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# A BILL FOR AN ACT

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RELATING TO FILM INFRASTRUCTURE TAX CREDIT.

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

1       SECTION 1. Chapter 235, Hawaii Revised Statutes, is  
2       amended by adding a new section to be appropriately designated  
3       and to read as follows:

4       "§235-A Motion picture, digital media, and film  
5       infrastructure tax credit. (a) For taxable years beginning  
6       after December 31, 2021, there shall be allowed to each taxpayer  
7       that invests \$3,000,000 or more in a film infrastructure  
8       project, subject to the taxes imposed by this chapter, a  
9       nonrefundable tax credit that shall be deductible from the  
10       taxpayer's net income tax liability, if any, imposed by this  
11       chapter for the taxable year in which the credit is properly  
12       claimed. The amount of the credit shall be twenty per cent of  
13       the eligible infrastructure costs made by the taxpayer in any  
14       county of the State.

15       A film infrastructure project occurring in more than one  
16       county may prorate its expenditures based upon the amounts spent



1 in each county, if the population bases differ enough to change  
2 the percentage of tax credit.

3 In the case of a partnership, S corporation, estate, or  
4 trust, the tax credit allowable is for eligible infrastructure  
5 costs incurred by the entity for the taxable year. The cost  
6 upon which the tax credit is computed shall be determined at the  
7 entity level. Distribution and share of credit shall be  
8 determined by rule.

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

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

16 (b) The credit allowed under this section shall be claimed  
17 against the net income tax liability for the taxable year.

18 (c) All claims, including any amended claims, for tax  
19 credits under this section shall be filed on or before the end  
20 of the twelfth month following the close of the taxable year for  
21 which the credit may be claimed. Failure to comply with the



1 foregoing provision shall constitute a waiver of the right to  
2 claim the credit.

3 (d) The total amount of tax credits allowed under this  
4 section in any particular year shall be \$10,000,000; however, if  
5 the total amount of credits applied for in any year exceeds the  
6 aggregate amount of credits allowed for that year under this  
7 section, the excess shall be treated as having been applied for  
8 and claimed in the three immediately succeeding taxable years  
9 and may be claimed in those years.

10 (e) Each taxpayer claiming a tax credit under this section  
11 shall:

12 (1) First prequalify for the credit by registering the  
13 film infrastructure project with the department during  
14 the development or preproduction stage. The taxpayer  
15 undertaking a film infrastructure project shall apply  
16 to the department for a film infrastructure tax credit  
17 certificate no later than ninety days after the first  
18 expenses or costs are incurred, and shall provide with  
19 the application the information as the department may  
20 require to determine the project's eligibility as a  
21 film infrastructure project;



1           Each application for a film infrastructure tax  
2           credit certificate shall include:

3           (A) A detailed description of the film infrastructure  
4           project;

5           (B) A preliminary budget;

6           (C) Estimated completion date; and

7           (D) Other information as the department may require.

8           The department may require an independent audit  
9           of all project costs and expenditures before issuing a  
10           film infrastructure tax credit certificate. If the  
11           department determines that the project has eligible  
12           infrastructure costs, the department shall indicate  
13           the amount of costs or expenditures that has been  
14           established to the satisfaction of the department, and  
15           issue to the taxpayer a film infrastructure tax credit  
16           certificate for investors indicating the amount of tax  
17           credits available under this section. The department  
18           shall provide a copy of the film infrastructure tax  
19           credit certificate to the director, upon request.

20           Before the issuance of a film infrastructure project  
21           tax credit voucher to a taxpayer based upon the film



infrastructure tax credit certificate issued by the  
department, the taxpayer undertaking the film  
infrastructure project shall provide the department  
with a description of the progress on the project and  
an estimated completion date. The department may  
require an independent audit of all project costs and  
expenditures before the issuance of the film  
infrastructure tax credit voucher to a taxpayer. No  
film infrastructure tax credit voucher may be issued  
before the film infrastructure project is shown to be  
one hundred per cent complete; and

(2) No later than ninety days following the end of each  
taxable year in which eligible infrastructure costs  
were expended, submit a written, sworn statement to  
the department, together with a verification review by  
a qualified certified public accountant using  
procedures prescribed by the department, identifying:

(A) All eligible infrastructure costs, if any,  
incurred in the previous taxable year;



1           (B) The amount of tax credits claimed pursuant to  
2           this section, if any, in the previous taxable  
3           year; and

4           (C) The number of total hires versus the number of  
5           local hires by category and by county.

6           This information may be reported from the department  
7           to the legislature in a redacted format pursuant to  
8           subsection (g) (5).

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

15          (g) The department shall:

16          (1) Charge a reasonable administrative fee sufficient to  
17          cover the department's costs to analyze applications  
18          submitted under this section;

19          (2) Maintain records of the names of the taxpayers and  
20          qualified productions thereof claiming the tax credits  
21          under this section;



1       (3) Obtain and total the aggregate amounts of all eligible  
2       infrastructure costs per qualified production and per  
3       qualified production per taxable year;

4       (4) Provide a letter to the director of taxation  
5       specifying the amount of the tax credit per qualified  
6       production for each taxable year that a tax credit is  
7       claimed and the cumulative amount of the tax credit  
8       for all years claimed; and

9       (5) Submit a report to the legislature no later than  
10       twenty days prior to the convening of each regular  
11       session detailing the non-aggregated eligible  
12       infrastructure costs that form the basis of the tax  
13       credit claims and expenditures, itemized by taxpayer,  
14       in a redacted format to preserve the confidentiality  
15       of the taxpayers claiming the credit.

16       Upon each determination required under this subsection, the  
17       department shall issue a letter to the taxpayer, regarding the  
18       qualified production, specifying the eligible infrastructure  
19       costs and the tax credit amount qualified for in each taxable  
20       year a tax credit is claimed. The taxpayer for each qualified  
21       production shall file the letter with the taxpayer's tax return



1 for the qualified production to the department of taxation.  
2 Notwithstanding the authority of the department of business,  
3 economic development, and tourism under this section, the  
4 director of taxation may audit and adjust the tax credit amount  
5 to conform to the information filed by the taxpayer.

6 (h) For the purposes of this section:

7 "Department" means the department of business, economic  
8 development, and tourism.

9 "Director" means the director of taxation.

10 "Eligible infrastructure costs" means costs incurred by a  
11 film infrastructure project within the State that are subject to  
12 the general excise tax under chapter 237 or income tax under  
13 this chapter and that have not been financed by any investments  
14 for which a credit was or will be claimed under this chapter.

15 "Eligible infrastructure costs" includes:

16 (1) All expenditures to provide buildings, facilities, or  
17 installations, whether a capital lease or purchase,  
18 together with necessary equipment for a film, video,  
19 television, digital production facility, or digital  
20 animation production facility;





1       (2) Project development, including design, professional  
2       consulting fees and transaction costs;

3       (3) Development, preproduction, production, post-  
4       production and distribution equipment, and system  
5       access; and

6       (4) Fixtures and other equipment.

7       "Film infrastructure project" means an infrastructure  
8 project undertaken in this State by an entity that:

9       (1) Meets the definition of a "qualified production" under  
10       section 235-17;

11       (2) Is authorized to conduct business in this State;

12       (3) Is not in default on a loan made by the State or a  
13       loan guaranteed by the State, nor has ever declared  
14       bankruptcy under which an obligation of the entity to  
15       pay or repay public funds was discharged as a part of  
16       the bankruptcy; and

17       (4) Has been approved by the department as qualifying for  
18       a film infrastructure tax credit under this section.

19       "Infrastructure project" means a capital project to provide  
20 one or more building, facility, or installation needed for the



1 digital media and motion picture industry to function in this  
2 State.

3 "Net income tax liability" means net income tax liability  
4 reduced by all other credits allowed under this chapter."

5 SECTION 2. There is appropriated out of the general  
6 revenues of the State of Hawaii the sum of \$ or so  
7 much thereof as may be necessary for fiscal year 2022-2023 to  
8 establish two full-time equivalent (2.0 FTE) staff positions,  
9 exempt from chapter 76, Hawaii Revised Statutes, for the  
10 operation and management of the motion picture, digital media,  
11 and film infrastructure tax credit provided under section 1 of  
12 this Act. These two staff positions shall be filled by persons  
13 with expertise in infrastructure and public-private partnership  
14 procurement.

15 The sum appropriated shall be expended by the creative  
16 industries division of the department of business, economic  
17 development, and tourism for the purposes of this Act.

18 SECTION 3. New statutory material is underscored.

19 SECTION 4. This Act, upon its approval, shall apply to  
20 taxable years beginning after December 31, 2021, provided that  
21 section 2 shall be effective July 1, 2022.



**Report Title:**

Motion Picture, Digital Media, and Film Infrastructure Tax Credit; Department of Business, Economic Development and Tourism; Creative Industries Division; Appropriation

**Description:**

Creates a nonrefundable twenty percent film infrastructure tax credit. Requires that the film infrastructure project must spend at least \$3,000,000 on buildings, facilities, or installations. Caps the credit at \$10,000,000 per year. Appropriates funds to the Department of Business, Economic Development and Tourism's Creative Industries Division for two FTE positions. (SD1)

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