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Statement of
RICHARD C. LIM
Director
Department of Business, Economic Development and Tourism
before the
SENATE COMMITTEE ON WAYS AND MEANS
Monday, March 25, 2013
9:20 AM
State Capitol, Conference Room 211
in consideration of

HB726, HD1, SD1

RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

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

The Department of Business, Economic Development and Tourism (DBEDT) offers comments for HB726, HD1, SD1, which extends the repeal date of Act 88, SLH 2006 from January 1, 2016, to January 1, 2023; increases the credit ceiling to $12,000,000 per qualified production; changes the credit amount from 15% to an unspecified amount in a county with a population over 700,000, and from 20% to an unspecified amount in a county with a population of 700,000 or less; establishes a special fund for management of media infrastructure project tax credits and related programs; and requires analysis and reporting by DOTAX on the effectiveness of the media infrastructure project tax credit.

DBEDT supports an extension of the sunset date for the production tax credit but recommends that the new sunset date of January 1, 2025. DBEDT supports the Media Infrastructure Project tax credit element of this draft because of the critical need for infrastructure at this time but we recommend eliminating the geographic restriction as outlined in this draft. We do have concerns about qualifying criteria for this infrastructure credit being cumbersome and believe we can come up with some streamlined language to make the infrastructure credit easier to access and for DBEDT to administer. DBEDT also supports the re-establishment of a special fund for the Hawaii Film Office to provide the necessary funding for the tax credit program but believe that fund should be managed by DBEDT rather than

DoTAX. And although we cannot support an increase to the base credit of 15-20% at this time, DBEDT would support an increase to the per production credit cap of $8M to $12M as originally proposed in our administration bill. DBEDT rather than DOTAX should be responsible for the analysis and reporting on the effectiveness of the media infrastructure project tax credit, which could be done by DBEDT's Research and Economic Analysis Division.

If the media infrastructure credit is approved, then DBEDT will require the Economic Development Specialist VI position eliminated in BED-105, HB 200, HD1, to be restored.

Thank you for the opportunity to testify on this measure.

L E G I S L A T I V E

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SUBJECT: INCOME, Extend and increase motion picture, digital media and film production credit; media infrastructure project tax credit

BILL NUMBER: HB 726, SD-1

INTRODUCED BY: Senate Committees on Economic Development, Government Operations and Housing and Technology and the Arts

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 20% to ___% for costs incurred in a county with a population of 700,000 or less.

Increases the total tax credits that may be claimed per qualified production from $8 million to $12 million.

Amends Act 88, SLH 2006, to extend the motion picture, digital media and film production credit from December 31, 2015 to December 1, 2022.

Adds a new section to HRS chapter 235 to allow taxpayers, between July 1, 2013 and December 31, 2015, to claim a credit of ___% of the qualified costs incurred for qualified media infrastructure projects situated in West Oahu or on the most populous island in a county with a population between 100,000 and 175,000.

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 department of business, economic development and tourism (DBEDT) and credits shall not be earned until certification is received; © 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 be submitted to DBEDT and include: (a) a detailed description of the infrastructure project; (b) a preliminary budget; © 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 DBEDT; (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 DBEDT an audit of the expenditures certified by an independent certified public accountant as determined by rule. Upon approval of the audit, the director of DBEDT 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 DBEDT, 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 qualifying media structure project expenses and qualify for the tax credit.

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) a 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 levels.

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. 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. Delineates recapture provisions if the qualified media infrastructure project no longer qualifies for the tax credit and the recapture shall be equal to ___% of the amount of the tax credit claimed in the preceding five years.

Establishes a Hawaii film office special fund administered by the department of taxation into which shall be deposited all application fees collected pursuant to this section. The monies in the fund shall be expended for the purpose of managing infrastructure development credits and related programs.

Requires the department of taxation to submit an annual report to the legislature 20 days prior to each regular session beginning with the 2014 regular session which shall include a cost benefit analysis of the tax credit established in this part, and a report of the data collected under this section along with a cumulative total of tax credits granted for each qualified media infrastructure project.

EFFECTIVE DATE: July 1, 2050; applicable to 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 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.

This measure proposes to increase the credit from15% to ___% in a county with a population over 700,000 and from 20% to ___% in a county with a population of 700,000 or less. The measure also increases the $8 million limit of tax credits that may be claimed per qualified production to $12 million and extends the motion picture, digital media and film production credits from December 31, 2015 to December 31, 2022. The proposed measure would allow taxpayers to claim a media infrastructure project tax credit in West Oahu or on the island of Maui.

These 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 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 increasing and continuing 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, spam musubi, and plate lunches with two scoops rice. 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. Sponsors try to make an argument that Hawaii needs to enact such incentives 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, a scenario akin to the bread and circus of ancient Rome.

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 have had to bear increasing tax burdens.

Instead of creating sustainable economic development incentives, the film tax credits waste money that could otherwise create an environment that is nurturing for all business activity, activity that lasts more than the six or eight months of a production. The overall tax burden could be lowered not only for families but for the businesses that provide long-term employment for Hawaii's people.

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. Another alternative would be the use of special purpose revenue bonds. These alternatives would be far more efficient and transparent than by the tax credit proposed by this measure. Lawmakers need to exert a little creativity if indeed they believe that such infrastructure is necessary to the development of this industry in the islands. Consideration should be given to the many assets the state brings to the table including land availability, streamlined permitting, tax free interest debt financing and the like. Instead of just handing out a tax credit, lawmakers need to take a more active role in the development of this infrastructure and should be held accountable for the success or failure of such an initiative.

Digested 3/24/13

LATE

From:	mailinglist@capitol.hawaii.gov
To:	WAM Testimony
Cc:	ric@islandfilmgroup.com
Subject:	Submitted testimony for HB726 on Mar 25, 2013 09:20AM
Date:	Sunday, March 24, 2013 10:38:12 AM

HB726
Submitted on: 3/24/2013
Testimony for WAM on Mar 25, 2013 09:20AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Ricardo Galindez	Island Film Group	Support	Yes

Comments: Support with Amendments.

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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March 23, 2013

TO: The Honorable David Y. Ige, Chair
Senate Committee on Ways and Means

FROM: Gladys C. Baisa
Council Chair

SUBJECT: **HEARING OF MARCH 25, 2013; TESTIMONY IN SUPPORT OF HB 726, HD1, SD1, RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is to extend and expand the motion picture, digital media, and film production income tax credit.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I support this measure for the following reasons:

1. The film, television, and other creative arts industries in Hawaii are important components of a diversified economy. These industries attract large amounts of money, create much-needed jobs, and, with the proper incentives, provide long-term sustainable economic activity.

2. High production costs and limited infrastructure deter television and film productions from coming to Hawaii. Enhanced tax incentive programs will offset these obstacles, and attract more film and television productions to Hawaii.

3. Enactment of the bill will encourage growth of the film industry, thereby stimulating the economy, providing jobs for local people, and generating increased tax revenues.

For the foregoing reasons, I support this measure.

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