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# A BILL FOR AN ACT

RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

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

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**PART I**

2           SECTION 1. The legislature finds that the film industry in  
3 Hawaii is an important component of a diversified economy and  
4 that its financial impact can be strengthened significantly if  
5 existing incentives for the industry are adjusted.

6           There has been a dramatic increase in the number of state  
7 and local governments attempting to attract film productions.  
8 These jurisdictions have experienced dramatic increases in in-  
9 state spending and significant growth in workforce and  
10 infrastructure development. In Hawaii, infrastructure  
11 developers have shown interest in West Oahu and neighbor islands  
12 to develop facilities. More facilities would increase  
13 production in Hawaii and would stimulate more direct and  
14 indirect tax revenue.

15           The legislature also finds that it is desirable to provide  
16 tools to the film industry to encourage similar dramatic growth  
17 in Hawaii because the film industry:



- 1 (1) Infuses significant amounts of new money into the  
2 economy, which are dispersed across many communities  
3 and businesses and which benefit a wide array of  
4 residents;
- 5 (2) Creates skilled, high-paying jobs;
- 6 (3) Has a natural dynamic synergy with Hawaii's top  
7 industry, tourism, and is used as a destination  
8 marketing tool for the visitor industry;
- 9 (4) Is a clean, nonpolluting industry that values the  
10 natural beauty of Hawaii and its diverse multicultural  
11 population and wide array of architecture; and
- 12 (5) Has the potential to create jobs in construction and  
13 media industries on Oahu and the neighbor islands.

14 It is necessary to enhance existing tax incentive programs  
15 that use front-end budgeting methods normally used by the film  
16 industry, lower production costs to allow Hawaii to compete with  
17 other film production centers in attracting a greater number of  
18 significant projects to the State, and continue to build the  
19 State's local film industry infrastructure.

20 The purpose of this Act is to encourage the growth of the  
21 film and creative media industries by providing enhanced  
22 incentives for infrastructure development that attract more film



1 and television productions to Hawaii and develop opportunities  
2 for locally developed productions, thereby generating increased  
3 creative media development and tax revenues.

4 **PART II**

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

7 "**§235-17 Motion picture, digital media, and film**  
8 **production income tax credit.** (a) Any law to the contrary  
9 notwithstanding, there shall be allowed to each taxpayer subject  
10 to the taxes imposed by this chapter, an income tax credit which  
11 shall be deductible from the taxpayer's net income tax  
12 liability, if any, imposed by this chapter for the taxable year  
13 in which the credit is properly claimed. The amount of the  
14 credit shall be:

15 (1) [~~Fifteen~~] \_\_\_\_\_ per cent of the qualified  
16 production costs incurred by a qualified production in  
17 any county of the State with a population of over  
18 seven hundred thousand; or

19 (2) [~~Twenty~~] \_\_\_\_\_ per cent of the qualified  
20 production costs incurred by a qualified production in  
21 any county of the State with a population of seven  
22 hundred thousand or less.



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

5 In the case of a partnership, S corporation, estate, or  
6 trust, the tax credit allowable is for qualified production  
7 costs incurred by the entity for the taxable year. The cost  
8 upon which the tax credit is computed shall be determined at the  
9 entity level. Distribution and share of credit shall be  
10 determined by rule.

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

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

18 (b) The credit allowed under this section shall be claimed  
19 against the net income tax liability for the taxable year. For  
20 the purposes of this section, "net income tax liability" means  
21 net income tax liability reduced by all other credits allowed  
22 under this chapter.



1 (c) If the tax credit under this section exceeds the  
2 taxpayer's income tax liability, the excess of credits over  
3 liability shall be refunded to the taxpayer; provided that no  
4 refunds or payment on account of the tax credits allowed by this  
5 section shall be made for amounts less than \$1. All claims,  
6 including any amended claims, for tax credits under this section  
7 shall be filed on or before the end of the twelfth month  
8 following the close of the taxable year for which the credit may  
9 be claimed. Failure to comply with the foregoing provision  
10 shall constitute a waiver of the right to claim the credit.

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

- 12 (1) Meet the definition of a qualified production  
13 specified in subsection [~~(l)~~] (k);
- 14 (2) Have qualified production costs totaling at least  
15 \$200,000;
- 16 (3) Provide the State, at a minimum, a shared-card, end-  
17 title screen credit, where applicable;
- 18 (4) Provide evidence of reasonable efforts to hire local  
19 talent and crew; and
- 20 (5) Provide evidence of financial or in-kind contributions  
21 or educational or workforce development efforts, in  
22 partnership with related local industry labor



1 organizations, educational institutions, or both,  
2 toward the furtherance of the local film and  
3 television and digital media industries.

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

8 (f) To receive the tax credit, the taxpayer shall first  
9 prequalify the production for the credit by registering with the  
10 department of business, economic development, and tourism during  
11 the development or preproduction stage. Failure to comply with  
12 this provision may constitute a waiver of the right to claim the  
13 credit.

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

20 (h) Every taxpayer claiming a tax credit under this  
21 section for a qualified production shall, no later than ninety  
22 days following the end of each taxable year in which qualified



1 production costs were expended, submit a written, sworn  
2 statement to the department of business, economic development,  
3 and tourism, identifying:

4 (1) All qualified production costs as provided by  
5 subsection (a), if any, incurred in the previous  
6 taxable year;

7 (2) The amount of tax credits claimed pursuant to this  
8 section, if any, in the previous taxable year; and

9 (3) The number of total hires versus the number of local  
10 hires by category (i.e., department) and by county.

11 (i) The department of business, economic development, and  
12 tourism shall:

13 (1) Maintain records of the names of the taxpayers and  
14 qualified productions thereof claiming the tax credits  
15 under subsection (a);

16 (2) Obtain and total the aggregate amounts of all  
17 qualified production costs per qualified production  
18 and per qualified production per taxable year; and

19 (3) Provide a letter to the director of taxation  
20 specifying the amount of the tax credit per qualified  
21 production for each taxable year that a tax credit is



1           claimed and the cumulative amount of the tax credit  
2           for all years claimed.

3           Upon each determination required under this subsection, the  
4 department of business, economic development, and tourism shall  
5 issue a letter to the taxpayer, regarding the qualified  
6 production, specifying the qualified production costs and the  
7 tax credit amount qualified for in each taxable year a tax  
8 credit is claimed. The taxpayer for each qualified production  
9 shall file the letter with the taxpayer's tax return for the  
10 qualified production to the department of taxation.

11 Notwithstanding the authority of the department of business,  
12 economic development, and tourism under this section, the  
13 director of taxation may audit and adjust the tax credit amount  
14 to conform to the information filed by the taxpayer.

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

17           ~~(k)]~~ (j) Qualified productions shall comply with  
18 subsections (d), (e), (f), and (h).

19           ~~[(l)]~~ (k) 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 Internet-
- 8           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 (excluding  
15 Internet-only distribution).

16           "Post production" means production activities and services  
17 conducted after principal photography is completed, including  
18 but not limited to editing, film and video transfers,  
19 duplication, transcoding, dubbing, subtitling, credits, closed  
20 captioning, audio production, special effects (visual and  
21 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 twenty-  
15 two episodes) of a television series regularly filmed  
16 in the State (if the number of episodes per single  
17 season exceeds twenty-two, additional episodes for the  
18 same season shall constitute a separate qualified  
19 production), television special, single television  
20 episode that is not part of a television series  
21 regularly filmed or based in the State, national  
22 magazine show, or national talk show. For the



1 purposes of [~~subsections~~] subsection (d) [~~and (j)~~],  
2 each of the aforementioned qualified production  
3 categories shall constitute separate, individual  
4 qualified productions; and

5 (2) Does not include: daily news; public affairs programs;  
6 non-national magazine or talk shows; televised  
7 sporting events or activities; productions that  
8 solicit funds; productions produced primarily for  
9 industrial, corporate, institutional, or other private  
10 purposes; and productions that include any material or  
11 performance prohibited by chapter 712.

12 "Qualified production costs" means the costs incurred by a  
13 qualified production within the State that are subject to the  
14 general excise tax under chapter 237 or income tax under this  
15 chapter and that have not been financed by any investments for  
16 which a credit was or will be claimed pursuant to section  
17 235-110.9. Qualified production costs include but are not  
18 limited to:

19 (1) Costs incurred during preproduction such as location  
20 scouting and related services;

21 (2) Costs of set construction and operations, purchases or  
22 rentals of wardrobe, props, accessories, food, office



- 1 supplies, transportation, equipment, and related
- 2 services;
- 3 (3) Wages or salaries of cast, crew, and musicians;
- 4 (4) Costs of photography, sound synchronization, lighting,
- 5 and related services;
- 6 (5) Costs of editing, visual effects, music, other post-
- 7 production, and related services;
- 8 (6) Rentals and fees for use of local facilities and
- 9 locations;
- 10 (7) Rentals of vehicles and lodging for cast and crew;
- 11 (8) Airfare for flights to or from Hawaii, and interisland
- 12 flights;
- 13 (9) Insurance and bonding;
- 14 (10) Shipping of equipment and supplies to or from Hawaii,
- 15 and interisland shipments; and
- 16 (11) Other direct production costs specified by the
- 17 department in consultation with the department of
- 18 business, economic development, and tourism."

19 SECTION 3. Act 88, Session Laws of Hawaii 2006, is amended  
20 by amending section 4 to read as follows:

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



- 1 (1) Section 2 of this Act shall apply to qualified  
2 production costs incurred on or after July 1, 2006,  
3 and before January 1, [~~2016~~] 2023; and
- 4 (2) This Act shall be repealed on January 1, [~~2016~~] 2023,  
5 and section 235-17, Hawaii Revised Statutes, shall be  
6 reenacted in the form in which it read on the day  
7 before the effective date of this Act."

8 **PART III**

9 SECTION 4. Chapter 235, Hawaii Revised Statutes, is  
10 amended by adding a new section to be appropriately designated  
11 and to read as follows:

12 "§235- Media infrastructure project tax credit. (a)  
13 In addition to the credits described in section 235-17,  
14 beginning on or after July 1, 2013, and ending prior to January  
15 1, 2016, there shall be allowed to each taxpayer subject to the  
16 taxes imposed by this chapter, a media infrastructure project  
17 tax credit that shall be deductible from the taxpayer's net  
18 income tax liability, if any, imposed by this chapter for the  
19 taxable year in which the credit is properly claimed. The  
20 amount of the credit shall be equal to per cent of the  
21 qualified costs incurred for qualified media infrastructure



1 projects situated in West Oahu or on the most populous island in  
2 a county with a population between 100,000 and 175,000.

3 For the purposes of this section, "net income tax  
4 liability" means net income tax liability reduced by all other  
5 credits allowed under this chapter.

6 In the case of a partnership, S corporation, estate, or  
7 trust, the tax credit allowable is for qualified production  
8 costs incurred by the entity for the taxable year. The cost  
9 upon which the tax credit is computed shall be determined at the  
10 entity level. Distribution and share of credit shall be  
11 determined by rule.

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

15 (b) The following shall apply to the qualified media  
16 infrastructure project tax credit described in subsection (a):

17 (1) The base investment for a qualified media  
18 infrastructure project shall be in excess of

19 \$ \_\_\_\_\_ ;

20 (2) The qualified media infrastructure project tax credit  
21 shall be nonrefundable. The portion of the tax credit  
22 that exceeds the tax liability of the taxpayer for the



1 tax year in which the credit was earned may be carried  
2 forward to offset net income tax liability in  
3 subsequent tax years for a period not to exceed ten  
4 taxable years or until exhausted, whichever occurs  
5 first. The director of taxation may require the tax  
6 credit to be taken in the tax period in which the  
7 credit is earned or may structure the tax credit to  
8 provide that only a portion of the tax credit be taken  
9 over the course of two or more years;

10 (3) The total qualified media infrastructure project tax  
11 credit allowed for any state-certified infrastructure  
12 project shall not exceed \$ \_\_\_\_\_ ;

13 (4) If all or a portion of an infrastructure project is a  
14 facility that may be used for other purposes unrelated  
15 to production or post production activities, then the  
16 project shall be approved only if a determination is  
17 made that the multiple-use facility will support and  
18 will be necessary to secure production or post  
19 production activity for the production and post  
20 production facility and the applicant provides  
21 sufficient contractual assurances that the facility  
22 will be used as a state-of-the-art production or post



1           production facility, or as a support and component  
2           thereof, for the useful life of the facility; provided  
3           that no tax credits described in subsection (a) shall  
4           be earned on a multiple-use facility until the  
5           production or post production facility is complete;  
6       (5) Tax credits for qualified media infrastructure  
7           projects shall be earned only as follows:  
8           (A) Construction of the infrastructure project shall  
9               begin within six months of the initial  
10            certification and shall be \_\_\_\_\_ per cent  
11            complete within a \_\_\_\_\_ year time frame;  
12           (B) Expenditures shall be certified by the department  
13               of business, economic development, and tourism,  
14               and credits shall not be earned until that  
15               certification is made; and  
16           (C) For purposes of allowing tax credits against  
17               state income tax liability, the tax credits shall  
18               be deemed earned at the time the expenditures are  
19               made; provided that all requirements of this  
20               subsection have been met and the tax credits have  
21               been certified;



- 1        (6) For state-certified infrastructure projects, an  
2        application for a qualified media infrastructure  
3        project tax credit shall be submitted to the  
4        department of business, economic development, and  
5        tourism and shall include:
- 6        (A) A detailed description of the infrastructure  
7        project;
- 8        (B) A preliminary budget;
- 9        (C) A complete detailed business plan and market  
10       analysis;
- 11       (D) Estimated start and completion dates;
- 12       (E) A letter issued by the mayor and council of the  
13       county in which the infrastructure project is to  
14       be located indicating that the project has been  
15       approved; and
- 16       (F) If the application is incomplete, additional  
17       information may be requested prior to further  
18       action by the department of business, economic  
19       development, and tourism;
- 20       (7) An application fee shall be submitted with the  
21       application for a qualified media infrastructure  
22       project tax credit. The amount of the fee shall be





1 included as part of the qualifying media  
2 infrastructure project expenses that qualify for the  
3 tax credit. The taxpayer for each qualified media  
4 infrastructure project shall file the letter with the  
5 taxpayer's tax return for the qualified media  
6 infrastructure project to the department of taxation.  
7 Notwithstanding the authority of the department of  
8 business, economic development, and tourism under this  
9 section, the director of taxation may audit and adjust  
10 the tax credit amount to conform to the information  
11 filed by the taxpayer.

12 (c) Any taxpayer eligible to claim a tax credit under  
13 subsection (a) shall:

14 (1) File an annual progress report with the department of  
15 business, economic development, and tourism on a  
16 calendar basis, which shall include the following  
17 information:

18 (A) Percentage of completion of each qualified media  
19 infrastructure project;

20 (B) Amount of moneys expended on, and amount  
21 remaining to complete, each qualified media  
22 infrastructure project; and



- 1            (C) Tax and labor clearances;
- 2            (2) Deliver to the department of business, economic
- 3            development, and tourism a performance bond, in a form
- 4            prescribed by the department of business, economic
- 5            development, and tourism by rule, executed by a surety
- 6            company authorized to do business in this State or
- 7            otherwise secured in a manner satisfactory to the
- 8            department of business, economic development, and
- 9            tourism, in an amount equal to            per cent of
- 10           total projected expenditures determined upon initial
- 11           certification; and
- 12           (3) Provide either of the following:
- 13           (A) Pledge of a lien on the qualified media
- 14           infrastructure project in favor of the State in
- 15           the amount of \$            ; provided that the lien
- 16           shall expire five years after completion of the
- 17           project; or
- 18           (B) Collateral security in the amount of \$            ;
- 19           provided that the collateral security shall be
- 20           released five years after completion of the
- 21           qualified media infrastructure project.

1        (d) Any taxpayer eligible to claim a qualified media  
2 infrastructure project tax credit under subsection (a) shall  
3 file with the department of business, economic development, and  
4 tourism an annual report no later than March 1 following each  
5 taxable year for which the credit is claimed. The report shall  
6 include the following information:

- 7        (1) The amount of general excise tax paid under chapter  
8        237;
- 9        (2) The amount of transient accommodations tax paid under  
10       chapter 237D;
- 11       (3) The amount of tax credits claimed under this section;
- 12       (4) Gross proceeds of each project;
- 13       (5) Number of full-time employees employed on each  
14       qualified media infrastructure project;
- 15       (6) Number of part-time employees employed on each  
16       qualified media infrastructure project;
- 17       (7) Number of independent contractors contracted to work  
18       on each qualified media infrastructure project;
- 19       (8) Amount disbursed as payroll in the State on each  
20       qualified media infrastructure project; and
- 21       (9) List of job classifications with average wage level.

22       (e) For purposes of this section:



1       "Production" and "post production" shall have the same  
2 meaning as defined in section 235-17.

3       "Qualified media infrastructure project" means the  
4 development, construction, renovation, or operation of a film,  
5 video, television, or media production or post-production  
6 facility and the immovable property and equipment related  
7 thereto, or any other facility that supports and is a necessary  
8 component of the proposed infrastructure project, that is  
9 located in the State; provided that the facility may include a  
10 movie theater or other commercial exhibition facility to assist  
11 in offsetting operating costs of the production or post  
12 production facility, but shall not include a facility used to  
13 produce pornographic matter or a pornographic performance.

14       (f) A taxpayer shall not be prohibited from claiming the  
15 media infrastructure project tax credit for qualifying  
16 investments made prior to the reenactment of section 235-17  
17 pursuant to section 4 of Act 88, Session Laws of Hawaii 2006.

18       A taxpayer may claim the media infrastructure project tax  
19 credit for investments made on a qualified media infrastructure  
20 project prior to January 1, 2016; provided that:

21       (1) Construction of the media infrastructure project shall  
22 commence prior to January 1, 2016; and



1       (2) The claim for the media infrastructure project tax  
2       credit shall be properly filed on or before the end of  
3       the twelfth month following the close of the taxable  
4       year for which the tax credit may be claimed.

5       Failure to comply with either of the foregoing provisions shall  
6       constitute a waiver of the right to claim the tax credit.

7       (g) If at the close of any taxable year:

8       (1) The qualified media infrastructure project no longer  
9       qualifies for the tax credit established under this  
10       section;

11       (2) The qualified media infrastructure project or an  
12       interest in the qualified media infrastructure project  
13       has been sold by the taxpayer making a base investment  
14       in the qualified media infrastructure project; or

15       (3) The taxpayer has withdrawn the taxpayer's base  
16       investment wholly or partially from the qualified  
17       media infrastructure project,

18       the tax credit claimed under this section shall be recaptured.

19       The recapture shall be equal to                    per cent of the  
20       amount of the total tax credit claimed under this section in the  
21       preceding five taxable years. The amount of the tax credit  
22       recaptured shall apply only to the investment in the particular



1 qualified media infrastructure project that meets the conditions  
2 of paragraph (1), (2), or (3). The amount of the recaptured tax  
3 credit determined under this subsection shall be added to the  
4 taxpayer's tax liability for the taxable year in which the  
5 recapture occurs under this subsection.

6 (h) Failure to complete a qualified media infrastructure  
7 project for which a tax credit is claimed under subsection (a)  
8 within five years of initial certification shall result in  
9 ineligibility to claim the tax credit.

10 (i) There is established a Hawaii film office special  
11 fund, to be administered by the department of taxation, into  
12 which shall be deposited all application fees collected pursuant  
13 to this section. The moneys in the special fund shall be  
14 expended for the purposes of managing infrastructure development  
15 credits and related programs."

16 SECTION 5. The department of taxation shall submit an  
17 annual report to the legislature twenty days prior to each  
18 regular session beginning with the 2014 regular session. The  
19 report shall contain a cost benefit analysis of the tax credit  
20 established in this part. The department of taxation shall  
21 report the data collected under this section along with a



1 cumulative total of tax credits granted for each qualified media  
2 infrastructure project.

3 **PART IV**

4 SECTION 6. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect on July 1, 2050, and  
7 apply to taxable years beginning after December 31, 2012.



**Report Title:**

Film Tax Credits; Amendments; Media Infrastructure Project Tax Credit

**Description:**

Extends the motion picture, digital media, and film production income tax credit from 01/01/2016 to 01/01/2023. Repeals the credit ceiling per qualified production. Changes the credit amount from 15% to an unspecified amount in a county with a population over 700,000, and from 20% to an unspecified amount in a county with a population of 700,000 or less. Creates a tax credit for media infrastructure projects in West Oahu or the most populous island in a county with a population of 100,000 to 175,000, from 07/01/13 to 01/01/16. Provides for recapture of the media infrastructure project tax credit. Establishes a special fund for management of media infrastructure project tax credits and related programs. Requires analysis and reporting by DOTAX on the effectiveness of the media infrastructure project tax credit. Effective 07/01/2050. (SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

