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
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 ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
ON
SENATE BILL NO. 2167

January 28, 2022
3:00 p.m.
Room 224 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 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.

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.

Thank you for your consideration of our comments.

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
PHONE NO: (808) 587-1540
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To:	The Honorable Glen Wakai, Chair; The Honorable Bennette E. Misalucha, Vice Chair; and Members of the Senate Committee on Energy, Economic Development, and Tourism
From:	Isaac W. Choy, Director Department of Taxation
Date:	January 28, 2022
Time:	3:00 P.M.
Place:	Via Video Conference, State Capitol

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

The Department of Taxation (Department) has strong reservations regarding S.B. 2167 and provides the following comments for your consideration.

S.B. 2167 creates a tax shelter in the form of a nonrefundable twenty percent film infrastructure tax credit, provided that at least $3,000,000 is be spent on buildings, facilities, or installations. The credit is capped at $10,000,000 per year, with DBEDT having the responsibility of approving projects and certifying the credit. The measure is applicable to taxable years beginning after December 31, 2021.

First, the Department notes that this measure fails to adequately define "eligible infrastructure costs." The term is currently defined only as *including*, but not limited to, certain specified costs. The Department suggests that the measure specifically specify the costs to which the credit will be allowed to avoid any dispute regarding the qualification of any particular costs.

Second, the measure allows the credit to be sold, assigned, or transferred from the original claimant to any other taxpayer. The Department is deeply concerned that allowing the credit to be transferred in such manner could lead to fraud and other abuse. It is important to note that these types of transfers were allowed with the Act 221 Qualified High Technology Business Investment Tax Credit.

Third, the measure provides that no tax credits which are transferred is subject to a post-certification remedy, which is defined as “the recapture, disallowance, recovery, reduction, repayment, forfeiture, decertification or any other remedy that would have the effect of reducing or otherwise limiting the use of a tax credit." The Department is strongly opposed to the provision as the Department of Business, Economic Development and Tourism (DBEDT) does not conduct a comprehensive tax examination on credit claims. DBEDT performs a preliminary review and allocates the credits so that the aggregate cap is not exceeded. If the DBEDT is to be the final arbiter, this tax credit should be converted to a grant program administered by DBEDT.

Fourth, the Department notes that subsections (c) and (d) conflict. Subsection (c) requires that all claims be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. However, the disallowance of any post certification remedy would mean that the Department would not be able to deny the credit claims based on late filings.

Finally, the measure provides that the "sole and exclusive remedy of the department and the director shall be to seek collection of the amount of the tax credits from the taxpayer that committed the fraud or misrepresentation". This provision will allow a taxpayer to set up an empty shell entity with no assets and make a fraudulent misrepresentation with impunity, as the only recourse of the Department would be to pursue an empty shell with no assets. The Department strongly believes that this provision should be deleted in its entirety.

Thank you for the opportunity to provide comments.

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
SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

Friday, January 28, 2022
3:00 PM
State Capitol, Conference Room #224

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

Chair Wakai, Vice Chair Misalucha and members of the Committee.

The Department of Business, Economic Development & Tourism (DBEDT) supports the intent of SB 2167, which seeks to create a nonrefundable twenty percent film infrastructure tax credit. 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.

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

DBEDT and its Creative Industries Division (CID) agrees with incentivizing purpose-built production, related growth industries in visual effects and post-production, as well as music production facilities, given the potential job creation for our student's future employment, working in areas where they are already excelling in.

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

As the 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 requests your consideration of the following amendments to this measure:

Related the department required management of this infrastructure credit as delineated in this measure, beginning on Page 4, Line 18, Item (1) through Page 10, Item (4) line 13 require additional exempt staffing positions to properly manage the infrastructure credit with expertise in infrastructure and public, private partnerships.

DBEDT and its Creative Industries Division looks forward to working with the lawmakers, the counties our industry to provide input as this measure to advance this measure through the legislative process.

Thank you for the opportunity to testify.

UNIVERSITY OF HAWAIʻI SYSTEM
Legislative Testimony

Written Testimony Presented to the
Senate Committee on Energy, Economic Development, and Tourism
Friday, January 28, 2022 at 3:00 p.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 – RELATING TO FILM INFRASTRUCTURE TAX CREDIT

Chair Wakai, Vice Chair Misalucha, and Members of the Committee:

The University of Hawaiʻi (UH) strongly supports SB 2167 which will 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.

As noted by economists Sumner La Croix and James Mak in their March 2021 UHERO report, *Understanding the Role of the Hawaii Film/TV/Digital Production Tax Credit In Diversifying the Hawaii Economy*: "There is more to building a robust film industry in Hawaiʻi than just having a competitive film credit. Two other factors that attract film/TV productions to Hawaiʻi are availability of workers with skills valued by the industry and availability of state-of-the-art production studios."

The report goes on to state that: "Expanded undergraduate education programs and facilities dedicated to film/TV/digital production at UH campuses are providing college students with skills and overall knowledge valued by film/TV/digital production companies. The brand new UH-West Oʻahu facilities have the potential to make UH's Academy of Creative media one of the leading schools for content production in the United States. With roughly 250 undergraduate majors expected when the new UH-West Oʻahu facilities open for in-person learning later this year, content production companies filming in Hawaiʻi will find it easier to staff jobs in their productions with local talent, while other UH program graduates will be encouraged to start their own companies."

However, 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. SB 2167 is an important measure in ensuring the continued growth of the industry and keeping UH graduates in the islands with living wage jobs.

Thank you for the opportunity to testify on this measure.

January 26, 2022

Committee on Energy, Economic Development and Tourism
Sen. Wakai, Chair
Sen. Misalucha, Vice Chair

The Senate
The Thirtieth-First Legislature
Regular Session of 2022

RE: SB2167 - RELATING TO FILM INFRASTRUCTURE TAX CREDIT
DATE: Friday, January 28, 2022
TIME: 3:00 pm
PLACE: Conference Room 224
VIA Videoconference
State Capitol 415 South Beretania Street, Honolulu HI

Aloha Chair Wakai, Vice Chair Misalucha 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

Mericia Palma Elmore, Executive Director
SAG-AFTRA Hawaii Local
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The Senate
The Thirty-First Legislature
Regular Session of 2022

COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT AND TOURISM
Sen. Glenn Wakai, Chair
Sen. Bennette E. Misalucha, Vice Chair

RE: SB 2167 RELATING TO FILM INFRASTRUCTURE TAX CREDIT

Date: Friday, January 28, 2022
Time: 3:00 p.m.
Conference Room 224
State Capitol
415 South Beretania Street

January 27, 2022

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

Aloha Chair Wakai and Vice Chair Misalucha, 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, 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 $500k. 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

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

INTRODUCED BY: WAKAI, KEITH-AGARAN, MISALUCHA, Ihara, Kim, Riviere, San Buenaventura

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.

Provides for sale, assignment, or transfer of credit to a transferee upon proper notification to DBEDT. Credits once transferred are not subject to reduction, so that the government's sole remedy would be to recoup any fraudulently obtained credits from the transferor.

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 or net income tax and that have not been financed by any investments for which an 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.

Digested: 1/26/2022

LATE

SB-2167
Submitted on: 1/27/2022 3:01:46 PM
Testimony for EET on 1/28/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Irish Barber	Testifying for IATSE Local 665	Support	No

Comments:

The Thirty-First Legislature, State of Hawaiʻi
Hawaiʻi State Senate, Regular Session 2022
Hawaii State Capitol,

415 South Beretania Street

COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT AND TOURISM
Senator Glenn Wakai, Chair

Senator Bennette E. Misalucha, Vice Chair

DATE: Friday, January 28, 2022

TIME: 3:00 PM

PLACE: Conference Room 224 & Videoconference

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

Mahalo Chair Wakai, Vice-Chair Misalucha, and Members of the Senate 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 continue support the State has shown toward the growth of our film industry.

This bill provides the support needed for Hawai'i to compete for Television and Film Projects. Most shows over the last several decades have come here for our exterior locations, but as we have seen from six years of filming "Lost", ten years of filming "Hawai'i Five-O", Four Seasons of "Magnum P.I.", the First Season of "NCIS- Hawai'i", two pilots awaiting pickup and one contemplating whether to come here, it is very clear that companies are coming here to also film their interior scenes. Both the Hawai'I Film Studio at Diamond Head and the Kalaeloa Stages are occupied year round for interior shots. These stages employ hundreds of additional film construction workers to design, build, paint, plaster and dress these sets.

"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 no film tax cap and very large film stages where many films are done. If we had an interior stage for them to use, "Jungle Cruise" may have filmed their interior shots here, too.

Please pass S.B. 2167 to help grow our film industry. It's definitely a step in the right direction. Mahalo!

Respectfully submitted,

Irish Barber

Business Representative

SB-2167
Submitted on: 1/27/2022 12:03:33 PM
Testimony for EET on 1/28/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Sandie Wong	Individual	Comments	Yes

Comments:

I join the comments of Island Film Group's Testimony. Thank you.