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# A BILL FOR AN ACT

RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

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

1           SECTION 1. The legislature finds that the film industry in  
2 Hawaii is an important component of a diversified economy and  
3 that its financial impact can be strengthened significantly if  
4 existing incentives for the industry are enhanced.

5           The legislature further finds that it is necessary to  
6 enhance the incentives that might lower film industry production  
7 costs in order to allow Hawaii to compete with other film  
8 production centers in attracting a greater number of significant  
9 projects to the islands and to continue to build the local film  
10 industry infrastructure.

11           The purpose of this Act is to encourage business  
12 development in Hawaii through the growth of the film industry by  
13 providing incentives that attract media infrastructure projects  
14 in order to facilitate more film and television productions in  
15 Hawaii.

16           SECTION 2. Chapter 201, Hawaii Revised Statutes, is  
17 amended by adding a new section to be appropriately designated  
18 and to read as follows:

1        "§201-    Qualified media infrastructure projects; revenue  
2 bonds; special fund. (a) The director may issue revenue bonds  
3 in amounts not more than \$25,000,000 to assist individuals with  
4 qualified media infrastructure projects.

5        (b) The revenue bonds, including refunding revenue bonds,  
6 shall not constitute indebtedness within the meaning of any  
7 constitutional or statutory provision limiting the incurring of  
8 indebtedness.

9        (c) Revenue bonds, including refunding revenue bonds,  
10 issued under this section and the income derived therefrom shall  
11 be exempt from all state, county, and municipal taxation.

12       (d) Proceeds received from the issuance of any revenue  
13 bonds shall be deposited into the qualified media infrastructure  
14 projects special fund established under subsection (e).

15       (e) There shall be created in the state treasury the  
16 qualified media infrastructure projects special fund, which  
17 shall be administered by the director. Funds shall consist of  
18 the proceeds from revenue bonds issued under subsection (a),  
19 legislative appropriations, donations, and any interest thereon.  
20 The funds shall be used to provide financial assistance, in the  
21 form of loans, grants, or other form of financial assistance, as  
22 determined by the director, for qualified media infrastructure

1 projects; provided that no financial assistance shall be  
2 disbursed prior to July 1, 2015.

3 (f) Applications for financial assistance for a qualified  
4 media infrastructure project shall include:

5 (1) A detailed description of the qualified media  
6 infrastructure project;

7 (2) A preliminary budget;

8 (3) A complete detailed business plan and market analysis;

9 (4) The estimated start and completion dates; and

10 (5) If the application is deemed incomplete by the  
11 director, any additional information as may be  
12 requested by the director prior to the taking of any  
13 further action by the director.

14 (g) In order to receive financial assistance from the  
15 proceeds of bonds issued under this section, the applicant shall  
16 provide matching funds of one dollar for every dollar received  
17 if the applicant's funds are comprised of entirely  
18 nongovernmental sources of funds, including EB-5 investments;  
19 provided that the applicant shall provide matching funds of  
20 twenty cents for every dollar received if the applicant's funds  
21 are comprised in part of funds derived from a county or other  
22 governmental entity.

1       (h) No applicant shall receive financial assistance under  
2 this section unless the applicant agrees to submit to a  
3 financial and management audit conducted by the state auditor  
4 upon the completion of the qualified media infrastructure  
5 project.

6       (i) The director shall adopt rules to implement this  
7 section.

8       (j) For the purposes of this section, a "qualified media  
9 infrastructure project" means the development, construction,  
10 renovation, or operation of a film, video, television, or media  
11 production or post-production facility and the immovable  
12 property and equipment related thereto, or any other facility  
13 that supports and is a necessary component of the proposed  
14 infrastructure project that is located in the State; provided  
15 that the facility may include a movie theater or other  
16 commercial exhibition facility to assist in offsetting operating  
17 costs of the production or post-production facility, but shall  
18 not include a facility used to produce pornographic matter or a  
19 pornographic performance."

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

1           **"§235-17 Motion picture, digital media, and film**  
2 **production income tax credit.** (a) Any law to the contrary  
3 notwithstanding, there shall be allowed to each taxpayer subject  
4 to the taxes imposed by this chapter, an income tax credit which  
5 shall be deductible from the taxpayer's net income tax  
6 liability, if any, imposed by this chapter for the taxable year  
7 in which the credit is properly claimed.

8           The amount of the credit shall be~~[+]~~ the sum of all of the  
9 applicable of the following:

10           (1) [~~Fifteen~~] \_\_\_\_\_ per cent of the qualified production  
11 costs, other than wages and salaries of cast, crew,  
12 and musicians, incurred by a qualified production in  
13 any county of the State with a population of over  
14 seven hundred thousand; [~~or~~]

15           (2) Twenty per cent of the qualified production costs,  
16 other than wages and salaries of cast, crew, and  
17 musicians, incurred by a qualified production in any  
18 county of the State with a population of seven hundred  
19 thousand or less~~[+]~~;

20           (3) \_\_\_\_\_ per cent of the wages and salaries of all  
21 cast, crew, and musicians that are included in the  
22 qualified production costs incurred by a qualified

1           production in any county of the State with a  
2           population of over seven hundred thousand;  
3       (4)             per cent of the wages and salaries of all  
4           cast, crew, and musicians that are included in the  
5           qualified production costs incurred by a qualified  
6           production in any county of the State with a  
7           population of seven hundred thousand or less; and  
8       (5)             per cent of the wages and salaries of cast,  
9           crew, and musicians included in the qualified  
10          production costs incurred by a qualified production in  
11          the State who are residents of the State.

12 A qualified production occurring in more than one county may  
13 prorate its expenditures based upon the amounts spent in each  
14 county[7] if the population bases differ enough to change the  
15 percentage of tax credit.

16       In the case of a partnership, S corporation, estate, or  
17 trust, the tax credit allowable is for qualified production  
18 costs incurred by the entity for the taxable year. The cost  
19 upon which the tax credit is computed shall be determined at the  
20 entity level. Distribution and share of credit shall be  
21 determined by rule.

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

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

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

13           (c) If the tax credit under this section exceeds the  
14 taxpayer's income tax liability, the excess of credits over  
15 liability shall be refunded to the taxpayer; provided that no  
16 refunds or payment on account of the tax credits allowed by this  
17 section shall be made for amounts less than \$1. All claims,  
18 including any amended claims, for tax credits under this section  
19 shall be filed on or before the end of the twelfth month  
20 following the close of the taxable year for which the credit may  
21 be claimed. Failure to comply with the foregoing provision  
22 shall constitute a waiver of the right to claim the credit.

- 1 (d) To qualify for this tax credit, a production shall:
- 2 (1) Meet the definition of a qualified production
- 3 specified in subsection [~~(l)~~] (m);
- 4 (2) Have qualified production costs totaling at least
- 5 \$200,000;
- 6 (3) Provide the State, at a minimum, a shared-card, end-
- 7 title screen credit, where applicable;
- 8 (4) Provide evidence of reasonable efforts to hire local
- 9 talent and crew; and
- 10 (5) Provide evidence of financial or in-kind contributions
- 11 or educational or workforce development efforts, in
- 12 partnership with related local industry labor
- 13 organizations, educational institutions, or both,
- 14 toward the furtherance of the local film and
- 15 television and digital media industries.
- 16 (e) On or after July 1, 2006, no qualified production cost
- 17 that has been financed by investments for which a credit was
- 18 claimed by any taxpayer pursuant to section 235-110.9 is
- 19 eligible for credits under this section.
- 20 (f) To receive the tax credit, the taxpayer shall first
- 21 prequalify the production for the credit by registering with the
- 22 department of business, economic development, and tourism during

1 the development or preproduction stage. To prequalify for the  
2 credit amount under subsections (a) (3) and (a) (4), the taxpayer  
3 shall submit a written pledge of the intent to comply with the  
4 requirement to receive that credit amount. Failure to comply  
5 with this [~~provision~~] subsection may constitute a waiver of the  
6 right to claim the credit.

7 (g) The director of taxation shall prepare forms as may be  
8 necessary to claim a credit under this section. The director  
9 may also require the taxpayer to furnish information to  
10 ascertain the validity of the claim for credit made under this  
11 section and may adopt rules necessary to effectuate the purposes  
12 of this section pursuant to chapter 91.

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

19 (1) All qualified production costs as provided by  
20 subsection (a), if any, incurred in the previous  
21 taxable year;

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

19           Upon each determination required under this subsection, the  
20           department of business, economic development, and tourism shall  
21           issue a letter to the taxpayer, regarding the qualified  
22           production, specifying the qualified production costs and the

1 tax credit amount qualified for in each taxable year a tax  
2 credit is claimed. The taxpayer for each qualified production  
3 shall file the letter with the taxpayer's tax return for the  
4 qualified production to the department of taxation.

5 Notwithstanding the authority of the department of business,  
6 economic development, and tourism under this section, the  
7 director of taxation may audit and adjust the tax credit amount  
8 to conform to the information filed by the taxpayer.

9 (j) The department of business, economic development, and  
10 tourism shall submit a report to the governor and legislature no  
11 later than twenty days prior to the convening of the regular  
12 sessions of 2015, 2020, and 2025, on the economic impact of the  
13 tax credit offered pursuant to this section. The reports shall  
14 include an estimate of the following for each year since 2012 or  
15 the last year covered by the preceding report, as applicable:

16 (1) Capital from out-of-state sources expended in the  
17 State on qualified production costs;

18 (2) Total expenditures for qualified production costs in  
19 the State;

20 (3) Total full-time equivalent jobs created by qualified  
21 productions in the State;

1        (4) Number of those full-time equivalent jobs filled by  
2                residents of the State;

3        (5) Total wages and salaries paid in the State for  
4                qualified productions;

5        (6) Amount of the total wages and salaries paid in the  
6                State to residents of the State for qualified  
7                productions; and

8        (7) Any contributions resulting from qualified productions  
9                that the department of business, economic development,  
10               and tourism deems necessary, including donations to  
11               improve the education and communities of the State.

12 The report shall also include any other information that the  
13 department of business, economic development, and tourism deems  
14 necessary.

15        [~~(j)~~] (k) Total tax credits claimed per qualified production  
16 shall not exceed [~~\$8,000,000.~~] \$\_\_\_\_\_.

17        [~~(k)~~] (l) Qualified productions shall comply with  
18 subsections (d), (e), (f), and (h).

19        [~~(l)~~] (m) For the purposes of this section:

20        "Animation" means animation or special and visual effects  
21 created primarily with digital technologies for designing,  
22 modeling, rendering, lighting, painting, animating, motion

1 capture, and compositing for qualified productions, but does not  
2 include:

3 (1) Audio effects;

4 (2) In-camera effects;

5 (3) Credit rolls;

6 (4) Subtitles; or

7 (5) Animation or special and visual effects for use in  
8 promotional material for a production eligible for the  
9 tax credit established under this section.

10 "Commercial":

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

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

17 (3) Does not include an advertising message with  
18 [~~Internet-only~~] internet-only distribution.

19 "Digital media" means production methods and platforms  
20 directly related to the creation of cinematic imagery and  
21 content, specifically using digital means, including but not  
22 limited to digital cameras, digital sound equipment, and

1 computers, to be delivered via film, the Internet, videotape,  
2 interactive game platform, or other digital distribution media  
3 [~~(excluding Internet-only distribution)~~].

4 "Post production" means production activities and services  
5 conducted after principal photography is completed, including  
6 but not limited to editing, film and video transfers,  
7 duplication, transcoding, dubbing, subtitling, credits, closed  
8 captioning, audio production, [~~special effects (visual and~~  
9 ~~sound),~~] sound effects, graphics, and animation[~~-~~] or special  
10 and visual effects.

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

21 "Qualified production":

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

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

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

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

- 1 (7) Rentals of vehicles and lodging for cast and crew;
- 2 (8) Airfare for flights to or from Hawaii, and interisland
- 3 flights;
- 4 (9) Insurance and bonding;
- 5 (10) Shipping of equipment and supplies to or from Hawaii,
- 6 and interisland shipments; and
- 7 (11) Other direct production costs specified by the
- 8 department in consultation with the department of
- 9 business, economic development, and tourism.

10 "Resident of the State" means a "resident" as defined in  
11 section 103B-1 who has filed tax returns in the State for the  
12 previous five sequential taxable years."

13 SECTION 4. Act 88, Session Laws of Hawaii 2006, is amended  
14 by amending section 4 to 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, [~~2016,~~] 2025; and
- 20 (2) This Act shall be repealed on January 1, [~~2016,~~] 2025,
- 21 and section 235-17, Hawaii Revised Statutes, shall be
- 22 reenacted in the form in which it read on the day

1                   before the effective date of this Act. SECTION 5.

2   Statutory material to be repealed is bracketed and stricken.

3   New statutory material is underscored.

4                   SECTION 6. This Act shall take effect on July 1, 2030, and

5   shall apply to taxable years beginning after December 31, 2112.

**Report Title:**

Business Development in Hawaii; Motion Picture; Qualified Media Infrastructure Projects; Film Tax Credit; Amendments

**Description:**

Authorizes the Director of Business, Economic Development, and Tourism to issue revenue bonds for qualified media infrastructure projects. Creates a special fund for disbursement of funds. Requires matching funds and post-audits. Extends the motion picture, digital media, and film production tax credit to January 1, 2025 from January 1, 2016. Raises the qualified production tax credit ceiling to \$ from \$8,000,000. Separates the calculation of the credit amount based on wages and salaries from the credit amount based on other qualified production costs. Provides different credit amounts based on residence within the counties for the wages and salaries paid to all cast, crew, and musicians of the qualified production, plus an additional unspecified per cent credit amount on wages and salaries of cast, crew, and musicians who are state residents.

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