

HI S 3049, Introduced

Hawaii

SUMMARY: (Governor Bill Package) Establishes a state 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.~SAME AS: HI H 2360#

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

01/23/2024 INTRODUCED.

01/26/2024 To SENATE Committee on ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM.

01/26/2024 Subsequent referral set for: SENATE Committee on WAYS AND MEANS.

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January 23, 2024

Kouchi

THE SENATE

THIRTY-SECOND LEGISLATURE, 2024

STATE OF HAWAII

S.B. NO. 3049

A BILL FOR AN ACT

RELATING TO THE FILM INDUSTRY.

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

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

" § 201-__ Hawai`i film advisory council; established. (a) There is established within the department of business, economic development, and tourism for administrative purposes only a Hawai`i film advisory council. The council shall consist of thirteen members who shall be appointed by the governor, in the manner prescribed in section 26-34, except as otherwise provided in this section; and shall be composed of:

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

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

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

(A) Film and television production;

(B) Film commission management;

(C) Investment and tax credits;

(D) Film production finance and accounting;

(E) Post-production;

(F) Entertainment industry labor union leadership;

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

(H) Workforce and skills development training organization; or

(I) Commercial real estate and development.

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

(b) The council shall advise the department, make recommendations, and provide industry insights to increase business development, workforce, jobs, and infrastructure in the film industry statewide. The council shall also provide the department with input on setting strategic priorities to accelerate the growth of the film industry.

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

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

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

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

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

(c) As used in this section:

"Film studio infrastructure" means:

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

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

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

- (B) Catering facilities;***
- (C) Laundry facilities;***
- (D) Post-Production spaces, including editing suites, screening rooms, and control rooms;***
- (3) Facilities that are used for production purposes, which may include:***
 - (A) Set design, build, construction, and painting;***
 - (B) Costume fabrication and related areas for construction;***
 - (C) Dining and food prep;***
 - (D) Office accommodations for all production personnel and departments;***
 - (E) Prop, picture car, and other vehicle parking, and related storage;***
 - (F) Sustainable alternative energy source where applicable;***
 - (G) Facilities equipped with private network fiber connectivity; and***
 - (H) Security infrastructure.***

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

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

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

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

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

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

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

- (1) All qualified production costs as provided by subsection (a), if any, incurred in the previous taxable year;***
- (2) The amount of tax credits claimed pursuant to this section, if any, in the previous taxable year; and***
- (3) The number of total hires versus the number of local hires by category and by county.***

If the qualified production costs of a taxpayer exceed \$1,000,000 in a taxable year, the written, sworn statement shall be accompanied by an independent third party certification, performed by a qualified certified public accountant, that verifies all representations made for the purpose of claiming the credit under this section. The certification shall be prepared and submitted in accordance with standards and procedures prescribed by

the department of business, economic development, and tourism and the department of taxation. This information may be reported from the department of business, economic development, and tourism to the legislature pursuant to subsection (i)(4)."

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

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

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

"(o) For the purposes of this section:

"Commercial":

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

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

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

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

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

"Production" means a series of activities that are directly related to the creation of visual and cinematic imagery to be delivered via film, videotape, or digital media and to be sold, distributed, or displayed as entertainment or the advertisement of products for mass public consumption, including but not limited to scripting, casting, set design and construction, transportation, videography, photography, sound recording, interactive game design, and post-production.

"Qualified production":

(1) Means a production, with expenditures in the State, for the total or partial production of a feature-length motion picture, short film, made-for-television movie, commercial, music video, interactive game, television ***(inclusive of broadcast and streaming platforms)*** series pilot, single season (up to twenty-two episodes) ***for broadcast television; and up to eight episodes for an ongoing series for streaming platforms)*** of a ~~television~~ series ~~regularly~~ filmed in the State ~~(if~~. ***If*** the number of episodes per single season ***for a broadcast series*** exceeds twenty-two, ***and if a streaming series exceeds eight episodes,*** additional episodes for the same season shall constitute a separate qualified production ***); . A "qualified production" also includes a*** television ***or streaming platform*** special, single ~~television~~ episode that is not part of a television ***or streaming platform*** series regularly filmed or based in

the State, national magazine show, ~~or~~ **and** national talk show. For the purposes of subsections (d) and (l), each of the aforementioned qualified production categories shall constitute separate, individual qualified productions; and

(2) Does not include:

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

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

- (1) Costs incurred during preproduction such as location scouting and related services;
- (2) Costs of set construction and operations, purchases or rentals of wardrobe, props, accessories, food, office supplies, transportation, equipment, and related services;
- (3) Wages or salaries of cast, crew, and musicians;
- (4) Costs of photography, sound synchronization, lighting, and related services;
- (5) Costs of editing, visual effects, music, other post-production, and related services;
- (6) Rentals and fees for use of local facilities and locations, including rentals and fees for use of state and county facilities and locations that are not subject to general excise tax under chapter 237 or income tax under this chapter;
- (7) Rentals of vehicles and lodging for cast and crew;
- (8) Airfare for flights to or from Hawaii, and interisland flights;
- (9) Insurance and bonding;
- (10) Shipping of equipment and supplies to or from Hawaii, and interisland shipments; and
- (11) Other direct production costs specified by the department in consultation with the department of business, economic development, and tourism;

provided that any government-imposed fines, penalties, or interest that are incurred by a qualified production within the State shall not be "qualified production costs". "Qualified production costs" does not include any costs funded by any grant, forgivable loan, or other amounts not included in gross income for purposes of this chapter.

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

SECTION 6. Act 88, Session Laws of Hawaii 2006, as amended by section 3 of Act 89, Session Laws of Hawaii 2013, as amended by section 3 of Act 143, Session Laws of Hawaii 2017, as amended by section 4 of Act 217, Session Laws of Hawaii 2022 is

amended by amending section 4 to read as follows:

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

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

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

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

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

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

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

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

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

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