
A BILL FOR AN ACT

RELATING TO CREATIVE MEDIA.

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

1 PART I

2 SECTION 1. The legislature finds that establishment of a
3 bachelor of arts degree in creative media at the University of
4 Hawaii, West Oahu campus, is a matter of statewide concern.

5 SECTION 2. Chapter 304A, Hawaii Revised Statutes, is
6 amended by adding a new section to part IV, subpart M, to be
7 appropriately designated and to read as follows:

8 "§304A- Creative media; University of Hawaii, West Oahu
9 campus. The University of Hawaii, West Oahu campus, shall award
10 a bachelor of arts degree in creative media to any student who
11 successfully completes an approved course of study and satisfies
12 other requirements established by the University of Hawaii."

13 SECTION 3. No later than the start of the 2020 spring
14 semester, the University of Hawaii shall finalize and approve,
15 including seeking approval from the Western Senior College and
16 University Commission, the bachelor of arts degree in creative
17 media at the University of Hawaii, West Oahu campus.



1 SECTION 4. There is appropriated out of the general
 2 revenues of the State of Hawaii the sum of \$ or so
 3 much thereof as may be necessary for fiscal year 2019-2020 and
 4 the same sum or so much thereof as may be necessary for fiscal
 5 year 2020-2021 for the University of Hawaii creative media
 6 program for the purposes of strengthening the pipeline of
 7 students to the creative media industry.

8 The sums appropriated shall be expended by the University
 9 of Hawaii for the purposes of this Act.

10 PART II

11 SECTION 5. The legislature finds that the film industry in
 12 Hawaii is an important component of a diversified economy. The
 13 legislature also finds that the motion picture, digital media,
 14 and film production income tax credit has been effective in
 15 stimulating the economy and creating quality jobs while
 16 promoting Hawaii as a visitor destination.

17 The legislature further finds that the film production
 18 process can extend over several years, due to extensive planning
 19 and development in the preproduction stage. Act 143, Session
 20 Laws of Hawaii 2017, extended to January 1, 2026, the sunset
 21 date of certain amendments made to the motion picture, digital



1 media, and film production income tax credit and added an annual
2 \$35,000,000 cap on the tax credit. After January 1, 2026, the
3 credit will be reenacted, in a different form and without the
4 cap, as the motion picture and film production income tax
5 credit. Although the annual \$35,000,000 cap was placed on the
6 tax credit, it was a "rolling cap" so that any claims for a
7 credit that exceeded \$35,000,000 in one year could be applied
8 toward the following year's cap, except for the final, seventh
9 year of the tax credit in the year 2026.

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

15 The purpose of this part is to remove the annual
16 \$35,000,000 cap on the motion picture, digital media, and film
17 production income tax credit.

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

20 **"§235-17 Motion picture, digital media, and film**
21 **production income tax credit.** (a) Any law to the contrary



1 notwithstanding, there shall be allowed to each taxpayer subject
2 to the taxes imposed by this chapter, an income tax credit that
3 shall be deductible from the taxpayer's net income tax
4 liability, if any, imposed by this chapter for the taxable year
5 in which the credit is properly claimed. The amount of the
6 credit shall be:

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

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

19 In the case of a partnership, S corporation, estate, or
20 trust, the tax credit allowable is for qualified production
21 costs incurred by the entity for the taxable year. The cost



1 upon which the tax credit is computed shall be determined at the
2 entity level. Distribution and share of credit shall be
3 determined by rule.

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

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

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

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



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

6 (1) Meet the definition of a qualified production
7 specified in subsection ~~[(m)+]~~ (1);

8 (2) Have qualified production costs totaling at least
9 \$200,000;

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

13 (4) Provide evidence of reasonable efforts to hire local
14 talent and crew;

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

20 (6) Provide evidence of financial or in-kind contributions
21 or educational or workforce development efforts, in



1 partnership with related local industry labor
2 organizations, educational institutions, or both,
3 toward the furtherance of the local film and
4 television and digital media industries.

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

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

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

19 (h) Every taxpayer claiming a tax credit under this
20 section for a qualified production shall, no later than ninety
21 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, together with a verification review by a qualified
4 certified public accountant using procedures prescribed by the
5 department of business, economic development, and tourism,
6 identifying:

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

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

17 (i) The department of business, economic development, and
18 tourism shall:

- 19 (1) Maintain records of the names of the taxpayers and
20 qualified productions thereof claiming the tax credits
21 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 ~~[(l) 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".

PART III

11 SECTION 7. 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 reenacted in the form in which it read on the day
2 before the effective date of this Act."

3 PART IV

4 SECTION 8. The University of Hawaii, West Oahu campus and
5 the Hawaii technology development corporation shall execute a
6 contract that transfers title to the thirty-acre parcel of
7 University of Hawaii, West Oahu campus land adjacent to the
8 intersection of Farrington Highway and Kapolei Golf Course Road,
9 generally described by the following parameters within tax map
10 key (TMK) #1-9-1-016-179-0000:

11 (1) Segment 1: 1145 feet north along the western boundary
12 of the TMK beginning at the westernmost point along
13 Farrington Highway;

14 (2) Segment 2: 1145 feet east along the southern boundary
15 of the TMK beginning at the westernmost point along
16 Farrington Highway and the southernmost point of
17 segment 1;

18 (3) Segment 3: The parallel of segment 1 connecting to the
19 easternmost point of segment 2; and

20 (4) Segment 4: The parallel of segment 2 connecting the
21 northernmost point of segment 3 and segment 1,



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 PART V

8 SECTION 9. The purpose of this part is to, among other
9 things, establish a deadline for the University of Hawaii, West
10 Oahu campus to transfer the parcel of land as required by part
11 IV and to make the effectuation of parts II and III contingent
12 upon the transfer of that parcel of land.

13 SECTION 10. Parts II and III of this Act shall not take
14 effect until the Hawaii technology development corporation
15 obtains title to the thirty-acre parcel of University of Hawaii,
16 West Oahu campus land adjacent to the intersection of Farrington
17 Highway and Kapolei Golf Course Road, described in section 8 of
18 this Act.

19 SECTION 11. This Act does not affect rights and duties
20 that matured, penalties that were incurred, and proceedings that
21 were begun before its effective date.



1 SECTION 12. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 13. This Act shall take effect on July 1, 2050;
4 provided that:

5 (1) If a contract to transfer title to the parcel
6 described in part IV of this Act has not been executed
7 between the University of Hawaii, West Oahu campus and
8 the Hawaii technology development corporation by
9 December 31, 2020, this Act shall be repealed on
10 January 1, 2021, and section 235-17, Hawaii Revised
11 Statutes, and section 4 of Act 88, Session Laws of
12 Hawaii 2006, as amended by Act 89, Session Laws of
13 Hawaii 2013, as amended by Act 143, Session Laws of
14 Hawaii 2017, shall be reenacted in the form in which
15 those provisions read on the day before the effective
16 date of this Act;

17 (2) Parts II and III shall take effect on the date that
18 the conditions set out in part IV are met; and

19 (3) Upon taking effect, part II shall apply to taxable
20 years beginning after December 31 of the prior
21 calendar year.



Report Title:

University of Hawaii, West Oahu Campus; Bachelor of Arts in Creative Media; Appropriation

Description:

Requires the University of Hawaii, West Oahu campus, to offer a Bachelor of Arts degree in creative media by the start of the 2020 spring semester. 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 campus land is successfully transferred to the Hawaii Technology Development Corporation. Appropriates funds. Effective 7/1/2050. (SD2)

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