
A BILL FOR AN ACT

RELATING TO THE CREATIVE MEDIA INDUSTRY.

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

- 1 SECTION 1. The purpose of this Act is to:
- 2 (1) Establish a statewide film commission within the
- 3 department of business, economic development, and
- 4 tourism to manage the marketing, promotion, rental,
- 5 and operation of the Hawaii film studio and provide
- 6 support and assistance to the creative media industry;
- 7 (2) Repeal the Hawaii television and film development
- 8 board, which has been inactive for about ten years,
- 9 along with the grant and venture capital programs to
- 10 be implemented by the board;
- 11 (3) Rename the Hawaii television and film development
- 12 special fund as the creative media and film
- 13 infrastructure special fund;
- 14 (4) Broaden the sources of revenue for the creative media
- 15 and film infrastructure special fund; and
- 16 (5) Amend the purposes for which the creative media and
- 17 film infrastructure special fund may be used, in order



1 to enable the department of business, economic
2 development, and tourism to fulfill its statutory
3 duties regarding the film program.

4 SECTION 2. Chapter 201, Hawaii Revised Statutes, is
5 amended by adding two new sections to part IX to be
6 appropriately designated and to read as follows:

7 "§201- Hawaii state film commission; establishment;
8 president and chief executive officer. (a) There is
9 established the Hawaii state film commission, which shall be
10 placed within the department for administrative purposes only.

11 (b) The commission shall be composed of seven members, two
12 of whom shall be appointed by the governor pursuant to section
13 26-34; provided that each member shall hold office until the
14 member's successor is appointed and confirmed by the Senate.
15 One of the governor's appointees shall be a representative of a
16 labor organization whose members provide services to the
17 creative media industry. The other gubernatorial appointee
18 shall be a representative of the International Alliance of
19 Theatrical Stage Employees. The two appointed members shall
20 each possess at least five years of experience in the creative
21 media industry. The business development program manager of the



1 department's film industry branch and the chairs of the four
2 county film commissions, or their equivalent, shall serve as ex
3 officio voting members, who may be represented on the commission
4 by designees.

5 (c) The commission shall elect a chairperson from among
6 its members.

7 (d) Four members shall constitute a quorum, and a minimum
8 of four affirmative votes shall be necessary for all actions by
9 the commission. The members shall serve without compensation
10 but shall be reimbursed for expenses, including travel expenses,
11 necessary for the performance of their duties.

12 (e) The commission shall appoint one person to serve as
13 president and chief executive officer, exempt from chapters 76
14 and 88, who shall oversee the commission staff; provided that
15 the compensation package shall not include private sector moneys
16 or other contributions. The commission shall set the president
17 and chief executive officer's duties, responsibilities,
18 holidays, vacations and other leaves, hours of work, and working
19 conditions. The commission may grant other benefits as it deems
20 necessary.

21 §201- Powers and duties. The commission shall:



- 1 (1) Adopt any rules, pursuant to chapter 91, necessary to
2 carry out its duties and functions under this part;
- 3 (2) Through its president and chief executive officer,
4 make and execute contracts and all other instruments
5 necessary or convenient for the exercise of its powers
6 and functions under this part;
- 7 (3) Through its president and chief executive officer,
8 provide for the appointment of employees, subject to
9 the approval of the commission, prescribe their duties
10 and qualifications, and fix their salaries, without
11 regard to chapter 76; provided that employees shall be
12 members of the employees' retirement system of the
13 State and shall be eligible to receive the benefits of
14 any state or federal employee benefit program
15 generally applicable to officers and employees of the
16 State;
- 17 (4) Through its president and chief executive officer,
18 purchase supplies, equipment, or furniture and
19 allocate the space or spaces that are to be occupied
20 by the commission and appropriate staff;



- 1 (5) Manage the marketing, promotion, rental, and operation
- 2 of the Hawaii film studio using a private entity or
- 3 entities contracted in accordance with chapter 103D;
- 4 (6) Set and collect rents, fees, charges, and other
- 5 payments for the lease, use, or occupancy of the
- 6 Hawaii film studio without regard to chapter 91;
- 7 (7) Establish programs and initiatives for creative media
- 8 industry development;
- 9 (8) Establish programs that expand the skill sets of
- 10 Hawaii's resident workforce in the creative media
- 11 industry;
- 12 (9) Establish advisory groups that include persons with a
- 13 working knowledge of the film industry, the county
- 14 film commissions, and government departments and
- 15 agencies controlling resources necessary to support
- 16 development of the creative media industry in the
- 17 State; and
- 18 (10) Provide direct support and assistance to the creative
- 19 media industry, to the extent that it is not already
- 20 being provided by the department's film industry
- 21 branch."



1 SECTION 3. Chapter 237, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§237- Hawaii film studio. This chapter shall not apply
5 to amounts received from:

- 6 (1) The improvements of the Hawaii film studio under a
- 7 financing agreement pursuant to chapter 37D; or
- 8 (2) The operations of the Hawaii film studio."

9 SECTION 4. Chapter 201, Hawaii Revised Statutes, is
10 amended by amending the title of part IX to read as follows:

11 "[+] PART IX. []- HAWAII TELEVISION] CREATIVE MEDIA
12 AND FILM DEVELOPMENT"

13 SECTION 5. Section 201-111, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[+] §201-111 [+] **Definitions.** As used in this part:

16 [~~"Applicant" means a person applying for a grant or venture~~
17 ~~capital investment from the board under this part.~~

18 [~~"Board" means the Hawaii television and film development~~
19 ~~board.~~

20 [~~"Eligible Hawaii project" or "project" means an~~
21 ~~entertainment project in which at least seventy five per cent of~~



1 ~~the budget for the production costs, excluding salaries and~~
2 ~~costs for the producer, director, writer, screenplay, and actors~~
3 ~~in the project, is dedicated for the purchase or lease of goods~~
4 ~~or services from a vendor or supplier who is located and doing~~
5 ~~business in the State.~~

6 ~~"Fund" means the Hawaii television and film development~~
7 ~~special fund.~~

8 ~~"Venture capital investment" means any of the following~~
9 ~~investments in a project:~~

- 10 ~~(1) Common or preferred stock and equity securities~~
11 ~~without a repurchase requirement for at least five~~
12 ~~years;~~
- 13 ~~(2) A right to purchase stock or equity securities;~~
- 14 ~~(3) Any debenture, whether or not convertible or having~~
15 ~~stock purchase rights, which is subordinated, together~~
16 ~~with security interests against the assets of the~~
17 ~~borrower, by their terms to all borrowings of the~~
18 ~~borrower from other institutional lenders, and that is~~
19 ~~for a term of not less than three years, and that has~~
20 ~~no part amortized during the first three years; and~~
- 21 ~~(4) General or limited partnership interests.]~~



1 "Creative media" includes film, motion pictures,
2 television, and digital media as defined in section 235-17.

3 "Department" means the department of business, economic
4 development, and tourism."

5 SECTION 6. Section 201-113, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[~~§~~201-113[~~]~~—~~Hawaii television~~] Creative media and film
8 [~~development~~] infrastructure special fund. (a) There is
9 established in the state treasury the [~~Hawaii television~~]
10 creative media and film [~~development~~] infrastructure special
11 fund into which shall be deposited:

- 12 (1) Appropriations by the legislature;
- 13 (2) Donations and contributions made by private
14 individuals or organizations for deposit into the
15 fund;
- 16 (3) Grants provided by governmental agencies or any other
17 source; [~~and~~
- 18 ~~(4) Any profits or other amounts received from venture~~
19 ~~capital investments.]~~
- 20 (4) All revenues, fees, and charges from the rental and
21 operation of the Hawaii film studio;



1 (5) All revenues, fees, and charges from the processing of
2 film permits pursuant to section 201-14; and

3 (6) All revenues, fees, and charges from the processing of
4 the motion picture, digital media, and film production
5 income tax credit pursuant to section 235-17.

6 (b) The fund shall be used by the ~~[board to assist in, and~~
7 ~~provide incentives for, the production of eligible Hawaii~~
8 ~~projects that are in compliance with criteria and standards~~
9 ~~established by the board in accordance with rules adopted by the~~
10 ~~board pursuant to chapter 91. In particular, the board shall~~
11 ~~adopt rules to provide for the implementation of the following~~
12 ~~programs:~~

13 ~~(1) A grant program. The board shall adopt rules pursuant~~
14 ~~to chapter 91 to provide conditions and qualifications~~
15 ~~for grants. Applications for grants shall be made to~~
16 ~~the board and shall contain such information as the~~
17 ~~board shall require by rules adopted pursuant to~~
18 ~~chapter 91. At a minimum, the applicant shall agree~~
19 ~~to the following conditions:~~

20 ~~(A) The grant shall be used exclusively for eligible~~
21 ~~Hawaii projects;~~



- 1 ~~(B) The applicant shall have applied for or received~~
- 2 ~~all applicable licenses and permits;~~
- 3 ~~(C) The applicant shall comply with applicable~~
- 4 ~~federal and state laws prohibiting discrimination~~
- 5 ~~against any person on the basis of race, color,~~
- 6 ~~national origin, religion, creed, sex, age, or~~
- 7 ~~physical handicap;~~
- 8 ~~(D) The applicant shall comply with other~~
- 9 ~~requirements as the board may prescribe;~~
- 10 ~~(E) All activities undertaken with funds received~~
- 11 ~~shall comply with all applicable federal, state,~~
- 12 ~~and county statutes and ordinances;~~
- 13 ~~(F) The applicant shall indemnify and save harmless~~
- 14 ~~the State of Hawaii and its officers, agents, and~~
- 15 ~~employees from and against any and all claims~~
- 16 ~~arising out of or resulting from activities~~
- 17 ~~carried out or projects undertaken with funds~~
- 18 ~~provided hereunder, and procure sufficient~~
- 19 ~~insurance to provide this indemnification if~~
- 20 ~~requested to do so by the department;~~



1 ~~(G) The applicant shall make available to the board~~
2 ~~all records the applicant may have relating to~~
3 ~~the project, to allow the board to monitor the~~
4 ~~applicant's compliance with the purpose of this~~
5 ~~chapter; and~~

6 ~~(H) The applicant, to the satisfaction of the board,~~
7 ~~shall establish that sufficient funds are~~
8 ~~available for the completion of the project for~~
9 ~~the purpose for which the grant is awarded; and~~

10 ~~(2) A venture capital program. The board shall adopt~~
11 ~~rules pursuant to chapter 91 to provide conditions and~~
12 ~~qualifications for venture capital investments in~~
13 ~~eligible Hawaii projects. The program may include a~~
14 ~~written agreement between the borrower and the board,~~
15 ~~as the representative of the State, that as~~
16 ~~consideration for the venture capital investment made~~
17 ~~under this part, the borrower shall share any~~
18 ~~royalties, licenses, titles, rights, or any other~~
19 ~~monetary benefits that may accrue to the borrower~~
20 ~~pursuant to terms and conditions established by the~~
21 ~~board by rule pursuant to chapter 91. Venture capital~~



1 ~~investments may be made on such terms and conditions~~
2 ~~as the board shall determine to be reasonable,~~
3 ~~appropriate, and consistent with the purposes and~~
4 ~~objectives of this part.]~~

5 department to provide for:

- 6 (1) Operations, repair, and maintenance of the Hawaii film
7 studio;
- 8 (2) Support for the operations of the department's film
9 industry branch and Hawaii state film commission;
- 10 (3) Programs and initiatives for creative media industry
11 development; and
- 12 (4) Programs that expand the skill sets of Hawaii's
13 resident workforce in the creative media and film
14 industries."

15 SECTION 7. Section 238-1, Hawaii Revised Statutes, is
16 amended by amending the definition of "use" to read as follows:

17 "Use" (and any nounal, verbal, adjectival, adverbial, and
18 other equivalent form of the term) herein used interchangeably
19 means any use, whether the use is of such nature as to cause the
20 property, services, or contracting to be appreciably consumed or
21 not, or the keeping of the property or services for such use or



1 for sale, the exercise of any right or power over tangible or
2 intangible personal property incident to the ownership of that
3 property, and shall include control over tangible or intangible
4 property by a seller who is licensed or who should be licensed
5 under chapter 237, who directs the importation of the property
6 into the State for sale and delivery to a purchaser in the
7 State, liability and free on board (FOB) to the contrary
8 notwithstanding, regardless of where title passes, but the term
9 "use" shall not include:

10 (1) Temporary use of property, not of a perishable or
11 quickly consumable nature, where the property is
12 imported into the State for temporary use (not sale)
13 therein by the person importing the same and is not
14 intended to be, and is not, kept permanently in the
15 State. For example, without limiting the generality
16 of the foregoing language:

17 (A) In the case of a contractor importing permanent
18 equipment for the performance of a construction
19 contract, with intent to remove, and who does
20 remove, the equipment out of the State upon
21 completing the contract;



- 1 (B) In the case of moving picture films imported for
- 2 use in theaters in the State with intent or under
- 3 contract to transport the same out of the State
- 4 after completion of such use; and
- 5 (C) In the case of a transient visitor importing an
- 6 automobile or other belongings into the State to
- 7 be used by the transient visitor while therein
- 8 but which are to be used and are removed upon the
- 9 transient visitor's departure from the State;
- 10 (2) Use by the taxpayer of property acquired by the
- 11 taxpayer solely by way of gift;
- 12 (3) Use which is limited to the receipt of articles and
- 13 the return thereof, to the person from whom acquired,
- 14 immediately or within a reasonable time either after
- 15 temporary trial or without trial;
- 16 (4) Use of goods imported into the State by the owner of a
- 17 vessel or vessels engaged in interstate or foreign
- 18 commerce and held for and used only as ship stores for
- 19 the vessels;



- 1 (5) The use or keeping for use of household goods,
2 personal effects, and private automobiles imported
3 into the State for nonbusiness use by a person who:
4 (A) Acquired them in another state, territory,
5 district, or country;
6 (B) At the time of the acquisition was a bona fide
7 resident of another state, territory, district,
8 or country;
9 (C) Acquired the property for use outside the State;
10 and
11 (D) Made actual and substantial use thereof outside
12 this State;
13 provided that as to an article acquired less than
14 three months prior to the time of its importation into
15 the State, it shall be presumed, until and unless
16 clearly proved to the contrary, that it was acquired
17 for use in the State and that its use outside the
18 State was not actual and substantial;
19 (6) The leasing or renting of any aircraft or the keeping
20 of any aircraft solely for leasing or renting to
21 lessees or renters using the aircraft for commercial



1 transportation of passengers and goods or the
2 acquisition or importation of any such aircraft or
3 aircraft engines by any lessee or renter engaged in
4 interstate air transportation. For purposes of this
5 paragraph, "leasing" includes all forms of lease,
6 regardless of whether the lease is an operating lease
7 or financing lease. The definition of "interstate air
8 transportation" is the same as in 49 U.S.C. 40102;

9 (7) The use of oceangoing vehicles for passenger or
10 passenger and goods transportation, from one point to
11 another within the State, as a public utility as
12 defined in chapter 269;

13 (8) The use of material, parts, or tools that are imported
14 or purchased by a person licensed under chapter 237
15 [~~which~~] and are used for aircraft service and
16 maintenance[7] or the construction of an aircraft
17 service and maintenance facility as those terms are
18 defined in section 237-24.9;

19 (9) The use of services or contracting imported for resale
20 where the contracting or services are for resale,



- 1 consumption, or use outside the State pursuant to
 2 section 237-29.53(a); [and]
- 3 (10) The use of property, services, or contracting imported
 4 by foreign diplomats and consular officials who are
 5 holding cards issued or authorized by the United
 6 States Department of State granting them an exemption
 7 from state taxes[-]; and
- 8 (11) The use of material, parts, or tools that are imported
 9 or purchased by a person licensed under chapter 237
 10 and are used for the Hawaii film studio, including any
 11 improvements made to the Hawaii film studio under a
 12 financing agreement pursuant to chapter 37D.

13 With regard to purchases made and distributed under the
 14 authority of chapter 421, a cooperative association shall be
 15 deemed the user thereof."

16 SECTION 8. Section 201-112, Hawaii Revised Statutes, is
 17 repealed.

18 [~~§201-112~~] ~~Hawaii television and film development board.~~

19 ~~(a) There is established the Hawaii television and film~~
 20 ~~development board. The board shall be attached to the~~
 21 ~~department of business, economic development, and tourism for~~



1 ~~administrative purposes only. The board shall administer the~~
2 ~~grant and venture capital investment programs and the Hawaii~~
3 ~~television and film development special fund established under~~
4 ~~this part. The board shall also assess and consider the overall~~
5 ~~viability and development of the television and film industries~~
6 ~~and make recommendations to appropriate state or county~~
7 ~~agencies.~~

8 ~~(b) The board shall be composed of nine members, four of~~
9 ~~whom shall be appointed by the governor pursuant to section 26-~~
10 ~~34, and all of whom shall serve four year staggered terms. One~~
11 ~~of the governor's appointments shall be made from a list of~~
12 ~~nominees submitted by the president of the senate and another~~
13 ~~appointment shall be made from a list of nominees submitted by~~
14 ~~the speaker of the house of representatives. The four appointed~~
15 ~~members shall possess a current working knowledge of the film,~~
16 ~~television, or entertainment industry. The director of~~
17 ~~business, economic development, and tourism, and the chairs of~~
18 ~~the four county film commissions or its equivalent, shall serve~~
19 ~~as ex officio voting members, who may be represented on the~~
20 ~~board by designees.~~



1 ~~The chairperson and vice chairperson of the board shall be~~
2 ~~selected by the board by majority vote. Five members shall~~
3 ~~constitute a quorum, whose affirmative vote shall be necessary~~
4 ~~for all actions by the board. The members shall serve without~~
5 ~~compensation but shall be reimbursed for expenses, including~~
6 ~~travel expenses, necessary for the performance of their duties.~~

7 ~~(c) The film industry branch development manager shall~~
8 ~~serve as the executive secretary of the board.~~

9 ~~(d) The board may adopt rules pursuant to chapter 91 to~~
10 ~~effectuate the purposes of this part."]~~

11 SECTION 9. Section 201-114, Hawaii Revised Statutes, is
12 repealed.

13 ~~["§201-114] Inspection of premises and records. The~~
14 ~~board shall have the right to inspect, at reasonable hours, the~~
15 ~~plant, physical facilities, equipment, premises, books, and~~
16 ~~records of any applicant in connection with the processing of a~~
17 ~~grant to the applicant."]~~

18 SECTION 10. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$ or so much
20 thereof as may be necessary for fiscal year 2017-2018 and the
21 same sum or so much thereof as may be necessary for fiscal year



1 2018-2019 to be deposited into the creative media and film
2 infrastructure special fund.

3 SECTION 11. There is appropriated out of the creative
4 media and film infrastructure special fund the sum of \$ or
5 so much thereof as may be necessary for fiscal year 2017-2018
6 and the same sum or so much thereof as may be necessary for
7 fiscal year 2018-2019 for the purposes of the fund.

8 The sums appropriated shall be expended by the department
9 of business, economic development, and tourism for the purposes
10 of this Act.

11 SECTION 12. Notwithstanding the establishment of the
12 Hawaii state film commission as provided in this Act, the film
13 industry branch within the department of business, economic
14 development, and tourism shall continue to be maintained without
15 any reduction in staffing or funding and all officers and
16 employees in the branch shall continue to perform their
17 functions and duties to the extent feasible under this Act.

18 SECTION 13. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20



1 SECTION 14. This Act shall take effect on July 1, 2017.

2

INTRODUCED BY:

[Handwritten Signature]

JAN 20 2017



Report Title:

Creative Media Industry; Creative Media and Film Infrastructure Special Fund; General Excise Tax; Use Tax; Appropriation

Description:

Establishes the Hawaii State Film Commission while retaining the Film Industry Branch of DBEDT. Repeals the Hawaii Television and Film Development Board along with the grant and venture capital programs to be implemented by the Board. Renames the Hawaii Television and Film Development Special Fund as the Creative Media and Film Infrastructure Special Fund. Expands funding sources for the Creative Media and Film Infrastructure Special Fund to support creative industries development within the Department of Business, Economic Development, and Tourism. Amends the purposes for which the Creative Media and Film Infrastructure Special Fund may be used. Provides general excise and use tax exemptions for operations and improvements of the Hawaii Film Studio. Makes an appropriation.

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

