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# DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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AMENDED 2-12-13

Statement of
**RICHARD C. LIM**
**Director**
Department of Business, Economic Development, and Tourism
before the
**HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS**

Tuesday, February 12, 2013
9:00 AM
State Capitol, Conference Room 312
in consideration of
**HB566**
**RELATING TO DIGITAL MEDIA INFRASTRUCTURE.**

Chair Tsuji, Vice Chair Ward, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) **offers comments** on HB566, which establishes an income tax credit for qualified infrastructure projects.

Increased filming activity has clearly demonstrated the need for additional infrastructure to support this economic driver for our State. HB566 will make development of new facilities possible in a manner that is reasonable and fiscally responsible.

We believe the State can support the private sector's efforts in this regard by providing an incentive which also provides, at a cost-effective rate, the appropriate land necessary to build such facilities. There are several credible studio developers who have shown keen interest in helping take Hawaii's film industry to the next level. This type of public-private partnership is the best way to move the industry forward by creating the necessary state-of-the-art facilities in communities where they make the most economic sense. A reasonable infrastructure credit as proposed, would work in concert with our existing film tax credit to keep Hawaii's production pipeline full and provide opportunities to grow Hawaii's creative workforce.

Thank you for the opportunity to testify on this measure.

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

BILL NUMBER: SB 750; HB 566 (Identical)

INTRODUCED BY: SB by Dela Cruz and Espero; HB by Har, Cabanilla, Cullen, Hashem, Ichiyama, Ito, Kawakami, Say, Takayama, Tsuji, Yamane and 2 Democrats

BRIEF SUMMARY: Amends HRS section 235-17 to allow taxpayers, between July1, 2013 and December 31, 2015, to claim a credit of 25% of the qualified costs incurred for qualified media infrastructure projects. 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 so any tax credit that exceeds the tax liability of the taxpayer may be carried forward to offset net income tax liability in subsequent tax years for up to ten 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 ___ year time frame; (b) expenditures shall be certified by the director of taxation and credits shall not be earned until certification is received; (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 of ___% times the estimated total incentive tax credits 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 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.

Further requires the taxpayer claiming the credit to file a progress report of a qualified media project with DBEDT, deliver a performance bond in a form prescribed by DBEDT in an amount equal to 100% of total projected expenditures determined upon initial certification; and either: (1) pledge of a lien on the qualified media infrastructure project in favor of the state; or (2) collateral security.

Also requires any taxpayer eligible to claim a qualified media infrastructure project tax credit to file with DBEDT an annual report by March 1 following each taxable year for which the credit is claimed delineating: (1) the amount of general excise tax paid; (2) the amount of transient accommodations tax paid; (3) the amount of tax credits claimed under this section; (4) gross proceeds of each project; (5) number of full-time employees, part-time employees employed on each qualified media infrastructure project; (6) number of independent contractors contracted to work on each qualified media infrastructure project; (7) amount disbursed as payroll on each qualified media infrastructure project; and (8) list of job classifications with average wage level.

Defines "qualified media infrastructure project" as the development, construction, renovation, or operation of a film, video, television, or media production or post-production facility and the immovable property and equipment related thereto, or any other facility that supports and is a necessary component of the proposed infrastructure project, that is located in the state; provided that the facility may include a movie theater or other commercial exhibition facility to assist in offsetting operating costs of the production or post-production facility, but shall not include a facility used to produce pornographic matter or a pornographic performance.

A taxpayer may claim the media infrastructure project tax credit for investments made on a qualified media infrastructure project prior to January 1, 2016 if construction of the media infrastructure project commenced prior to January 1, 2016.

EFFECTIVE DATE: Tax years beginning after December 31, 2012

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 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. The proposed measure expands the existing motion picture, digital media and film production income tax credits to media infrastructure projects.

These motion picture credits have been morphing and expanding into full-blown tax credits since they "got their foot in the door" in 1997. 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. 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 expanding these tax credits 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.

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 be 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."

Finally, given all of the other proposals by the administration to exact this or that fee or tax out of the economy and from Hawaii's residents, one must ask just how much can we afford? At the very time, Hawaii residents are being asked to chip in another dime for a single-use bag, or another dollar on their vehicle registration fee for a parking program for the disabled, or a penny per ounce on sugary drinks, can taxpayers really afford to hand $8 million or $12 million to a film production in the promise that it will bring more jobs. Let's see, we are going to put people out of business by raising taxes and fees to create jobs for people who will have no where to go to buy their plate lunch. Instead of handing out tax credits for which lawmakers have no clue of the overall drain on state tax dollars, subsidies for these film productions, if that is what lawmakers believe is needed, should be subject to legislative review and appropriation like any other expenditure of state tax dollars.

Instead of handing out a tax credit to build the film infrastructure, be it a studio or a sound stage, lawmakers should appropriate a specific sum of money and put a request for proposals to build such a project and see which bidder would come forward with the best proposal and offer to match the state's share. This way, each bidder could be evaluated as to what they have to offer and what benefit the state would get. Inasmuch as the state would probably be able to offer the land for such a facility, it could also offer a streamlined permitting process which would also be an in-kind contribution. Based on the responses to the request, a careful review done by experts in the field could be made and the best proposal selected. The persons responsible for making the final selection would then be held accountable for their selection and provide the justification for the selection. This lends far more transparency to the process than the proposed tax credit.

Digested 2/6/13

**<u>TESTIMONY OF NBC UNIVERSAL MEDIA, LLC. REGARDING H.B. NO. 566 RELATING TO DIGITAL MEDIA INFRASTRUCTURE</u>**

DATE: Tuesday, February 12, 2013
TIME: 9:00 am in room 312

**To:** Chairman Cliff Tsuji and Members of the House Committee on Economic Development and Business:

NBC Universal Media, LLC ("NBC/U") submits the following comments regarding H.B. No. 566.

NBC Universal Media, LLC ("NBC/U") develops, produces, broadcasts and distributes motion pictures, television programs and related content around the world. Over the last several years the Hawaii Legislature and the people of Hawaii have developed a clear consensus that the motion picture, television and related digital media industries (the "Film Industry") in Hawaii has become an important component of a diversified economy and has had a positive financial impact on the State of Hawaii which can be strengthened significantly if Hawaii's existing incentives for the Film Industry are enhanced.

Hawaii's Act 88 has protected and preserved Hawaii's status as one of the world's dynamic and stunning film production centers. NBC/U feels that increasing the production tax credit as provided in H.B. No. 726 as well as in H.B. No. 698 is the important first step to serve as a catalyst for growth in jobs and increasing the film industry in Hawaii. It is our opinion that as production increases and the need for media infrastructure is essential, it would then be more timely to consider the development of more media infrastructure.

Thank you for the opportunity to present our comments on this bill.

Testimony to

House Committee on Economic Development and Business

Tuesday, February 12, 2013

By: Stephan D. Smith

President, SHM Partners/Film Studio Group

**HB 566—Relating to Digital Media Infrastructure**

Rep. Clift Tsuji, Chair; Rep. Gene Ward, Vice Chair

As Section 1 of HB 566 points out, the positive impact of film and television production on the State is irrefutable. The primary reason that there's not more of it is the lack of studio space. Given a stable production tax credit regime, there's no reason that production expenditures in Hawaii would not meet or exceed the high-water level of 2010, over $400 million, every year if the proper infrastructure were built. Without it, production expenditures in the State will continue its seesaw pattern as it is so heavily based on location-based shooting, thereby missing many project entirely and losing over half the spending of others that leave the Islands for their stage work.

Passage of HB 566, with the following revisions, would provide an essential building block for providing the proper studio infrastructure and ensuring the long-term viability of the film industry in the State:

1) The qualified media infrastructure project tax credit must be refundable. The pool of qualified, and interested, taxpayers to utilize the credits is not deep enough to impose this restriction, and the discount on the 25% credit becomes steeper as the limited taxpayer demand is satiated. In addition, the taxpayer loses the federal tax deduction on State the tax credits taken which reduces their benefit by at least a third, further depressing demand.

2) It should be clarified that land acquisition or leasing costs is included in the definition of "Qualified media infrastructure project". Land is scarce, and, therefore, relatively expensive in Hawaii, and it's simply not feasible to build a studio on a small lot. Stages are single-story structures and considerable parking and circulation space is needed.

3) Related educational facilities should be in included in the definition of "Qualified media infrastructure project". A studio-related film school and crew training facility are both needed in order to fill the jobs created and build the State's industry.

Another building block for ensuring the sustainability and growth of the film industry is the production tax credit. As has been starkly demonstrated in other states and countries, the stability of this credit is critical to attracting productions. Beyond that, a modest increase in the credit and significant increase in the per-project cap would attract more productions as well as more private capital for infrastructure improvements. A new studio would be able to attract $100 million productions; it would be a shame for the production tax credit to be the limiting factor.

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ISLAND
FILM GROUP

February 11, 2013

TO: House Committee on Economic Development and Business
The Honorable Cliff Tsuji, Chair
The Honorable Gene Ward, Vice Chair

FROM: Ricardo S. Galindez, Co-Owner, Island Film Group
Roy J. Tjioe, Co-Owner, Island Film Group

**RE: Testimony In Support of HB 566 with Amendments**

Aloha Chairs, Vice Chairs, and Members of the Committees:

Thank you for the opportunity to testify in support of HB 566

**QUALIFED MEDIA INFRASTRUCTRE TAX CREDIT**

- An Infrastructure Tax Credit is necessary to facilitate the construction of adequate sound stage and post-production facilities in Hawaii
- Such facilities will provide for increased film and television production spending in Hawaii
- Such facilities will allow larger film and television productions ($50m +) to complete more of their production in Hawaii, including stage work and post-production

## NECESSARY AMENDMENTS TO SB HB 566

- **The Infrastructure Tax Credit must be refundable.** Non-refundable tax credits lose 35% of their value due to the loss of the deduction for federal taxes paid. In essence, a non-refundable tax credit is worth 65% of its face value to taxpayers due to the resulting increase in federal tax (but still costs the state of Hawaii 100%).
- **The definition of Qualified Media Infrastructure Project must be clarified to specifically include the acquisition of real property.** Given the great amount of space necessary for soundstages and parking, the purchase or lease of real property is a significant portion of the overall cost.

**About Island Film Group** Island Film Group (IFG) is one of the largest local film and television production companies in Hawaii. Since its formation in 2007, IFG has produced a television series ("Beyond the Break"), three television movies for Lifetime Television Network, countless national and international television commercials, and three independent feature films ("Soul Surfer", "Princess Ka`iulani", and "4 Wedding Planners"). Our projects have employed hundreds of Hawaii residents and spent millions of dollars on local goods and services. In addition, IFG, in partnership with Hawaii Media Inc., owns and operates Halawa Valley Studios, the largest private film and television production facility in Hawaii.

**edbtestimony**

**From:** mailinglist@capitol.hawaii.gov
**Sent:** Saturday, February 09, 2013 9:54 AM
**To:** edbtestimony
**Cc:** tabraham08@gmail.com
**Subject:** *Submitted testimony for HB566 on Feb 12, 2013 09:00AM*

**HB566**
Submitted on: 2/9/2013
Testimony for EDB on Feb 12, 2013 09:00AM in Conference Room 312

| Submitted By | Organization | Testifier Position | Present at Hearing |
| --- | --- | --- | --- |
| Troy Abraham | Individual | Support | No |

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing , improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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