DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
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ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
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To: The Honorable Sean Quinlan, Chair;
The Honorable Daniel Holt, Vice Chair;
and Members of the House Committee on Economic Development

From: Isaac W. Choy, Director
Department of Taxation

Date: Wednesday, March 16, 2022
Time: 10:00 A.M.
Place: Via Video Conference, State Capitol

Re: S.B. 2167, S.D. 2, Relating to Film Infrastructure Tax Credit

The Department of Taxation (Department) is opposed to S.B. 2167, S.D. 2, in its current form, and offers the following comments for your consideration.

S.B. 2167, S.D. 2, 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 measure has a defective effective date of July 1, 2050 but otherwise applies to taxable years beginning after December 31, 2021.

First, "eligible infrastructure costs" and "film infrastructure project" are very broad and should be further defined. Both definitions refer to costs or projects that are necessary or needed for the industry to function. Stating that a cost or project is necessary or needed is not sufficient in terms of a tax credit. As currently written, these definitions are ripe for subjective determinations that will result in inconsistent administration and taxpayer confusion. In addition, "eligible infrastructure costs" is broader than and inconsistent with what is allowed as a "film infrastructure credit." The Department strongly suggests resolving these issues.

Second, the Department notes that a film infrastructure project may only be undertaken by an entity that meets the specified criteria, which includes the requirement that such entity not be in default on a loan made by the State or on a loan guaranteed by the State and which has not filed for bankruptcy. Because a qualified project will likely span several years, it is not clear what should occur should an entity initially qualify but in a later year cease to be qualified. For example, do previously-granted credits get cancelled or is the entity still able to complete the project but is limited to the credits granted while it was still a qualified entity? It is also unclear why a taxpayer must be a "qualified production" under section 235-17, Hawaii Revised Statutes, to qualify for the credit.

Third, the Department notes that a qualified project must obtain from DBEDT a film infrastructure tax credit certificate, which is based upon expected expenditures for the project. Because this measure requires that a minimum of $3 million be spent on the project, it is not clear what should occur if the actual expenditures fall short of the minimum threshold. It is also not clear on the consequences if a project is started but never completed.

Fourth, the measure uses the phrases "tax credit certificate" and "tax credit voucher" somewhat interchangeably. If the intent is to distinguish the documents that DBEDT will issue for reservation versus certification, this must be expressly stated in the law. The Department strongly suggests clarifying what each of these terms means and their legal effect on the administration of this new credit.

Fifth, the Department believes that it may be more cost-effective for the State to instead make a grant upon completion of such a qualifying project, rather than burdening the tax code with a tax credit that less than a handful of taxpayers will be able to claim.

Finally, the Department strongly suggests that the credit be made effective for taxable years beginning after December 31, 2022. Allowing this new credit for tax year 2022 as currently written may provide a windfall for taxpayers who have already expended qualifying costs. In addition, this extension will provide the Department necessary time to prepare the required tax forms and make the necessary computer programming changes.

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

UNIVERSITY OF HAWAIʻI SYSTEM
Legislative Testimony

Testimony Presented to the
House Committee on Economic Development
Wednesday, March 16, 2022 at 10:00 a.m.
by
Christopher P. Lee, Founder/Director, Academy for Creative Media System
on behalf of
Vassilis L. Syrmos, Vice President for Research and Innovation
University of Hawaiʻi System

SB 2167 SD2 – RELATING TO FILM INFRASTRUCTURE TAX CREDIT

Chair Quinlan, Vice Chair Holt, and Members of the Committee:

The University of Hawaiʻi (UH) supports the intent of SB 2167 SD2 to enhance the state's successful motion picture/television/streaming production industry by incentivizing the building of much needed physical infrastructure. The production industry is an essential component of the diversification of Hawaiʻi's economy. While numbers are not finalized, 2021 is likely to be another record year of positive impact for the local economy, with a direct spend of over $400 million.

Unfortunately, Hawaiʻi is limited by having only one stage worthy of a television series -- the state-owned Diamond Head Studio -- which can only accommodate one show at a time and is insufficient for feature films. Blockbusters like *Jumanji, Pirates of the Caribbean, Godzilla* and *Jurassic Park* are forced to do the bulk of their interior shooting, visual effects and post production elsewhere. It means that Hawaiʻi is only getting a small portion of the overall spend on a film. As successful as the production industry is currently, it is severely constrained by lack of physical capacity.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR

MIKE MCCARTNEY
DIRECTOR

CHUNG I. CHANG
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
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Statement of
MIKE MCCARTNEY
Director
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT

Wednesday, March 16, 2022
10:00 AM
State Capitol, Conference Room #312

In consideration of
SB 2167, SD2
RELATING TO FILM INFRASTRUCTURE TAX CREDIT.

Chair Quinlan, Vice Chair Holt and members of the Committee.

The Department of Business, Economic Development & Tourism (DBEDT) supports the intent of SB 2167, SD2, which seeks to create a nonrefundable twenty percent film infrastructure tax credit against a Hawaii company's 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 this aspect of HRS 235-17. We support this measure provided that its passage does not replace or adversely impact priorities indicated in our Executive budget.

DBEDT defers to the Department of Taxation (DoTAX) and Budget and Finance on the 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.

We request the committee's consideration in adding an amendment in an HD1 to extend the sunset date from December 31, 2024 to December 31, 2032. We estimate the cost of the two positions to be $188,000 to support the oversight and management of this proposed measure, should it become law.

Incentivizing purpose-built production studios can support exponential growth in film and entertainment industries. This can advance increased job opportunities across multiple sectors; during construction and those skilled workforce jobs which support production and post-production. We also see that smaller regional studio and co-working facilities may benefit from such a credit.

It is our obligation as a state to develop the necessary framework, policies, broadband infrastructure, and incentives to accelerate purpose-built facilities with private sector partners. Increased production demands are here, and so is the need for production studio space.

The department remains committed to advancing partnerships to create a thriving ecosystem for residents with the talent and aspirations to build a career in media, arts, entertainment and music industries, right here at home.

Thank you for the opportunity to testify.

LEGISLATIVE TAX BILL SERVICE

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 SD 2

INTRODUCED BY: Senate Committee on Ways & Means

EXECUTIVE SUMMARY: Establishes a film infrastructure income tax credit. Requires that the film infrastructure project spend at least $3,000,000 on buildings, facilities, or installations. Sets an aggregate cap amount for the credit of $10,000,000 per year. Appropriates moneys to the Department of Business, Economic Development, and Tourism's Creative Industries Division for two full-time equivalent (2.0 FTE) positions.

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: July 1, 2050

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: 3/14/2022

The House of Representatives
The Thirty-First Legislature
Regular Session of 2022

COMMITTEE ON ECONOMIC DEVELOPMENT
Rep. Sean Quinlan, Chair
Rep. Daniel Holt, Vice Chair

RE: SB 2167, SD2 RELATING TO FILM INFRASTRUCTURE TAX CREDIT

Date: Wednesday, March 16, 2022
Time: 10:00 a.m.
Conference Room 312
State Capitol
415 South Beretania Street

March 15, 2022

From: Roy Tjioe and Ricardo Galindez
Island Film Group
99-1245 Halawa Valley St.
Aiea, HI 96701
808-536-7955

Aloha Chair Quinlan and Vice Chair Holt, and Members of the Committee:

Our Background

Island Film Group is a locally owned and operated production company. We began working in Hawaii's film and television industry in 2001 as attorneys at Goodsill Anderson Quinn & Stifel, where we represented filmmakers and other production companies. Since our formation of Island Film Group in 2007, we have been working full-time as producers of feature films such as "Princess Ka`iulani" and "Soul Surfer", network and cable television movies and series, as well as a variety of commercial productions.

We SUPPORT the intent of SB 2167, SD2, which proposes a 20% tax credit based upon a minimum investment in a film infrastructure project, with the following proposed changes:

- The minimum spend amount should be reduced to $500,000. There are beneficial production and post-production technologies, as well as infrastructure upgrades, that could be added to current facilities that would not require $3m of expenditures.

- The tax credit should be made refundable. Non-refundable credits require that the credits be "sold" to taxpayers with Hawaii tax liability. Such sales are done at a discount (as high as 20%), which means that the economic value to the infrastructure project is reduced even though the State of Hawaii is still obligated for the full amount of the tax credit.

Me ke aloha,

Roy Tjioe and Ricardo Galindez
Co-Founders
Island Film Group
Honolulu, Hawaii

SB-2167-SD-2
Submitted on: 3/15/2022 9:05:20 AM
Testimony for ECD on 3/16/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Sandie Wong	Individual	Comments	Remotely Via Zoom

Comments:

I support the proposals by Island Film Group on this bill. Thank you.

DAVID Y. IGE
GOVERNOR

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

<u>WRITTEN ONLY</u>
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT
ON
SENATE BILL NO. 2167, S.D. 2

March 16, 2022
10:00 a.m.
Room 312 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. 2, establishes a non-refundable tax credit for each taxpayer that invests $3,000,000 or more in a qualified 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 Hawaiʻi complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.