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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The legislature has recognized the importance  
2 of promoting innovation and research-based activities through  
3 the enactment of several tax credits and programs to promote  
4 growth in the technology and other innovation-related  
5 industries. The legislature has actively encouraged a range of  
6 industries and activities contributing to the creation of a  
7 higher-wage, and more knowledge-intensive economy.

8           The recently issued Report of the 2005-2007 Tax Review  
9 Commission (Commission) illustrates that the State does not  
10 adequately measure the effectiveness of these programs. The  
11 Report states that, "A tax incentive program is a potential  
12 'black hole,' because it is a future benefit of unknown  
13 proportions, which is determined by the favored taxpayer's  
14 interpretation of what the tax credit should be, and is claimed  
15 on a tax return which is confidential." The Commission  
16 recommended that the tax credit be replaced with a program that  
17 provides grants to qualifying firms.



1           The legislature has determined that the effectiveness of  
2 these incentives be evaluated. The legislature further finds  
3 that reliable information must be available to determine whether  
4 tax benefits are implemented as intended.

5           The legislature also recognizes the importance of  
6 maintaining taxpayer confidentiality. To ensure accountability  
7 in the disposition of public funds, confidentiality must be  
8 balanced with transparency. One solution is to protect taxpayer  
9 identities for past filings, as was expected by taxpayers, and  
10 require public disclosure of the names of individuals benefiting  
11 from tax credits in the future.

12           Evaluations of economic impact and growth are a  
13 responsibility of the department of business, economic  
14 development, and tourism (DBEDT). Economists whose primary  
15 responsibility is to measure economic impact should be  
16 conducting economic analyses of existing tax credits, as well as  
17 tax credits considered in the future. DBEDT is the agency best  
18 equipped to provide this measurement.

19           To fulfill this function, the director of business,  
20 economic development, and tourism will need authorization to  
21 access confidential information from the departments of taxation  
22 and labor and industrial relations (DLIR) in a timely manner and



1 convenient format. Allowing DBEDT to study tax data and provide  
2 its expertise is in the best interest of the public. Moreover,  
3 designating certain personnel as tax officials will require them  
4 to uphold confidentiality requirements.

5 The purpose of this Act is to improve the State's ability  
6 to measure its progress toward a more productive economy, as  
7 well as to assess the effectiveness of measures enacted by the  
8 legislature to achieve this goal. Specifically, this Act:

- 9 (1) Authorizes disclosure of certain information  
10 pertaining to tax incentives to DBEDT;
- 11 (2) Requires entities receiving tax credits to provide  
12 information to DBEDT;
- 13 (3) Requires the DLIR to provide information to DBEDT to  
14 analyze the effectiveness of tax incentives; and
- 15 (4) Appropriates funds to fulfill the purposes of this  
16 Act.

17 SECTION 2. Section 231-18, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "**§231-18 Federal or other tax officials permitted to**  
20 **inspect returns; reciprocal provisions.** Notwithstanding the  
21 provisions of any law making it unlawful for any person,  
22 officer, or employee of the State to make known information



1 imparted by any tax return or permit any tax return to be seen  
2 or examined by any person, it shall be lawful to permit a duly  
3 accredited tax official of the United States, any state or  
4 territory, any county of this State, or the Multistate Tax  
5 Commission to inspect any tax return of any taxpayer, or to  
6 furnish to an official, commission, or the authorized  
7 representative thereof an abstract of the return or supply the  
8 official, commission, or the authorized representative thereof  
9 with information concerning any item contained in the return or  
10 disclosed by the report of any investigation of the return or of  
11 the subject matter of the return for tax purposes only. The  
12 Multistate Tax Commission may make the information available to  
13 a duly accredited tax official of the United States, any state  
14 or territory, or the authorized representative thereof, for tax  
15 purposes only. Tax return information may also be provided to  
16 the department of business, economic development, and tourism  
17 solely for purposes of conducting economic studies to  
18 demonstrate the effectiveness, impact, consequence, result, or  
19 other measurement of any state tax incentive, including tax  
20 credits or exemptions."

21 SECTION 3. Section 235-110.9, Hawaii Revised Statutes, is  
22 amended to read as follows:

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1           **"§235-110.9 High technology business investment tax**  
2 **credit.** (a) There shall be allowed to each taxpayer subject to  
3 the taxes imposed by this chapter a high technology business  
4 investment tax credit that shall be deductible from the  
5 taxpayer's net income tax liability, if any, imposed by this  
6 chapter for the taxable year in which the investment was made  
7 and the following four years provided the credit is properly  
8 claimed. The tax credit shall be as follows:

9           (1) In the year the investment was made, thirty-five per  
10           cent;

11           (2) In the first year following the year in which the  
12           investment was made, twenty-five per cent;

13           (3) In the second year following the investment, twenty  
14           per cent;

15           (4) In the third year following the investment, ten per  
16           cent; and

17           (5) In the fourth year following the investment, ten per  
18           cent;

19 of the investment made by the taxpayer in each qualified high  
20 technology business, up to a maximum allowed credit in the year  
21 the investment was made, \$700,000; in the first year following  
22 the year in which the investment was made, \$500,000; in the



1 second year following the year in which the investment was made,  
2 \$400,000; in the third year following the year in which the  
3 investment was made, \$200,000; and in the fourth year following  
4 the year in which the investment was made, \$200,000.

5 (b) The credit allowed under this section shall be claimed  
6 against the net income tax liability for the taxable year. For  
7 the purpose of this section, "net income tax liability" means  
8 net income tax liability reduced by all other credits allowed  
9 under this chapter.

10 (c) If the tax credit under this section exceeds the  
11 taxpayer's income tax liability for any of the five years that  
12 the credit is taken, the excess of the tax credit over liability  
13 may be used as a credit against the taxpayer's income tax  
14 liability in subsequent years until exhausted. Every claim,  
15 including amended claims, for a tax credit under this section  
16 shall be filed on or before the end of the twelfth month  
17 following the close of the taxable year for which the credit may  
18 be claimed. Failure to comply with the foregoing provision  
19 shall constitute a waiver of the right to claim the credit.

20 (d) If at the close of any taxable year in the five year  
21 period in subsection (a):



- 1 (1) The business no longer qualifies as a qualified high  
2 technology business;
- 3 (2) The business or an interest in the business has been  
4 sold by the taxpayer investing in the qualified high  
5 technology business; [~~or~~]
- 6 (3) The taxpayer has withdrawn the taxpayer's investment  
7 wholly or partially from the qualified high technology  
8 business; or
- 9 (4) The business fails to file the registration statement  
10 as required under subsection (g),  
11 the credit claimed under this section shall be recaptured. The  
12 recapture shall be equal to ten per cent of the amount of the  
13 total tax credit claimed under this section in the preceding two  
14 taxable years. The amount of the credit recaptured shall apply  
15 only to the investment in the particular qualified high  
16 technology business that meets the requirements of paragraph  
17 (1), (2), or (3). The recapture provisions of this subsection  
18 shall not apply to a tax credit claimed for a qualified high  
19 technology business that does not fall within the provisions of  
20 paragraph (1), (2), or (3). The amount of the recaptured tax  
21 credit determined under this subsection shall be added to the



1 taxpayer's tax liability for the taxable year in which the  
2 recapture occurs under this subsection.

3 (e) Every taxpayer, before March 31 of each year in which  
4 an investment in a qualified high technology business was made  
5 in the previous taxable year, shall submit a written, certified  
6 statement to the director of taxation identifying:

7 (1) Qualified investments, if any, expended in the  
8 previous taxable year; and

9 (2) The amount of tax credits claimed pursuant to this  
10 section, if any, in the previous taxable year.

11 (f) The department shall:

12 (1) Maintain records of the names and addresses of the  
13 taxpayers claiming the credits under this section and  
14 the total amount of the qualified investment costs  
15 upon which the tax credit is based;

16 (2) Verify the nature and amount of the qualifying  
17 investments;

18 (3) Total all qualifying and cumulative investments that  
19 the department certifies; and

20 (4) Certify the amount of the tax credit for each taxable  
21 year and cumulative amount of the tax credit.



1           Upon each determination made under this subsection, the  
2 department shall issue a certificate to the taxpayer verifying  
3 information submitted to the department, including qualifying  
4 investment amounts, the credit amount certified for each taxable  
5 year, and the cumulative amount of the tax credit during the  
6 credit period. The taxpayer shall file the certificate with the  
7 taxpayer's tax return with the department.

8           The director of taxation may assess and collect a fee to  
9 offset the costs of certifying tax credits claims under this  
10 section. All fees collected under this section shall be  
11 deposited into the tax administration special fund established  
12 under section 235-20.5.

13           (g) Each qualified high technology business that has  
14 received an investment for which a credit may be claimed under  
15 this section shall file a registration statement with the  
16 department of business, economic development, and tourism on or  
17 before July 1, of each year. The annual registration statement  
18 shall pertain to the activities of the qualified high technology  
19 business from January 1 through December 31 of the preceding  
20 calendar year, including:

21           (1) The name of the qualified high technology business;



- 1        (2) The number of employees and wages paid, including  
2        whether the employee is full-time, part-time, or  
3        seasonal;
- 4        (3) Total gross sales;
- 5        (4) The amount of investments for which a credit under  
6        this section may be claimed;
- 7        (5) The total amount of tax credits claimed and unclaimed,  
8        including whether the source was from Hawaii or out-  
9        of-state;
- 10       (6) Number of trademarks, patents, and copyrights applied  
11       for and obtained;
- 12       (7) Information on costs incurred in Hawaii;
- 13       (8) Information on the company's general business  
14       operations, including the industrial classification  
15       under which the company does business; and
- 16       (9) Any other information specifically related to the  
17       measurement of the impact of the tax credit and that  
18       the department of business, economic development, and  
19       tourism deems relevant.
- 20       Notwithstanding any other law to the contrary, an annual  
21       registration statement submitted under this section shall be a  
22       public document.



1 Failure to file the annual registration statement required  
2 by this subsection in a timely manner will result in credit  
3 recapture as provided in subsection (d).

4 [~~g~~] (h) As used in this section:

5 "Investment tax credit allocation ratio" means, with  
6 respect to a taxpayer that has made an investment in a qualified  
7 high technology business, the ratio of:

8 (1) The amount of the credit under this section that is,  
9 or is to be, received by or allocated to the taxpayer  
10 over the life of the investment, as a result of the  
11 investment; to

12 (2) The amount of the investment in the qualified high  
13 technology business.

14 "Qualified high technology business" means a business,  
15 employing or owning capital or property, or maintaining an  
16 office, in this [~~State,~~] state; provided that:

17 (1) More than fifty per cent of its total business  
18 activities are qualified research; and provided  
19 further that the business conducts more than seventy-  
20 five per cent of its qualified research in this  
21 [~~State,~~] state; or



1 (2) More than seventy-five per cent of its gross income is  
2 derived from qualified research; and provided further  
3 that this income is received from:

4 (A) Products sold from, manufactured in, or produced  
5 in this [~~State~~] state; or

6 (B) Services performed in this [~~State~~] state.

7 "Qualified research" means the same as defined in section  
8 235-7.3.

9 [~~h~~] (i) Common law principles, including the doctrine of  
10 economic substance and business purpose, shall apply to any  
11 investment. There exists a presumption that a transaction  
12 satisfies the doctrine of economic substance and business  
13 purpose to the extent that the special allocation of the high  
14 technology business tax credit has an investment tax credit  
15 ratio of 1.5 or less of credit for every dollar invested.

16 Transactions for which an investment tax credit allocation  
17 ratio greater than 1.5 but not more than 2.0 of credit for every  
18 dollar invested and claimed may be reviewed by the department  
19 for applicable doctrines of economic substance and business  
20 purpose.

21 Businesses claiming a tax credit for transactions with  
22 investment tax credit allocation ratios greater than 2.0 of



1 credit for every dollar invested shall substantiate economic  
2 merit and business purpose consistent with this section.

3 ~~[(i)]~~ (j) This section shall not apply to taxable years  
4 beginning after December 31, 2010."

5 SECTION 4. Section 383-95, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "**§383-95 Disclosure of information.** (a) Except as  
8 otherwise provided in this chapter, information obtained from  
9 any employing unit or individual pursuant to the administration  
10 of this chapter and determinations as to the benefit rights of  
11 any individual shall be held confidential and shall not be  
12 disclosed or be open to public inspection in any manner  
13 revealing the individual's or employing unit's identity. Any  
14 claimant (or the claimant's legal representative) shall be  
15 supplied with information from the records of the department to  
16 the extent necessary for the proper presentation of the  
17 claimant's claim in any proceeding under this chapter. Subject  
18 to such restrictions as the director may by rule prescribe, and  
19 costs incurred in furnishing the information are reimbursed to  
20 the department and all safeguards are established as are  
21 necessary to ensure that information furnished by the department



1 is used only for authorized purposes, the information and  
2 determinations may be made available to:

3 (1) Any federal or state agency charged with the  
4 administration of an unemployment compensation law or  
5 the maintenance of a system of public employment  
6 offices;

7 (2) The Bureau of Internal Revenue of the United States  
8 Department of Treasury;

9 (3) Any federal, state, or municipal agency charged with  
10 the administration of a fair employment practice or  
11 anti-discrimination law;

12 (4) Any other federal, state, or municipal agency if the  
13 director deems that the disclosure to the agency  
14 serves the public interest; and

15 (5) Any federal, state, or municipal agency if the  
16 disclosure is authorized under section 303 of the  
17 Social Security Act and section 3304 of the Internal  
18 Revenue Code of 1986, as amended.

19 (b) Information obtained in connection with the  
20 administration of the employment service may be made available  
21 to persons or agencies for purposes appropriate to the operation  
22 of a public employment service.



1           (c) Upon requests therefor the department shall furnish to  
2 any agency of the United States charged with the administration  
3 of public works or assistance through public employment, and may  
4 furnish to any state agency similarly charged, the name,  
5 address, ordinary occupation and employment status of each  
6 recipient of benefits and the recipient's rights to further  
7 benefits under this chapter.

8           (d) The department may request the comptroller of the  
9 currency of the United States to cause an examination of the  
10 correctness of any return or report of any national banking  
11 association rendered pursuant to this chapter, and may in  
12 connection with the request transmit any of the report or return  
13 to the comptroller of the currency of the United States as  
14 provided in section 3305(c) of the federal Internal Revenue  
15 Code.

16           (e) Upon request, the department shall furnish to the  
17 director of business, economic development, and tourism, the  
18 name, address, county, private or public sector classification,  
19 number of employees, total wages paid, and the assigned North  
20 American Industrial Classification Code pertaining to each  
21 employing unit in the state, for the calendar quarters and  
22 calendar years in the format requested. The information shall



1 be used solely for the purposes of analyzing the effectiveness  
2 of state tax incentives and state tax credits. The director  
3 shall be authorized to publish the results of the analysis in a  
4 form that does not identify any individual taxpayer."

5 SECTION 5. There is appropriated out of the general  
6 revenues of the State of Hawaii the sum of \$250,000 or so much  
7 thereof as may be necessary for fiscal year 2007-2008 and  
8 \$415,000 or so much thereof as may be necessary for fiscal year  
9 2008-2009 for the purposes of this Act; provided that \$150,000  
10 shall be allocated to two permanent full-time equivalent (2.0  
11 FTE) economist positions in the department of business, economic  
12 development, and tourism.

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

16 SECTION 6. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 7. This Act shall take effect on July 1, 2007;  
19 provided that section 3 of this Act shall apply to qualified  
20 high technology businesses that received an investment on or  
21 after July 1, 2007, that qualified for a tax credit under



# H.B. NO. 1752

1 section 235-110.9, Hawaii Revised Statutes, regardless of  
2 whether the credit was claimed.  
3

INTRODUCED BY:



JAN 24 2007



**Report Title:**

High Technology Tax Credit; Transparency; Effectiveness

**Description:**

Requires DBEDT to obtain and analyze certain information pertaining to tax incentives. Appropriates funds.

