HOUSE OF REPRESENTATIVES TWENTY-SIXTH LEGISLATURE, 2011 STATE OF HAWAII H.B. NO. ¹³⁰⁸ H.D. ²

1

A BILL FOR AN ACT

RELATING TO DIGITAL MEDIA.

1

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

PART I

SECTION 1. The purpose of this Act is to leverage the unique opportunities for digital media industry development in Hawaii resulting from the groundbreaking of the long-awaited University of Hawaii-West Oahu campus in Kapolei and recent high-profile film projects in Hawaii, including the "Pirates of the Caribbean" in 2010.

8 The University of Hawaii-West Oahu campus will house the 9 academy for creative media's student digital media production 10 facility that will provide global-standard student facilities to 11 anchor the premiere media school of the Pacific Rim. The 12 facility will also include a state-of-the-art motion picture and 13 digital media studio complex to serve film and video production 14 with four sound stages, two production support buildings, a 15 mill/shop extension and extra stage, commissary/kitchen, 16 festival pavilion and screening room to host events and 17 conferences, back-lot retail/shopping/dining area and office 18 buildings that may provide incubator space for new media HB1308 HD2 HMS 2011-2792

companies. The University of Hawaii-West Oahu Campus will also
 house the Henry Ku'ualoha Giugni Digital Archives, which is
 designed to preserve, digitize, and provide the moving image
 history of Hawaii on the Internet.

5 The digital media tax incentive in this Act is designed to 6 align the strengths of the University of Hawaii system and its 7 multiple campuses with the creativity of University of Hawaii 8 academy for creative media graduates and the talented media 9 workforce from leeward Oahu emerging from the Waianae Seariders' 10 program since 1998, or from the schools and businesses that the 11 Seariders have helped to incubate. By requiring that 12 beneficiaries of the digital media infrastructure tax credit 13 locate in enterprise zones in which some of the University of 14 Hawaii campuses are located, the tax credit targets new media 15 industry development, educational public-private facility and 16 infrastructure development, and job creation with a focus on 17 measurable economic benefits over time.

18 The current and proposed University of Hawaii-West Oahu 19 campuses are located in an existing enterprise zone covering 20 most of the Kapolei region. Leeward community college and 21 Honolulu community college are also located within existing 22 enterprise zones. Neighbor island community college campuses on HB1308 HD2 HMS 2011-2792 HB1308 HD2 HMS 2011-2792

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1	Maui, Kauai, and Hawaii are in enterprise zones, as is the
2	University of Hawaii at Hilo.
3	PART II
4	SECTION 2. Chapter 209E, Hawaii Revised Statutes, is
5	amended by adding a new part to be appropriately designated and
6	to read as follows:
7	"PART . DIGITAL MEDIA ENTERPRISE SUBZONES
8	§209E-A Definitions. As used in this part:
9	"Base investment" means the cost, including fabrication and
10	installation, paid or accrued in the taxable year, of tangible
11	assets of a type that are, or under the Internal Revenue Code
12	will become, eligible for depreciation, amortization, or
13	accelerated capital cost recovery for federal income tax
14	purposes; provided that the assets are physically located in
15	this State for use in a business activity in this State and are
16	not mobile tangible assets expended by a person in the
17	development of a qualified digital media infrastructure project.
18	Base investment does not include a direct production expenditure
19	or qualified personnel expenditure eligible for a tax credit
20	under section 235-17.
21	"Department" means the department of business economic

21 "Department" means the department of business, economic22 development, and tourism.



1 "Digital media" has the same meaning as in section 235-17. "Digital media enterprise subzone" means the geographic 2 3 area located within a mile radius of a University of 4 Hawaii campus, on or off campus, that is within an existing 5 enterprise zone established pursuant to part II of this chapter 6 or other delineated geographic area designated by the 7 legislature pursuant to this part; provided that from July 1, 8 2011, to June 30, 2013, establishment of a subzone shall be 9 limited to an area within a mile radius, on or off 10 campus, of the University of Hawaii-West Oahu.

11 "Director" means the director of business, economic12 development, and tourism.

13 "Qualified digital media infrastructure project" means the 14 development, construction, renovation, or operation of a digital media production facility, a postproduction facility, or both, 15 that is located in this State within a digital media enterprise 16 17 subzone; provided that the facility may include a movie theater 18 or other commercial exhibition facility to assist in offsetting 19 operating costs of the production or postproduction facility, but shall not include a facility used to produce pornographic 20 21 matter or a pornographic performance.

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1 §209E-B Digital media infrastructure tax credit. (a) 2 There shall be allowed to each taxpayer qualifying for a tax 3 credit under this part and subject to the taxes imposed under 4 chapter 235, a digital media infrastructure tax credit that 5 shall be deductible from the taxpayer's net state income tax 6 liability for investment expenditures made by the taxpayer for 7 all qualified digital media infrastructure projects within a 8 digital media enterprise subzone. The tax credit shall be equal 9 per cent of the taxpayer's base investment. The tax to credit under this section shall be reduced by any credit claimed 10 11 by the taxpayer under chapter 235 for the same base investment. in total tax credits under 12 No more than \$ (b) 13 this section shall be authorized in any one taxable year. If all or a portion of a qualified digital media 14 (C) 15 infrastructure project is a facility that may be used for 16 purposes unrelated to production or postproduction activities, the project shall be eligible for the tax credit only if the 17 18 department determines that the facility will support and be 19 necessary to secure production or postproduction activity; 20 provided that the taxpayer agrees to both of the following: 21 (1)The facility will be used as a state-of-the-art

production or postproduction facility or as support HB1308 HD2 HMS 2011-2792

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1		and as a component of the facility for the useful life
2		of the facility; and
3	(2)	The tax credit will not be claimed under this section
4		until the facility is complete.
5	(d)	A taxpayer shall be eligible for certification by the
6	departmen	t to qualify for a tax credit if the taxpayer:
7	(1)	Receives from the department a written certification
8		that the taxpayer has undertaken, or will undertake
9		within one hundred eighty days of the issuance of the
10		certification, the development, construction,
11		renovation, or operation of a qualified digital media
12		infrastructure project within a digital media
13		enterprise subzone; provided that, upon request
.14		submitted by the taxpayer based on good cause, the
15		department may extend the period for commencement of
16		work for up to an additional ninety days;
17	(2)	Before July 1, 2012, shall expend not less than
18		\$100,000 on the base investment for a qualified
19		digital media infrastructure project within a digital
20		media enterprise subzone, and the taxpayer, after July
21		1, 2012, shall expend not less than \$250,000 on the
22		base investment for a qualified digital media



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1		infrastructure project in a digital media enterprise
2		subzone;
3	(3)	Enters into an agreement as provided in this section;
4	(4)	Receives an investment expenditure certificate from
5		the department under subsection (i);
6	(5)	Submits the investment expenditure certificate issued
7		by the department under subsection (i) to the
8		department of taxation; and
9	(6)	Shall not be delinquent in a tax or other obligation
10		owed to the State or be owned or under common control
11		of an entity that is delinquent in a tax or other
12		obligation owed to the State.
13	(e)	To claim a tax credit under this section, a taxpayer
14	shall sub	mit an investment expenditure certificate issued under
15	subsection	n (i) to the department.
16	If th	he tax credit allowed under this section exceeds the
17	amount of	taxes owed by the taxpayer, that portion of the tax
18	'credit that	at exceeds the tax liability of the taxpayer for the
19	tax year :	shall not be refunded but may be carried forward to
20	offset net	t income tax liability under chapter 235 in subsequent
21	tax years	for a period not to exceed ten tax years or until
22	exhausted	, whichever occurs first.

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(f) The tax credit under this section shall be claimed 1 after all other tax credits available to the taxpayer have been 2 3 claimed. A taxpayer eligible to claim a tax credit under this 4 section may assign all or a portion of a tax credit under this section to any assignee. An assignee may subsequently assign a 5 tax credit or any portion of a tax credit assigned under this 6 7 subsection to one or more assignees. A taxpayer may claim a portion of a tax credit and assign the remaining tax credit 8 9 amount. A tax credit assignment under this subsection shall be 10 irrevocable. The tax credit assignment under this subsection shall be made on a form prescribed by the department of 11 taxation. A taxpayer claiming a tax credit under this section 12 13 shall submit a copy of the completed assignment form to the 14 department in the tax year in which the assignment is made and 15 shall attach a copy of the form to the tax return on which the 16 tax credit is claimed.

(g) To qualify for the tax credit established under this
section, the taxpayer shall submit an application to enter into
an agreement with the department. The application shall be
submitted in a form prescribed by the department and shall be
accompanied by a \$100 application fee and all of the information
and records requested by the department. The application fee
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1	received	by the department under this subsection shall be
2	deposited	. in the Hawaii film office special fund established
3	pursuant	to section 201-113. The department shall not process
4	an applic	ation until it is complete. The agreement shall
5	include:	
6	(1)	A unique number assigned to the qualified digital
7		media infrastructure project;
8	(2)	A detailed description of the qualified digital media
9		infrastructure project;
10	(3)	A detailed business plan and market analysis for the
11		qualified digital media infrastructure project;
12	(4)	A projected budget for the qualified digital media
13		infrastructure project;
14	(5)	An estimated start date and completion date for the
15		qualified digital media infrastructure project;
16	(6)	A requirement that the taxpayer not file a claim for
17		the credit under this section until at least twenty-
18		five per cent of the base investment in the qualified
19		digital media infrastructure project identified in the
20		agreement has been expended; and
21	(7)	A requirement that the taxpayer provide the department
22		with the information and independent certification the



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department deems necessary to verify investment 1 expenditures and eligibility for the credit under this 2 section. 3 In determining whether to enter into an agreement 4 (h) under this section, the department shall consider all of the 5 6 following: The potential that in the absence of the tax credit 7 (1) allowed under this section, the qualified digital 8 media infrastructure project will be constructed in a 9 location other than this State; 10 The extent to which the qualified digital media 11 (2) infrastructure project may have the effect of 12 promoting economic development or job creation in this 13 14 State; The extent to which the tax credit will attract 15 (3) private investment for the production of motion 16 pictures, videos, television programs, and digital 17 media in this State; and 18 The extent to which the tax credit will encourage the (4) 19 development of film, video, television, and digital 20 media production and postproduction facilities in this 21 22 State.

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1 (i) The taxpayer shall submit a request to the department 2 for an investment expenditure certificate on a form prescribed 3 by the department, along with any information or independent 4 certification the department deems necessary. The department 5 shall process each request within sixty days after the request 6 is complete. However, the department may request additional 7 information or independent certification before issuing an 8 investment expenditure certificate and need not issue the 9 investment expenditure certificate until satisfied that 10 investment expenditures and eligibility are adequately 11 established. The additional information requested may include a 12 report of expenditures audited and certified by an independent 13 certified public accountant. If the department determines that 14 a taxpayer has complied with the terms of an agreement entered 15 into under this section, the department shall issue an 16 investment expenditure certificate to the taxpayer. Each 17 investment expenditure certificate shall be signed by the 18 director and shall include the following information:

19

(1) The name of the taxpayer;

20 (2) A description of the qualified digital media
21 infrastructure project;

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1	(3)	The taxpayer's eligible base investment for the
2		qualified digital media infrastructure project;
3	(4)	The unique number assigned to the qualified digital
4		media infrastructure project by the department under
5		subsection (g)(1);
6	(5)	The taxpayer's federal employer identification number
7		or state taxpayer identification number; and
8	(6)	Any independent certification required by the
9		department.
10	(j)	In addition to the \$100 application fee established
11	under sub	section (g), the department may establish, assess, and
12	collect a	tax credit application and redemption fee to cover the
13	costs of a	administering the tax credit certification program
14	establish	ed under this part. The fee shall not exceed one-half
15	of one pe	r cent of the tax credit claimed, and shall be paid to
16	the depar	tment by the taxpayer prior to filing for the tax
17	credit.	The department shall deposit any proceeds derived from
18	the fee in	n the Hawaii film office special fund established under
19	section 20	01-113.

20

(k) If at the close of any taxable year:

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1 (1)The digital media infrastructure project no longer 2 qualifies for the tax credit established under this 3 section; 4 (2) The digital media infrastructure project or an 5 interest in the digital media infrastructure project 6 has been sold by the taxpayer making a base investment 7 in the qualified digital media infrastructure project; 8 or 9 (3) The taxpayer has withdrawn the taxpayer's base 10 investment wholly or partially from the qualified 11 digital media infrastructure project, 12 the tax credit claimed under this section shall be recaptured. 13 The recapture shall be equal to ninety per cent of the amount of 14 the total tax credit claimed under this section in the preceding 15 two taxable years. The amount of the tax credit recaptured 16 shall apply only to the investment in the particular digital 17 media infrastructure project that meets the requirements of 18 paragraph (1), (2), or (3). The amount of the recaptured tax 19 credit determined under this subsection shall be added to the 20 taxpayer's tax liability for the taxable year in which the 21 recapture occurs under this subsection.

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1 (1)Information, records, or other data received, 2 prepared, used, or retained by the department under this section 3 that are submitted by an eligible taxpayer and considered by the 4 taxpayer and acknowledged by the department as confidential 5 shall not be subject to public disclosure. Information, 6 records, or other data shall only be considered confidential to the extent that the information or records describe the 7 8 commercial and financial operations or intellectual property of 9 the taxpayer, the information or records have not been publicly 10 disseminated at any time, and disclosure of the information or 11 records may put the taxpayer at a competitive disadvantage.

(m) A taxpayer who wilfully submits information under this section that the taxpayer knows to be fraudulent or false, in addition to any other penalties provided by law, shall be liable for a civil penalty equal to the amount of the taxpayer's credit under this section. A penalty collected under this section shall be deposited in the Hawaii film office special fund established under section 201-113."

19 SECTION 3. Chapter 209E, Hawaii Revised Statutes, is
20 amended by designating sections 209E-1 through 209E-14 as
21 follows:

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1	"PART I. ENTERPRISE ZONES"
2	SECTION 4. Chapter 431, Hawaii Revised Statutes, is
3	amended by adding a new section to part II of article 7 to be
4	appropriately designated and to read as follows:
5	"§431:7- Digital media infrastructure tax credit. The
6	digital media tax infrastructure tax credit provided under
7	section 209E-B shall apply to this article on July 1, 2011."
8	PART III
9	SECTION 5. Section 201-111, Hawaii Revised Statutes, is
10	amended by amending the definitions of "board" and "fund" to
11	read as follows:
12	""Board" means the Hawaii [television and film development]
13	film office board.
14	"Fund" means the Hawaii [television-and film development]
15	film office special fund."
16	SECTION 6. Section 201-112, Hawaii Revised Statutes, is
17	amended by amending the title and subsection (a) to read as
18	follows:
19	"[[]§201-112[]] Hawaii [television and film development]
20	film office board. (a) There is established the Hawaii
21	[television and film development] film office board. The board
22	shall be attached to the department of business, economic
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1	developmen	t, and tourism for administrative purposes only. The
2	board shal	l administer the grant and venture capital investment
3	programs a	nd the Hawaii [television and film development] <u>film</u>
4	office spe	cial fund established under this part. The board
5	shall also	assess and consider the overall viability and
6	developmen	t of the television and film industries and make
7	recommenda	tions to appropriate state or county agencies."
8	SECTI	ON 7. Section 201-113, Hawaii Revised Statutes, is
9	amended to	read as follows:
10	" [+] S	201-113[]] Hawaii [television and film development]
11	film offic	e special fund. (a) There is established in the
12	state trea	sury the Hawaii [television and film development] <u>film</u>
12 13		sury the Hawaii [television and film development] <u>film</u> cial fund into which shall be deposited:
	office spe	
13	<u>office</u> spe (1)	cial fund into which shall be deposited:
13 14	<u>office</u> spe (1) <u>(2)</u>	cial fund into which shall be deposited: Appropriations by the legislature;
13 14 15	<u>office</u> spe (1) <u>(2)</u>	cial fund into which shall be deposited: Appropriations by the legislature; Rent from usage of the Hawaii film studio operated by
13 14 15 16	<u>office</u> spe (1) <u>(2)</u> <u>(3)</u>	cial fund into which shall be deposited: Appropriations by the legislature; Rent from usage of the Hawaii film studio operated by the film office branch;
13 14 15 16 17	<u>office</u> spe (1) <u>(2)</u> <u>(3)</u>	cial fund into which shall be deposited: Appropriations by the legislature; Rent from usage of the Hawaii film studio operated by the film office branch; Fees collected by the department for processing



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1	$\left[\frac{(2)}{(4)}\right]$ Donations and contributions made by private
2	individuals or organizations for deposit into the
3	fund; and
4	[(3)] (5) Grants provided by governmental agencies or any
5	other source[; and
6	(4) Any profits or other amounts received from venture
7	capital investments.
8	(b) The fund shall be used by the board to assist in, and
9	provide incentives for, the production of eligible Hawaii
10	projects that are in compliance with criteria and standards
11	established by the board in accordance with rules-adopted by the
12	board pursuant to chapter 91. In particular, the board shall
13	adopt-rules to provide for the implementation-of the following
14	programs:
15	(1) A grant program. The board shall adopt rules pursuant
16	to chapter 91 to provide conditions and qualifications
17	for grants. Applications for grants shall be made to
18	the board and shall contain such information as the
19	board shall require by rules adopted pursuant to
20	chapter 91. At a minimum, the applicant shall agree
21	to the following-conditions:

• •



1	(A)	The grant shall be used exclusively for eligible
2		Hawaii projects;
3	(B)	The applicant shall have applied for or received
4		all applicable licenses and permits;
5	(C)	The applicant shall comply with applicable
6		federal and state laws prohibiting discrimination
7		against any person on the basis of race, color,
8		national origin, religion, creed, sex, age, or
9		physical handicap;
10	(Ð)	The applicant shall comply with other
11		requirements as the board may prescribe;
12	(E)	All-activities undertaken with funds received
13		shall comply with all applicable federal, state,
14		and county statutes and ordinances;
15	(F)	The applicant shall indemnify and save harmless
16		the State of Hawaii and its officers, agents, and
17		employees from and against any and all claims
18		arising out of or resulting from activities
19		carried out or projects undertaken with funds
20		provided hereunder, and procure sufficient
21		insurance to provide this indemnification if
22		requested to do so by the department;



1		(G)	The applicant-shall-make-available-to-the board
2			all records the applicant may have relating to
3			the project, to allow the board to monitor the
4			applicant's compliance with the purpose of this
5			chapter; and
6		- (H) -	The applicant, to the satisfaction of the board,
7			shall establish that sufficient funds are
8			available for the completion of the project for
9			the purpose for which the grant is awarded; and
10	(2)	A ve	nture capital program. The board shall adopt
11		rule	s pursuant to chapter 91 to provide conditions and
12		qual	ifications for venture capital investments in
13		elig	ible Hawaii projects. The program may include a
14		writ	ten agreement between the borrower and the board,
15		as t	he representative of the State, that as
16		cons	ideration for the venture capital investment made
17		unde	r this part, the borrower shall share any
18		төуа	lties, licenses, titles, rights, or any other
19		mone	tary benefits that may accrue to the borrower
20		purs	uant to terms and conditions established by the
21		boar	d by-rule pursuant to chapter 91. Venture-capital
22		inve	stments may be made on-such terms and conditions



1	as the board shall determine to be reasonable,
2	appropriate, and consistent with the purposes and
3	objectives of this part].
4	(b) Moneys in the fund shall be used for the operations o
5	the Hawaii film office, including personnel costs of staff
6	positions existing on November 1, 2010; provided that the use o
7	the fund for personnel costs shall be limited to those employee
8	performing specialized duties who are assigned solely to the
9	Hawaii film office."
10	SECTION 8. Section 201-113, Hawaii Revised Statutes, is
11	amended to read as follows:
12	"§201-113 Hawaii film office special fund. (a) There is
13	established in the state treasury the Hawaii film office specia
14	fund into which shall be deposited:
15	(1) Appropriations by the legislature;
16	[(2) Rent from usage of the Hawaii film studio operated by
17	the film office branch;
18	(3) Fees collected by the department for processing
19	taxpayer letters pursuant to section 235-17 and the
20	tax credit certification program pursuant to section
21	209E B;



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1	(4)] (2) Donations and contributions made by private
2	individuals or organizations for deposit into the
3	fund; [and]
4	[(5)] (3) Grants provided by governmental agencies or any
5	other source[-]; and
6	(4) Any profits or other amounts received from venture
7	capital investments.
8	[(b) Moneys in the fund shall be used for the operations
9	of the Hawaii film office, including personnel costs of staff
10	positions existing on November 1, 2010; provided that the use of
11	the fund for personnel costs shall be limited to those employees
12	performing specialized duties who are assigned solely to the
13	Hawaii film office.]
14	(b) The fund shall be used by the board to assist in, and
15	provide incentives for, the production of eligible Hawaii
16 ·	projects that are in compliance with criteria and standards
17	established by the board in accordance with rules adopted by the
18	board pursuant to chapter 91. In particular, the board shall
19	adopt rules to provide for the implementation of the following
20	programs:
21	(1) A grant program. The board shall adopt rules pursuant



1	for	grants. Applications for grants shall be made to
2	the [board and shall contain information as the board
3	shal	l require by rules adopted pursuant to chapter 91.
4	<u>At a</u>	minimum, the applicant shall agree to the
5	foll	owing conditions:
6	<u>(A)</u>	The grant shall be used exclusively for eligible
7		Hawaii projects;
8	<u>(B)</u>	The applicant shall have applied for or received
9		all applicable licenses and permits;
10	<u>(C)</u>	The applicant shall comply with applicable
11		federal and state laws prohibiting discrimination
12		against any person on the basis of race, color,
13		national origin, religion, creed, sex, age, or
14		physical handicap;
15	(D)	The applicant shall comply with other
16		requirements as the board may prescribe;
17	(E)	All activities undertaken with funds received
18		shall comply with all applicable federal, state,
19		and county statutes and ordinances;
20	<u>(F)</u>	The applicant shall indemnify and save harmless
21		the State of Hawaii and its officers, agents, and
22		employees from and against any and all claims



1			arising out of or resulting from activities	
2			carried out or projects undertaken with funds	
3			provided hereunder, and procure sufficient	
4			insurance to provide this indemnification if	
5			requested to do so by the department;	
6		<u>(G)</u>	The applicant shall make available to the board	
7			all records the applicant may have relating to	
8			the project, to allow the board to monitor the	
9			applicant's compliance with the purpose of this	
10			chapter; and	
11		(H)	The applicant, to the satisfaction of the board,	
12			shall establish that sufficient funds are	
13			available for the completion of the project for	
14			the purpose for which the grant is awarded; and	
15	(2)	<u>A ve</u>	nture capital program. The board shall adopt	
16		<u>rule</u>	s pursuant to chapter 91 to provide conditions and	
17		qual	ifications for venture capital investments in	
18		<u>elig</u>	ible Hawaii projects. The program may include a	
19		<u>writ</u>	ten agreement between the borrower and the board,	
20		<u>as t</u>	he representative of the State, that as	
21		cons	ideration for the venture capital investment made	
22		unde	r this part, the borrower shall share any	
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1	royalties, licenses, titles, rights, or any other
2	monetary benefits that may accrue to the borrower
3	pursuant to terms and conditions established by the
4	board by rule pursuant to chapter 91. Venture capital
5	investments may be made on terms and conditions as the
6	board shall determine to be reasonable, appropriate,
7	and consistent with the purposes and objectives of
8	this part."
9	PART IV
10	SECTION 9. This Act does not affect rights and duties that
11	matured, penalties that were incurred, and proceedings that were
12	begun before its effective date.
13	SECTION 10. In codifying the new sections added by section
14	2 of this Act, the revisor of statutes shall substitute
15	appropriate section numbers for the letters used in designating
16	the new sections in this Act.
17	SECTION 11. Statutory material to be repealed is bracketed
18	and stricken. New statutory material is underscored.
19	SECTION 12. This Act shall take effect on July 1, 2112;
20	provided that:
21	(1) Sections 2, 3, and 4 shall be repealed on June 30,
22	2021;
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1	(2)	Section 7 shall be effective until June 30, 2021; and
2	(3)	Section 8 shall take effect on July 1, 2021.

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Report Title:

Digital Media Enterprise Subzones; Tax Incentives; Investments

Description:

Establishes digital media enterprise subzones as unspecified geographic areas surrounding University of Hawaii campuses that are also designated as enterprise zones. Establishes tax benefits for digital media infrastructure development and operation. Effective July 1, 2112. (HB1308 HD2)

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

