

JAN 22 2010

A BILL FOR AN ACT

RELATING TO HAWAII TELEVISION AND FILM DEVELOPMENT.

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

1 SECTION 1. The purpose of this Act is to transfer the film
2 industry activities within the department of business, economic
3 development, and tourism to the Hawaii tourism authority.

4 SECTION 2. Chapter 201B, Hawaii Revised Statutes, is
5 amended by adding a new part to be appropriately designated and
6 to read as follows:

7 **"PART . HAWAII TELEVISION AND FILM DEVELOPMENT**

8 **§201B-A Definitions.** As used in this part:

9 "Applicant" means a person applying for a grant or venture
10 capital investment from the board under this part.

11 "Authority" means the Hawaii tourism authority.

12 "Board" means the Hawaii television and film development
13 board.

14 "Eligible Hawaii project" or "project" means an
15 entertainment project in which at least seventy-five per cent of
16 the budget for the production costs, excluding salaries and
17 costs for the producer, director, writer, screenplay, and actors
18 in the project, is dedicated for the purchase or lease of goods



1 or services from a vendor or supplier who is located and doing
2 business in the State.

3 "Fund" means the Hawaii television and film development
4 special fund.

5 "Venture capital investment" means any of the following
6 investments in a project:

- 7 (1) Common or preferred stock and equity securities
8 without a repurchase requirement for at least five
9 years;
- 10 (2) A right to purchase stock or equity securities;
- 11 (3) Any debenture, whether or not convertible or having
12 stock purchase rights, which is subordinated, together
13 with security interests against the assets of the
14 borrower, by their terms to all borrowings of the
15 borrower from other institutional lenders, and that is
16 for a term of not less than three years, and that has
17 no part amortized during the first three years; and
- 18 (4) General or limited partnership interests.

19 **§201B-B Hawaii television and film development board.** (a)
20 There is established the Hawaii television and film development
21 board. The board shall be attached to the Hawaii tourism
22 authority for administrative purposes only. The board shall



1 administer the grant and venture capital investment programs and
2 the Hawaii television and film development special fund
3 established under this part. The board shall also assess and
4 consider the overall viability and development of the television
5 and film industries and make recommendations to appropriate
6 state or county agencies.

7 (b) The board shall be composed of nine members, four of
8 whom shall be appointed by the governor pursuant to section
9 26-34, and all of whom shall serve four-year staggered terms.
10 One of the governor's appointments shall be made from a list of
11 nominees submitted by the president of the senate and another
12 appointment shall be made from a list of nominees submitted by
13 the speaker of the house of representatives. The four appointed
14 members shall possess a current working knowledge of the film,
15 television, or entertainment industry. The executive director
16 of the Hawaii tourism authority, and the chairs of the four
17 county film commissions or their equivalent, shall serve as
18 ex officio voting members, who may be represented on the board
19 by designees.

20 The chairperson and vice chairperson of the board shall be
21 selected by the board by majority vote. Five members shall
22 constitute a quorum, whose affirmative vote shall be necessary



1 for all actions by the board. The members shall serve without
2 compensation but shall be reimbursed for expenses, including
3 travel expenses, necessary for the performance of their duties.

4 (c) The film industry branch development manager shall
5 serve as the executive secretary of the board.

6 (d) The board may adopt rules pursuant to chapter 91 to
7 effectuate the purposes of this part.

8 **§201B-C Hawaii television and film development special**

9 **fund.** (a) There is established in the state treasury the
10 Hawaii television and film development special fund into which
11 shall be deposited:

12 (1) Appropriations by the legislature;

13 (2) Donations and contributions made by private
14 individuals or organizations for deposit into the
15 fund;

16 (3) Grants provided by governmental agencies or any other
17 source; and

18 (4) Any profits or other amounts received from venture
19 capital investments.

20 (b) The fund shall be used by the board to assist in, and
21 provide incentives for, the production of eligible Hawaii
22 projects that are in compliance with criteria and standards



1 established by the board in accordance with rules adopted by the
2 board pursuant to chapter 91. In particular, the board shall
3 adopt rules to provide for the implementation of the following
4 programs:

5 (1) A grant program. The board shall adopt rules pursuant
6 to chapter 91 to provide conditions and qualifications
7 for grants. Applications for grants shall be made to
8 the board and shall contain information as the board
9 shall require by rules adopted pursuant to chapter 91.

10 At a minimum, the applicant shall agree to the
11 following conditions:

12 (A) The grant shall be used exclusively for eligible
13 Hawaii projects;

14 (B) The applicant shall have applied for or received
15 all applicable licenses and permits;

16 (C) The applicant shall comply with applicable
17 federal and state laws prohibiting discrimination
18 against any person on the basis of race, color,
19 national origin, religion, creed, sex, age, or
20 physical handicap;

21 (D) The applicant shall comply with other
22 requirements as the board may prescribe;



- 1 (E) All activities undertaken with funds received
2 shall comply with all applicable federal, state,
3 and county statutes and ordinances;
- 4 (F) The applicant shall indemnify and save harmless
5 the State of Hawaii and its officers, agents, and
6 employees from and against any and all claims
7 arising out of or resulting from activities
8 carried out or projects undertaken with funds
9 provided hereunder, and procure sufficient
10 insurance to provide this indemnification if
11 requested to do so by the authority;
- 12 (G) The applicant shall make available to the board
13 all records the applicant may have relating to
14 the project, to allow the board to monitor the
15 applicant's compliance with the purpose of this
16 part; and
- 17 (H) The applicant, to the satisfaction of the board,
18 shall establish that sufficient funds are
19 available for the completion of the project for
20 the purpose for which the grant is awarded; and
- 21 (2) A venture capital program. The board shall adopt
22 rules pursuant to chapter 91 to provide conditions and



1 qualifications for venture capital investments in
2 eligible Hawaii projects. The program may include a
3 written agreement between the borrower and the board,
4 as the representative of the State, that as
5 consideration for the venture capital investment made
6 under this part, the borrower shall share any
7 royalties, licenses, titles, rights, or any other
8 monetary benefits that may accrue to the borrower
9 pursuant to terms and conditions established by the
10 board by rule pursuant to chapter 91. Venture capital
11 investments may be made on terms and conditions as the
12 board shall determine to be reasonable, appropriate,
13 and consistent with the purposes and objectives of
14 this part.

15 **§201B-D Consolidated film permit processing.** (a) The
16 authority shall consult with state and county agencies to
17 identify sites that can be used for making visually recorded
18 productions under terms and conditions as may be determined by
19 the state or county agency having jurisdiction over the sites.

20 (b) The authority may accept an application from any
21 person who proposes to make a motion picture, television show,
22 television commercial, or other visually recorded production at



1 one or more sites on state or county lands, whether or not set
2 aside under section 171-11.

3 (c) The applicant shall identify the sites to be covered
4 by the permit and provide other information as may be required
5 by the authority.

6 (d) The authority may approve and issue a permit to film
7 at any of the sites identified by the appropriate state or
8 county agency under subsection (a). If any site requested for
9 use by the applicant is not identified under subsection (a), the
10 authority shall consult with the appropriate state or county
11 agency having jurisdiction over the site to obtain a permit. If
12 the matter of a permit cannot be resolved in this manner, the
13 authority shall refer the application to the appropriate state
14 or county agency to obtain a permit.

15 (e) The authority is authorized to make changes to, and
16 extensions of, any approved permits so long as the changes and
17 extensions do not conflict with the policies, terms, and
18 conditions set forth by the agency having jurisdiction over the
19 site in question.

20 (f) The authority may establish memoranda of agreement or
21 adopt rules to implement the intent and purposes of this
22 section.



1 (g) Nothing in this section shall be construed as waiving
2 the authority of any county or the authority of transportation
3 of the State to require a person to obtain a permit from the
4 authority or county where the production takes place on or from
5 a public highway.

6 (h) A vessel engaged in temporary use for film production
7 purposes in accordance with a film permit issued by the
8 authority shall not be considered to be a "commercial vessel"
9 within the meaning of section 200-9, 200-10, or 200-39; provided
10 that:

11 (1) The period of temporary use does not exceed fourteen
12 hours per day, five days per week, excluding weekends,
13 and for a period not to exceed thirty calendar days;
14 and

15 (2) The authority may make allowances to include weekends
16 for film production purposes due to inclement weather
17 conditions during the weekday period.

18 **§201B-E Inspection of premises and records.** The board
19 shall have the right to inspect, at reasonable hours, the plant,
20 physical facilities, equipment, premises, books, and records of
21 any applicant in connection with the processing of a grant to
22 the applicant."



1 SECTION 3. Section 201-3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§201-3 Specific research and promotional functions of the
4 department. Without prejudice to its general functions and
5 duties, the department of business, economic development, and
6 tourism shall have specific functions in the following areas:

- 7 (1) Industrial development. The department shall:
- 8 (A) Determine through technical and economic surveys
9 the profit potential of new or expanded
10 industrial undertakings;
 - 11 (B) Develop through research projects and other means
12 new and improved industrial products and
13 processes;
 - 14 (C) Promote studies and surveys to determine consumer
15 preference as to design and quality and to
16 determine the best methods of packaging,
17 transporting, and marketing the State's
18 industrial products;
 - 19 (D) Disseminate information to assist the present
20 industries of the State, to attract new
21 industries to the State, and to encourage capital



1 investment in present and new industries in the
2 State;

3 (E) Assist associations of producers and distributors
4 of industrial products to introduce these
5 products to consumers; and

6 (F) Make grants or contracts as may be necessary or
7 advisable to accomplish the foregoing;

8 (2) Land development. The department shall:

9 (A) Encourage the most productive use of all land in
10 the State in accordance with a general plan
11 developed by the department;

12 (B) Encourage the improvement of land tenure
13 practices on leased private lands;

14 (C) Promote an informational program directed to
15 landowners, producers of agricultural and
16 industrial commodities, and the general public
17 regarding the most efficient and most productive
18 use of the lands in the State; and

19 (D) Make grants or contracts as may be necessary or
20 advisable to accomplish the foregoing;

21 (3) Credit development. The department shall:



- 1 (A) Conduct a continuing study of agricultural and
2 industrial credit needs;
- 3 (B) Encourage the development of additional private
4 and public credit sources for agricultural and
5 industrial enterprises;
- 6 (C) Promote an informational program to acquaint
7 financial institutions with agricultural and
8 industrial credit needs and the potential for
9 agricultural and industrial expansion, and inform
10 producers of agricultural and industrial products
11 as to the manner in which to qualify for loans;
12 and
- 13 (D) Make grants or contracts as may be necessary or
14 advisable to accomplish the foregoing;
- 15 (4) Promotion. The department shall:
- 16 (A) Disseminate information developed for or by the
17 department pertaining to economic development to
18 assist present industry in the State;
- 19 (B) Attract new industry and investments to the
20 State; and



1 (C) Assist new and emerging industry with good growth
2 potential or prospects in jobs, exports, and new
3 products.

4 The industrial and economic promotional activities of
5 the department may include the use of literature,
6 advertising, demonstrations, displays, market testing,
7 lectures, travel, motion picture and slide films, and
8 other promotional and publicity devices as may be
9 appropriate; and

10 (5) Self-sufficiency standard. The department shall
11 establish and update biennially a self-sufficiency
12 standard that shall incorporate existing methods of
13 calculation, and shall reflect, at a minimum, costs
14 relating to housing, food, child care, transportation,
15 health care, clothing and household expenses, federal
16 and state tax obligations, family size, children's
17 ages, geography, and the number of household wage
18 earners. The department shall report to the
19 legislature concerning the self-sufficiency standard
20 no later than twenty days prior to the convening of
21 the regular session of 2009, and every odd-numbered
22 year thereafter. The recommendations shall address,



1 among other things, the use of any federal funding
2 that may be available for the purposes of establishing
3 and updating the self-sufficiency standard.

4 ~~[The department shall be the central agency to coordinate~~
5 ~~film permit activities in the State.]"~~

6 SECTION 4. Section 235-17, Hawaii Revised Statutes, is
7 amended as follows:

8 1. By amending subsection (f) to read:

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]~~
12 Hawaii tourism authority during the development or preproduction
13 stage. Failure to comply with this provision may constitute a
14 waiver of the right to claim the credit."

15 2. By amending subsections (h) and (i) to read:

16 "(h) Every taxpayer claiming a tax credit under this
17 section for a qualified production shall, no later than ninety
18 days following the end of each taxable year in which qualified
19 production costs were expended, submit a written, sworn
20 statement to the ~~[department of business, economic development,~~
21 ~~and tourism,]~~ Hawaii tourism authority, 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, if any, in the previous taxable year; and
- 6 (3) The number of total hires versus the number of local
7 hires by category (i.e., department) and by county.
- 8 (i) The [~~department of business, economic development, and~~
9 ~~tourism~~] Hawaii tourism authority shall:
- 10 (1) Maintain records of the names of the taxpayers and
11 qualified productions thereof claiming the tax credits
12 under subsection (a);
- 13 (2) Obtain and total the aggregate amounts of all
14 qualified production costs per qualified production
15 and per qualified production per taxable year; and
- 16 (3) Provide a letter to the director of taxation
17 specifying the amount of the tax credit per qualified
18 production for each taxable year that a tax credit is
19 claimed and the cumulative amount of the tax credit
20 for all years claimed.

21 Upon each determination required under this subsection, the
22 [~~department of business, economic development, and tourism~~]



1 Hawaii tourism authority shall issue a letter to the taxpayer,
2 regarding the qualified production, specifying the qualified
3 production costs and the tax credit amount qualified for in each
4 taxable year a tax credit is claimed. The taxpayer for each
5 qualified production shall file the letter with the taxpayer's
6 tax return for the qualified production to the department of
7 taxation. Notwithstanding the authority of the [~~department of~~
8 ~~business, economic development, and tourism~~] Hawaii tourism
9 authority under this section, the director of taxation may audit
10 and adjust the tax credit amount to conform to the information
11 filed by the taxpayer."

12 3. By amending definition of "qualified production costs"
13 to read:

14 "Qualified production costs" means the costs incurred by a
15 qualified production within the State that are subject to the
16 general excise tax under chapter 237 or income tax under this
17 chapter and that have not been financed by any investments for
18 which a credit was or will be claimed pursuant to section
19 235-110.9. Qualified production costs include but are not
20 limited to:

21 (1) Costs incurred during preproduction such as location
22 scouting and related services;



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



1 SECTION 5. Section 201-14, Hawaii Revised Statutes, is
2 repealed.

3 ~~["§201-14 Consolidated film permit processing. (a) The~~
4 ~~department shall consult with state and county agencies in order~~
5 ~~to identify sites that can be used for making visually recorded~~
6 ~~productions under terms and conditions as may be determined by~~
7 ~~the state or county agency having jurisdiction over the sites.~~

8 ~~(b) The department may accept an application from any~~
9 ~~person who proposes to make a motion picture, television show,~~
10 ~~television commercial, or other visually recorded production at~~
11 ~~one or more sites on state or county lands, whether or not set~~
12 ~~aside under section 171-11.~~

13 ~~(c) The applicant shall identify the sites to be covered~~
14 ~~by the permit and provide other information as may be required~~
15 ~~by the department.~~

16 ~~(d) The department may approve and issue a permit to film~~
17 ~~at any of the sites identified by the appropriate state or~~
18 ~~county agency under subsection (a). If any site requested for~~
19 ~~use by the applicant is not identified under subsection (a), the~~
20 ~~department shall consult with the appropriate state or county~~
21 ~~agency having jurisdiction over the site to obtain a permit. If~~
22 ~~the matter of a permit cannot be resolved in this manner, the~~



1 ~~department shall refer the application to the appropriate state~~
2 ~~or county agency to obtain a permit.~~

3 ~~(e) The department is authorized to make changes to, and~~
4 ~~extensions of, any approved permits so long as the changes and~~
5 ~~extensions do not conflict with the policies, terms, and~~
6 ~~conditions set forth by the agency having jurisdiction over the~~
7 ~~site in question.~~

8 ~~(f) The department may establish memoranda of agreement or~~
9 ~~adopt rules to implement the intent and purposes of this~~
10 ~~section.~~

11 ~~(g) Nothing in this section shall be construed as waiving~~
12 ~~the authority of any county or the department of transportation~~
13 ~~of the State to require a person to obtain a permit from the~~
14 ~~department or county where the production takes place on or from~~
15 ~~a public highway.~~

16 ~~(h) A vessel engaged in temporary use for film production~~
17 ~~purposes in accordance with a film permit issued by the~~
18 ~~department shall not be considered to be a "commercial vessel"~~
19 ~~within the meaning of section 200-9, 200-10, or 200-39; provided~~
20 ~~that:~~

21 ~~(1) The period of temporary use does not exceed fourteen~~
22 ~~hours per day, five days per week, excluding weekends,~~



1 ~~and for a period not to exceed thirty calendar days,~~
2 ~~and~~

3 ~~(2) The department may make allowances to include weekends~~
4 ~~for film production purposes due to inclement weather~~
5 ~~conditions during the weekday period."]~~

6 SECTION 6. Part IX of chapter 201, Hawaii Revised
7 Statutes, is repealed.

8 SECTION 7. All rights, powers, functions, and duties
9 related to Hawaii television and film development are
10 transferred to the Hawaii tourism authority.

11 All officers and employees whose functions are transferred
12 by this Act shall be transferred with their functions and shall
13 continue to perform their regular duties upon their transfer,
14 subject to the state personnel laws and this Act.

15 No officer or employee of the State having tenure shall
16 suffer any loss of salary, seniority, prior service credit,
17 vacation, sick leave, or other employee benefit or privilege as
18 a consequence of this Act, and such officer or employee may be
19 transferred or appointed to a civil service position without the
20 necessity of examination; provided that the officer or employee
21 possesses the minimum qualifications for the position to which
22 transferred or appointed; and provided that subsequent changes



1 in status may be made pursuant to applicable civil service and
2 compensation laws.

3 An officer or employee of the State who does not have
4 tenure and who may be transferred or appointed to a civil
5 service position as a consequence of this Act shall become a
6 civil service employee without the loss of salary, seniority,
7 prior service credit, vacation, sick leave, or other employee
8 benefits or privileges and without the necessity of examination;
9 provided that such officer or employee possesses the minimum
10 qualifications for the position to which transferred or
11 appointed.

12 If an office or position held by an officer or employee
13 having tenure is abolished, the officer or employee shall not
14 thereby be separated from public employment, but shall remain in
15 the employment of the State with the same pay and classification
16 and shall be transferred to some other office or position for
17 which the officer or employee is eligible under the personnel
18 laws of the State as determined by the head of the department or
19 the governor.

20 SECTION 8. All appropriations, records, equipment,
21 machines, files, supplies, contracts, books, papers, documents,
22 maps, and other personal property heretofore made, used,



1 acquired, or held by the department of business, economic
2 development, and tourism relating to the functions transferred
3 to the Hawaii tourism authority shall be transferred with the
4 functions to which they relate.

5 SECTION 9. This Act shall not affect the membership or
6 term of any appointed member of a board or other policy-making
7 or advisory body transferred by this Act. Such a member shall
8 continue to serve on the board or other body for the member's
9 term without necessity of reappointment.

10 SECTION 10. This Act does not affect rights and duties
11 that matured, penalties that were incurred, and proceedings that
12 were begun before its effective date.

13 SECTION 11. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 12. This Act shall take effect on July 1, 2010.

16

INTRODUCED BY:

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SB. NO. 2624

W. J. J.

Report Title:

Hawaii Television and Film Development; Hawaii Tourism Authority

Description:

Transfers the television and film industry activities and responsibilities under the department of business, economic development, and tourism to the Hawaii tourism authority.

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

