
A BILL FOR AN ACT

RELATING TO BUSINESS DEVELOPMENT IN HAWAII.

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 and
3 that its financial impact can be strengthened significantly if
4 existing incentives for the industry are adjusted.

5 The legislature also finds that there has been a dramatic
6 increase in the number of state and local governments attempting
7 to attract film productions. These jurisdictions have
8 experienced dramatic increases in in-state spending and
9 significant growth in workforce and infrastructure development.
10 More productions in Hawaii would stimulate more direct and
11 indirect tax revenue.

12 The legislature further finds that it is desirable to
13 provide tools to the film industry to encourage similar dramatic
14 growth in Hawaii because the film industry:

15 (1) Infuses significant amounts of new money into the
16 economy, which are dispersed across many communities
17 and businesses and which benefit a wide array of
18 residents;



- 1 (2) Creates skilled, high-paying jobs;
- 2 (3) Has a natural dynamic synergy with Hawaii's top
- 3 industry, tourism, and is used as a destination
- 4 marketing tool for the visitor industry; and
- 5 (4) Is a clean, nonpolluting industry that values the
- 6 natural beauty of Hawaii and its diverse multicultural
- 7 population and wide array of architecture.

8 The legislature also finds that the film industry has a
9 strong desire to hire locally and invests in the training and
10 workforce development of island-based personnel. It is the
11 intent of this Act to continue to encourage this industry
12 practice of hiring a significant number of residents and to
13 support training and opportunities to those residents.

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

21 The purpose of this Act is to encourage the growth of the
22 film industry by providing enhanced incentives that attract more



1 film and television productions to Hawaii, thereby generating
2 increased tax revenues.

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

5 "§235-17 Motion picture, digital media, [and] film
6 production, and media infrastructure project income tax
7 credit[-]; qualified persons crew training program rebate. (a)

8 Any law to the contrary notwithstanding, there shall be allowed
9 to each taxpayer subject to the taxes imposed by this chapter,
10 an income tax credit [~~which~~] that shall be deductible from the
11 taxpayer's net income tax liability, if any, imposed by this
12 chapter for the taxable year in which the credit is properly
13 claimed. The amount of the credit shall be:

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

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



1 (b) In addition to the credits described in subsection
2 (a), beginning on or after July 1, 2011, and ending prior to
3 January 1, 2016, the following credits shall apply:

4 (1) _____ per cent of the qualified costs incurred for
5 qualified media infrastructure projects in any county
6 of the State with a population of over seven hundred
7 thousand; or

8 (2) _____ per cent of the qualified costs incurred for
9 qualified media infrastructure projects in any county
10 of the State with a population of seven hundred
11 thousand or less.

12 (c) The following shall apply to the qualified media
13 infrastructure project tax credit described in subsection (b):

14 (1). The base investment for a qualified media
15 infrastructure project shall be in excess of \$ _____ ;

16 (2) _____ per cent of the qualified media
17 infrastructure tax credit shall be funded by the
18 transient accommodations tax allocation of the county
19 in which the qualified media infrastructure project is
20 to be located; provided that the qualified media
21 infrastructure project shall be subject to prior
22 approval by the mayor and council of the county;



1 (3) The qualified media infrastructure project tax credit
 2 shall be non-refundable. The portion of the tax
 3 credit that exceeds the tax liability of the taxpayer
 4 for the tax year in which the credit was earned may be
 5 carried forward to offset net income tax liability in
 6 subsequent tax years for a period not to exceed ten
 7 taxable years or until exhausted, whichever occurs
 8 first. The director of taxation may require the tax
 9 credit to be taken in the tax period in which the
 10 credit is earned or may structure the tax credit in
 11 the initial certification of the project to provide
 12 that only a portion of the tax credit be taken over
 13 the course of two or more years;

14 (4) The total qualified media infrastructure project tax
 15 credit allowed for any state-certified infrastructure
 16 project shall not exceed \$ _____ ;

17 (5) If all or a portion of an infrastructure project is a
 18 facility that may be used for other purposes unrelated
 19 to production or post production activities, then the
 20 project shall be approved only if a determination is
 21 made that the multiple use facility will support and
 22 will be necessary to secure production or post



1 production activity for the production and post
 2 production facility and the applicant provides
 3 sufficient contractual assurances that the facility
 4 will be used as a state-of-the-art production or post
 5 production facility, or as a support and component
 6 thereof, for the useful life of the facility.

7 No tax credits shall be earned on a multiple use facility until
 8 the production or post production facility is complete;

9 (6) Tax credits for qualified media infrastructure
 10 projects shall be earned only as follows:

11 (A) Construction of the infrastructure project shall
 12 begin within six months of the initial
 13 certification and shall be per cent
 14 completed within a year time frame;

15 (B) Expenditures shall be certified by the director
 16 and credits shall not be earned until that
 17 certification;

18 (C) No tax credit shall be allowed for expenditures
 19 made for any infrastructure project after July 1,
 20 2011, unless per cent of the total base
 21 investment provided for in the initial
 22 certification of the project has been expended



1 prior to that date; provided that the
2 expenditures may be finally certified at a later
3 date; and

4 (D) For purposes of allowing tax credits against
5 state income tax liability, the tax credits shall
6 be deemed earned at the time the expenditures are
7 made, provided that all requirements of this
8 subsection have been met and the tax credits have
9 been certified;

10 (7) For state-certified infrastructure projects, the
11 application for a qualified media infrastructure
12 project tax credit shall include:

13 (A) A detailed description of the infrastructure
14 project;

15 (B) A preliminary budget;

16 (C) A complete detailed business plan and market
17 analysis;

18 (D) Estimated start and completion dates;

19 (E) A letter issued by the mayor and council of the
20 county in which the infrastructure project is to
21 be located indicating that the project has been
22 approved; and



1 (F) If the application is incomplete, additional
2 information may be requested prior to further
3 action by the director;

4 (8) An application fee shall be submitted with the
5 application for a qualified media infrastructure
6 project tax credit based on the following:

7 (A) _____ per cent multiplied by the estimated total
8 incentive tax credits; and

9 (B) The minimum application fee shall be \$ _____ and
10 the maximum application fee shall be \$ _____ ;

11 and

12 (9) Prior to any final certification of a tax credit for a
13 state-certified infrastructure project, the applicant
14 for the qualified media infrastructure project tax
15 credit shall submit to the director an audit of the
16 expenditures audited and certified by an independent
17 certified public accountant, as determined by rule.

18 Upon approval of the audit, the director shall issue a
19 final tax credit certification letter indicating the
20 amount of tax credits certified for the state-
21 certified infrastructure project to the investors.

22 Bank loan finance fees applicable to the qualified



1 media infrastructure project expenditures, as
2 certified by the director, and any general excise
3 taxes that have been paid on the bank loan finance
4 fees and remitted to the State may be included as part
5 of the tax credit.

6 There shall be a qualified persons crew training program
7 rebate that shall be equal to per cent of the hourly wages
8 of each resident participant in a qualified persons crew
9 training program, and if incurred by a qualified production in
10 any county of the State, shall be reimbursed up to the first
11 hours physically worked by the qualifying crew member in a
12 specialized craft position.

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

17 In the case of a partnership, S corporation, estate, or
18 trust, the tax credit allowable is for qualified production
19 costs incurred by the entity for the taxable year. The cost
20 upon which the tax credit is computed shall be determined at the
21 entity level. Distribution and share of credit shall be
22 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 Subsections (d) through (k) shall apply only to the production
9 tax credits set forth in subsection (a).

10 ~~[(b)]~~ (d) The ~~[credit]~~ credits allowed under ~~[this~~
11 ~~section]~~ subsection (a) shall be claimed against the net-income
12 tax liability for the taxable year~~[-]~~ in which the credit is
13 claimed. For the purposes of this section, "net income tax
14 liability" means net income tax liability reduced by all other
15 credits allowed under this chapter.

16 ~~[(e)]~~ (e) If the production tax credit under ~~[this~~
17 ~~section]~~ subsection (a) exceeds the taxpayer's income tax
18 liability, the excess of credits over liability shall be
19 refunded to the taxpayer; provided that no refunds or payment on
20 account of the tax credits allowed by this section shall be made
21 for amounts less than \$1. All claims, including any amended
22 claims, for tax credits under ~~[this section]~~ subsection (a)



1 shall be filed on or before the end of the twelfth month
2 following the close of the taxable year for which the credit may
3 be claimed. Failure to comply with the foregoing provision
4 shall constitute a waiver of the right to claim the credit.

5 ~~[(d)]~~ (f) To qualify for ~~[this]~~ a tax ~~[credit,]~~ credit
6 under subsection (a), a production shall:

- 7 (1) Meet the definition of a qualified production
8 ~~[specified in subsection (1)]~~;
- 9 (2) Have qualified production costs totaling at least
10 ~~[\$200,000,]~~ \$ _____ ;
- 11 (3) Provide the State, at a minimum, a shared-card, end-
12 title screen credit, where applicable;
- 13 (4) Provide evidence of reasonable efforts to hire local
14 talent and crew; and
- 15 (5) Provide evidence of financial or in-kind contributions
16 or educational or workforce development efforts, in
17 partnership with related local industry labor
18 organizations, educational institutions, or both,
19 toward the furtherance of the local film and
20 television and digital media industries.

21 ~~[(e)]~~ (g) On or after July 1, 2006, no qualified
22 production cost that has been financed by investments for which

1 a credit was claimed by any taxpayer pursuant to section
2 235-110.9 is eligible for credits under this section.

3 ~~[(f)]~~ (h) To receive ~~[the]~~ a tax ~~[credit,]~~ credit under
4 subsection (a), the taxpayer shall first prequalify the
5 production for the credit by registering with the department of
6 business, economic development, and tourism during the
7 development or preproduction stage. Failure to comply with this
8 provision may constitute a waiver of the right to claim the
9 credit.

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

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



- 1 (1) All qualified production costs as provided by
2 subsection (a), if any, incurred in the previous
3 taxable year;
- 4 (2) The amount of tax credits claimed pursuant to [~~this~~
5 ~~section,~~] subsection (a), if any, in the previous
6 taxable year; and
- 7 (3) The number of total hires versus the number of local
8 hires by category (i.e., department) and by county.
- 9 [~~i~~] (k) The department of business, economic
10 development, and tourism shall:
- 11 (1) Maintain records of the names of the taxpayers and
12 qualified productions thereof claiming the tax credits
13 under subsection (a);
- 14 (2) Obtain and total the aggregate amounts of all
15 qualified production costs per qualified production
16 and per qualified production per taxable year; and
- 17 (3) Provide a letter to the director [~~of taxation~~]
18 specifying the amount of the tax credit per qualified
19 production for each taxable year that a tax credit is
20 claimed under subsection (a) and the cumulative amount
21 of the tax credit for all years claimed.



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

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

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

15 (1) Any taxpayer eligible to claim a qualified media
 16 infrastructure project tax credit under subsection (b) shall:

17 (1) File an annual progress report with the department of
 18 business, economic development, and tourism on a
 19 calendar basis, that shall include the following
 20 information:

21 (A) Percentage of completion of each qualified media
 22 infrastructure project;



1 (B) Amount of moneys expended on, and amount
2 remaining to complete, each qualified media
3 infrastructure project; and

4 (C) Tax and labor clearances;

5 (2) Deliver to the department of business, economic
6 development, and tourism a performance bond in a form
7 prescribed by the department of business, economic
8 development, and tourism by rule, executed by a surety
9 company authorized to do business in this State or
10 otherwise secured in a manner satisfactory to the
11 department of business, economic development, and
12 tourism, in an amount equal to one hundred per cent of
13 total projected expenditures determined upon initial
14 certification; and

15 (3) Provide either of the following:

16 (A) Pledge of a lien on the qualified media
17 infrastructure project in favor of the State in
18 the amount of \$; provided that the lien
19 shall expire five years after completion of the
20 project; or

21 (B) Collateral security in the amount of \$;
22 provided that the collateral security shall be



1 released five years after completion of the
2 qualified media infrastructure project.

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

9 (1) The amount of general excise tax paid under chapter
10 237;

11 (2) The amount of transient accommodations tax paid under
12 chapter 237D;

13 (3) The amount of tax credits claimed under this section,
14 as amended by Act 88, Session Laws of Hawaii 2006;

15 (4) Gross proceeds of each project;

16 (5) Number of full-time employees employed on each
17 qualified media infrastructure project;

18 (6) Number of part-time employees employed on each
19 qualified media infrastructure project;

20 (7) Number of independent contractors contracted to work
21 on each qualified media infrastructure project;



- 1 (8) Amount disbursed as payroll in the State on each
2 qualified media infrastructure project; and
3 (9) List of job classifications with average wage level.
4 (n) Failure to complete a qualified media infrastructure
5 project for which a tax credit is claimed under subsection (b)
6 within five years of initial certification shall result in
7 ineligibility to claim the tax credit.

8 [~~+~~] (o) Qualified productions shall comply with
9 subsections [~~(d), (e), (f), and (h)-]~~ (f), (g), (h), and (j).

10 [~~+~~] (p) For the purposes of this section:

11 "Base investment" means the costs incurred and financial
12 investment made to operate and sustain a qualified media
13 infrastructure project.

14 "Commercial":

15 (1) Means an advertising message that is filmed using
16 film, videotape, or digital media, for dissemination
17 via television broadcast or theatrical distribution;

18 (2) Includes a series of advertising messages if all parts
19 are produced at the same time over the course of six
20 consecutive weeks; and

21 (3) Does not include an advertising message with Internet-
22 only distribution.



1 "Digital media" means production methods and platforms
2 directly related to the creation of cinematic imagery and
3 content, specifically using digital means, including but not
4 limited to digital cameras, digital sound equipment, and
5 computers, to be delivered via film, videotape, interactive game
6 platform, or other digital distribution media (excluding
7 Internet-only distribution).

8 "Director" means the director of taxation.

9 "Post production" means production activities and services
10 conducted after principal photography is completed, including
11 but not limited to editing, film and video transfers,
12 duplication, transcoding, dubbing, subtitling, credits, closed
13 captioning, audio production, special effects (visual and
14 sound), graphics, and animation.

15 "Production" means a series of activities that are directly
16 related to the creation of visual and cinematic imagery to be
17 delivered via film, videotape, or digital media and to be sold,
18 distributed, or displayed as entertainment or the advertisement
19 of products for mass public consumption, including but not
20 limited to scripting, casting, set design and construction,
21 transportation, videography, photography, sound recording,
22 interactive game design, and post production.



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

12 "Qualified person" means a person who has been domiciled
13 and filed a resident income tax return in the State for at least
14 the preceding two years.

15 "Qualified persons crew training programs" means the
16 development and operation of a training program for state job
17 creation with a focus on film, video, television and digital
18 media production or post-production, with a budget of
19 \$ or greater. Commercials or other short form
20 formats, with a shooting schedule of less than eighteen days
21 shall be excluded from participation.

22 "Qualified production":



- 1 (1) Means a production, with expenditures in the State,
2 for the total or partial production of a feature-
3 length motion picture, short film, made-for-television
4 movie, commercial, music video, interactive game,
5 television series pilot, single season (up to twenty-
6 two episodes) of a television series regularly filmed
7 in the State (if the number of episodes per single
8 season exceeds twenty-two, additional episodes for the
9 same season shall constitute a separate qualified
10 production), television special, single television
11 episode that is not part of a television series
12 regularly filmed or based in the State, national
13 magazine show, or national talk show. For the
14 purposes of [~~subsections (d) and (j)~~], subsection (f),
15 each of the aforementioned qualified production
16 categories shall constitute separate, individual
17 qualified productions; and
- 18 (2) Does not include: daily news; public affairs programs;
19 non-national magazine or talk shows; televised
20 sporting events or activities; productions that
21 solicit funds; productions produced primarily for
22 industrial, corporate, institutional, or other private



1 purposes; and productions that include any material or
2 performance prohibited by chapter 712.

3 "Qualified production costs" means the costs incurred by a
4 qualified production within the State that are subject to the
5 general excise tax under chapter 237 or income tax under this
6 chapter and that have not been financed by any investments for
7 which a credit was or will be claimed pursuant to section
8 235-110.9. Qualified production costs include but are not
9 limited to:

- 10 (1) Costs incurred during preproduction such as location
11 scouting and related services;
- 12 (2) Costs of set construction and operations, purchases or
13 rentals of wardrobe, props, accessories, food, office
14 supplies, transportation, equipment, and related
15 services;
- 16 (3) Wages or salaries of cast, crew, and musicians;
- 17 (4) Costs of photography, sound synchronization, lighting,
18 and related services;
- 19 (5) Costs of editing, visual effects, music, other post-
20 production, and related services;
- 21 (6) Rentals and fees for use of local facilities and
22 locations;



- 1 (7) Rentals of vehicles and lodging for cast and crew;
- 2 (8) Airfare for flights to or from Hawaii, and interisland
- 3 flights;
- 4 (9) Insurance and bonding;
- 5 (10) Shipping of equipment and supplies to or from Hawaii,
- 6 and interisland shipments; [~~and~~]
- 7 (11) Costs for equipment or items not readily obtainable in
- 8 the State that are passed through a qualified resident
- 9 vendor and upon which a mark-up and general excise tax
- 10 are paid; and
- 11 [~~(11)~~] (12) Other direct production costs specified by the
- 12 department in consultation with the department of
- 13 business, economic development, and tourism."

14 SECTION 3. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect on July 1, 2112.



Report Title:

Film Production Tax Credits

Description:

Provides a tax credit for qualified media infrastructure projects. Establishes a qualified persons crew training program rebate. Effective 07/01/2112. (HD1)

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

