SB 318
SD 1

L E G I S L A T I V E

TAXBILLSERVICE

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SUBJECT: INCOME, Expand motion picture, digital media and film production credit

BILL NUMBER: SB 318, Proposed SD-2

INTRODUCED BY: Senate Committee on Ways and Means

BRIEF SUMMARY: Amends HRS section 235-17 to increase the motion picture, digital media, and film production tax credit from 15% to ___% for the costs incurred in a county with a population over 700,000 for qualified production costs incurred by a qualified production company and from ___% to 40% for costs incurred in a county with a population of 700,000 or less.

Allow taxpayers to claim a credit of ___% of the qualified special or visual effect and animation production costs incurred by a qualified production in the state, in addition to the motion picture income tax credit.

Allows taxpayers, between July1, 2011 and December 31, 2015, to claim a credit of ___% of the qualified costs incurred for qualified media infrastructure projects in any county with a population over 700,000; or ___% of the qualified costs incurred for qualified media infrastructure projects in any county with a population of 700,000 or less. To qualify for the credit: (1) the base investment for a qualified media infrastructure project shall be in excess of $________; (2) the qualified media infrastructure project tax credit shall be non-refundable with any tax credit that exceeds the tax liability of the taxpayer for the tax year carried forward to offset net income tax liability in subsequent tax years for up to 10 years or until exhausted, whichever occurs first. The director of taxation may require the tax credits to be taken or assigned in the tax period in which the credit is earned or may structure the tax credit in the initial certification of the project to provide that only a portion of the tax credit be taken over the course of two or more years; (3) the total qualified media infrastructure project tax credit allowed for any state-certified infrastructure project shall not exceed $___________; (4) if any portion of an infrastructure project is a facility that may be used for other purposes unrelated to production or post production activities, then the project shall be approved only if a determination is made that the multiple use facility will support and will be necessary to secure production or post production activity for the production and post production facility; provided that no tax credits shall be earned on such multiple use facilities until the production or post production facility is complete; (5) tax credits for infrastructure projects shall be earned only if: (a) construction of the infrastructure project begins within six months of the initial certification and shall be completed within a five-year time frame; (b) expenditures shall be certified by the director of taxation and credits shall not be earned until that certification; (c) the tax credits shall be deemed earned at the time the expenditures are made, provided that all requirements of this subsection have been met and the tax credits have been certified; (6) for state-certified infrastructure projects, the application for a qualified media infrastructure project tax credit shall include: (a) a detailed description of the infrastructure project; (b) a preliminary budget; (c) a complete detailed business plan and market analysis; (d) estimated start and completion dates; and (e) if the application is incomplete, additional information may be requested prior to further action by the director of taxation; (7) an application fee shall be submitted with the application for a qualified media infrastructure project tax

credit; (8) prior to any final certification of a tax credit for a state-certified infrastructure project, the applicant for the infrastructure project tax credit shall submit to the director of taxation an audit of the expenditures audited and certified by an independent certified public accountant as determined by rule. Upon approval of the audit, the director of taxation shall issue a final tax credit certification letter indicating the amount of tax credits certified for the state-certified infrastructure project to the investors. Bank loan finance fees applicable to the qualified media infrastructure project expenditures, as certified by the director of taxation, and any general excise taxes that have been paid on the bank loan finance fees and remitted to the state may be included as part of the tax credit.

There shall be a qualified local crew training program rebate equal to ___% of the hourly wages of each resident participant in a qualified local crew training program up to the first ______ hours physically worked by the qualifying crew member in a specialized craft position.

Deletes the $______ million limit of the total production tax credits that may be claimed under this section per qualified production and provides that the qualified media infrastructure project income tax credits shall be capped at $__________ in the aggregate.

Allows a taxpayer eligible to claim a tax credit under this section to assign all or a portion of a tax credit under this section to any assignee. A tax credit assignment under this section shall be irrevocable and shall be made on a form prescribed by the director of taxation. A taxpayer claiming a tax credit under this section shall send a copy of the completed assignment form to the department of taxation in the tax year in which the assignment is made and shall attach a copy of the form to the tax return on which the tax credit is claimed.

Adds definitions of "base investment," "director," "qualified local crew training programs," "qualified media infrastructure project"and "qualified special or visual effects and animation production" for purposes of the measure.

Amends the definition of "qualified production costs" to include: (1) rentals of any transient accommodations for cast and crew; (2) costs for equipment or items not readily obtainable in the state which are passed through a qualified resident vendor and upon which a mark-up and general excise tax are paid; (3) bank loan finance fees applicable to the qualified production expenditures as finally certified by the director of taxation to the extent that a general excise tax is paid and remitted to the state. For the purposes of this section, banks providing loans to qualified productions shall be considered service vendors that are providing services to a production company where the motion picture film product consists in part of the value of services provided and shall be subject to the one-half of one per cent tax rate under HRS section 237-18(c); and (4) other direct production costs specified by the department in consultation with the department of business, economic development, and tourism.

EFFECTIVE DATE: July 1, 2050; Tax years beginning after December 31, 2010

STAFF COMMENTS: The legislature by Act 107, SLH 1997, enacted an income tax credit of 4% for costs incurred as a result of producing a motion picture or television film in the state and 7.25% for transient accommodations rented in connection with such activity. The credit was adopted largely to address the impost of the state's general excise tax on goods and services used by film producers. The exclusion of income received from royalties was initially established by Act 178, SLH 1999, as an incentive to attract high technology businesses to Hawaii. The original proposal would have applied to

royalties and other income received from high technology businesses. This section of the law was later amended in 2000 by Act 297 which added the inclusion of royalties from "performing arts products" and again amended by Act 221, SLH 2001, to include authors of "performing arts products."

The legislature by Act 88, SLH 2006, increased the 4% credit to 15% in a county with a population over 700,000 and to 20% in a county with a population of 700,000 or less. Act 88 also repealed the income tax credit for transient accommodations and expanded the credit to include commercials and digital media productions, and limited the credit to $8 million per qualified production.

These credits have been morphing and expanding into full-blown tax credits since they "got their foot in the door" in 1997. This measure proposes to increase the motion picture, digital media, and film production tax credit from 15% to ___% in a county with a population of 700,000 or over and from 20% to 40% in a county with a population of under 700,000. While the initial 4% credit for production costs may have been justified as alleviating this additional cost for film producers because such imposts may not be levied in other jurisdictions, increasing the amount of the credit amounts to nothing more than a generous subsidy of these productions by the state. That being the case, then an appropriation of state funds would be more accountable and transparent than a wide-open, back door tax credit.

The proposed measure also expands the existing motion picture, digital media and film production income tax credits to special or visual effects and animation, and media infrastructure projects. As proposed in this measure there are new tax credits for: (1) ___% of the qualified special or visual effects and animation production costs; (2) qualified media infrastructure projects which may include rentals of any transient accommodations for cast and crew, certain equipment costs, bank loan finance fees attributable to a qualified production, and other direct production costs. This measure would also eliminate the $8 million cap of the tax credits which may be claimed by a qualified production.

It should be remembered that the perpetuation and expansion of the motion picture credits are a drain on the state treasury. It is incredulous how lawmakers can bemoan the fact that there are insufficient resources to catch up on the backlog of school repairs and maintenance, to fund social programs and not being able to provide tax relief to residents and yet they are willing to throw additional public resources at a subsidy of film production and media infrastructure as proposed in this measure. Taxpayers should be insulted that lawmakers can provide breaks for film productions but refuse to provide tax relief for residents, many of whom work two or three jobs just to keep a roof over their head and food on the table.

There is absolutely no rational basis for this proposal that the credit be increased and expanded to include media infrastructure projects, other than that other states are offering similar tax credits. Then again those states can't offer paradise, year-round good weather during which to film. Instead of utilizing back door subsidies through tax credits, film industry advocates need to promote the beauty that is synonymous with Hawaii.

Income tax credits are designed to reduce the tax burden by providing relief for taxes paid. Tax credits are justified on the basis that taxpayers with a lesser ability to pay should be granted relief for state taxes imposed. While the sponsors try to make an argument that Hawaii needs to enact such an incentive to compete for this type of business, one has to ask "at what price?" Promoters of the film industry obviously don't give much credit to Hawaii's natural beauty and more recently its relative security. Just ask the actors of "Lost" or "Hawaii 5-0" who have bought homes here if they would like to work elsewhere. While film producers may moan that they will lose money without the proposed tax credits,

is there any offer to share the wealth when a film makes millions of dollars? If promoters of the film industry would just do their job in outlining the advantages of doing this type of work in Hawaii and address some of the costly barriers by correcting them, such tax incentives would not be necessary. From permitting to skilled labor to facilitating transportation of equipment, there are ways that could reduce the cost of filming in Hawaii. Unless these intrinsic elements are addressed, movie makers will probably demand subsidies, such as this incentive. Unfortunately, they come at the expense of all taxpayers and industries struggling to survive in Hawaii. While lawmakers look like a ship of fools, movie producers and promoters are laughing all the way to the bank and the real losers in this scenario are the poor taxpayers who continue to struggle to make ends meet.

This, along with proposals from film producers, seems to have caught the eye and excitement of lawmakers. Certainly the promise of the land of milk and honey seems all too good to be true especially amidst the doom and gloom of a $900 million budget shortfall. However, the harsh reality is that on the other end taxpayers are looking at proposals to raise taxes, tax pensions, raise alcohol taxes, slap new taxes on sugary drinks and yet another round of fee and user charge increases. With the loss of millions of dollars in tax breaks and tax credits, how can local taxpayers buy into proposals like these, especially in light of the fact that lawmakers are unwilling to make cuts in other programs? Before lawmakers go off on the deep end entranced by all of these wonderful offers to bring the state to the land of milk and honey, they need to address the fiscal realities on the road before them. On top of this all, lawmakers have yet to address the unfunded liability of the state's retirement and health system.

So while there may be the promise of a new industry and increased career opportunities, lawmakers must return to the cold hard reality of solving the problems at hand. The long and short of it is that due in large part to the irresponsibility of handling state finances in the past, taxpayers cannot afford proposals like this. Thanks to the gushing generosity of those lawmakers who gave the state's bank away in all sorts of tax incentive schemes in recent years, taxpayers cannot afford what looks like a promising opportunity.

Robert Tannenwald, a senior fellow at the Center for Budget and Policy Priorities, drew the following conclusions in a report entitled "State Film Subsidies Offer 'Little Bang for the Buck'," published in State Tax Notes Magazine, December 13, 2010:

> "State film subsidies are a wasteful, ineffective, and unfair instrument of economic development. While they appear to be a "quick fix" that provides jobs and businesses to state residents with only a short lag, in reality they benefit mostly nonresidents, especially well-paid nonresident film and TV professionals. Some residents benefit from these subsidies, but most end up paying for them in the form of fewer services - such as education, healthcare and police and fire protection - or higher taxes elsewhere. The benefits to the few are highly visible; the costs to the majority are hidden because they are spread so widely and detached from the subsidies.
>
> State governments cannot afford to fritter away scarce public funds on film subsidies, or, for that matter, any other wasteful tax break. Instead, policymakers should broaden the base of their

taxes to create a fairer and more neutral tax system. Economic development funds should be targeted on programs that are much more likely to e effective in the long run, such as support of education and training, enhancement of public safety, and maintenance and improvement of public infrastructure. Effective public support of economic development may not be glamorous, but at its best, it creates lasting benefits for residents from all walks of life."

Digested 2/28/11

The Senate
The Twenty-Sixth Legislature
Committee on Ways and Means
March 1, 2011
9:20 a.m., Room 211

Statement of the Hawaii Carpenters Union on SB 318, Proposed SD2

The Hawaii Carpenters Union supports the concept of the proposed SD 2 of SB 318, Relating to Business Development in Hawaii.

The motion picture and related industries have shown that they can have a positive impact on Hawaii's economic activity and diversification, and subsequently, employment of our residents. Passage of the SD 2 of this Bill will allow for further consideration of types of industrial activities, amounts and maximums, administration, and budget requirements.

Our members are of course most directly affected by infrastructure development and construction, and incentives for this aspect of the industry, are vital to motion picture work here in Hawaii. It appears that this industry has the ability to pay area standard wages for construction.

Infrastructure in place, as well as the other resources that this Bill can establish, would produce more sustained motion picture activity in Hawaii, as opposed to pronounced peaks and valleys. This will in turn sustain a local work force and related training programs. Should all other aspects of the Bill be fully developed, we would urge an effective date that is as early as possible, rather than later.

Thank you for your consideration of our support for SB 318, Proposed SD 2.

Ryan Kavanaugh, CEO, Relativity Media LLC
Kenneth Halsband, President, Physical Production, Relativity Media LLC
Ramon Wilson, EVP, Business Development, Relativity Media LLC

Testimony presented before the Committee of Ways and Means

March 1, 2011, 9:30 am

SB 318 Relating to Business Development in Hawaii (Formerly SB 1550 Relating to Tax Credits)

Dear Chair Ige, Vice Chair Kidani, and Members of the Committee:

We submit this testimony in support of SB 318 (formerly, SB 1550) and are honored to have the opportunity to participate in improving the film tax incentive program in Hawaii.

Hawaii is a beautiful state, with a well trained local film crew and filming-friendly weather year round. As a result of these fundamental elements, Hawaii is poised to experience significant and sustainable growth in the amount of film-related production, infrastructure, job/career opportunities and economic activity, if it improves its film tax incentive program.

Currently, most films come to Hawaii for its natural beauty, unique exteriors and film-friendly weather year round as it also has among the highest film union labor rates in the country, high cost to travel crew and ship equipment, and limited local infrastructure. If Hawaii was to improve its film tax incentive program, based on the proposed amendments, it would mitigate these factors and attract both major Hollywood and independent film/television productions, which currently do not film in Hawaii, thereby creating a lasting surge of film production and related economic activity.

As Hawaii has very limited production space, it needs additional film stages in order to support the growth of its film industry. Relativity, with the support of Steve Bing's Shangri-La Industries and JP Morgan, is prepared to build 180,000 square feet, state-of-the-art, first-class production facilities, on Oahu, Maui and potentially other neighbor islands, budgeted at $300-500 million with the capacity to house multiple film/television productions simultaneously. These facilities will be built "green" and to qualify as two of very few LEED Platinum Certified (the highest environmentally friendly rating awarded) buildings in Hawaii. The proposed amendment makes building these facilities financially viable and will drive economic development associated with major construction projects. It will also drastically increase the economic activity associated with film production generally as more production dollars will be spent in Hawaii.

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RELATIVITY

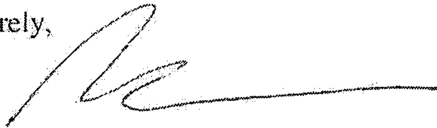
Hawaii has a thriving group of local film makers, film production crew and businesses that benefit from the limited number of films currently shot in Hawaii. An improved film tax incentive program, coupled with a formal local film crew training program, would drive growth of this film community and further development of the local film industry. This would give more local residents the opportunity to work in the high-paying film-related jobs. Over time, a majority of the jobs on each film production, including department heads, would be filled by State residents as opposed to out-of-state workers. And the training program, as proposed, would not cost the state a penny, but rather generate a surplus.

SB 318 (formerly, SB 1550) will set the stage to allow Hawaii's film industry to flourish, in a controlled way, and turn Hawaii into a major film production center leading to thousands of high-paying local jobs and major growth in local economic activity.

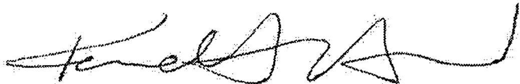
We have done extensive research and analysis on how to make the film tax incentive financially competitive with other production centers in the United States of America and around the world. This analysis shows how the proposed amendments achieve this in a manner that is economically advantageous to Hawaii. We look forward to working with the State Legislature, the Department of Business, Economic Development and Tourism, the Department of Taxation and the local film community to increase film/television production, build stages and related infrastructure and create new job and career opportunities for state residents.

We thank the Committee for the opportunity to present testimony on this matter.

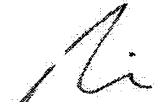
Sincerely,



Ryan Kavanaugh, CEO, Relativity Media LLC



Kenneth Halsband, President, Physical Production, Relativity Media LLC



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From: Mason, John [jmason@co.hawaii.hi.us]
Sent: Monday, February 28, 2011 4:12 PM
To: WAM Testimony
Subject: SB 318 SD1 proposed SD2

To Committee on Ways and Means Chairs Ige, Kidani, and Committee Members:

SB 318 SD2 looks attractive on the surface, but I would urge the Committee to dig below the surface to examine some of the underlying assumptions of this bill. Section 1 talks glowingly about how large tax incentives to film producers act as an incentive to lure a steady stream of production into an area, and spending by high end production is good for a local economy because of hiring, skills development, and trickle down multiplier effects.

The authors and supporters of this bill will point to evidence to confirm these assumptions, but it is also true that the tax implications for specific locales really need to be fine tuned by tax professionals, and it is also true that some jurisdictions across the country are or have reconsidered or have modified their incentive programs for not delivering all that was claimed or because of tax burdens to citizens.

Additional rebates for local crew and technical training programs also sound like a great idea, but more needs to be clarified in this area as well. Just to hire someone locally does not necessarily mean that they are participating in a well thought-out and credible training program that meets industry standards.

There is more that could be addressed, but the main point I would leave you with is to urge a very careful analysis of this bill's claims. We all want a strong, vibrant, and world class media industry in Hawaii. There's a lot of sizzle in this steak—let's make sure at the end of the day it's more steak than sizzle.

Thanks you,

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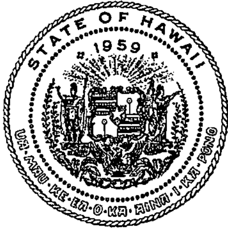

LATE

NEIL ABERCROMBIE
GOVERNOR

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STATEMENT OF

RICHARD C. LIM
Interim Director

Department Of Business, Economic Development, and Tourism

before the

SENATE COMMITTEE ON WAYS AND MEANS

Tuesday, March 1, 2011
9:20 a.m.
State Capitol, Conference Room 211

in consideration of

SB 318 proposed SD2
RELATING TO BUSINESS DEVELOPMENT IN HAWAII

Chair Ige, Vice Chair Kidani and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) supports the intent of SB318 proposed SD2, however we do have concerns about any major increases to the existing HRS 235-17 (Act 88) Motion Picture, Television and Digital Media refundable tax credits of 15-20% until all fiscal impacts and economic benefits are fully analyzed. We defer to the Department of Taxation on the overall fiscal impacts of this measure.

In the current version of the measure, we note that the percentages have been left blank to encourage further discussion and look forward to the dialogue with the legislature and industry. The department agrees improving Hawaii's infrastructure and workforce development programs for the film and creative sectors is a priority.

In 2010, an estimated $416 million in production expenditures were generated in film and television ; $395 million through Act 88 and $21 million in non-Act 88 related production activity, providing over $683 million in estimated economic impact for our state. This credit remains crucial to Hawaii's competitive advantage in the global entertainment industry.

We agree that the interest and commitment of companies like Relativity Media, RelativityREAL, Shangri-La , Hawaii Animation Studios, Avatar Reality, Blue Water Multimedia, Prox13, Lucent Film Academy and our local production community are helping to define Hawaii as a vibrant hub of creative industry development. Coupled with the creative talent of Hawaii's visual storytellers and our educational programs in creative media, the state has an unprecedented opportunity to build a sustainable sector through a broad spectrum of strategic partnerships for scalable industry growth.

The ideas and programs proposed in SB318 proposed SD2 contribute to establishing Hawaii as a major production center, in addition to other measures this session that enhance support for digital media education, expanded training programs and facilities development.

DBEDT and its Creative Industries Division is committed to further collaboration with lawmakers, the administration and industry leaders to find the appropriate balance between incentivizing industry, the overall economic benefits while being mindful of the potential fiscal impacts to the state.

Thank you for the opportunity to testify on this measure.