DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR

ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
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To: The Honorable Donovan M. Dela Cruz, Chair;
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair;
and Members of the Senate Committee on Ways and Means

From: Isaac W. Choy, Director
Department of Taxation

Date: Thursday, February 24, 2022
Time: 10:00 A.M.
Place: Via Video Conference, State Capitol

Re: S.B. 2167, S.D. 1, Relating to Film Infrastructure Tax Credit

The Department of Taxation (Department) is opposed to S.B. 2167, S.D. 1, in its current form and offers the following comments for your consideration.

S.B. 2167, S.D. 1, creates a nonrefundable twenty percent film infrastructure tax credit, provided that at least $3,000,000 is expended on buildings, facilities, or installations. The credit is capped at $10,000,000 per year, with the Department of Business, Economic Development, and Tourism (DBEDT) having the responsibility of approving projects and certifying the credit. The new tax credit is applicable to taxable years beginning after December 31, 2021.

First, the Department appreciates that the Senate Committee on Energy, Economic Development and Tourism addressed the Department's concerns in the original measure which allowed the credit to be sold, assigned, or transferred, exempted the credit from any post-certification remedy, and limited the Department's recourse in the event that fraud was committed by a taxpayer.

Second, the Department notes that the credit 20 percent credit amount stated on page 1, lines12-14, conflicts with the provision contained in page 1, line 15 to page 2, line 2. The latter provision that that the tax credit percentage may be changed depending on the population of the county. The Department strongly suggests resolving this conflict.

Third, the measure is unclear regarding the difference, if any, between a "tax credit certificate" and a "tax credit voucher." If the intent of a "tax credit certificate" is to serve as a reservation of the $10 million aggregate cap then it must be specified. Similarly, if the "tax credit voucher" will serve as the actual certification that taxpayers will attach to their returns when claiming the credit this must be specified.

In addition, as currently written, the measure seems to indicate that the credit is available as the costs are expended, but also states that the "tax credit voucher" cannot be issued until the film infrastructure project is 100 percent complete. This conflict must be resolved as the availability of the tax credit will be a significant point of contention if left unresolved.

Fourth, although not expressly stated, it appears that the intent is to allow for first come-first served certification. The measure provides that the measure requires an eligible taxpayer to submit to DBEDT a sworn statement identifying eligible costs not later than ninety days following the end of each taxable year in which eligible infrastructure costs were expended. Because some taxpayers are fiscal year filers, with the end of the tax year varying, this could result in some taxpayers having a substantial advantage or disadvantage in obtaining the credit, depending on when their fiscal year ends. The Department suggests making the deadline uniform for all taxpayers by making the deadline not later than March 31st following the end of each calendar year in which eligible infrastructure costs were expended.

Finally, the Department requests that the credit be made effective for taxable years beginning after December 31, 2022, in order to provide the Department sufficient time to prepare the required tax forms, make necessary computer programming changes, and allow information dispersal to the public.

Thank you for the opportunity to provide testimony on this measure.

DAVID Y. IGE
GOVERNOR

MIKE MCCARTNEY
DIRECTOR

CHUNG I. CHANG
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
MIKE MCCARTNEY
Director
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON WAYS AND MEANS

Thursday, February 24, 2022
10:00 AM
State Capitol, Conference Room #211

In consideration of
SB 2167, SD1
RELATING TO MOTION PICTURE, DIGITAL MEDIA, AND FILM PRODUCTION.

Chair Dela Cruz, Vice Chair Keith-Agaran and members of the Committee.

The Department of Business, Economic Development & Tourism (DBEDT) supports the intent of SB 2167, SD1. which seeks to create a nonrefundable twenty percent film infrastructure tax against a Hawaii company tax liability. As proposed, 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, and adds two exempt positions in DBEDT to manage the infrastructure credit.

DBEDT defers to the Department of Taxation (DoTAX) on the anticipated fiscal impacts of this measure as it relates to the Administration's budget and administrative rules governing HRS 235-17, the Hawaii Motion Picture, Digital Media, and Film Production Tax Credit program.

Hawaii is one of a few states which has not adopted an infrastructure credit.

Incentivizing purpose-built production studios which supports related growth industries in visual effects and post-production, as well as music production facilities, is necessary to ensure job creation for our graduates and university student's future employment, working in areas where they are already showing great promise in.

The Department appreciates the addition of two exempt staffing positions in SB2167, SD1, which are crucial to properly manage infrastructure credit with expertise necessary having worked in the areas of land development, financing, future facing studio development and public, private partnerships.

We currently estimate funding required for these positions at $198,000 per year; $130,000 for the lead position and $68,000 for executive level staffing support.

We support this measure provided that its passage does not replace or adversely impact priorities indicated in our Executive budget.

As the state's lead agency for economic development, it is our obligation to build the necessary framework, broadband infrastructure, and incentivize facilities to ensure a thriving ecosystem in which residents with aspirations to work in media, entertainment and music industries can remain home here in Hawaii to pursue their careers.

DBEDT and its Creative Industries Division looks forward to working with the lawmakers, the counties and our industry to develop new facilities to increase job opportunities for our Hawaii student and residents.

Thank you for the opportunity to testify.

DAVID Y. IGE
GOVERNOR

LATE

CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAI'I EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAIʻI
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAIʻI 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 2167, S.D. 1

February 24, 2022
10:00 a.m.
Room 211 and Videoconference

RELATING TO FILM INFRASTRUCTURE TAX CREDIT

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill No. 2167, S.D. 1, establishes a non-refundable tax credit for each taxpayer that invests $3,000,000 or more in a film infrastructure project and caps the credit at $10,000,000 per year; and appropriates an unspecified amount of general funds in FY 23 to the Department of Business, Economic Development and Tourism, Creative Industries Division, for 2.00 positions to administer the tax credit.

B&F notes that the federal American Rescue Plan (ARP) Act restricts states from using ARP Coronavirus State Fiscal Recovery Funds (CSFRF) to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation beginning on March 3, 2021, through the last day of the fiscal year in which the CSFRF have been spent. If a state cuts taxes during this period, it must demonstrate how it paid for the tax cuts from sources other than the CSFRF, such as:

- By enacting policies to raise other sources of revenue;
- By cutting spending; or

- Through higher revenue due to economic growth.

If the CSFRF provided have been used to offset tax cuts, the amount used for this purpose must be repaid to the U.S. Treasury.

The U.S. Department of Treasury has issued rules governing how this restriction is to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawaiʻi complies with this ARP restriction.

B&F also notes that, with respect to the general fund appropriation in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal ARP Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai‘i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Motion Picture, Digital Media, and Film Infrastructure Tax Credit

BILL NUMBER: SB 2167 SD1

INTRODUCED BY: Senate Committee on Energy, Economic Development, and Tourism

EXECUTIVE SUMMARY: Creates a nonrefundable twenty percent motion picture, digital media, and 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. Our view is that rather than enact a tax credit and the blank check that comes with it, the legislature should appropriate money to plan and construct the infrastructure and then execute on that plan.

SYNOPSIS: Adds a new section to HRS chapter 235 to allow taxpayers to claim a nonrefundable credit of 20% of the qualified costs incurred for qualified media infrastructure projects in any county of the state; provided the credit shall not exceed $10 million.

Further delineates requirements to qualify for and certification of the credit.

Requires the taxpayer claiming the credit to first prequalify for the credit by registering the project with DBEDT during the development or preproduction stage, and file an application including: (A) a detailed description of the film infrastructure project; (B) a preliminary budget; (C) estimated completion date; and (D) other information as the department may require.

Upon completion of the project, DBEDT may issue an infrastructure credit voucher to the taxpayer.

Requires any taxpayer eligible to claim a qualified media infrastructure project tax credit to file with DBEDT an annual report no later than 90 days following each taxable year for which the credit is claimed delineating: (A) all eligible infrastructure costs, if any, incurred in the previous taxable year; (B) the amount of tax credits claimed pursuant to this section, if any, in the previous taxable year; and (C) the number of total hires versus the number of local hires by category and by county.

Defines “film infrastructure project” as an infrastructure project undertaken in this State by an entity that: (1) meets the definition of a "qualified production" under section 235-17; (2) is authorized to conduct business in this State; (3) is not in default on a loan made by the State or a loan guaranteed by the State, nor has ever declared bankruptcy under which an obligation of the entity to pay or repay public funds was discharged as a part of the bankruptcy; and (4) has been approved by the department as qualifying for a film infrastructure tax credit.

Defines “eligible infrastructure costs” as costs incurred by a film infrastructure project within the State that are subject to general excise tax under chapter 237 or net income tax under chapter 235 and that have not been financed by any investments for which this income tax credit was or will be claimed. Such costs include but are not limited to: (1) all expenditures to provide buildings, facilities, or installations, whether a capital lease or purchase, together with necessary equipment for a film, video, television, digital production facility, or digital animation production facility; (2) project development, including design, professional consulting fees and transaction costs; (3) development, preproduction, production, post-production and distribution equipment, and system access; and (4) fixtures and other equipment.

EFFECTIVE DATE: Upon Approval

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. Act 89, SLH 2013, increased the motion picture, digital media, and film production tax credit from 15% to 20% for the costs incurred in a county with a population over 700,000 and from 20% to 25% for costs incurred in a county with a population of 700,000 or less. Act 89 also increased the total tax credits that may be claimed per qualified production from $8 million to $15 million. Act 143, SLH 2017, imposed a statewide cap on such credits of $35 million; Act 275, SLH 2019, increased the statewide cap to $50 million.

In addition to the existing credits, the proposed measure would allow taxpayers to claim a media infrastructure project tax credit in any county of the state.

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 ensure 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.

As a technical matter, the definition of eligible infrastructure costs now requires that costs be subject to tax under chapter 237 or chapter 235. Because some productions may incur costs subject to Hawaii Use Tax under chapter 238, and chapter 238 is considered complementary to chapter 237, chapter 238 should also be referred to in the definition.

Digested: 2/20/2022

SAG·AFTRA.

February 22, 2022

Committee on Ways and Means
Sen. Dela Cruz, Chair
Sen. Keith-Agaran, Vice Chair

The Senate
The Thirtieth-First Legislature
Regular Session of 2022

RE: SB2167 SD 1 - RELATING TO FILM INFRASTRUCTURE TAX CREDIT
DATE: Thursday, February 24, 2022
TIME: 10:00 am
PLACE: Conference Room 211
VIA Videoconference
State Capitol 415 South Beretania Street, Honolulu HI

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and the members of the committee,

Thank you for the opportunity to testify in SUPPORT of SB2167 - RELATING TO FILM INFRASTRUCTURE TAX CREDIT.

SAG-AFTRA represents over 1200 actors, recording artists, and media professionals in our state. We are the professional performers working in front of the camera and behind the microphone.

As the latest DBEDT figures indicate, in 2019 our Film and Television industry "generated an estimated $707 million of economic impact, $43.7 million in estimated tax revenues and total job impacts of 3,303 jobs."[1] State support and incentives to help build a stable infrastructure for our industry will go a long way to grow and sustain this industry and provide jobs for local people.

Respectfully,

Mericia Palma Elmore

Mericia Palma Elmore, Executive Director SAG-AFTRA Hawaii Local

[1] https://files.hawaii.gov/dbedt/economic/data_reports/hawaii-creative-report/HI_Creative_Ind_2019.pdf

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SCREEN ACTORS GUILD - AMERICAN FEDERATION OF
TELEVISION AND RADIO ARTISTS
SAGAFTRA.org
Associated Actors & Artistes of America / AFL-CIO

Local 665
HAWAII'S TECHNICIANS
for
FILM, TELEVISION, STAGE AND PROJECTION
Since 1937

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS
OF THE UNITED STATES, ITS TERRITORIES AND CANADA, AFL-CIO, CLC

LATE

The Thirty-First Legislature, State of Hawai'i
Hawai'i State Senate, Regular Session 2022
Hawaii State Capitol,
415 South Beretania Street

COMMITTEE ON WAYS AND MEANS
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S. C. Keith-Agaran, Vice Chair

DATE: Thursday, February 24, 2022
TIME: 10:00 AM
PLACE: Conference Room 211 & Videoconference

RE: SENATE BILL 2167 – RELATING TO FILM INFRASTRUCTURE TAX CREDIT

Mahalo Chair Dela Cruz, Vice-Chair Keith-Agaran, and Members of the Committee for allowing us to testify in **STRONG SUPPORT of S.B. 2167**.

IATSE Local 665 represents Entertainment Technicians in the Stagecraft, Tradeshow, Conventions, Film and TV industries across the State of Hawaii, and we truly appreciate the continued support the State has shown toward the growth of our film industry.

Our film tax credit and our beautiful exterior locations are what drives film projects to Hawai'i. Having proper film stages would keep them here longer. The Hawai'i Film Studio at Diamond Head has been occupied year-round for over a decade, most recently by "NCIS-Hawai'i". "Magnum P.I." has converted a cluster of military buildings in Kalaeloa into sound stages, and although they lack proper soundproofing, those buildings have also been occupied for the last five years. These interior sets employ hundreds of film construction workers to design, build, paint, plaster and dress these interior sets – workers who might otherwise be unemployed.

"Jungle Cruise" built their entire exterior set on Kaua'i and then packed up everything and shipped it to Atlanta to film the interior scenes. Atlanta has many large film stages and a strong film tax incentive. If we had an interior stage for them to use, "Jungle Cruise" may have filmed their interior shots here, too.

S.B. 2167 may need some modifications, but it is definitely a step in the right direction.

Respectfully submitted,

Trish Barber
Business Representative

501 SUMNER STREET, #605 • HONOLULU, HAWAII 96817 • 808-596-0227 • FAX 808-591-8213

SB-2167-SD-1
Submitted on: 2/19/2022 12:50:05 PM
Testimony for WAM on 2/24/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Gerard Silva	Individual	Oppose	No

Comments:

Wast of Money there are many more important thing to work on than this rubish!!

SB-2167-SD-1
Submitted on: 2/20/2022 4:30:48 PM
Testimony for WAM on 2/24/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Bronsten Kossow	Individual	Support	No

Comments:

Please support. Mahalo!