NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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

HOUSE COMMITTEE ON WATER & LAND

Tuesday, March 19, 2013
9:00 a.m.
State Capitol, Conference Room 312
in consideration of

SB750, SD2
RELATING TO DIGITAL MEDIA INFRASTRUCTURE.

Chairs Tsuji & Evans, Vice Chairs Ward & Lowen and Members of the Committee.

The Department of Business, Economic Development and Tourism (DBEDT) offers comments on SB750, SD 2, which introduces a new non-refundable credit equal to 25 percent of the qualified costs for qualified digital media infrastructure projects, specifically in West Oahu or the most populous island in a county with a population of 100,000 to 175,000. The measure also provides for recapture of the media infrastructure project tax credit in certain circumstances.

We support the intent of a new infrastructure credit but would recommend eliminating the geographic restriction. The department requests your consideration of depositing application fees into a Hawaii Film Office special fund, incorporating the language from SB463, SD2, page 17, section (i), but further amending to designate DBEDT instead of the Department of Taxation to administer the fund.

DBEDT calls to your attention that should any measures regarding infrastructure tax credits pass this session, the department will require additional staffing to manage the program.

Thank you for the opportunity to testify on this measure.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR

FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

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To: The Honorable Clift Tsuji, Chair
and Members of the House Committee on Economic Development & Business

Date: Tuesday, March 19, 2013
Time: 9:00 a.m.
Place: Conference Room 312, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. 750, S.D. 2, Relating to Digital Media Infrastructure

The Department of Taxation (Department) **appreciates the intent** of S.B. 750, S.D. 2. However, as written, the Department is concerned that it will not be able to implement the provisions of the S.D. 2 due to the anticipated difficulty in administering this bill, as well as the potential increase in revenue loss resulting from the new media infrastructure project tax credit.

S.B. 750, S.D. 2, adds a new section to Chapter 235, Hawaii Revised Statutes, to create a media infrastructure project tax credit. The credit is a nonrefundable tax credit of an unspecified percentage of the qualified infrastructure costs for a facility located in West Oahu or on the most populous island in a county with a population between 100,000 and 175,000, beginning July 1, 2013 and ending December 31, 2015.

The Department is concerned about the broad range of costs (the development, construction, renovation, or operation of a film, video, television, or media production or postproduction facility, or any other facility that supports the project, including a movie theater or other commercial exhibition facility) that would qualify for the tax credit. This broad definition will create administration and enforcement difficulties for the Department.

This measure also requires DBEDT to approve an audit of the infrastructure tax credit conducted by an independent certified public accountant and certify the expenditures for the project, including: a detailed description of the project; a preliminary budget; a complete detailed business plan and market analysis; an estimated start and completion dates; and a letter from the mayor and council of the county. However, section 2 of this measure requires the Department of Taxation, not DBEDT, to collect data and submit an annual cost benefit analysis of the tax credit to the legislature. The Department suggests that DBEDT is the more appropriate agency to conduct the cost benefit analysis of the tax credit, as they are the agency which will approve and certify the expenditures. Moreover, the Department does not perform any cost benefit analysis based on taxpayer data.

Thank you for the opportunity to provide comments.

edbtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 18, 2013 12:50 PM
To: edbtestimony
Cc: film@filmbigisland.com
Subject: Submitted testimony for SB750 on Mar 19, 2013 09:00AM

SB750
Submitted on: 3/18/2013
Testimony for EDB on Mar 19, 2013 09:00AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
John L Mason	Big Island Film Office	Oppose	No

Comments: I'm the Film Commissioner here on The Big Island of Hawaii. I am in general support of the intent of this bill, which is to expand the film and digital media industries here in the state. I am not in support of the language in this bill pertaining to the tax credit for infrastructure. Unless I am reading it wrong, the bill says that this tax credit will be available in West Oahu and in counties with a population of between 100,000 and 175,000. The current census has the population of the Big Island at almost 190,000. This seems to say that the Big Island would be excluded from the infrastructure tax credit. On the face of it, this kind of restrictive language seems exclusionary, anti-Big Island, and probably unconstitutional. If there is going to be a tax credit for film infrastructure, we must do everything we can do to make all sections of the state equally open to this opportunity. It is also not a good idea to attach this piece of legislation to the current Act 88. That program is a stand along program which works very well and would be compromised by adding the infrastructure piece to it. A separate organization needs to administer this program, if enacted. Thank you for your consideration, John Mason Big Island Film Office

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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L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Media infrastructure project tax credit

BILL NUMBER: SB 750, SD-2

INTRODUCED BY: Senate Committee on Ways and Means

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow taxpayers, between July1, 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; (c) the tax credits shall be deemed earned at the time the expenditures are made if 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; (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 DBEDT an audit of the expenditures certified by an independent certified public accountant as determined by rule. Upon approval of the audit, 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 DBEDT, and any general excise taxes that have been paid on the bank loan finance fees and remitted to the state shall be considered as a qualifying expense for purposes 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. The facility may not be 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.

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 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 would allow taxpayers to claim a media infrastructure project tax credit in West Oahu or on the island of Maui.

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 perpetuating 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.

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 issue 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 the tax credit proposed by this measure.

Merely handing out a tax credit to entice an economic activity is the "easy way" out for lawmakers. To really insure the success of this venture, it will take creative thinking and hard work. An appropriation of funds, perhaps the issuance of special purpose revenue bonds, a joint venture, contributions of land or acceleration of the permitting process are but a few ways government could incentivize such a project without spending one cent of cold hard cash. If, in fact, lawmakers believe this infrastructure to be critical to the development of this industry, then lawmakers need to take a more active role as opposed to sitting back and letting the tax credit drive the activity.

Digested 3/12/13

THE HOUSE
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS
Representative Clift Tsuji, Chair
Representative Gene Ward, Vice Chair
Members of the Committee

COMMITTEE ON WATER & LAND
Representative Cindy Evans, Chair
Representative Nicole E. Lowen, Vice Chair

TESTIMONY ON SENATE BILL 750, SD2
RELATING TO DIGITAL MEDIA INFRASTRUCTURE

The film industry unions, SAG-AFTRA, the International Alliance of Theatrical Stage Employees (IATSE) Mixed Local 665, the American Federation of Musicians (AFM) Local 677 and the Hawaii Teamsters Local 996, collectively represent over 2,500 union members who work in the film, television, digital and new media industry.

Over the years Hawaii has experienced numerous television shows and feature films that have showcased our islands. With the recent success of television shows such as *Lost* and *Hawaii 5-0,* studio space continues to be a challenge. Let us be reminded that most productions come to Hawaii to utilize our prize possessions; our scenery, the weather and people.

We **support the intent** of SB 750, SD2 but **strongly disagree** that the media infrastructure project tax credit should be in Act 88; it should be a stand-alone measure. We also **disagree** that a media infrastructure project tax credit be limited to specific areas and exclude other areas within the State that could be feasible and suitable.

We appreciate your careful consideration of this measure. Thank you for giving us this opportunity to submit testimony on SB 750, SD2.

Brenda Ching	Henry Fordham	Brien Matson	Jeanne Ishikawa
SAG-AFTRA Hawaii	IATSE, Local 665	AFM, Local 677	Teamsters, Local 996
596-0388	596-0227	596-2123	258-0358

edbtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 18, 2013 1:07 AM
To: edbtestimony
Cc: rgalindez@islandfilmgroup.com
Subject: Submitted testimony for SB750 on Mar 19, 2013 09:00AM
Attachments: Proposed QMIP Tax Credit.docx

SB750
Submitted on: 3/18/2013
Testimony for EDB on Mar 19, 2013 09:00AM in Conference Room 312

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

Comments: Attached is proposed Infrastructure Tax Credit language, which is based on the current Production Tax Credit language.

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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§235-__ Media infrastructure project tax credit.

(a) Any law to the contrary notwithstanding, there shall be allowed to each taxpayer subject to the taxes imposed by this chapter, an income tax credit which shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

The amount of the credit shall be twenty five per cent of the qualified media infrastructure project costs incurred by a taxpayer in any county of the State on or after July 1, 2013, and prior to January 1, 2019.

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

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

(c) If the tax credit under this section exceeds the taxpayer's income tax liability, the excess of credits over liability shall be refunded to the taxpayer; provided that no refunds or payment on account of the tax credits allowed by this section shall be made for amounts less than $1.

(d) To be eligible for the tax credit, a media infrastructure project shall:

(1) Meet the definition of a qualified media infrastructure project specified in subsection (l);

(2) Have qualified media infrastructure project costs, as defined in subsection (l), totaling at least $20,000,000;

(e) To be receive the tax credit, the taxpayer shall first prequalify the qualified media infrastructure project by submitting an application to the department of business, economic development, and tourism, which shall include:

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

(2) A preliminary budget;

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

(4) Estimated start and completion dates;

(5) A letter issued by the mayor and council of the county in which the qualified media infrastructure project is to be located indicating that the project has been approved; and

(6) Any additional information that may be requested prior to further action by the department of business, economic development, and tourism;

(f) An application fee shall be submitted with the application for a qualified media infrastructure project tax credit. The amount of the fee shall be $25,000;

(g) The department of business, economic development, and tourism, in its sole discretion, shall issue a prequalification letter to the taxpayer for the qualified media infrastructure project.

(h) The director of taxation shall prepare forms as may be necessary to claim a credit under this section. The director may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

(i) Every taxpayer claiming a tax credit under this section for a qualified media infrastructure project shall, no later than one hundred eighty days following the end of each taxable year in which qualified media infrastructure costs were expended, submit a written, sworn statement to the department of business, economic development, and tourism, identifying:

(1) The percentage of completion of each qualified media infrastructure project;

(2) Amount of moneys expended on, and amount remaining to complete, the qualified media infrastructure project;

(3) Tax and labor clearances;

(4) The amount of general excise tax paid under chapter 237;

(5) The amount of transient accommodations tax paid under chapter 237D;

(6) The number of full-time employees employed on the qualified media infrastructure project;

(7) The number of part-time employees employed on each qualified media infrastructure project;

(8) The number of independent contractors contracted to work on each qualified media infrastructure project;

(9) The amount disbursed as payroll in the State on each qualified media infrastructure project; and

(10) A list of job classifications with average wage level.

(j) Prior to the final certification of a tax credit for a qualified media infrastructure project, the taxpayer shall submit to the department of business, economic development, and tourism an audit of the qualified media infrastructure costs that is performed and certified by an independent certified public accountant pursuant to rule.

Upon approval of the audit, the department of business, economic development, and tourism shall issue a final tax credit certification letter indicating the amount of the tax credit certified for the qualified media infrastructure project for that year.

The taxpayer shall file the letter with the taxpayer's tax return claiming the tax credit for the tax year in which the qualified media infrastructure costs were incurred.

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

(k) Total tax credits claimed per qualified media infrastructure project shall not exceed $12,500,000.

(l) For the purposes of this section:

"Qualified media infrastructure project” means 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; and

"Qualified media infrastructure project costs" means the costs incurred by a taxpayer for a qualified media infrastructure project, including the acquisition of real property.

(m) If at the close of any taxable year the qualified media infrastructure project no longer qualifies for the tax credit established under this section, the tax credit claimed under this section shall be recaptured.

The recapture shall be equal to twenty percent of the amount of the total tax credit claimed under this section for each year for which the qualified media infrastructure project no longer qualifies for the tax credit during the five year period after the taxable year for which the tax credit was certified. The amount of the recaptured tax credit determined under this subsection shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs.

For purposes of this subsection (m), unless otherwise qualified by a determination of the department of business, economic development, and tourism, a qualified media infrastructure project will no longer qualify for the tax credit if less than seventy five percent of its annual income is derived from activities related to film and television production.

I OPPOSE SB750 SD2

This bill SB750 SD2 as written with the unnecessary statement of "or the most populous island in a county with a population of 100,000 to 175,000" deliberately, illegally and with prejudice removes Hawaii county from the bill, this is an injustice to the residents of Hawaii county and illegally serves only a small special interest group in Oahu and Maui.

I request and demand that the bill be modified to strike the Antitrust statement of "or the most populous island in a county with a population of 100,000 to 175,000"

This bill as written excluding Hawaii County violates Antitrust Laws.

This bill as written excluding Hawaii County violates Antitrust Exclusive dealing Law.

This bill as written excluding Hawaii County violates Antitrust Price Fixing Law.

This bill as written excluding Hawaii County violates Antitrust Dividing territories Law.

This bill as written excluding Hawaii County violates Antitrust Price Fixing Law.

This bill as written excluding Hawaii County violates Antitrust Protectionism Law.

This bill as written excluding Hawaii County violates numerous state laws of business and public interest.

Mark Guagliardo
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