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## A BILL FOR AN ACT

RELATING TO BUSINESS DEVELOPMENT AT BARBERS POINT.

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

1           SECTION 1. The legislature finds the federal Tax Cuts and  
2 Jobs Act of 2017, P.L. 115-97, authorized a community economic  
3 development program called the opportunity zones program to  
4 encourage long-term investments in economically distressed  
5 communities nationwide.

6           The legislature also finds that the program provides for  
7 incentives for investors to re-invest unrealized capital gains  
8 into "opportunity funds" established by the private sector in  
9 exchange for temporary tax deferral and other tax benefits.

10          Hawaii has nominated, and the United States Department of  
11 the Treasury has already designated, twenty-five census tracts  
12 as opportunity zones. One of these is the Kalaeloa  
13 district. The former Naval Air Station at Barbers Point is in  
14 the Kalaeloa district. Barbers Point was decommissioned by the  
15 United States Navy in 1998 and was turned over to the State of  
16 Hawaii.



1           The legislature further finds that Barbers Point has the  
2 potential for business development but needs upgrades to its  
3 infrastructure, especially its electrical system, as the area  
4 presently uses its own electrical grid. The need for these  
5 costly upgrades at Barbers Point has hindered development.

6           The purpose of this Act is to incentivize investments in  
7 the area for business development and housing and to incentivize  
8 businesses or owner-occupants to invest in electrical and water  
9 upgrades at Barbers Point.

10           SECTION 2. Chapter 235, Hawaii Revised Statutes, is  
11 amended by adding a new section to part VI to be appropriately  
12 designated and to read as follows:

13           "§235-        Barbers Point upgrade tax credit. (a) There  
14 shall be allowed to each taxpayer subject to the tax imposed  
15 under this chapter, a tax credit that shall be deductible from  
16 the taxpayer's net income tax liability, if any, imposed by this  
17 chapter for the taxable year in which the credit is properly  
18 claimed.

19           In the case of a partnership, S corporation, estate, or  
20 trust, the tax credit allowable is for qualified expenses  
21 incurred by the entity for the taxable year. The expenses upon



1 which the tax credit is computed shall be determined at the  
2 entity level. Distribution and share of credit shall be  
3 determined by rule.

4 (b) The amount of the tax credit shall be equal to the  
5 qualified expenses of the taxpayer, up to a maximum of \$50,000.

6 (c) Every taxpayer claiming a credit under this section,  
7 before March 31 of each year in which qualified expenses were  
8 incurred by the taxpayer in the previous taxable year, shall  
9 submit a written, certified statement to the director of  
10 business, economic development, and tourism identifying:

11 (1) Qualified expenses incurred in the previous taxable  
12 year; and

13 (2) The amount of the tax credit claimed by the taxpayer  
14 pursuant to this section, if any, in the previous  
15 taxable year.

16 (d) The department of business, economic development, and  
17 tourism shall:

18 (1) Maintain records of the names and addresses of the  
19 taxpayers claiming the credits under this section and  
20 the total amount of the qualified expenses upon which  
21 the tax credits are based;



- 1       (2) Verify the nature and amount of the qualified  
2           expenses;
- 3       (3) Total all qualified and cumulative expenses that the  
4           department certifies; and
- 5       (4) Certify the amount of the tax credit for each taxpayer  
6           for each taxable year and the cumulative amount of the  
7           tax credit.

8       Upon each determination made under this subsection, the  
9       department of business, economic development, and tourism shall  
10       issue a certificate to the taxpayer verifying information  
11       submitted to the department of business, economic development,  
12       and tourism, including amounts of qualified expenses, the credit  
13       amount certified for the taxpayer for each taxable year, and the  
14       cumulative amount of tax credits certified. The director of  
15       business, economic development, and tourism may adopt rules  
16       under chapter 91 as necessary to implement the certification  
17       requirements under this section.

18       The taxpayer shall file the certificate with the taxpayer's  
19       tax return with the department of taxation. Notwithstanding the  
20       authority of the department of business, economic development,  
21       and tourism under this section, the director of taxation may



1 audit and adjust the tax credit amount to conform to the  
2 information filed by the taxpayer.

3 (e) The director of taxation:

4 (1) Shall prepare any forms that may be necessary to claim  
5 a tax credit under this section;

6 (2) May require the taxpayer to furnish reasonable  
7 information to ascertain the validity of the claim for  
8 the tax credit made under this section; and

9 (3) May adopt rules under chapter 91 necessary to  
10 effectuate the purposes of this section.

11 (f) If the tax credit under this section exceeds the  
12 taxpayer's income tax liability, the excess of the credit over  
13 liability may be used as a credit against the taxpayer's income  
14 tax liability in subsequent years until exhausted. All claims  
15 for the tax credit under this section, including amended claims,  
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 (g) As used in this section, "qualified expenses" means  
21 costs that are necessary and directly incurred by the taxpayer



1 for upgrading the electrical and water systems at Barbers Point  
2 in the Kalaeloa opportunity zone."

3 SECTION 3. Section 237-23, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) This chapter shall not apply to the following  
6 persons:

- 7 (1) Public service companies as that term is defined in  
8 section 239-2, with respect to the gross income,  
9 either actual gross income or gross income estimated  
10 and adjusted, that is included in the measure of the  
11 tax imposed by chapter 239;
- 12 (2) Public utilities owned and operated by the State or  
13 any county, or other political subdivision thereof;
- 14 (3) Fraternal benefit societies, orders, or associations,  
15 operating under the lodge system, or for the exclusive  
16 benefit of the members of the fraternity itself,  
17 operating under the lodge system, and providing for  
18 the payment of death, sick, accident, a legal service  
19 plan, or other benefits to the members of the  
20 societies, orders, or associations, and to their  
21 dependents;



- 1           (4) Corporations, associations, trusts, or societies  
2           organized and operated exclusively for religious,  
3           charitable, scientific, or educational purposes, as  
4           well as that of operating senior citizens housing  
5           facilities qualifying for a loan under the laws of the  
6           United States as authorized by section 202 of the  
7           Housing Act of 1959, as amended, as well as that of  
8           operating a legal service plan, as well as that of  
9           operating or managing a homeless facility, or any  
10          other program for the homeless authorized under part  
11          XVII of chapter 346;
- 12          (5) Business leagues, chambers of commerce, boards of  
13          trade, civic leagues, agricultural and horticultural  
14          organizations, and organizations operated exclusively  
15          for the benefit of the community and for the promotion  
16          of social welfare that shall include the operation of  
17          a legal service plan, and from which no profit inures  
18          to the benefit of any private stockholder or  
19          individual;
- 20          (6) Hospitals, infirmaries, and sanitararia;



1 (7) Companies that provide potable water to residential  
2 communities that lack any access to public utility  
3 water services and are tax exempt under section  
4 501(c)(12) of the Internal Revenue Code of 1986, as  
5 amended;

6 (8) Cooperative associations incorporated under chapter  
7 421 or Code section 521 cooperatives which fully meet  
8 the requirements of section 421-23, except Code  
9 section 521 cooperatives need not be organized in  
10 Hawaii; provided that:

11 (A) The exemption shall apply only to the gross  
12 income derived from activities that are pursuant  
13 to purposes and powers authorized by chapter 421,  
14 except those provisions pertaining to or  
15 requiring corporate organization in Hawaii do not  
16 apply to Code section 521 cooperatives;

17 (B) The exemption shall not relieve any person who  
18 receives any proceeds of sale from the  
19 association of the duty of returning and paying  
20 the tax on the total gross proceeds of the sales  
21 on account of which the payment was made, in the



1 same amount and at the same rate as would apply  
2 thereto had the sales been made directly by the  
3 person, and all those persons shall be so  
4 taxable; and

5 (C) As used in this paragraph, "Code section 521  
6 cooperatives" mean associations that qualify as a  
7 cooperative under section 521 (with respect to  
8 exemption of farmers' cooperatives from tax) of  
9 the Internal Revenue Code of 1986, as amended;

10 (9) Persons affected with Hansen's disease and kokuas,  
11 with respect to business within the county of Kalawao;

12 (10) Corporations, companies, associations, or trusts  
13 organized for the establishment and conduct of  
14 cemeteries no part of the net earnings of which inures  
15 to the financial benefit of any private stockholder or  
16 individual; provided that the exemption shall apply  
17 only to the activities of those persons in the conduct  
18 of cemeteries and shall not apply to any activity the  
19 primary purpose of which is to produce income, even  
20 though the income is to be used for or in the



1 furtherance of the exempt activities of those persons;

2 [~~and~~]

3 (11) Nonprofit shippers associations operating under part

4 296 of the Civil Aeronautics Board Economic

5 Regulations[-]; and

6 (12) Businesses investing more than \$500,000 over a ten-

7 year period and creating a minimum of fifty job

8 positions for the purpose of business development at

9 Barbers Point, located in the Kalaeloa opportunity

10 zone."

11 SECTION 4. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 5. This Act shall take effect upon its approval;  
14 provided that section 2 shall apply to taxable years beginning  
15 after December 31, 2020.

16

INTRODUCED BY: 

JAN 26 2021



# H.B. NO. 1153

**Report Title:**

General Excise Tax Exemption; Tax Credit; Businesses Development; Barbers Point; Kalaeloa Opportunity Zone

**Description:**

Authorizes a GET exemption for businesses investing more than \$500,000 over a 10-year period and creating a minimum of 50 job positions for the purpose of business development at Barbers Point in the Kalaeloa opportunity zone. Establishes a tax credit for upgrading infrastructure at Barbers Point.

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