

JAN 24 2024

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**A BILL FOR AN ACT**

RELATING TO THE FILM INDUSTRY.

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

1           SECTION 1. Chapter 201, Hawaii Revised Statutes, is  
2 amended by adding to part IX a new section to be appropriately  
3 designated and to read as follows:

4           "§201-           Hawai'i film advisory council; established. (a)

5 There is established within the department of business, economic  
6 development, and tourism for administrative purposes only a  
7 Hawai'i film advisory council. The council shall consist of  
8 thirteen members who shall be appointed by the governor, in the  
9 manner prescribed in section 26-34, except as otherwise provided  
10 in this section; and shall be composed of:

11           (1) Five members who are employees from each of the four  
12           county film offices in the State and the department's  
13           state film office;

14           (2) Seven members who are employed by or serve in  
15           leadership positions of organizations or businesses  
16           from the Hawai'i Film and Entertainment Board, film  
17           industry labor unions, film industry guilds, higher

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1 education in film and media, entrepreneurs in media,  
2 native Hawaiian cultural organizations, or New Zealand  
3 film industry organizations that have experience in  
4 one or more of the following fields:

5 (A) Film and television production;

6 (B) Film commission management;

7 (C) Investment and tax credits;

8 (D) Film production finance and accounting;

9 (E) Post-production;

10 (F) Entertainment industry labor union leadership;

11 (G) Hawaii film production organization and non-  
12 profit film production organization;

13 (H) Workforce and skills development training  
14 organization; or

15 (I) Commercial real estate and development.

16 (3) The director of business, economic development, and  
17 tourism, or the director's designee, who shall serve  
18 as an ex officio, voting member of the council.

19 (b) The council shall advise the department, make  
20 recommendations, and provide industry insights to increase  
21 business development, workforce, jobs, and infrastructure in the  
22 film industry statewide. The council shall also provide the

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1 department with input on setting strategic priorities to  
2 accelerate the growth of the film industry.

3 (d) The council shall appoint a chair, and other  
4 leadership positions as deemed necessary.

5 (e) The council shall make recommendations to the  
6 department on the appointment of a film industry development  
7 liaison."

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

11 "§237- Exemption for certified development of film  
12 studio facilities. (a) Any provision of law to the contrary  
13 notwithstanding, and upon receipt of the certification required  
14 by subsection (b), there shall be exempted from, and excluded  
15 from the measure of, the taxes imposed by this chapter, the  
16 gross proceeds of a qualified person arising from the planning,  
17 design, construction, or retrofitting of film studio  
18 infrastructure in the State.

19 (b) Application for the exemption provided by this section  
20 shall first be made to the department of business, economic  
21 development, and tourism, who shall certify that the qualified  
22 person meets the requirements in this section.

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1        (c) As used in this section:

2        "Film studio infrastructure" means:

3        (1) New or retrofit construction of structures in the  
4        State to accommodate soundstages for the production  
5        needs of the film industry;

6        (2) Permanent space primarily used for production,  
7        including:

8        (A) Actors, on-screen personnel, producers,  
9        directors, writers, and related support staff  
10       spaces;

11       (B) Catering facilities;

12       (C) Laundry facilities;

13       (D) Post-Production spaces, including editing suites,  
14       screening rooms, and control rooms;

15       (3) Facilities that are used for production purposes,  
16       which may include:

17       (A) Set design, build, construction, and painting;

18       (B) Costume fabrication and related areas for  
19       construction;

20       (C) Dining and food prep;

21       (D) Office accommodations for all production  
22       personnel and departments;

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1           (E) Prop, picture car, and other vehicle parking, and  
2           related storage;

3           (F) Sustainable alternative energy source where  
4           applicable;

5           (G) Facilities equipped with private network fiber  
6           connectivity; and

7           (H) Security infrastructure.

8           "Production" has the same meaning as in section 235-17(o).

9           "Post-production" has the same meaning as in section 235-  
10 17(o).

11           "Qualified person" means an individual, partnership, joint  
12 venture, corporation, association, limited liability  
13 partnership, limited liability company, business, trust, or any  
14 organized group of persons or legal entities, or any combination  
15 thereof, that possesses all professional or vocational licenses  
16 necessary to do business in the State in conjunction with the  
17 planning, design, construction, or retrofitting of film studio  
18 infrastructure.

19           (d) The department of business, economic development, and  
20 tourism and the department of taxation may adopt rules pursuant  
21 to chapter 91 for the purpose of this section.

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1        (e) This section shall not apply to gross proceeds  
2 received after December 31, 2034."

3        SECTION 3. Section 235-17, Hawaii Revised Statutes, is  
4 amended by amending subsection (h) to read as follows:

5        "(h) Every taxpayer claiming a tax credit under this  
6 section for a qualified production shall, no later than ninety  
7 days following the end of each taxable year in which qualified  
8 production costs were expended, submit a written, sworn  
9 statement to the department of business, economic development,  
10 and tourism that identifies:

11        (1) All qualified production costs as provided by  
12                subsection (a), if any, incurred in the previous  
13                taxable year;

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

16        (3) The number of total hires versus the number of local  
17                hires by category and by county.

18 If the qualified production costs of a taxpayer exceed  
19 \$1,000,000 in a taxable year, the written, sworn statement shall  
20 be accompanied by an independent third party certification,  
21 performed by a qualified certified public accountant, that  
22 verifies all representations made for the purpose of claiming

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1 the credit under this section. The certification shall be  
2 prepared and submitted in accordance with standards and  
3 procedures prescribed by the department of business, economic  
4 development, and tourism and the department of taxation. This  
5 information may be reported from the department of business,  
6 economic development, and tourism to the legislature pursuant to  
7 subsection (i)(4)."

8 SECTION 4. Section 235-17, Hawaii Revised Statutes, is  
9 amended by amending subsection (n) to read as follows:

10 "(n) The total amount of tax credits allowed under this  
11 section in any particular year shall be [~~\$50,000,000;~~  
12 \$60,000,000; however, if the total amount of credits applied for  
13 in any particular year exceeds the aggregate amount of credits  
14 allowed for that year under this section, the excess shall be  
15 treated as having been applied for in the subsequent year and  
16 shall be claimed in the subsequent year; provided that no excess  
17 shall be allowed to be claimed after December 31, [~~2032;~~ 2038."

18 SECTION 5. Section 235-17, Hawaii Revised Statutes, is  
19 amended by amending subsection (o) to read as follows:

20 "(o) For the purposes of this section:

21 "Commercial":

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- 1           (1) Means an advertising message that is filmed using  
2                   film, videotape, or digital media, for dissemination  
3                   via television broadcast or theatrical distribution;
- 4           (2) Includes a series of advertising messages if all parts  
5                   are produced at the same time over the course of six  
6                   consecutive weeks; and
- 7           (3) Does not include an advertising message with Internet-  
8                   only distribution.

9           "Digital media" means production methods and platforms  
10           directly related to the creation of cinematic imagery and  
11           content, specifically using digital means, including but not  
12           limited to digital cameras, digital sound equipment, and  
13           computers, to be delivered via film, videotape, interactive game  
14           platform, or other digital distribution media.

15           "Post-production" means production activities and services  
16           conducted after principal photography is completed, including  
17           but not limited to editing, film and video transfers,  
18           duplication, transcoding, dubbing, subtitling, credits, closed  
19           captioning, audio production, special effects (visual and  
20           sound), graphics, and animation.

21           "Production" means a series of activities that are directly  
22           related to the creation of visual and cinematic imagery to be



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1 delivered via film, videotape, or digital media and to be sold,  
2 distributed, or displayed as entertainment or the advertisement  
3 of products for mass public consumption, including but not  
4 limited to scripting, casting, set design and construction,  
5 transportation, videography, photography, sound recording,  
6 interactive game design, and post-production.

7 "Qualified production":

8 (1) Means a production, with expenditures in the State,  
9 for the total or partial production of a feature-  
10 length motion picture, short film, made-for-television  
11 movie, commercial, music video, interactive game,  
12 television (inclusive of broadcast and streaming  
13 platforms) series pilot, single season (up to twenty-  
14 two episodes[+]) for broadcast television; and up to  
15 eight episodes for an ongoing series for streaming  
16 platforms) of a [~~television~~] series [~~regularly~~] filmed  
17 in the State [~~if~~]. If the number of episodes per  
18 single season for a broadcast series exceeds twenty-  
19 two, and if a streaming series exceeds eight episodes,  
20 additional episodes for the same season shall  
21 constitute a separate qualified production[+]. A  
22 "qualified production" also includes a television or

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1            streaming platform special, single [~~television~~]  
2            episode that is not part of a television or streaming  
3            platform series regularly filmed or based in the  
4            State, national magazine show, [~~or~~] and national talk  
5            show. For the purposes of subsections (d) and (l),  
6            each of the aforementioned qualified production  
7            categories shall constitute separate, individual  
8            qualified productions; and

9            (2) Does not include:

- 10            (A) News;
- 11            (B) Public affairs programs;
- 12            (C) Non-national magazine or talk shows;
- 13            (D) Televised sporting events or activities;
- 14            (E) Productions that solicit funds;
- 15            (F) Productions produced primarily for industrial,  
16            corporate, institutional, or other private  
17            purposes; and
- 18            (G) Productions that include any material or  
19            performance prohibited by chapter 712.

20            "Qualified production costs" means the costs incurred by a  
21            qualified production within the State that are subject to the  
22            general excise tax under chapter 237 at the highest rate of tax

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1 or income tax under this chapter if the costs are not subject to  
2 general excise tax and that have not been financed by any  
3 investments for which a credit was or will be claimed pursuant  
4 to section 235-110.9. Qualified production costs include but  
5 are not limited to:

- 6 (1) Costs incurred during preproduction such as location  
7 scouting and related services;
- 8 (2) Costs of set construction and operations, purchases or  
9 rentals of wardrobe, props, accessories, food, office  
10 supplies, transportation, equipment, and related  
11 services;
- 12 (3) Wages or salaries of cast, crew, and musicians;
- 13 (4) Costs of photography, sound synchronization, lighting,  
14 and related services;
- 15 (5) Costs of editing, visual effects, music, other post-  
16 production, and related services;
- 17 (6) Rentals and fees for use of local facilities and  
18 locations, including rentals and fees for use of state  
19 and county facilities and locations that are not  
20 subject to general excise tax under chapter 237 or  
21 income tax under this chapter;
- 22 (7) Rentals of vehicles and lodging for cast and crew;

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- 1           (8) Airfare for flights to or from Hawaii, and interisland  
2           flights;
- 3           (9) Insurance and bonding;
- 4           (10) Shipping of equipment and supplies to or from Hawaii,  
5           and interisland shipments; and
- 6           (11) Other direct production costs specified by the  
7           department in consultation with the department of  
8           business, economic development, and tourism;
- 9 provided that any government-imposed fines, penalties, or  
10 interest that are incurred by a qualified production within the  
11 State shall not be "qualified production costs". "Qualified  
12 production costs" does not include any costs funded by any  
13 grant, forgivable loan, or other amounts not included in gross  
14 income for purposes of this chapter.

15           "Streaming platform" means an online provider of media  
16 content that delivers the content via internet connection to the  
17 subscriber's computer, television, or mobile device through a  
18 paid subscription."

19           SECTION 6. Act 88, Session Laws of Hawaii 2006, as amended  
20 by section 3 of Act 89, Session Laws of Hawaii 2013, as amended  
21 by section 3 of Act 143, Session Laws of Hawaii 2017, as amended

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1 by section 4 of Act 217, Session Laws of Hawaii 2022 is amended  
2 by amending section 4 to read as follows:

3 "SECTION 4. This Act shall take effect on July 1, 2006;  
4 provided that:

5 (1) Section 2 of this Act shall apply to qualified  
6 production costs incurred on or after July 1, 2006,  
7 and before January 1, ~~[2033]~~ 2039; and

8 (2) This Act shall be repealed on January 1, ~~[2033]~~ 2039,  
9 and section 235-17, Hawaii Revised Statutes, shall be  
10 reenacted in the form in which it read on the day  
11 before the effective date of this Act."

12 SECTION 7. Act 143, Session Laws of Hawaii 2017, is  
13 amended by amending section 6 to read as follows:

14 "SECTION 6. ~~[No later than January 1, 2018, and each~~  
15 ~~January 1 thereafter, each film production that has production~~  
16 ~~expenditures of \$1,000,000 or more and is claiming a tax credit~~  
17 ~~pursuant to section 235-17, Hawaii Revised Statutes, shall~~  
18 ~~obtain an independent third party certification of qualified~~  
19 ~~production costs eligible for the motion picture, digital media,~~  
20 ~~and film production income tax credit in the form of a tax~~  
21 ~~opinion, as required under section 235-17(h), Hawaii Revised~~

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1 ~~Statutes, submitted to the department of business, economic~~  
2 ~~development, and tourism.] Repealed."~~

3 SECTION 8. The department of business, economic  
4 development, and tourism shall establish one full-time  
5 equivalent (1.0 FTE) permanent film industry development liaison  
6 position to oversee development of the film industry, exempt  
7 from chapter 76.

8 SECTION 9. There is appropriated out of the general  
9 revenues of the State of Hawaii the sum of \$130,000 or so much  
10 thereof as may be necessary for fiscal year 2024-2025 for the  
11 position established by this Act and associated administrative  
12 costs.

13 The sum appropriated shall be expended by the department of  
14 business, economic development, and tourism for the purposes of  
15 this Act.

16 SECTION 10. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

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1 SECTION 11. This Act, upon its approval, shall take effect  
2 on January 1, 2025; provided that sections 1, 2, 8, and 9 shall  
3 take effect on July 1, 2024; provided further that sections 2  
4 through 7 shall apply to expenditures made after December 31,  
5 2024.

6

7

INTRODUCED BY: *AMN. M.*

8

BY REQUEST

# S.B. NO. 3049

**Report Title:**

DBEDT; Motion Picture, Digital Media, and Film Production Income Tax Credit; Hawai'i Film Advisory Council; General Excise Tax Exemption; Civil Service Exemption.

**Description:**

Establishes a Hawai'i Film Advisory Council within the Department of Business, Economic Development, and Tourism. Provides exemption for certified development of film studio facilities from taxes imposed under chapter 237, HRS. Amends the Motion Picture, Digital Media, and Film Production Income Tax Credit allowed under section 235-17, HRS, to (1) clarify and amend the requirement for an independent third-party certification, (2) increase the annual credit cap to \$60,000,000 from \$50,000,000, (3) extend the sunset date to January 1, 2039, and (4) expand the definition of "qualified production" to include streaming platforms. Establishes, exempt from chapter 76, and appropriates funds for the film industry liaison position.

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



JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development and Tourism

TITLE: A BILL FOR AN ACT RELATING TO THE FILM INDUSTRY.

PURPOSE: To establish a Hawai'i Film Advisory Council within the Department of Business, Economic Development, and Tourism. To provide exemption for certified development of film studio facilities from taxes imposed under chapter 237, HRS. To amend the Motion Picture, Digital Media, and Film Production Income Tax Credit allowed under section 235-17, HRS, to (1) clarify and amend the requirement for an independent third-party certification, (2) increase the annual credit cap to \$60,000,000 from \$50,000,000, (3) extend the sunset date to January 1, 2039, and (4) expand the definition of "qualified production" to include streaming platforms. To establish, exempt from chapter 76, and appropriate funds for the film industry liaison position.

MEANS: Add new sections to chapters 201 and 237, Hawaii Revised Statutes (HRS). Amend section 235-17(h), (n), and (o), HRS; section 6 of Act 143, Session Laws of Hawaii 2017, as amended; and section 4 of Act 88, Session Laws of Hawaii 2006.

JUSTIFICATION: An advisory council of film industry professionals and labor unions provides input to increase business, workforce, and infrastructure development.

The global media industry has evolved to include new forms of distribution with streaming platforms equaling the amount of production for series as broadcast television series. The amendments to section 235-17(h), HRS, would ensure an expedited review and certification process to meet the seven-month deadline. The amendments to section 235-17 (n), HRS

provides an increase of the annual cap from \$50,000,000 to \$60,000,000 which would accelerate employment and economic activity. The amendments to section 235-17 (o), HRS, would ensure Hawaii is in alignment with industry standards and increase streaming content production in the islands.

The income tax credit allowed under section 235-17, HRS, aligns with current and projected market activity and retains the carry forward provision. The extension of the sunset date to January 1, 2039, along with a new provision in chapter 237 to exempt general excise taxes on purpose-built or retrofit facilities for film production to attract investment for the purpose of expanding the State's infrastructure and facilities.

Addition of a film industry development liaison position in the department working in conjunction with existing film branch personnel provides necessary industry-specific expertise to advance business development and grow the State's film industry.

Impact on the public: The bill would support Hawaii's economic diversification strategy and enhance job and business growth of the film, media, and key related sectors of Hawaii's creative economy.

Impact on the department and other agencies: The department and the Department of Taxation will need to amend their administrative rules and adjust forms and online systems to include amended wording should the measure pass.

GENERAL FUND: \$130,000.  
 OTHER FUNDS: None.  
 PPBS PROGRAM  
 DESIGNATION: BED 105.

OTHER AFFECTED  
AGENCIES:

Department of Taxation.

EFFECTIVE DATE:

January 1, 2025; provided that sections 1, 2, 8 and 9 take effect on July 1, 2024; provided further that sections 2 through 7 shall apply to expenditures made after December 31, 2024.