



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2023**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1193, H.D. 1, RELATING TO THE TAX CREDIT FOR RESEARCH ACTIVITIES.

**BEFORE THE:**

SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

**DATE:** Tuesday, March 14, 2023

**TIME:** 1:30 p.m.

**LOCATION:** State Capitol, Room 229

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Joshua J. Michaels, Deputy Attorney General

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Chair DeCoite and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to add new reporting requirements (page 3, line 12, through page 5, line 19) and unspecified cap amounts (page 7, lines 9 and 15) to the research activities tax credit, and to extend the credit's repeal date for an additional five years (page 12, line 18). The bill would also require qualified high technology businesses to "[o]ccupy a business location and address in the State where at least seventy-five per cent of the business's employees are located." (page 13, lines 5-7).

This bill could be subject to challenge under the Privileges and Immunities Clause of the United States Constitution. "The Privileges and Immunities Clause, U.S. Const., Art. IV, § 2, provides that the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several states." *Lunding v. NY Tax Appeals Tribunal*, 522 U.S. 287, 290 (1998) (internal brackets and quotation marks omitted). "One right thereby secured is the right of a citizen of any State to remove to and carry on business in another without being subjected in property or person to taxes more onerous than the citizens of the latter State are subjected to." *Id.* at 296 (internal quotation marks omitted). The Clause requires "substantial equality of treatment" for resident and nonresident taxpayers; "[w]here nonresidents are subject to different treatment, there must be reasonable grounds for . . . diversity of treatment." *Id.* at 297-

98 (internal quotation marks omitted). Thus, "the Privileges and Immunities Clause bars discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other states." *Id.* at 298 (internal quotation marks omitted). When confronted with a Privileges and Immunities challenge, "a State may defend its position by demonstrating that '(i) there is a substantial reason for the difference in treatment; and (ii) the discrimination practiced against nonresidents bears a substantial relationship to the State's objective.'" *Id.* (internal quotation marks omitted).

It is not clear from the bill whether there is a "substantial reason" for restricting tax credit recipients to only those who "[o]ccupy a business location and address in the State where at least seventy-five per cent of the business's employees are located," or whether there is a substantial relationship between the proposed tax credit and the requirement to have both a physical location and a minimum quota of employees in the State. Accordingly, we recommend deleting paragraph (2) of the definition of "qualified high technology business" on page 13, lines 4-7, beginning with the word "and" on line 4, through the requirement to "[o]ccupy a business location and address in the State where at least seventy-five per cent of the business's employees are located" at page 13, lines 5-7. The new wording for the definition, which would no longer require a paragraph (1), beginning on page 13, line 1, would read:

"Qualified high technology business" shall have the same meaning as in section 235-7.3(c)~~[-]~~; provided that the business shall be registered to do business in the State.

These amendments should sufficiently address a possible Privileges and Immunities challenge.

Thank you for the opportunity to comment on this bill.



Written Statement of  
**Len Higashi**  
Executive Director  
Hawaii Technology Development Corporation  
before the  
**Senate Committee On Energy Economic Development and Tourism**  
Tuesday, March 14, 2023  
1:30 p.m.  
Conference Room 229 & Videoconference

In consideration of  
**HB1193, HD1**  
**RELATING TO THE TAX CREDIT FOR RESEARCH ACTIVITIES.**

Chair DeCoite, Vice Chair Wakai, and Members of the Committee.

The Hawai'i Technology Development Corporation (HTDC) **supports** HB1193, HD1 that extends the repeal date of the tax credits for research activities for an additional 5 years; adds a cap amount on the tax credit for research activities; consolidates the survey and certification requirements for the tax credit for research activities; changes to an unspecified amount the annual aggregate cap amount on the tax credit for research activities; requires certification of the tax credit for research activities on a first-come, first-served basis to be based on the date that a complete application is received, subject to certain conditions; requires a qualified high technology business and at least 75% of its employees to be physically located in the State.

HTDC supports initiatives aimed at growing tech and innovation jobs. Last year, HTDC assisted Department of Business, Economic Development and Tourism (DBEDT) with the online applications for the certification. Last year the entire \$5 million cap was claimed in the first **23 seconds** after the applications opened. HTDC suggests this bill be coordinated with the Admin bill HB990. HB1193 includes language from HB990 and extends the sunset date, changes to an unspecified cap and adds restrictions to eligibility based on percentage of employees in the state.

HTDC supports this measure provided it does not supplant the priorities in the Administration's budget and respectfully requests correction of the defective effective date. Thank you for the opportunity to offer these comments

JOSH GREEN M.D.  
GOVERNOR

SYLVIA LUKE  
LT. GOVERNOR



STATE OF HAWAII  
DEPARTMENT OF TAXATION

Ka 'Oihana 'Auhau  
P.O. BOX 259

HONOLULU, HAWAII 96809  
PHONE NO: (808) 587-1540  
FAX NO: (808) 587-1560

GARY S. SUGANUMA  
DIRECTOR

KRISTEN M.R. SAKAMOTO  
DEPUTY DIRECTOR

**TESTIMONY OF  
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

**TESTIMONY ON THE FOLLOWING MEASURE:**

H.B. No. 1193, H.D.1, Relating to the Tax Credit for Research Activities

**BEFORE THE:**

Senate Committee on Energy, Economic Development, and Tourism

**DATE:** Tuesday, March 14, 2023

**TIME:** 1:30 p.m.

**LOCATION:** State Capitol, Room 229

Chair DeCoite, Vice-Chair Wakai, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding H.B. 1193, H.D.1, for your consideration.

H.B. 1193, H.D.1, seeks to amend section 235-110.91 Hawaii Revised Statutes (HRS), relating to the tax credit for research activities, by: (1) imposing an unspecified cap that an eligible taxpayer and the taxpayer's related entities may receive per taxable year; (2) changing the deadline that the taxpayer must provide a certified statement to the Department of Business, Economic Development, and Tourism (DBEDT) from March 31 of each year to the last day of the third month following the end of the taxable year; (3) expanding the required data that qualified high technology businesses must submit to DBEDT; (4) clarifying that the certification is determined on a first-come, first-served basis and is based on the date that the complete application is received; (5) amending the aggregate cap from \$5,000,000 per taxable year to an unspecified amount per calendar year; (6) amending the definition of "qualified high technology business" to include provisions that the business must be registered to do business within the State, and occupy a business location and address within the State where at least 75 percent of the business's employees are located; and (7) extending the repeal date from December 31, 2024 to December 31, 2029.

The measure has a defective effective date of June 30, 3000.

First, the Department notes that the measure changes the certification deadline from March 31 after the end of the calendar year in which research was conducted to the last day of the third month following the close of the taxable year in which research was conducted. Some taxpayers are fiscal year filers, with the end of the tax year varying. Because of the aggregate cap, this change could result in some taxpayers having a substantial advantage or disadvantage in obtaining the credit, depending on when their fiscal year ends. The Department suggests deleting this amendment.

Second, the Department notes that that the taxpayer submission deadline in subsection (d) on page 3, lines 14-15, of the bill, may be read to conflict with subsection (f) on page 7 of the bill. Subsection (f) refers to the aggregate cap and certifications in terms of a calendar year. As such, subsection (d) should also be set in terms of a calendar year so that no taxpayer has an advantage based on their specific tax year end date. The Department strongly suggests that the term “taxable year” on page 3, line 15, be replaced with “calendar year.”

Third, to prevent the credit from being claimed on research that has been funded by tax-exempt receipts such as a grant, the Department suggests that subsection (b) on page 2 of the bill, be amended to read as follows:

(b) All references to Internal Revenue Code sections within sections 41 and 280C(c) of the Internal Revenue Code shall be operative for purposes of this section; provided that references to the base amount in section 41 of the Internal Revenue Code shall not apply, and credit for all qualified research expenses may be taken without regard to the amount of expenses for previous years. In determining the allowable credit, research funded by any grant, forgivable loan, or other amounts not included in gross income for purposes of this chapter shall not be eligible research.

Finally, the Department notes that it will require resources and time to implement the new credit. Accordingly, the Department requests that when the effective date of the measure is updated, it be amended to apply to qualified expenses incurred after December 31, 2023.

Thank you for the opportunity to provide comments on this measure.



# Chamber of Commerce HAWAII

*The Voice of Business*

## Testimony to the Senate Committee on Energy, Economic Development, and Tourism

**Tuesday, March 14, 2023, at 1:30 P.M.  
Conference Room 229 & Videoconference**

### **RE: HB 1193 HD1 Relating to the Tax Credit for Research Activities**

Aloha Chair DeCoite, Vice Chair Wakai, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports HB 1193 HD1**, which extends the repeal date of the tax credits for research activities for an additional 5 years. Adds a cap amount on the tax credit for research activities that may be claimed by a taxpayer and all its business entities. Consolidates the survey and certification requirements for the tax credit for research activities. Changes to an unspecified amount the annual aggregate cap amount on the tax credit for research activities. Requires certification of the tax credit for research activities on a first-come, first-served basis to be based on the date that a complete application is received, subject to certain conditions. Requires a qualified high technology business and at least 75% of its employees to occupy a business location and address in the State.

The Small Business Innovation Research Program (SBIR) is a highly competitive federal program that encourages domestic small businesses to engage in federal research and development that has the potential for commercialization. Through the Hawaii SBIR Program, Hawaii-based companies receive matching funds that can help them to enhance their project development, compete for more lucrative awards and ultimately reach successful commercialization.

The Hawaii Technology Development Corporation has provided assistance to SBIR awarded companies since 1988; as a result, Hawaii companies have attracted federal dollars in return to the state plus commercialization funding for every state dollar invested through this program. The federal SBIR grant program has continued its efforts to move companies through grant awards to commercial product sales, and this bill would allow the Hawaii Technology Development Corporation to continue to provide the necessary support of a commercialization assistance program to all phases in the program for local businesses here in Hawaii.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

Thank you for the opportunity to testify.



Statement of  
**Hermann Kugeler**  
**Vice President of Business Development**  
**Makai Ocean Engineering, Inc.**  
before the  
**Senate Committee on Energy, Economic Development, and Tourism**  
Tuesday, March 14, 2023  
1:30 pm  
State Capitol, Conference Room 229  
In consideration of  
**HB1193**  
**RELATING TO THE TAX CREDIT FOR RESEARCH ACTIVITIES.**

Chair DeCoite, Vice Chair Wakai, and Members of the Committee

Makai Ocean Engineering, Inc. **STRONGLY SUPPORTS HB1193** with a request to extend the sunset date of this bill by 5 years.

Makai is a locally-owned and operated technology company based in Hawai'i for 50 years. We are currently performing R&D on a variety of exciting ocean technology projects, including autonomous underwater vehicles, ocean thermal energy conversion (OTEC) and seawater air conditioning (SWAC) systems, submarine and subsea cable systems, and a Department of Energy project to grow and harvest macroalgae offshore in Hawaiian waters to produce a renewable biofuel alternative for transportation.

Makai has been successful in bringing in tens of millions of dollars in R&D funds from federal and international sponsors to Hawai'i, helping to stem the tide of "brain drain" of talented kama'aina kids going to the mainland. Makai is not unique among Hawaii technology companies in this. There is a tech community here that has made a strong economic impact in terms of high paying jobs, and demonstrated success in commercializing R&D, which has increased taxable revenue for the state, and brought home kama'aina scientists and engineers.

This bill allows Hawaii companies like Makai to outshine mainland peers in competitive federal R&D projects, bring home R&D dollars that greatly exceed the initial investment, and create a critical mass and a truly vibrant industry of innovative R&D companies in Hawaii. It helps expand and diversify Hawaii's economy, and enable our tech industry to support high-paying, highly-skilled professional jobs for our keiki here at home.

This is why we **STRONGLY SUPPORT HB1193**, with the request to extend the sunset date of this bill by 5 years, which supports Hawaii's R&D companies enabling them to continue spending monies on wages, materials and subcontractors IN THE STATE OF HAWAII and recognizes the importance of Hawaii's innovation industries to our economy.



Written Statement of  
**MR. MATTHEW SULLIVAN**  
**DIRECTOR OF PRODUCT OCEANIT**

Before the  
**SENATE COMMITTEE ON ENERGY, ECONOMIC  
DEVELOPMENT AND TOURISM**

Tuesday, March 14, 2023  
1:30 p.m.  
State Capitol, Conference Room 229 and Videoconference

Offers Comments to  
**HB1193 RELATING TO THE TAX CREDIT  
FOR RESEARCH ACTIVITIES**

To: Senator Lynn DeCoite, Chair, Senator Glenn Wakai, Vice Chair, and  
Members of the Committee

From: Mr. Matthew Sullivan, Director of Product

Re: Support and Requested Changes to HB1193 HD1

Honorable Chair, Vice-Chair and Committee Members: Thank you for the opportunity to  
submit testimony in **Support and Requested Changes** to HB1193 HD1.

Oceanit is one of the largest local science and technology companies in the State of Hawaii  
and has been around for over 35 years. We employ over 100 local scientists and engineers  
in specialized fields such as artificial intelligence and nanomaterials, addressing global  
problems such as climate change and energy transition.

Hawaii's R&D tax credit is one of the few state policies to support the local tech industry. We  
support SB951 SD2 and ask that you conform HB1193 HD1 to be consistent with that  
language.

**The Hawaii R&D tax credit is a good investment for the State.**

According to a 2021 UHERO report titled *The Hawaii Research Activity Tax Credit: Is It  
Effective and How Can It Be Improved?*, every \$1 in tax credits claimed generates an  
additional \$1-2 in additional spending in the State by private firms.

**The tech industry supports a living wage for locals, empowering locals to compete for  
housing in Hawaii and remain in the State vs move to the mainland.**

According to the *Report on Hawaii Tax Credit for Research Activities for Tax Year 2021*  
prepared by DBEDT, the average annual wage was \$93,634 for the 34 Qualified High  
Technology Businesses that applied for the Hawaii tax credit for research activities for the  
tax year 2021.

**The R&D tax credit enables Hawaii companies to compete with other states for talent.**

37 of the 50 states in the U.S. offer an R&D tax credit. Hawaii's R&D tax credit enables Hawaii companies to compete with other states to recruit and retain more local talent and stem Hawaii's "Brain Drain".

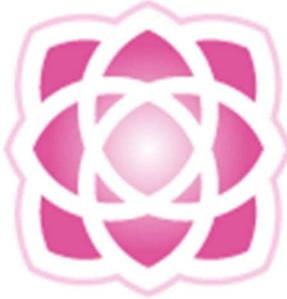
**To grow our local tech industry, the annual \$5 million cap should be increased.**

In 2021, 34 companies applied for the Hawaii tax credit but only 9 received it due to the \$5 million annual cap. In aggregate, the 34 QHTBs generated a total of \$223 million revenue from all goods and services produced in Hawaii, \$195 million as operating cost, and paid a total of \$80 million as payroll.

Mahalo for your consideration,

Matthew Sullivan

**LATE**



**MAUI**  
CHAMBER OF COMMERCE  
**VOICE OF BUSINESS**

**HEARING BEFORE THE SENATE COMMITTEE ON  
ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM  
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 229  
TUESDAY, MARCH 14, 2023 AT 1:30 P.M.**

To The Honorable Senator Lynn DeCoite, Chair  
The Honorable Senator Glenn Wakai, Vice Chair  
Members of the Committee on Energy, Economic Development, and Tourism

**SUPPORT FOR HB1193 HD1 RELATING TO THE TAX CREDIT FOR RESEARCH ACTIVITIES**

The Maui Chamber of Commerce would like testify in **support for HB1193 HD1** which extends the repeal date of the tax credits for research activities for an additional 5 years; adds a cap amount on the tax credit for research activities; consolidates the survey and certification requirements for the tax credit for research activities; changes to an unspecified amount the annual aggregate cap amount on the tax credit for research activities; requires certification of the tax credit for research activities on a first-come, first-served basis to be based on the date that a complete application is received, subject to certain conditions; requires a qualified high technology business and at least 75% of its employees to be physically located in the State.

The Chamber notes that research is critical to every industry and especially to innovation. Innovation and research attracts dollars, to the state, that create STEM and higher paying jobs, supporting further STEM education. This has been prevalent in the stellar results we have previously seen from the university in cancer research.

As other states have incentives like this, we believe extending this deadline allows Hawaii to be more competitive to attract further research activities.

For these reasons, we **support HB1193 HD1**.

Sincerely,

Pamela Tumpap  
President

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Additional Requirements for Tax Credit for Research Activities

BILL NUMBER: HB 1193 HD 1

INTRODUCED BY: House Committee on Economic Development

EXECUTIVE SUMMARY: Extends the repeal date of the tax credits for research activities for an additional 5 years. Adds a cap amount on the tax credit for research activities. Consolidates the survey and certification requirements for the tax credit for research activities. Changes to an unspecified amount the annual aggregate cap amount on the tax credit for research activities. Requires certification of the tax credit for research activities on a first-come, first-served basis to be based on the date that a complete application is received, subject to certain conditions. Requires a qualified high technology business and at least 75% of its employees to be physically located in the State.

SYNOPSIS: Amends section 235-110.91(c), HRS, to provide that each taxpayer, together with all of the taxpayer's related entities, as determined under section 267(b) of the Internal Revenue Code, and all business entities under common control, as determined under sections 414(b), 414(c), and 1563(a) of the Internal Revenue Code, shall not be eligible for more than \$\_\_\_\_\_ in tax credits provided by this section per taxable year.

Amends section 235-110.91(d), HRS, to require, as a condition of claiming the credit, a credit applicant to submit the following to DBEDT on or before the end of the third month following the end of the taxable year: (1) Qualified expenditures, if any, expended in the previous taxable year; (2) The amount of tax credits claimed pursuant to this section, if any, in the previous taxable year; (3) The industry sector or sectors in which the qualified high technology business conducts business, as set forth in paragraphs (2) to (8) of the definition of "qualified research" in section 235-7.3(c), HRS; (4) Revenue and expense data, including a breakdown of any licensing royalty or other forms of income generated from intellectual property; (5) Hawaii employment and wage data, including the numbers of full-time and part-time employees retained, new jobs, temporary positions, external services procured by the business, and payroll taxes; (6) The number of filed intellectual property, including invention disclosures, provisional patents, and patents issued or granted; (7) The number of new companies spun out or established in Hawaii to commercialize the intellectual property owned by the qualified high technology business; and (8) A written declaration signed by an officer of the qualified high technology business certifying that the information that is submitted is true and correct as to every material matter, which certification shall be subject to the penalties provided in section 231-36, HRS, including monetary fines or imprisonment. Failure to meet the requirements of this subsection shall constitute a waiver of the right to claim the credit.

DBEDT may request any additional information necessary to measure the effectiveness of the tax credit, such as additional information related to patents.

Amends section 235-110.91(f), HRS, to limit the amount of certified credits to \$\_\_\_\_\_ million per calendar year (used to be \$5 million). DBEDT shall certify credits on a first-come, first-served basis determined based on the date and time a complete application is received by DBEDT. Complete applications received on the same date shall be certified on a pro rata basis.

Removes the requirement of an annual survey contained in current subsections (i) and (j) of section 235-110.91, HRS.

Amends section 5 of Act 261, SLH 2019, to extend the sunset date of this credit to December 31, 2029.

EFFECTIVE DATE: June 30, 3000.

STAFF COMMENTS: The legislature by Act 270, SLH 2013, reestablished the income tax credit for qualified research activities that expired on 12/31/10. The prior version of that law, under Act 221, SLH 2001, offered a credit for qualified research activities that was a flat percentage of qualified research expenses in Hawaii without regard to the federal base amount (the federal credit is supposed to be an incentive to increase research activities, so the federal credit is based on incremental research expenses). When Act 270 brought the credit back, it did so as an incremental credit, like the federal credit.

Act 261, SLH 2019, amended the credit by reinserting the phrase “provided that references to the base amount shall not apply and credit for all qualified research expenses may be taken without regard to the amount of expenses for previous years.”

Substantively, over the last decade, Hawaii has adopted various tax incentives to encourage the development of high technology businesses in the state. The acts provided investment and research credits as well as income exclusions providing tax relief to high tech businesses and individuals associated with high tech businesses. While the focus on high technology in the last few years is commendable, it fails to recognize that investments are made with the prospect that the venture will yield a profit. If the prospects for making a profit are absent, no amount of tax credits will attract investment from outside Hawaii’s capital short environment. People do not invest to lose money. It should be remembered that until Hawaii’s high cost of living can be addressed, all the tax incentives in the world will not make a difference in attracting new investment to Hawaii. The only attractive aspect for resident investors to plow money into such activities is the fact that the credit provides a way to avoid paying state taxes.

At a minimum, lawmakers should carefully examine the results that have come out of this 20-year-old incentive to see if the State has gotten its money’s worth. If it hasn’t, how can an extension or increase in the credit be justified?

Digested: 2/28/2023