



1 "Department" means, unless otherwise noted, the department  
2 of business, economic development, and tourism or any successor  
3 agency.

4 "Development assistance" means:

- 5 (1) Tax credits and tax exemptions (other than given under  
6 tax increment financing) given as an incentive to a  
7 recipient pursuant to an initial certification or an  
8 initial designation made by the department;
- 9 (2) Grants or loans given to a recipient as an incentive  
10 to a business organization;
- 11 (3) All programs and tax credits designed to promote large  
12 business relocations and expansions.

13 "Development assistance" does not include tax increment  
14 financing, participation loans, or financial transactions  
15 through statutorily authorized financial intermediaries in  
16 support of small business loans and investments or given in  
17 connection with the development of affordable housing.

18 "Development assistance agreement" means any agreement  
19 executed by the state granting body and the recipient setting  
20 forth the terms and conditions of development assistance to be  
21 provided to the recipient consistent with the final application



1 for development assistance, including the date of assistance,  
2 submitted to and approved by the state granting body.

3 "Full-time, permanent job" means either:

4 (1) The definition of "full-time, permanent job" in the  
5 legislation authorizing the programs described in the  
6 definition of development assistance in this chapter;  
7 or

8 (2) If there is no such definition, then "full-time,  
9 permanent job" as defined in administrative rules  
10 implementing that legislation; provided that the  
11 administrative rules were in place prior to the  
12 effective date of this chapter. On and after the  
13 effective date of this chapter, if there is no  
14 definition of "full-time, permanent job" in either the  
15 legislation authorizing a program that constitutes  
16 economic development assistance under this chapter or  
17 in any administrative rule implementing the  
18 legislation that was in place prior to the effective  
19 date of this chapter, then "full-time, permanent job"  
20 means a job in which the new employee works for the  
21 recipient at a rate of at least thirty-five hours per  
22 week.



1 "New employee":  
2 (1) Means:  
3 (A) The definition of "new employee" in the  
4 legislation authorizing the programs described in  
5 the definition of development assistance in this  
6 chapter;  
7 (B) If there is no such definition, then "new  
8 employee" as defined in administrative rules  
9 implementing that legislation; provided that the  
10 administrative rules were in place prior to the  
11 effective date of this chapter; or  
12 (C) If, on and after the effective date of this  
13 chapter, there is no definition of "new employee"  
14 in either the legislation authorizing a program  
15 that constitutes economic development assistance  
16 under this chapter nor in any administrative rule  
17 implementing the legislation that was in place  
18 prior to the effective date of this chapter, then  
19 "new employee" means a full-time, permanent  
20 employee who represents a net increase in the  
21 number of the recipient's employees statewide.



1 (2) Includes an employee who previously filled a new  
2 employee position with the recipient who was rehired  
3 or called back from a layoff that occurs during or  
4 following the base years.

5 (3) Does not include any of the following:

6 (A) An employee of the recipient who performs a job  
7 that was previously performed by another employee  
8 in this State, if that job existed in this State  
9 for at least six months before hiring the  
10 employee; and

11 (B) A child, grandchild, parent, or spouse, other  
12 than a spouse who is legally separated from the  
13 individual, of any individual who has a direct or  
14 indirect ownership interest of at least five per  
15 cent in the profits, capital, or value of any  
16 member of the recipient.

17 "Part-time job" means:

18 (1) The definition of "part-time" in the legislation  
19 authorizing the programs described in the definition  
20 of development assistance in this chapter;

21 (2) If there is no such definition, then "part-time job"  
22 as defined in administrative rules implementing that



1           legislation; provided that the administrative rules  
2           were in place prior to the effective date of this  
3           chapter; or

4           (3) If, on and after the effective date of this chapter,  
5           if there is no definition of "part-time job" in either  
6           the legislation authorizing a program that constitutes  
7           economic development assistance under this chapter or  
8           in any administrative rule implementing the  
9           legislation that was in place prior to the effective  
10          date of this chapter, then "part-time job" means a job  
11          in which the new employee works for the recipient at a  
12          rate of less than thirty-five hours per week.

13          "Recipient" means any business that receives economic  
14          development assistance. For the purpose of this chapter,  
15          "business" means any corporation, limited liability company,  
16          partnership, joint venture, association, sole proprietorship, or  
17          other legally recognized entity.

18          "Retained employee" means:

19          (1) The definition of "retained employee" in the  
20          legislation authorizing the programs described in the  
21          definition of development assistance in this chapter;



1 (2) If there is no such definition, then "retained  
2 employee" defined in administrative rules implementing  
3 that legislation; provided that the administrative  
4 rules were in place prior to the effective date of  
5 this chapter; or

6 (3) If, on and after the effective date of this chapter,  
7 there is no definition of "retained employee" in  
8 either the legislation authorizing a program that  
9 constitutes economic development assistance under this  
10 chapter or in any administrative rule implementing the  
11 legislation that was in place prior to the effective  
12 date of this chapter, then "retained employee" means  
13 any employee defined as having a full-time or full-  
14 time equivalent job preserved at a specific facility  
15 or site, the continuance of which is threatened by a  
16 specific and demonstrable threat, which shall be  
17 specified in the application for development  
18 assistance.

19 "Specific project site" means that distinct operational  
20 unit to which any development assistance is applied.

21 "State granting body" means the department, any department  
22 or agency that provides development assistance that has

1 reporting requirements under this chapter, and any successor  
2 agencies to any of the preceding.

3 "Temporary job" means:

4 (1) The definition of "temporary job" in the legislation  
5 authorizing the programs described in the definition  
6 of development assistance in this chapter;

7 (2) If there is no such definition, then "temporary job"  
8 as defined in administrative rules implementing that  
9 legislation; provided the administrative rules were in  
10 place prior to the effective date of this chapter; or

11 (3) If, on and after the effective date of this chapter,  
12 there is no definition of "temporary job" in either  
13 the legislation authorizing a program that constitutes  
14 economic development assistance under this chapter or  
15 in any administrative rule implementing the  
16 legislation that was in place prior to the effective  
17 date of this chapter, then "temporary job" means a job  
18 in which the new employee is hired for a specific  
19 duration of time or season.

20 "Value of assistance" means the face value of any form of  
21 development assistance.



1           §    -2   **Unified economic development budget.**   (a) For each  
2 fiscal year ending on or after June 30, 2007, the department of  
3 taxation shall submit an annual unified economic development  
4 budget to the legislature. The unified economic development  
5 budget shall be due within three months after the end of the  
6 fiscal year and shall report all types of development assistance  
7 granted during the prior fiscal year, including:

8           (1) The aggregate amount of uncollected or diverted tax  
9 revenues resulting from each type of development  
10 assistance provided by law under title 14, as reported  
11 to the department of taxation on tax returns filed  
12 during the fiscal year; and

13           (2) All state development assistance.

14           (b) All data contained in the unified economic development  
15 budget presented to the legislature shall be government records.

16           (c) The department of taxation shall submit a report of  
17 the amounts in subsection (a)(1) to the department of business,  
18 economic development, and tourism, which may append the report  
19 to the unified economic development budget rather than  
20 separately reporting the amounts.

21           §    -3   **Standardized applications for state development**  
22 **assistance.**   (a) All final applications submitted to the



1 department or any other state granting body requesting  
2 development assistance shall contain, at a minimum:

3 (1) An application tracking number that is specific to  
4 both the state granting agency and to each  
5 application;

6 (2) The office mailing addresses, office telephone number,  
7 and chief officer of the granting body;

8 (3) The office mailing address, telephone number, four-  
9 digit standard industrial classification number, and  
10 the name of the chief officer of the applicant or  
11 authorized designee for the specific project site for  
12 which development assistance is requested;

13 (4) The applicant's total number of employees at the  
14 specific project site on the date that the application  
15 is submitted to the state granting body, including the  
16 number of full-time, permanent jobs, the number of  
17 part-time jobs, and the number of temporary jobs;

18 (5) The type of development assistance and value of  
19 assistance being requested;

20 (6) The number of jobs to be created and retained or both  
21 created and retained by the applicant as a result of  
22 the development assistance, including the number of



- 1 full-time, permanent jobs, the number of part-time  
2 jobs, and the number of temporary jobs;
- 3 (7) A detailed list of the occupation or job  
4 classifications and number of new employees or  
5 retained employees to be hired in full-time, permanent  
6 jobs, a schedule of anticipated starting dates of the  
7 new hires and the anticipated average wage by  
8 occupation or job classification and total payroll to  
9 be created as a result of the development assistance;
- 10 (8) A list of all other forms of development assistance  
11 that the applicant is requesting for the specific  
12 project site and the name of each state granting body  
13 from which that development assistance is being  
14 requested;
- 15 (9) A narrative, if necessary, describing why the  
16 development assistance is needed and how the  
17 applicant's use of the development assistance may  
18 reduce employment at any site in Hawaii; and
- 19 (10) A certification by the chief officer of the applicant  
20 or the chief officer's authorized designee that the  
21 information contained in the application submitted to  
22 the granting body contains no knowing



1 misrepresentation of material facts upon which  
2 eligibility for development assistance is based.

3 (b) Every state granting body either shall complete, or  
4 shall require the applicant to complete, an application form  
5 that meets the minimum requirements as prescribed in this  
6 section each time an applicant applies for development  
7 assistance under this chapter.

8 (c) The department shall have the discretion to modify any  
9 standardized application for state development assistance  
10 required under subsection (a) for any grants that are not given  
11 as an incentive to a recipient.

12 § -4 State development assistance disclosure. (a)  
13 Beginning February 1, 2009, and each year thereafter, every  
14 state granting body shall submit to the department copies of all  
15 development assistance agreements that it approved in the prior  
16 calendar year.

17 (b) For each development assistance agreement for which  
18 the date of assistance has occurred in the prior calendar year,  
19 each recipient shall submit to the department a progress report  
20 that shall include, but not be limited to, the following:

21 (1) The application tracking number;



- 1           (2) The office mailing address, telephone number, and the  
2           name of the chief officer of the granting body;
- 3           (3) The office mailing address, telephone number, four-  
4           digit standard industrial classification number or  
5           successor number, and the name of the chief officer of  
6           the applicant or authorized designee for the specific  
7           project site for which the development assistance was  
8           approved by the state granting body;
- 9           (4) The type of development assistance program and value  
10           of assistance that was approved by the state granting  
11           body;
- 12           (5) The applicant's total number of employees at the  
13           specific project site on the date that the application  
14           was submitted to the state granting body and the  
15           applicant's total number of employees at the specific  
16           project site on the date of the report, including the  
17           number of full-time, permanent jobs, the number of  
18           part-time jobs, and the number of temporary jobs, and  
19           a computation of the gain or loss of jobs in each  
20           category;
- 21           (6) The number of new employees and retained employees, if  
22           any, the applicant stated in its development



- 1 assistance agreement, or in its application, would be  
2 created by the development assistance, categorized by  
3 full-time, permanent, part-time, and temporary status;
- 4 (7) A declaration of whether the recipient is in  
5 compliance with the development assistance agreement;
- 6 (8) A detailed list of the occupation or job  
7 classifications and number of new employees or  
8 retained employees to be hired in full-time, permanent  
9 jobs, a schedule of anticipated starting dates of the  
10 new hires, and the actual average wage by occupation  
11 or job classification and total payroll to be created  
12 as a result of the development assistance;
- 13 (9) A narrative, if necessary, describing how the  
14 recipient's use of the development assistance during  
15 the reporting year has reduced employment at any site  
16 in the State; and
- 17 (10) A certification by the chief officer of the applicant  
18 or the chief officer's authorized designee that the  
19 information in the progress report contains no knowing  
20 misrepresentation of material facts upon which  
21 eligibility for development assistance is based.



1 (c) The state granting body, or a successor agency, shall  
2 have full authority to verify information contained in the  
3 recipient's progress report, including the authority to inspect  
4 the specific project site and inspect the records of the  
5 recipient that are subject to the development assistance  
6 agreement.

7 (d) By June 1, 2009, and by June 1 of each year  
8 thereafter, the department shall compile and publish all data in  
9 all of the progress reports in both written and electronic form.

10 (e) If a recipient of development assistance fails to  
11 comply with subsection (b), the department, within twenty  
12 working days after the reporting submittal deadlines set forth  
13 in:

- 14 (1) The authorizing legislation;  
15 (2) The implementing administrative rules; or  
16 (3) Specific provisions in development assistance  
17 agreements pertaining to the development assistance  
18 programs,  
19 shall suspend, within thirty-three working days, any current  
20 development assistance to the recipient under its control and  
21 shall be prohibited from completing any current, or providing  
22 any future, development assistance until the department receives



1 proof that the recipient has complied with the requirements of  
2 subsection (b).

3 (f) The department shall have the discretion to modify the  
4 information required in the progress report required under  
5 subsection (b), consistent with the disclosure purpose of this  
6 section for any grants that are not given as an incentive to a  
7 recipient business organization.

8 § -5 **Recapture.** (a) All development assistance  
9 agreements shall contain, at a minimum, the following recapture  
10 provisions:

11 (1) That the recipient shall:

12 (A) Make the level of capital investment in the  
13 economic development project specified in the  
14 development assistance agreement; and

15 (B) Create or retain, or both, the requisite number  
16 of jobs, paying not less than specified wages for  
17 the created and retained jobs, within and for the  
18 duration of the time period specified in the  
19 legislation authorizing, or the administrative  
20 rules implementing, the development assistance  
21 programs and the development assistance  
22 agreement;



1           (2) If the recipient fails to create or retain the  
2           requisite number of jobs within and for the time  
3           period specified in the legislation authorizing, or  
4           the administrative rules implementing, the development  
5           assistance programs and the development assistance  
6           agreement, the recipient shall be deemed to no longer  
7           qualify for the state economic assistance and the  
8           applicable recapture provisions shall take effect;

9           (3) If the recipient receives state economic assistance  
10          and fails to create or retain the requisite number of  
11          jobs, as determined by the legislation authorizing the  
12          development assistance programs or the administrative  
13          rules implementing such legislation, or both, within  
14          the requisite period of time, the recipient shall be  
15          required to pay to the State the full amount of any  
16          state tax exemption that is received;

17          (4) If the recipient receives a grant or a loan and fails  
18          to create or retain the requisite number of jobs for  
19          the requisite time period, as provided in the  
20          legislation authorizing the development assistance  
21          programs or the administrative rules implementing such  
22          legislation, or both, or in the development assistance



1 agreement, the recipient shall be required to repay to  
2 the State a pro rata amount of the grant. That amount  
3 shall reflect the percentage of the deficiency between  
4 the requisite number of jobs to be created or retained  
5 by the recipient and the actual number of jobs in  
6 existence as of the date the department determines the  
7 recipient is in breach of the job creation or  
8 retention covenants contained in the development  
9 assistance agreement. If the recipient of development  
10 assistance ceases operations at the specific project  
11 site, during the five-year period commencing on the  
12 date of assistance, the recipient shall repay the  
13 entire amount of the grant or accelerate repayment of  
14 the loan back to the State;

- 15 (5) If the recipient receives a tax credit, the  
16 development assistance agreement shall provide that:
- 17 (A) If the number of new or retained employees falls  
18 below the requisite number set forth in the  
19 development assistance agreement, the credit  
20 shall be automatically suspended until the number  
21 of new and retained employees equals or exceeds



1           the requisite number in the development  
2           assistance agreement;

3           (B) If the recipient discontinues operations at the  
4           specific project site during the first five years  
5           of the ten-year term of the development  
6           assistance agreement, the recipient shall forfeit  
7           all credits taken by the recipient during the  
8           five-year period; and

9           (C) In the event of a revocation or suspension of the  
10          credit, the department shall contact the director  
11          of taxation to initiate proceedings against the  
12          recipient to recover wrongfully exempted state  
13          income taxes, and the recipient shall promptly  
14          repay to the department of taxation any  
15          wrongfully exempted state income taxes. The  
16          forfeited amount of credits shall be deemed  
17          assessed on the date the department contacts the  
18          department of taxation and the recipient shall  
19          promptly repay to the department of taxation any  
20          wrongfully exempted state income taxes.

21          (b) The director of business, economic development, and  
22          tourism may elect to waive enforcement of any contractual



1 provision arising out of the development assistance agreement  
2 required by this chapter, based on a finding that the waiver is  
3 necessary to avert an imminent and demonstrable hardship to the  
4 recipient that may result in the recipient's insolvency or  
5 discharge of workers. If a waiver is granted, the recipient  
6 shall agree to a contractual modification, including recapture  
7 provisions to the development assistance agreement. The  
8 existence of any waiver granted pursuant to this subsection, the  
9 date of the granting of the waiver, and a brief summary of the  
10 reasons supporting the granting of the waiver shall be disclosed  
11 consistent with this section.

12 (c) Beginning June 1, 2008, the department shall annually  
13 compile a report on the outcomes and effectiveness of recapture  
14 provisions by program, including but not limited to:

- 15 (1) The total number of companies that receive development  
16 assistance as defined in this chapter;
- 17 (2) The total number of recipients in violation of  
18 development agreements with the department;
- 19 (3) The total number of completed recapture efforts;
- 20 (4) The total number of recapture efforts initiated; and
- 21 (5) The number of waivers granted.

22 This report shall be disclosed consistent with section -4."



# H.B. NO. 35

1           SECTION 2. In codifying the new sections added by section  
2 3 of this Act, the revisor of statutes shall substitute  
3 appropriate section numbers for the letters used in designating  
4 the new sections in this Act.

5           SECTION 3. This Act shall take effect upon its approval.

6

INTRODUCED BY: \_\_\_\_\_



JAN 17 2007



**Report Title:**

Corporate Accountability for Tax Expenditures Act

**Description:**

Requires corporate recipients of economic development assistance to adhere to certain requirements regarding job creation, job retention, investment of capital; requires uniform application for assistance; creates mechanism to track compliance; provides for recapture upon non-compliance.

