director of taxation may audit and adjust the tax credit amount  
6 to conform to the information filed by the taxpayer.

7 (j) Total tax credits claimed per qualified production  
8 shall not exceed \$15,000,000.

9 (k) Qualified productions shall comply with subsections  
10 (d), (e), (f), and (h).

11 ~~[(1) The total amount of tax credits allowed under this~~  
12 ~~section in any particular year shall be \$35,000,000; however, if~~  
13 ~~the total amount of credits applied for in any particular year~~  
14 ~~exceeds the aggregate amount of credits allowed for such year~~  
15 ~~under this section, the excess shall be treated as having been~~  
16 ~~applied for in the subsequent year and shall be claimed in such~~  
17 ~~year; provided that no excess shall be allowed to be claimed~~  
18 ~~after December 31, 2025.~~

19 ~~(m)]~~ (l) For the purposes of this section:

20 "Commercial":



- 1 (1) Means an advertising message that is filmed using
- 2 film, videotape, or digital media, for dissemination
- 3 via television broadcast or theatrical distribution;
- 4 (2) Includes a series of advertising messages if all parts
- 5 are produced at the same time over the course of six
- 6 consecutive weeks; and
- 7 (3) Does not include an advertising message with
- 8 Internet-only distribution.

9 "Digital media" means production methods and platforms  
10 directly related to the creation of cinematic imagery and  
11 content, specifically using digital means, including but not  
12 limited to digital cameras, digital sound equipment, and  
13 computers, to be delivered via film, videotape, interactive game  
14 platform, or other digital distribution media.

15 "Post-production" means production activities and services  
16 conducted after principal photography is completed, including  
17 but not limited to editing, film and video transfers,  
18 duplication, transcoding, dubbing, subtitling, credits, closed  
19 captioning, audio production, special effects (visual and  
20 sound), graphics, and animation.



1 "Production" means a series of activities that are directly  
2 related to the creation of visual and cinematic imagery to be  
3 delivered via film, videotape, or digital media and to be sold,  
4 distributed, or displayed as entertainment or the advertisement  
5 of products for mass public consumption, including but not  
6 limited to scripting, casting, set design and construction,  
7 transportation, videography, photography, sound recording,  
8 interactive game design, and post-production.

9 "Qualified production":

10 (1) Means a production, with expenditures in the State,  
11 for the total or partial production of a feature-  
12 length motion picture, short film, made-for-television  
13 movie, commercial, music video, interactive game,  
14 television series pilot, single season (up to  
15 twenty-two episodes) of a television series regularly  
16 filmed in the State (if the number of episodes per  
17 single season exceeds twenty-two, additional episodes  
18 for the same season shall constitute a separate  
19 qualified production), television special, single  
20 television episode that is not part of a television  
21 series regularly filmed or based in the State,



1 national magazine show, or national talk show. For  
2 the purposes of subsections (d) and (j), each of the  
3 aforementioned qualified production categories shall  
4 constitute separate, individual qualified productions;  
5 and

6 (2) Does not include:

7 (A) News;

8 (B) Public affairs programs;

9 (C) Non-national magazine or talk shows;

10 (D) Televised sporting events or activities;

11 (E) Productions that solicit funds;

12 (F) Productions produced primarily for industrial,  
13 corporate, institutional, or other private  
14 purposes; and

15 (G) Productions that include any material or  
16 performance prohibited by chapter 712.

17 "Qualified production costs" means the costs incurred by a  
18 qualified production within the State that are subject to the  
19 general excise tax under chapter 237 or income tax under this  
20 chapter and that have not been financed by any investments for  
21 which a credit was or will be claimed pursuant to section



- 1 235-110.9. Qualified production costs include but are not  
2 limited to:
- 3 (1) Costs incurred during preproduction such as location  
4 scouting and related services;
  - 5 (2) Costs of set construction and operations, purchases or  
6 rentals of wardrobe, props, accessories, food, office  
7 supplies, transportation, equipment, and related  
8 services;
  - 9 (3) Wages or salaries of cast, crew, and musicians;
  - 10 (4) Costs of photography, sound synchronization, lighting,  
11 and related services;
  - 12 (5) Costs of editing, visual effects, music, other post-  
13 production, and related services;
  - 14 (6) Rentals and fees for use of local facilities and  
15 locations, including rentals and fees for use of state  
16 and county facilities and locations that are not  
17 subject to general excise tax under chapter 237 or  
18 income tax under this chapter;
  - 19 (7) Rentals of vehicles and lodging for cast and crew;
  - 20 (8) Airfare for flights to or from Hawaii, and interisland  
21 flights;



- 1 (9) Insurance and bonding;
- 2 (10) Shipping of equipment and supplies to or from Hawaii,
- 3 and interisland shipments; and
- 4 (11) Other direct production costs specified by the
- 5 department in consultation with the department of
- 6 business, economic development, and tourism;
- 7 provided that any government-imposed fines, penalties, or
- 8 interest that are incurred by a qualified production within the
- 9 State shall not be "qualified production costs".

10 PART III

11 SECTION 3. Act 88, Session Laws of Hawaii 2006, as amended  
12 by Act 89, Session Laws of Hawaii 2013, as amended by Act 143,  
13 Session Laws of Hawaii 2017, is amended by amending section 4 to  
14 read as follows:

15 "SECTION 4. This Act shall take effect on July 1, 2006;  
16 provided that:

- 17 (1) Section 2 of this Act shall apply to qualified
- 18 production costs incurred on or after July 1, 2006,
- 19 and before January 1, [~~2026~~] 2033; and
- 20 (2) This Act shall be repealed on January 1, [~~2026~~] 2033,
- 21 and section 235-17, Hawaii Revised Statutes, shall be





1 to the Hawaii technology development corporation by no later  
2 than December 31, 2020.

3 The executive director of the Hawaii technology development  
4 corporation shall promptly notify the director of taxation upon  
5 successful transfer of title to the parcel described herein to  
6 the Hawaii technology development corporation.

7 SECTION 5. Parts II and III of this Act shall not take  
8 effect until the Hawaii technology development corporation  
9 obtains title to the thirty-acre parcel of University of Hawaii  
10 - West Oahu land adjacent to the intersection of Farrington  
11 Highway and Kapolei Golf Course Road, described in section 4 of  
12 this Act.

13 PART V

14 SECTION 6. This Act does not affect rights and duties that  
15 matured, penalties that were incurred, and proceedings that were  
16 begun before its effective date.

17 SECTION 7. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 8. This Act shall take effect on July 1, 2050;  
20 provided that:





- 1           (1) If a contract to transfer title to the parcel  
2           described in part IV of this Act has not been executed  
3           between the University of Hawaii - West Oahu and the  
4           Hawaii technology development corporation by December  
5           31, 2020, this Act shall be repealed on January 1,  
6           2021, and section 235-17, Hawaii Revised Statutes, and  
7           section 4 of Act 88, Session Laws of Hawaii 2006, as  
8           amended by Act 89, Session Laws of Hawaii 2013, as  
9           amended by Act 143, Session Laws of Hawaii 2017, shall  
10          be reenacted in the form in which those provisions  
11          read on the day before the effective date of this Act;  
12          (2) Parts II and III shall take effect on the date that  
13          the conditions set out in part IV are met; and  
14          (3) Upon taking effect, part II shall apply to taxable  
15          years beginning after December 31 of the prior  
16          calendar year.



**Report Title:**

Economic Development; Motion Picture, Digital Media, and Film  
Production Income Tax Credit; Cap Repeal; Extension; HTDC

**Description:**

Repeals the annual \$35,000,000 rolling cap and extends the  
repeal date for the motion picture, digital media, and film  
production income tax credit; provided that title to a certain  
parcel of University of Hawaii - West Oahu land is successfully  
transferred to the Hawaii Technology Development Corporation.  
Effective 7/1/2050. (SD3)

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not legislation or evidence of legislative intent.*

