
A BILL FOR AN ACT

RELATING TO MEDIA INFRASTRUCTURE.

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

1 SECTION 1. The legislature finds that the film industry in
2 Hawaii is an important component of a diversified economy and
3 that its financial impact can be strengthened significantly if
4 existing incentives for the industry are adjusted.

5 There has been a dramatic increase in the number of state
6 and local governments attempting to attract film productions.
7 These jurisdictions have experienced dramatic increases in in-
8 state spending and significant growth in workforce and
9 infrastructure development. Greater numbers of productions in
10 Hawaii would stimulate more direct and indirect tax revenue.

11 The legislature also finds that it is desirable to provide
12 tools to the film industry to encourage similar dramatic growth
13 in Hawaii because the film industry:

14 (1) Infuses significant amounts of new money into the
15 economy, which are dispersed across many communities
16 and businesses and which benefit a wide array of
17 residents;

18 (2) Creates skilled, high-paying jobs;



- 1 (3) Has a natural dynamic synergy with Hawaii's top
2 industry, tourism, and is used as a destination
3 marketing tool for the visitor industry; and
- 4 (4) Is a clean, nonpolluting industry that values the
5 natural beauty of Hawaii and its diverse multicultural
6 population and wide array of architecture.

7 It is necessary to enhance existing tax incentive programs
8 that use front-end budgeting methods normally used by the film
9 industry and lower production costs to allow Hawaii to compete
10 with other film production centers in attracting a greater
11 number of significant projects to the islands and to continue to
12 build the State's local film industry infrastructure.

13 The purpose of this Act is to encourage the growth of the
14 film industry by providing enhanced incentives that attract more
15 film and television productions to Hawaii, thereby generating
16 increased tax revenues.

17 SECTION 2. Section 235-17, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§235-17 Motion picture, digital media, ~~and~~ film**
20 **production, and media infrastructure project income tax credit.**

21 (a) Any law to the contrary notwithstanding, there shall be
22 allowed to each taxpayer subject to the taxes imposed by this



1 chapter, an income tax credit that shall be deductible from the
2 taxpayer's net income tax liability, if any, imposed by this
3 chapter for the taxable year in which the credit is properly
4 claimed. The amount of the credit shall be:

5 (1) Twenty per cent of the qualified production costs
6 incurred by a qualified production in any county of
7 the State with a population of over seven hundred
8 thousand; or

9 (2) Twenty-five per cent of the qualified production costs
10 incurred by a qualified production in any county of
11 the State with a population of seven hundred thousand
12 or less.

13 (b) In addition to the credits described in subsection
14 (a), beginning on or after July 1, 2014, and ending prior to
15 January 1, 2019, there shall be allowed to each taxpayer subject
16 to the taxes imposed by this chapter, a media infrastructure
17 project income tax credit that shall be deductible from the
18 taxpayer's net income tax liability, if any, imposed by this
19 chapter for the taxable year in which the credit is properly
20 claimed. The amount of the credit shall be equal to per
21 cent of the qualified costs incurred for qualified media
22 infrastructure projects in any county of the State. The



1 following shall apply to the qualified media infrastructure
2 project income tax credit:

3 (1) The base investment for a media infrastructure project
4 shall be in excess of \$ _____ ;

5 (2) The qualified media infrastructure project income tax
6 credit shall be nonrefundable. The portion of the tax
7 credit that exceeds the tax liability of the taxpayer
8 for the tax year in which the credit was earned may be
9 carried forward to offset net income tax liability in
10 subsequent tax years for a period not to exceed ten
11 taxable years or until exhausted, whichever occurs
12 first. The director of taxation may require the tax
13 credit to be taken in the tax period in which the
14 credit is earned or may structure the tax credit in
15 the initial certification of the project to provide
16 that only a portion of the tax credit be taken over
17 the course of two or more years;

18 (3) The total media infrastructure project income tax
19 credit allowed for any state-certified infrastructure
20 project shall not exceed \$ _____ ;

21 (4) If all or a portion of an infrastructure project is a
22 facility that may be used for other purposes unrelated



1 to production or post-production activities, then the
2 project shall be approved only if a determination is
3 made that the multiple-use facility will support and
4 will be necessary to secure production or post-
5 production activity for the production and post-
6 production facility and the applicant provides
7 sufficient contractual assurances that the facility
8 will be used as a state-of-the-art production or post-
9 production facility, or as a support and component
10 thereof, for the useful life of the facility; provided
11 that no tax credits described in subsection (b) shall
12 be earned on a multiple-use facility until the
13 production or post-production facility is complete;
14 (5) Tax credits for qualified media infrastructure
15 projects shall be earned only as follows:
16 (A) Construction of the infrastructure project shall
17 begin within six months of the initial
18 certification and shall be per cent completed
19 within a year time frame;
20 (B) Expenditures shall be certified by the director
21 and credits shall not be earned until that
22 certification is made; and



1 (C) For purposes of allowing tax credits against
2 state income tax liability, the tax credits shall
3 be deemed earned at the time the expenditures are
4 made; provided that all requirements of this
5 subsection have been met and the tax credits have
6 been certified;

7 (6) For state-certified infrastructure projects, the
8 application for a qualified media infrastructure
9 project income tax credit shall include:

10 (A) A detailed description of the infrastructure
11 project;

12 (B) A preliminary budget;

13 (C) A complete detailed business plan and market
14 analysis;

15 (D) Estimated start and completion dates;

16 (E) A letter issued by the mayor and council of the
17 county in which the infrastructure project is to
18 be located indicating that the project has been
19 approved; and

20 (F) If the application is incomplete, additional
21 information may be requested prior to further
22 action by the director;



1 (7) An application fee shall be submitted with the
2 application for a qualified media infrastructure
3 project income tax credit based on the following:

4 (A) _____ per cent multiplied by the estimated total
5 incentive tax credits; and

6 (B) The minimum application fee shall be \$ _____
7 and the maximum application fee shall be
8 \$ _____ ;

9 and

10 (8) Prior to any final certification of a tax credit for a
11 state-certified infrastructure project, the applicant
12 for the qualified media infrastructure project income
13 tax credit shall submit to the director an audit of
14 the expenditures that is performed and certified by an
15 independent certified public accountant pursuant to
16 rule. Upon approval of the audit, the director shall
17 issue a final tax credit certification letter
18 indicating the amount of tax credits certified for the
19 state-certified infrastructure project to the
20 investors. Bank loan finance fees applicable to the
21 qualified media infrastructure project expenditures,
22 as certified by the director, and any general excise



1 taxes that have been paid on the bank loan finance
2 fees and remitted to the State may be included as part
3 of the tax credit.

4 (c) A qualified production occurring in more than one
5 county may prorate its expenditures based upon the amounts spent
6 in each county, if the population bases differ enough to change
7 the percentage of tax credit.

8 In the case of a partnership, S corporation, estate, or
9 trust, the tax credit allowable is for qualified production
10 costs incurred by the entity for the taxable year. The cost
11 upon which the tax credit is computed shall be determined at the
12 entity level. Distribution and share of credit shall be
13 determined by rule.

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

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

21 ~~[(b)]~~ (d) The credit allowed under ~~[this section]~~
22 subsection (a) shall be claimed against the net income tax



1 liability for the taxable year~~[7]~~ in which the credit is
2 claimed. [~~For the purposes of this section, "net income tax~~
3 ~~liability" means net income tax liability reduced by all other~~
4 ~~credits allowed under this chapter.~~

5 ~~(e)]~~ (e) If the production tax credit under [~~this section]~~
6 subsection (a) exceeds the taxpayer's income tax liability, the
7 excess of credits over liability shall be refunded to the
8 taxpayer; provided that no refunds or payment on account of the
9 tax credits allowed by this section shall be made for amounts
10 less than \$1. All claims, including any amended claims, for tax
11 credits under [~~this section]~~ subsection (a) shall be filed on or
12 before the end of the twelfth month following the close of the
13 taxable year for which the credit may be claimed. Failure to
14 comply with the foregoing provision shall constitute a waiver of
15 the right to claim the credit.

16 [~~(d)]~~ (f) To qualify for [~~this]~~ a tax credit~~[7]~~ under
17 subsection (a), a production shall:

- 18 (1) Meet the definition of a qualified production
19 [~~specified in subsection (1)]~~;
- 20 (2) Have qualified production costs totaling at least
21 \$200,000;



- 1 (3) Provide the State, at a minimum, a shared-card, end-
2 title screen credit, where applicable;
- 3 (4) Provide evidence of reasonable efforts to hire local
4 talent and crew; and
- 5 (5) Provide evidence of financial or in-kind contributions
6 or educational or workforce development efforts, in
7 partnership with related local industry labor
8 organizations, educational institutions, or both,
9 toward the furtherance of the local film and
10 television and digital media industries.

11 [~~e~~] (g) On or after July 1, 2006, no qualified
12 production cost that has been financed by investments for which
13 a credit was claimed by any taxpayer pursuant to section 235-
14 110.9 is eligible for credits under this section.

15 [~~f~~] (h) To receive [~~the~~] a tax credit~~[7]~~ under subsection
16 (a), the taxpayer shall first prequalify the production for the
17 credit by registering with the department of business, economic
18 development, and tourism during the development or preproduction
19 stage. Failure to comply with this provision may constitute a
20 waiver of the right to claim the credit.

21 [~~g~~] (i) The director of taxation shall prepare forms as
22 may be necessary to claim a credit under this section. The



1 director may also require the taxpayer to furnish information to
2 ascertain the validity of the claim for credit made under this
3 section and may adopt rules necessary to effectuate the purposes
4 of this section pursuant to chapter 91.

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

- 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]~~ subsection (a), if any, in the previous
16 taxable year; and
- 17 (3) The number of total hires versus the number of local
18 hires by category and by county.

19 This information may be reported from the department of
20 business, economic development, and tourism to the legislature
21 in redacted form pursuant to subsection ~~[(i)]~~ (k) (4).



1 [~~(i)~~] (k) The department of business, economic
2 development, and tourism shall:

- 3 (1) Maintain records of the names of the taxpayers and
4 qualified productions thereof claiming the tax credits
5 under subsection (a);
- 6 (2) Obtain and total the aggregate amounts of all
7 qualified production costs per qualified production
8 and per qualified production per taxable year;
- 9 (3) Provide a letter to the director of taxation
10 specifying the amount of the tax credit per qualified
11 production for each taxable year that a tax credit is
12 claimed under subsection (a) and the cumulative amount
13 of the tax credit for all years claimed; and
- 14 (4) Submit a report to the legislature no later than
15 twenty days prior to the convening of each regular
16 session detailing the nonaggregated qualified
17 production costs that form the basis of the tax credit
18 claims and expenditures, itemized by taxpayer, in a
19 redacted format to preserve the confidentiality of the
20 taxpayers claiming the credit.

21 Upon each determination required under this subsection, the
22 department of business, economic development, and tourism shall



1 issue a letter to the taxpayer, regarding the qualified
2 production, specifying the qualified production costs and the
3 tax credit amount qualified for in each taxable year a tax
4 credit is claimed. The taxpayer for each qualified production
5 shall file the letter with the taxpayer's tax return for the
6 qualified production to the department of taxation.

7 Notwithstanding the authority of the department of business,
8 economic development, and tourism under this section, the
9 director of taxation may audit and adjust the tax credit amount
10 to conform to the information filed by the taxpayer.

11 ~~(j)~~ (l) Total tax credits claimed per qualified production
12 shall not exceed \$15,000,000.

13 (m) Any taxpayer eligible to claim a media infrastructure
14 project income tax credit under subsection (b) shall:

15 (1) File an annual progress report with the department of
16 business, economic development, and tourism on a
17 calendar basis, which shall include the following
18 information:

19 (A) Percentage of completion of each qualified media
20 infrastructure project;



1 (B) Amount of moneys expended on, and amount
2 remaining to complete, each qualified media
3 infrastructure project; and

4 (C) Tax and labor clearances;

5 (2) Deliver to the department of business, economic
6 development, and tourism a performance bond in a form
7 prescribed by the department of business, economic
8 development, and tourism by rule, executed by a surety
9 company authorized to do business in this State or
10 otherwise secured in a manner satisfactory to the
11 department of business, economic development, and
12 tourism, in an amount equal to one hundred per cent of
13 total projected expenditures determined upon initial
14 certification; and

15 (3) Provide either of the following:

16 (A) Pledge of a lien on the qualified media
17 infrastructure project in favor of the State in
18 the amount of \$; provided that the lien
19 shall expire five years after completion of the
20 project; or

21 (B) Collateral security in the amount of \$;
22 provided that the collateral security shall be



1 released five years after completion of the
2 qualified media infrastructure project.

3 (n) Any taxpayer eligible to claim a qualified media
4 infrastructure project income tax credit under subsection (b)
5 shall file with the department of business, economic
6 development, and tourism an annual report no later than March 1
7 following each taxable year for which the credit is claimed.

8 The report shall include the following information:

- 9 (1) The amount of general excise tax paid under chapter
10 237;
- 11 (2) The amount of transient accommodations tax paid under
12 chapter 237D;
- 13 (3) The amount of tax credits claimed under this section,
14 as amended by Act 89, Session Laws of Hawaii 2013;
- 15 (4) Gross proceeds of each project;
- 16 (5) Number of full-time employees employed on each
17 qualified media infrastructure project;
- 18 (6) Number of part-time employees employed on each
19 qualified media infrastructure project;
- 20 (7) Number of independent contractors contracted to work
21 on each qualified media infrastructure project;



- 1 (8) Amount disbursed as payroll in the State on each
2 qualified media infrastructure project; and
3 (9) List of job classifications with average wage level.
4 (o) Failure to complete a qualified media infrastructure
5 project for which a tax credit is claimed under subsection (b)
6 within five years of initial certification shall result in
7 ineligibility to claim the tax credit.

8 [~~(k)~~] (p) Qualified productions shall comply with
9 subsections [~~(d), (e), (f), and (h).~~] (c), (f), (g), (h), (j),
10 and (k).

11 [~~(l)~~] (q) For the purposes of this section:

12 "Base investment" means the costs incurred and financial
13 investment made to operate and sustain a qualified media
14 infrastructure project.

15 "Commercial":

16 (1) Means an advertising message that is filmed using
17 film, videotape, or digital media, for dissemination
18 via television broadcast or theatrical distribution;

19 (2) Includes a series of advertising messages if all parts
20 are produced at the same time over the course of six
21 consecutive weeks; and



1 (3) Does not include an advertising message with
2 Internet-only distribution.

3 "Digital media" means production methods and platforms
4 directly related to the creation of cinematic imagery and
5 content, specifically using digital means, including but not
6 limited to digital cameras, digital sound equipment, and
7 computers, to be delivered via film, videotape, interactive game
8 platform, or other digital distribution media.

9 "Director" means the director of taxation.

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

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

18 "Production" means a series of activities that are directly
19 related to the creation of visual and cinematic imagery to be
20 delivered via film, videotape, or digital media and to be sold,
21 distributed, or displayed as entertainment or the advertisement
22 of products for mass public consumption, including but not



1 limited to scripting, casting, set design and construction,
2 transportation, videography, photography, sound recording,
3 interactive game design, and post-production.

4 "Qualified media infrastructure project" means the
5 development, construction, renovation, or operation of a film,
6 video, television, or media production or post-production
7 facility and the immovable property and equipment related
8 thereto, or any other facility that supports and is a necessary
9 component of the proposed infrastructure project, that is
10 located in the State; provided that the facility may include a
11 movie theater or other commercial exhibition facility to assist
12 in offsetting operating costs of the production or post-
13 production facility, but shall not include a facility used to
14 produce pornographic matter or a pornographic performance.

15 "Qualified production":

16 (1) Means a production, with expenditures in the State,
17 for the total or partial production of a feature-
18 length motion picture, short film, made-for-television
19 movie, commercial, music video, interactive game,
20 television series pilot, single season (up to
21 twenty-two episodes) of a television series regularly
22 filmed in the State (if the number of episodes per



1 single season exceeds twenty-two, additional episodes
2 for the same season shall constitute a separate
3 qualified production), television special, single
4 television episode that is not part of a television
5 series regularly filmed or based in the State,
6 national magazine show, or national talk show. For
7 the purposes of subsections [~~(d)~~] (f) and [~~(j)~~] (l),
8 each of the aforementioned qualified production
9 categories shall constitute separate, individual
10 qualified productions; and

11 (2) Does not include:

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



1 "Qualified production costs" means the costs incurred by a
2 qualified production within the State that are subject to the
3 general excise tax under chapter 237 or income tax under this
4 chapter and that have not been financed by any investments for
5 which a credit was or will be claimed pursuant to section
6 235-110.9. Qualified production costs include but are not
7 limited to:

8 (1) Costs incurred during preproduction such as location
9 scouting and related services;

10 (2) Costs of set construction and operations, purchases or
11 rentals of wardrobe, props, accessories, food, office
12 supplies, transportation, equipment, and related
13 services;

14 (3) Wages or salaries of cast, crew, and musicians;

15 (4) Costs of photography, sound synchronization, lighting,
16 and related services;

17 (5) Costs of editing, visual effects, music, other post-
18 production, and related services;

19 (6) Rentals and fees for use of local facilities and
20 locations, including rentals and fees for use of state
21 and county facilities and locations that are not



1 subject to general excise tax under chapter 237 or
2 income tax under this chapter;

3 (7) Rentals of vehicles and lodging for cast and crew;

4 (8) Airfare for flights to or from Hawaii, and interisland
5 flights;

6 (9) Insurance and bonding;

7 (10) Shipping of equipment and supplies to or from Hawaii,
8 and interisland shipments; and

9 (11) Other direct production costs specified by the
10 department in consultation with the department of
11 business, economic development, and tourism;

12 provided that any government-imposed fines, penalties, or
13 interest that are incurred by a qualified production within the
14 State shall not be "qualified production costs".

15 SECTION 3. A taxpayer shall not be prohibited from
16 claiming the media infrastructure project income tax credit for
17 qualifying investments made prior to the reenactment of section
18 235-17, Hawaii Revised Statutes, pursuant to section 3 of Act
19 89, Session Laws of Hawaii 2013.

20 A taxpayer may claim the media infrastructure project
21 income tax credit for investments made on a qualified media
22 infrastructure project prior to January 1, 2019; provided that:



1 (1) Construction of the media infrastructure project shall
2 commence prior to January 1, 2019; and

3 (2) The claim for the media infrastructure project income
4 tax credit shall be properly filed on or before the
5 end of the twelfth month following the close of the
6 taxable year for which the tax credit may be claimed.

7 Failure to comply with either of the foregoing provisions shall
8 constitute a waiver of the right to claim the tax credit.

9 SECTION 4. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 5. This Act shall take effect on January 20, 2050,
12 and shall apply to taxable years beginning after December 31,
13 2013.



Report Title:

Media Infrastructure Project Income Tax Credit

Description:

Establishes an income tax credit for qualified media infrastructure projects. Effective January 20, 2050. (HB2088 HD1)

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

