

Civil Beat

Hawaii Monitor: Did Your Tax Dollars Pay to Hunt Down That Cow?

By Ian Lind 12/04/2013

I'm sure when legislators and state officials think about the many millions of dollars in tax credits paid out each year to Hollywood production companies to attract film projects and resulting media exposure to the islands, they have critically-acclaimed and award-winning films like "The Descendents" in mind.

That's the image sold by industry lobbyists when they roll out the red carpets for legislative receptions and arrange for lawmakers to rub shoulders with film personalities while considering the industry's bills.

In fact, so-called "reality television" is where the industry makes a lot of its money. These productions are cheap, quick, generally non-union, and known for long hours, low pay, and often poor working conditions. That apparently translates into profits.

So state officials shouldn't be surprised when those same media companies that promised the stars later return with low-rent projects that test the limits of good taste.

Just before Thanksgiving, state officials issued an unusual multi-agency press release criticizing a new "reality" series filmed in Hawaii for its "inaccurate, offensive, and in some cases, potentially illegal" portrayal of what is depicted as hunting by rival island "clans."

State investigators are probing whether the History channel's "American Jungle" violated state rules and regulations while filming. For example, the episodes broadcast so far have included scenes of night hunting, which is prohibited by state law, and hunting down a cow with spears and dogs, although cattle "are illegal to hunt without a special feral cattle control permit" issued by the state.

Government officials, including Governor Neil Abercrombie and William Aila, director of the Department of Land and Natural Resources, said any violations uncovered will be pursued.

Big Island resident T'Jaye Forsythe, who originated the concept for the program and was involved in its production, took to Facebook to defend the show against charges of inaccuracy.

"This is a television show not a documentary," Forsythe wrote. "Television shows have fictional and non-fictional elements to them."

Just as Hawaii Five-O doesn't reflect actual police procedures, Forsythe said, American Jungle is "just a show."

He said it is considered a "reality show" because the cast is not made up of professional actors and "they are not reading from a script." Apart from that, however, "reality" is apparently little more than a word.

The controversial series is a production of Relativity Media LLC and TIJAT, a Hollywood-based new media production company, in association with Forsythe's RustyBoar.com.

Does Hollywood-based Relativity Media ring a bell? This is the same company that made news a couple of years ago when it wined and dined legislators while lobbying for increases in tax credits for media production.

The bill backed by Relativity would have at least doubled the film production tax credit, increasing the rate for Oahu productions from 15 to 35 percent of production costs, and from 20 to 45 percent in the rest of the state. It would also have removed a cap on the total amount the state makes available for film tax credits each year. In addition, the bill would have waived the hotel room tax for certain film projects, and also given additional credits for a film studio Relativity proposed building on Maui. One legislative estimate was that the bill would have cost the state over \$40 million in the first year alone.

At the time, the company justified its request for increased public funding by saying it intended to significantly increase its productions in Hawaii. Relativity representatives said they aimed to be "doing 10 movies a year with budgets over \$50 million, at least two network series and as many as 30 cable TV series each year," according to a story in *The Hollywood Reporter*.

But the company's aggressive lobbying ran afoul of state ethics laws. In January 2012, the State Ethics Commission charged Relativity with failing to disclose expenditures made for the purpose of lobbying during the 2011 legislative session, including amounts spent for entertainment, lobbying materials, as well as the fair market value of expensive DVD sets given as gifts to legislators and legislative staff while the company's tax credit legislation was pending.

The DVD gifts came to light when eleven legislators reported receiving the gifts on their annual gift disclosure statements, estimating the value as high as \$395 each. Additional copies were reportedly given to other legislators or staff, but the company said it did not keep records of who got them.

The company also said it didn't know which legislators attended a \$15,000 reception at the Mandalay Restaurant in downtown Honolulu on February 14, 2011. An estimated 30 to 50 legislators were among the 100 people present, which also included film executives and movie personalities.

The company eventually disclosed it had spent \$221,900 lobbying between Jan. 1 and April 30, 2011, including \$10,150 for the DVDs.

State law prohibits a legislator or employee from accepting a gift "under circumstances in which it can reasonably be inferred that the gift is intended to influence the performance of official duties or is intended as a reward for official action."

Despite the relationship between Relativity's push for increased credits and its lavish (and, at the time, undisclosed) spending, the Ethics Commission did not find the gifts to be prohibited.

It did, however, require compliance with reporting requirements. The law requires lobbyists to publicly disclose any expenditures of \$25 or more per day lobbying any legislator. The amount

could include the cost of gifts, meals, entertainment, or other expenses. Those gifts must also be reported by the legislator if they total \$200 or more from a single source in a year.

Relativity eventually agreed to settle the ethics charges by paying an administrative fine of \$8,500, and do its best to identify legislators and others who had accepted gifts.

Its tax credit bill did not pass. However, this year the legislature did increase the film production tax credits from 15 percent to 20 percent for Oahu, and from 20 to 25 percent elsewhere in the state.

It isn't clear whether the actual production of American Jungle was done before or after the increase in the tax credit. But in either case, the show's backers will be able to apply for the state's tax credit on all qualified production costs as long as at least \$200,000 was spent in Hawaii, and other conditions are met, including making "reasonable efforts" to hire local cast and crew. For purposes of getting this public subsidy, it doesn't matter that it's been criticized by Governor Abercrombie and other state officials, or portrays the state in a negative light.

Despite the public controversy, it's unlikely taxpayers will ever know whether or not we helped pay for this particular "reality" show with its "inaccurate but who cares" portrayals of the hunting community. Hawaii law still considers the list of productions getting these public funds via tax credits to be confidential and not subject to public disclosure. We may have to pay the bill, but we don't have the right to know.

Those apparent night hunts aren't the only thing wrong here.

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