

ACT 297

H.B. NO. 2901

A Bill for an Act Relating to the New Economy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The ‘New Economy’ is an economy based on knowledge and ideas. It is an economy where the keys to job creation and higher standards of living are innovative ideas and technology embedded in services and manufactured prod-

ucts. It is an economy where risk, uncertainty, and constant change are the rule rather than the exception. It is an economy in a world of innovation where there is rapid convergence of technology, telecommunications, and media. As a result, partnerships, such as MSNBC and AOL-Time Warner, become staples of this rapidly moving industry.

Hawaii is competing in this New Economy. Hawaii offers great advantages not available in other areas of the world: unparalleled quality of life, rich and diverse cultures, and an educated populace. In 1999, the twentieth legislature, the educational system, and administration partnered to demonstrate their commitment of support for an aggressive development of high technology resources. Act 178, Session Laws of Hawaii 1999, called for the integration of technology with some of Hawaii's industries, the increase of technology professionals through work force development programs, and the creation of economic incentives for businesses to increase high technology research activities.

Since geographic location and isolation are no longer detrimental factors when competing in a global market, the legislature believes that it must continue the effort started in 1999. The purpose of this Act is to encourage the continued growth and development of high technology businesses and associate industries.

PART I

SECTION 2. The purpose of this Part is to:

- (1) Allow qualified high technology businesses to sell their unused net operating loss carryover to other taxpayers;
- (2) Amend the high technology-related definitions in the income tax law;
- (3) Amend the income tax exclusion for royalties and other income from high technology businesses established by section 22 of Act 178, Session Laws of Hawaii 1999, by expanding that exclusion to include royalties derived from any patent, copyright, or trade secret;
- (4) Amend the section relating to operation of certain Internal Revenue Code provisions to allow partnership investors the flexibility of allocating the high technology business investment tax credit in section 235-110.9, Hawaii Revised Statutes, among partners without regard to their proportionate interests in their partnership investment vehicle;
- (5) Amend the tax credit for increasing research activities under section 235-110.91, Hawaii Revised Statutes, by making the credit refundable to the taxpayer in addition to allowing the credit to be used against the taxpayer's income tax liability in subsequent years until exhausted; and
- (6) Conform the tax credit for increasing research activities under section 235-110.91, Hawaii Revised Statutes, to that provided under the Internal Revenue Code, thereby increasing the tax credit from 2.5 per cent to twenty per cent to match the federal rate.

SECTION 3. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§235- High technology; sale of unused net operating loss carryover.

(a) A qualified high technology business may apply to the department of taxation to sell its unused net operating loss carryover to another taxpayer. If approved by the department of taxation, a qualified high technology business may sell its unused net operating loss carryover to another taxpayer in an amount equal to at least seventy-five per cent of the amount of the surrendered tax benefit; provided that the qualified high technology business may sell no more than \$500,000 of its unused net operating loss carryover to another taxpayer per year. The tax benefit purchased by the buyer

shall be claimed in the year for which the sale is approved by the department. Any use of the purchased net operating loss carryover for tax carryback or carryforward purposes shall comply with applicable law. The income from the sale of the net operating loss carryover received by the seller shall be reported on its tax return in the taxable year received but shall not be considered taxable income.

(b) No application for the sale of unused net operating losses shall be approved if the seller is a qualified high technology business that:

- (1) Has demonstrated positive net income in any of the two previous full years of ongoing operations as determined on its financial statements;
- (2) Has demonstrated a ratio in excess of one hundred ten per cent or greater of operating revenues divided by operating expenses in any of the two previous full years of operations as determined on its financial statements; or
- (3) Is directly or indirectly at least fifty per cent owned or controlled by another corporation that has demonstrated positive net income in any of the two previous full years of ongoing operations as determined on its financial statements or is part of a consolidated group of affiliate corporations, as filed for federal income tax purposes, that in the aggregate has demonstrated positive net income in any of the two previous full years of ongoing operations as determined on its combined financial statements;

as certified and documented by a licensed certified public accountant.

(c) As used in this section, "net operating loss" means a net operating loss for income tax purposes occurring in the two taxable years preceding the year in which the sale of net operating loss carryover occurs.

(d) This section shall only apply to sales of net operating loss carryovers after December 31, 2000, and before January 1, 2004."

SECTION 4. Section 235-1, Hawaii Revised Statutes, is amended by adding five new definitions to be appropriately inserted and to read as follows:

"Biotechnology" means fundamental knowledge regarding the function of biological systems from the macro level to the molecular and subatomic levels that has application to development including the development of novel products, services, technologies, and subtechnologies from insights gained from research advances that add to that body of fundamental knowledge.

"Computer data" means any representation of information, knowledge, facts, concepts, or instructions that is being prepared or has been prepared and is intended to be processed, is being processed, or has been processed in a computer or computer network.

"Computer program" means an ordered set of computer data representing coded instructions or statements, that, when executed by a computer, causes the computer to perform one or more computer operations.

"Computer software" means computer data, a computer program, or a set of computer programs, procedures, or associated documentation concerned with the operation and function of a computer system, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

"Investment" means a nonrefundable investment, at risk, as that term is used in section 465 (with respect to deductions limited to amount at risk) of the Internal Revenue Code, in a qualified high technology business, of cash that is transferred to the qualified high technology business, the transfer of which is in connection with a transaction in exchange for stock, interests in partnerships, joint ventures, or other entities, licenses (exclusive or nonexclusive), rights to use tech-

nology, marketing rights, warrants, options, or any items similar to those included in this definition, including but not limited to options or rights to acquire any of the items included in this definition. The nonrefundable investment is entirely at risk of loss where repayment depends upon the success of the qualified high technology business. If the money invested is to be repaid to the taxpayer, no repayment except for dividends or interest shall be made for at least one year from the date the investment is made. The annual amount of any dividend and interest payment to the taxpayer shall not exceed twelve per cent of the amount of the investment.”

SECTION 5. Section 235-2.4, Hawaii Revised Statutes, is amended to read as follows:

“§235-2.4 Operation of certain Internal Revenue Code provisions[.]; sections 63 to 530. (a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that the standard deduction amount in section 63(c) of the Internal Revenue Code shall instead mean:

- (1) \$1,900 in the case of:
 - (A) A joint return as provided by section 235-93; or
 - (B) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code);
- (2) \$1,650 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code);
- (3) \$1,500 in the case of an individual who is not married and who is not a surviving spouse or head of household; or
- (4) \$950 in the case of a married individual filing a separate return.

Section 63(c)(4) shall not be operative in this State. Section 63(c)(5) shall be operative, except that the limitation on basic standard deduction in the case of certain dependents shall be the greater of \$500 or such individual’s earned income. Section 63(f) shall not be operative in this State.

The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5.

(b) Section 72 (with respect to annuities; certain proceeds of endowment and life insurance contracts) of the Internal Revenue Code shall be operative for purposes of this chapter and be interpreted with due regard to section 235-7(a), except that the ten per cent additional tax on early distributions from retirement plans in section 72(t) shall not be operative for purposes of this chapter.

(c) Section 121 (with respect to exclusion of gain from sale of principal residence) of the Internal Revenue Code shall be operative for purposes of this chapter, except that for the election under section 121(f), a reference to section 1034 treatment means a reference to section 235-2.4(n) in effect for taxable year 1997.

(d) Section 219 (with respect to retirement savings) of the Internal Revenue Code shall be operative for the purpose of this chapter. For the purpose of computing the limitation on the deduction for active participants in certain pension plans for state income tax purposes, adjusted gross income as used in section 219 as operative for this chapter means federal adjusted gross income.

(e) Section 220 (with respect to medical savings accounts) of the Internal Revenue Code shall be operative for the purpose of this chapter, but only with respect to medical services accounts that have been approved by the Secretary of the Treasury of the United States.

(f) Section 408A (with respect to Roth Individual Retirement Accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purposes of determining the aggregate amount of contributions to a Roth Individual Retirement Account or qualified rollover contribution to a Roth Individual Retirement

ment Account from an individual retirement plan other than a Roth Individual Retirement Account, adjusted gross income as used in section 408A as operative for this chapter means federal adjusted gross income.

(g) In administering the provisions of sections 410 to 417 (with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.), sections 418 to 418E (with respect to special rules for multiemployer plans), and sections 419 and 419A (with respect to treatment of welfare benefit funds) of the Internal Revenue Code, the department of taxation shall adopt rules under chapter 91 relating to the specific requirements under such sections and to such other administrative requirements under those sections as may be necessary for the efficient administration of sections 410 to 419A.

In administering sections 401 to 419A (with respect to deferred compensation) of the Internal Revenue Code, Public Law 93-406, section 1017(i), shall be operative for the purposes of this chapter.

In administering section 402 (with respect to the taxability of beneficiary of employees' trust) of the Internal Revenue Code, the tax imposed on lump sum distributions by section 402(e) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter.

(h) Section 468B (with respect to special rules for designated settlement funds) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at a rate equal to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.

(i) Section 469 (with respect to passive activities and credits limited) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of computing the offset for rental real estate activities for state income tax purposes, adjusted gross income as used in section 469 as operative for this chapter means federal adjusted gross income.

(j) Sections 512 to 514 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

"Unrelated business taxable income" means the same as in the Internal Revenue Code, except that in the computation thereof sections 235-3 to 235-5, and 235-7 (except subsection (c)), shall apply, and in the determination of the net operating loss deduction there shall not be taken into account any amount of income or deduction [which] that is excluded in computing the unrelated business taxable income. Unrelated business taxable income shall not include any income from a prepaid legal service plan.

For a person described in section 401 or 501 of the Internal Revenue Code, as modified by section 235-2.3, the tax imposed by section 235-51 or 235-71 shall be imposed upon the person's unrelated business taxable income.

(k) Section 521 (with respect to cooperatives) and subchapter T (sections 1381 to 1388, with respect to cooperatives and their patrons) of the Internal Revenue Code shall be operative for the purposes of this chapter as to any cooperative fully meeting the requirements of section 421-23, except that Internal Revenue Code section 521 cooperatives need not be organized in Hawaii.

(l) Sections 527 (with respect to political organizations) and 528 (with respect to certain homeowners associations) of the Internal Revenue Code shall be operative for the purposes of this chapter and the taxes imposed in each such section are hereby imposed by this chapter at the rates determined under section 235-71.

(m) Section 530 (with respect to education individual retirement accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of determining the maximum amount that a contributor could make to an

education individual retirement account for state income tax purposes, modified adjusted gross income as used in section 530 as operative for this chapter means federal modified adjusted gross income as defined in section 530.

[(n)] **§235-2.45 Operation of certain Internal Revenue Code provisions; sections 641 to 7518.** (a) Section 641 (with respect to imposition of tax) of the Internal Revenue Code shall be operative for the purposes of this chapter subject to the following:

- (1) The deduction for exemptions shall be allowed as provided in section 235-54(b)[.];
- (2) The deduction for contributions and gifts in determining taxable income shall be limited to the amount allowed in the case of an individual, unless the contributions and gifts are to be used exclusively in the State[.]; and
- (3) The tax imposed by section 1(e) of the Internal Revenue Code as applied by section 641 of the Internal Revenue Code is hereby imposed by this chapter at the rate and amount as determined under section 235-51 on estates and trusts.

[(o)] (b) Section 667 (with respect to treatment of amounts deemed distributed by trusts in preceding years) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter; except that the reference to tax-exempt interest to which section 103 of the Internal Revenue Code applies in section 667(a) of the Internal Revenue Code shall instead be a reference to tax-exempt interest to which section 235-7(b) applies.

[(p)] (c) Section 685 (with respect to treatment of qualified funeral trusts) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the tax imposed under this chapter shall be computed at the tax rates provided under section 235-51, and no deduction for the exemption amount provided in section 235-54(b) shall be allowed. The cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code shall be operative for the purpose of applying section 685(c)(3) under this chapter.

(d) Section 704 of the Internal Revenue Code (with respect to a partner's distributive share) shall be operative for purposes of this chapter; except that subsection (b)(2) shall not apply to allocations of the high technology business investment tax credit allowed by section 235-110.9.

[(q)] (e) Section 1212 (with respect to capital loss carrybacks and carryforwards) of the Internal Revenue Code shall be operative for the purposes of this chapter; except that for the purposes of this chapter the capital loss carryback provisions of section 1212 shall not be operative and the capital loss carryforward allowed by section 1212(a) shall be limited to five years[.]; except for a qualified high technology business as defined in section 235-7.3, which shall be limited to fifteen years.

[(r)] (f) Subchapter S (sections 1361 to 1379) (with respect to tax treatment of S corporations and their shareholders) of chapter 1 of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in part VII.

[(s)] (g) Section 6015 (with respect to relief from joint and several liability on joint return) of the Internal Revenue Code is operative for purposes of this chapter.

[(t)] (h) Subchapter C (sections 6221 to 6233) (with respect to tax treatment of partnership items) of chapter 63 of the Internal Revenue Code shall be operative for the purposes of this chapter.

[(u)] (i) Subchapter D (sections 6240 to 6255) (with respect to simplified audit procedures for electing large partnerships) of the Internal Revenue Code shall

be operative for the purposes of this chapter, with due regard to chapter 232 relating to tax appeals.

[(v)] (j) Section 6511(h) (with respect to running of periods of limitation suspended while taxpayer is unable to manage financial affairs due to disability) of the Internal Revenue Code shall be operative for purposes of this chapter, with due regard to section 235-111 relating to the limitation period for assessment, levy, collection, or credit.

[(w)] (k) Section 7518 (with respect to capital construction fund for commercial fishers) of the Internal Revenue Code shall be operative for the purposes of this chapter. Qualified withdrawals for the acquisition, construction, or reconstruction of any qualified asset [which] that is attributable to deposits made before the effective date of this section shall not reduce the basis of the asset when withdrawn. Qualified withdrawals shall be treated on a first-in-first-out basis.”

SECTION 6. Section 235-7.3, Hawaii Revised Statutes, is amended to read as follows:

“[[§235-7.3]] Royalties [and other income from high technology business] derived from patents, copyrights, or trade secrets excluded from gross income. (a) In addition to the exclusions in section 235-7, there shall be excluded from gross income, adjusted gross income, and taxable income, amounts received by an individual or a qualified high technology business as royalties and other income derived from any¹ patents [and], copyrights[:], and trade secrets:

- (1) Owned by the individual or qualified high technology business; and
- (2) Developed and arising out of a qualified high technology business.

(b) For the purposes of this section:

[“Computer software” means a set of computer programs, procedures, or associated documentation concerned with the operation and function of a computer system, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.]

“Performing arts products” means:

- (1) Audio files, video files, audiovideo files, computer animation, and other entertainment products perceived by or through the operation of a computer; and
- (2) Commercial television and film products for sale or license, and reuse or residual fee payments from these products.

“Qualified high technology business” means a business [performing] conducting more than fifty per cent of its activities in qualified research. The term “qualified high technology business” does not include:

- (1) Any trade or business involving the performance of services in the field of law, architecture, accounting, actuarial science, [performing arts,] consulting, athletics, financial services, or brokerage services;
- (2) Any banking, insurance, financing, leasing, rental, investing, or similar business; any farming business, including the business of raising or harvesting trees; any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 611 (with respect to allowance of deduction for depletion), 613 (with respect to basis for percentage depletion), or 613A (with respect to limitation on percentage depleting in cases of oil and gas wells) of the Internal Revenue Code;
- (3) Any business operating a hotel, motel, restaurant, or similar business; and
- (4) Any trade or business involving a hospital, a private office of a licensed health care professional, a group practice of licensed health care professionals, or a nursing home.

“Qualified research” means:

- (1) The same as in section 41(d) of the Internal Revenue Code; [or]
- (2) [Developing, designing, modifying, programming, and licensing computer software.] The development and design of computer software using fourth generation or higher software development tools or native programming languages to design and construct unique and specific code to create applications and design databases of sale or license;
- (3) Biotechnology; or
- (4) Performing arts products.’’

SECTION 7. Section 235-9.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§235-9.5]] Stock options from qualified high technology businesses exempt from taxation. (a) Notwithstanding any law to the contrary, all income received from stock options from a qualified high technology business by an employee, officer, or director, or investor who qualifies for the credit under section 235-110.9, that would otherwise be taxed as ordinary income or as capital gains to those [employees] persons is exempt from taxation under this chapter.

(b) For the purposes of this section:

[“Computer software” means a set of computer programs, procedures, or associated documentation concerned with the operation and function of a computer system, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.]

“Qualified high technology business” means a business [performing] conducting more than fifty per cent of its activities in qualified research. The term “qualified high technology business” does not include:

- (1) Any trade or business involving the performance of services in the field of law, architecture, accounting, actuarial science, [performing arts,] consulting, athletics, financial services, or brokerage services;
- (2) Any banking, insurance, financing, leasing, rental, investing, or similar business; any farming business, including the business of raising or harvesting trees; any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 611 (with respect to allowance of deduction for depletion), 613 (with respect to basis for percentage depletion), or 613A (with respect to limitation on percentage depleting in cases of oil and gas wells) of the Internal Revenue Code;
- (3) Any business operating a hotel, motel, restaurant, or similar business; and
- (4) Any trade or business involving a hospital, a private office of a licensed health care professional, a group practice of licensed health care professionals, or a nursing home.

“Qualified research” means:

- (1) The same as in section 41(d) of the Internal Revenue Code; or
- (2) [Developing, designing, modifying, programming, and licensing computer software.] The development and design of computer software using fourth generation or higher software development tools or native programming languages to design and construct unique and specific code to create applications and design databases for sale or license; or
- (3) Biotechnology.’’

SECTION 8. Section 235-110.9, Hawaii Revised Statutes, is amended to read as follows:

“[[§235-110.9]] **[High-technology] High technology business investment tax credit.** (a) There shall be allowed to each taxpayer, subject to the taxes imposed by this chapter, a high technology investment tax credit that shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed. The tax credit shall be an amount equal to ten per cent of the investment made by the taxpayer in each qualified high technology business, up to a maximum allowed credit of \$500,000 for the taxable year for the investment made by the taxpayer in a qualified high technology business.

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

(c) If the tax credit under this section exceeds the taxpayer’s income tax liability, the excess of the tax credit over liability may be used as a credit against the taxpayer’s income tax liability in subsequent years until exhausted. All claims, including any amended claims, for tax credits under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(d) As used in this section:

“Computer software” means a set of computer programs, procedures, or associated documentation concerned with the operation and function of a computer system, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

“Investment” means a nonrefundable investment, at risk, as that term is used in section 465 (with respect to deductions limited to amount at risk) of the Internal Revenue Code, in a qualified high technology business, of cash that is transferred to the qualified high technology business, the transfer of which is in connection with a transaction in exchange for stock, interests in partnerships, joint ventures, or other entities, licenses (exclusive or nonexclusive), rights to use technology, marketing rights, warrants, options, or any items similar to those included herein, including but not limited to options or rights to acquire any of the items included herein. The nonrefundable investment is entirely at risk of loss where repayment depends upon the success of the qualified high technology business. If the money invested is to be repaid to the taxpayer, no repayment except for dividends or interest shall be made for at least three years from the date the investment is made. The annual amount of any dividend and interest payment to the taxpayer shall not exceed twelve per cent of the amount of the investment.

(e) For the purposes of this section:]

“Qualified high technology business” means[:

(1) A]

a business, employing or owning capital or property, or maintaining an office, in this State[: and which] that:

(2) (A) Conducts one hundred] (1) More than fifty per cent of [its] whose total business activities [in performing] are qualified research [in this State; or] ; provided that the business conducts more than seventy-five per cent of its qualified research in this State; or

[(B) Received² one hundred] (2) More than seventy-five per cent of its gross income is derived from qualified research; provided that the income is received from [products]:

(A) Products sold from, manufactured[, in, or produced in the State; or [services]

(B) Services performed in this State.

The term “qualified high technology business” does not include:

- (1) Any trade or business involving the performance of services in the field of law, architecture, accounting, actuarial science, [performing arts,] consulting, athletics, financial services, or brokerage services;
- (2) Any banking, insurance, financing, leasing, rental, investing, or similar business; any farming business, including the business of raising or harvesting trees; any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 611 (with respect to allowance of deduction for depletion), 613 (with respect to basis for percentage depletion), or 613A (with respect to limitation on percentage depleting in cases of oil and gas wells) of the Internal Revenue Code;
- (3) Any business operating a hotel, motel, restaurant, or similar business; and
- (4) Any trade or business involving a hospital, a private office of a licensed health care professional, a group practice of licensed health care professionals, or a nursing home.

“Qualified research” means:

- (1) The same as in section 41(d) of the Internal Revenue Code; [or]
- (2) [Developing, designing, modifying, programming, and licensing computer software;] The development and design of computer software using fourth generation or higher software development tools or native programming languages to design and construct unique and specific code to create applications and design databases for sale or license; or
- (3) Biotechnology;

[except that it shall not include research conducted outside the State.]³

(f) (e) This section shall not apply to taxable years beginning after December 31, 2005.”

SECTION 9. Section 235-110.91, Hawaii Revised Statutes, is amended to read as follows:

“[[§235-110.91]] Tax credit for increasing research activities. (a) Section 41 (with respect to the credit for increasing research activities) and section 280C(c) (with respect to certain expenses for which the credit for increasing research activities are allowable) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section. If section 41 of the Internal Revenue Code is repealed or terminated prior to January 1, 2006, its provisions shall remain in effect for purposes of the income tax law of the State as provided for in subsection (h).

(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.

(c) There shall be allowed to each taxpayer, subject to the tax imposed by this chapter, an income tax credit for increased research activities [that] equal to the credit for research activities provided by section 41 of the Internal Revenue Code. The credit shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

(d) The tax credit for increased research activities shall be equal to the sum of:

- (1) 2.5 per cent of the excess (if any) of:
 - (A) The qualified research expenses for the taxable year; over
 - (B) The base amount; and
- (2) 2.5 per cent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code.

(e) For purposes of this section:

- (1) The alternative incremental credit in section 41(c)(4) of the Internal Revenue Code shall be equal to the sum of 12.5 per cent of:
 - (A) 1.65 per cent of so much of the qualified research expenses for the taxable year as exceeds one per cent of the average described in section 41(c)(1)(B) but does not exceed 1.5 per cent of such average;
 - (B) 2.2 per cent of so much of those expenses as exceeds 1.5 per cent of the average but does not exceed two per cent of the average; and
 - (C) 2.75 per cent of so much of those expenses as exceeds two per cent of the average;
- (2) The term “qualified research”]

(d) As used in this section:

“Qualified research” under section 41(d)(1) of the Internal Revenue Code shall not include research conducted outside of the State[; and].

[(3) The term “basic research”]

“Basic research” under section 41(e) of the Internal Revenue Code shall not include research conducted outside of the State.

[(f) The amount of reduced credit in section 280C(c)(3)(B) of the Internal Revenue Code shall be equal to the excess of:

- (1) The amount of credit determined under section 41(a) (as provided for in this section) (without regard to this paragraph); over
- (2) The product of:
 - (A) The amount described in subsection (f)(1); and
 - (B) 12.5 per cent of the maximum rate of tax under section 11(b)(1) of the Internal Revenue Code.

(g) (e) If the tax credit for increased research activities claimed by a taxpayer exceeds the amount of income tax payment due from the taxpayer, the excess of the tax credit over payments due [may be used as a credit against the taxpayer’s income tax liability in subsequent years until exhausted.] shall be refunded to the taxpayer; provided that no refund on account of the tax credit allowed by this section shall be made for amounts less than \$1.

[(h) (f) All claims for a tax credit under this section [must] shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to properly claim the credit shall constitute a waiver of the right to claim the credit.

[(i) (g) The director of taxation may adopt any rules under chapter 91 and forms necessary to carry out this section.

[(j) (h) This section shall not apply to taxable years beginning after December 31, 2005.”

SECTION 10. It is the intention of the legislature in making amendments in this Part to sections 235-7.3, 235-9.5, 235-110.9, and 235-110.91, Hawaii Revised Statutes, that the amendments be liberally construed, and in this regard, the department of taxation is given latitude to interpret those amendments in light of current industry standards. The amendments made in this Part to sections 235-7.3, 235-9.5, 235-110.9, and 235-110.91, Hawaii Revised Statutes, shall not be construed to disqualify any taxpayer who has received a favorable written determination from the department of taxation under the original provisions of those sections as enacted by Act 178, Session Laws of Hawaii, 1999.

PART II

SECTION 11. The legislature finds that the shortage of venture capital in Hawaii makes it difficult for local high technology businesses to obtain the necessary financing to develop products, enter new markets, and expand on their early success. The purpose of this Part is to allow the board of trustees of the employees' retirement system to invest in Hawaii high technology businesses or venture capital investments.

SECTION 12. Section 88-119, Hawaii Revised Statutes, is amended to read as follows:

“§88-119 Investments. Investments may be made in:

- (1) Real estate loans and mortgages. Obligations (as defined in section 431:6-101) of any of the following classes:
 - (A) Obligations secured by mortgages of nonprofit corporations desiring to build multirental units (ten units or more) subject to control of the government for occupancy by families displaced as a result of government action;
 - (B) Obligations secured by mortgages insured by the Federal Housing Administration;
 - (C) Obligations for the repayment of home loans made under the Servicemen's Readjustment Act of 1944 or under Title II of the National Housing Act;
 - (D) Other obligations secured by first mortgages on unencumbered improved real estate owned in fee simple; provided that the amount of the obligation at the time investment is made therein shall not exceed eighty per cent of the value of the real estate and improvements mortgaged to secure it, and except that the amount of the obligation at the time investment is made therein may exceed eighty per cent but no more than ninety per cent of the value of the real estate and improvements mortgaged to secure it; provided further that the obligation is insured or guaranteed against default or loss under a mortgage insurance policy issued by a casualty insurance company licensed to do business in the State. The coverage provided by the insurer shall be sufficient to reduce the system's exposure to not more than eighty per cent of the value of the real estate and improvements mortgaged to secure it. The insurance coverage shall remain in force until the principal amount of the obligation is reduced to eighty per cent of the market value of the real estate and improvements mortgaged to secure it, at which time the coverage shall be subject to cancellation solely at the option of the board of trustees. Real estate shall not be deemed to be encumbered within the meaning of this subparagraph by reason of the existence of any of the restrictions, charges, or claims described in section 431:6-308;
 - (E) Other obligations secured by first mortgages of leasehold interests in improved real estate; provided that:
 - (i) Each such leasehold interest at such time shall have a current term extending at least two years beyond the stated maturity of the obligation it secures; and
 - (ii) The amount of the obligation at the time investment is made therein shall not exceed eighty per cent of the value of the

respective leasehold interest and improvements, and except that the amount of the obligation at the time investment is made therein may exceed eighty per cent but no more than ninety per cent of the value of the leasehold interest and improvements mortgaged to secure it;

provided further that the obligation is insured or guaranteed against default or loss under a mortgage insurance policy issued by a casualty insurance company licensed to do business in the State. The coverage provided by the insurer shall be sufficient to reduce the system's exposure to not more than eighty per cent of the value of the leasehold interest and improvements mortgaged to secure it. The insurance coverage shall remain in force until the principal amount of the obligation is reduced to eighty per cent of the market value of the leasehold interest and improvements mortgaged to secure it, at which time the coverage shall be subject to cancellation solely at the option of the board of trustees;

- (F) Obligations for the repayment of home loans guaranteed by the department of Hawaiian home lands pursuant to section 214(b) of the Hawaiian Homes Commission Act, 1920; and
- (G) Obligations secured by second mortgages on improved real estate for which the mortgagor procures a second mortgage on the improved real estate for the purpose of acquiring the leaseholder's fee simple interest in the improved real estate; provided that any prior mortgage does not contain provisions that might jeopardize the security position of the retirement system or the borrower's ability to repay the mortgage loan.

The board of trustees may retain such real estate, including leasehold interests therein, as it may acquire by foreclosure of mortgages or in enforcement of security, or as may be conveyed to it in satisfaction of debts previously contracted; provided that all such real estate, other than leasehold interests, shall be sold within five years after acquiring the same, subject to extension by the governor for additional periods not exceeding five years each, and that all such leasehold interests shall be sold within one year after acquiring the same, subject to extension by the governor for additional periods not exceeding one year each;

- (2) Government obligations, etc. Obligations of any of the following classes:
 - (A) Obligations issued or guaranteed as to principal and interest by the United States or by any state thereof or by any municipal or political subdivision or school district of any of the foregoing; provided that principal of and interest on such obligations are payable in currency of the United States; or sovereign debt instruments issued by agencies of, or guaranteed by foreign governments;
 - (B) Revenue bonds, whether or not permitted by any other provision hereof, of the State or any municipal or political subdivision thereof, including the board of water supply of the city and county of Honolulu, and street or improvement district bonds of any district or project in the State; and
 - (C) Obligations issued or guaranteed by any federal home loan bank including consolidated federal home loan bank obligations, the Home Owner's Loan Corporation, the Federal National Mortgage Association, or the Small Business Administration;

- (3) Corporate obligations. Below investment grade or nonrated debt instruments, foreign or domestic, in accordance with investment guidelines adopted by the board of trustees;
- (4) Preferred and common stocks. Shares of preferred or common stock of any corporation created or existing under the laws of the United States or of any state or district thereof or of any country;
- (5) Obligations eligible by law for purchase in the open market by federal reserve banks;
- (6) Obligations issued or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, or the African Development Bank;
- (7) Obligations secured by collateral consisting of any of the securities or stock listed above and worth at the time the investment is made at least fifteen per cent more than the amount of the respective obligations;
- (8) Insurance company obligations. Contracts and agreements supplemental thereto providing for participation in one or more accounts of a life insurance company authorized to do business in Hawaii, including its separate accounts, and whether the investments allocated thereto are comprised of stocks or other securities or of real or personal property or interests therein;
- (9) Interests in real property. Interests in improved or productive real property in which, in the informed opinion of the board of trustees, it is prudent to invest funds of the system. For purposes of this paragraph, "real property" includes any property treated as real property either by local law or for federal income tax purposes. Investments in improved or productive real property may be made directly or through pooled funds, including common or collective trust funds of banks and trust companies, group or unit trusts, limited partnerships, limited liability companies, investment trusts, title-holding corporations recognized under section 501(c) of the Internal Revenue Code of 1986, as amended, similar entities that would protect the system's interest, and other pooled funds invested on behalf of the system by investment managers retained by the system;
- (10) Other securities and futures contracts. Securities and futures contracts in which in the informed opinion of the board of trustees it is prudent to invest funds of the system, including currency, interest rate, bond, and stock index futures contracts and options on such contracts to hedge against anticipated changes in currencies, interest rates, and bond and stock prices that might otherwise have an adverse effect upon the value of the system's securities portfolios; covered put and call options on securities; and stock; whether or not the securities, stock, futures contracts, or options on futures are expressly authorized by or qualify under the foregoing paragraphs, and notwithstanding any limitation of any of the foregoing paragraphs (including paragraph (4)); and
- (11) Private placements. Investments in institutional blind pool limited partnerships or direct investments that make private debt and equity investments in privately held companies[.], including but not limited to investments in Hawaii high technology businesses or venture capital investments that, in the informed opinion of the board of trustees, are appropriate to invest funds of the system. In evaluating venture capital investments, the board of trustees shall consider, among other things, the impact an investment may have on job creation in Hawaii and on the state economy."

PART III

SECTION 13. The legislature finds that there is a need to expand educational programs in science and math at Hawaii's "E Academies", which were established by section 17 of Act 178, Session Laws of Hawaii 1999. These programs were created to give students greater opportunities in new educational technologies, and provide relevant, challenging, and meaningful course offerings for students interested in pursuing a career in advanced technology fields. The legislature finds that the use of "E Academies", which are virtual, site-based schools that provide students with industry and academic standards-based instruction and assessments in technology, science, math, and engineering, offer enhanced opportunities to students who are interested in furthering their preparation for technology positions or who are interested in advanced studies in post secondary information technology, science, engineering, and math.

By funding the laptops for learning program, the legislature provides constant access to computer education and reduces the digital divide by providing opportunities for all regardless of economic status.

The legislature also finds that there is a need for Hawaii's public community colleges to develop training programs to improve the skills of students in those colleges for jobs in the new economy, in such industries as biotechnology, health care, information technology, environmental science and technology, and telecommunications. The development of new or enhanced programs in these and related areas at the State's community colleges will help to lessen the need to import workers and increase job opportunities for Hawaii's residents by improving their skills in these areas.

The legislature acknowledges the following appropriations, which have been included under the Supplemental Appropriations Act of 2000:

- (1) \$1,000,000 for fiscal year 2000-2001 to conduct advanced communications research at the University of Hawaii's college of engineering;
- (2) \$1,000,000 for fiscal year 2000-2001 for the expansion of research, scholarship, and instruction in electronic commerce at the University of Hawaii's college of business administration;
- (3) \$1,000,000 for fiscal year 2000-2001 to conduct research in molecular genetics at the University of Hawaii's school of medicine;
- (4) \$1,000,000 for fiscal year 2000-2001 to be expended by the University of Hawaii's community colleges to establish the Pacific center for advanced technology training where a coordinated statewide approach to designing and delivering customized training to the high technology industry in Hawaii will be implemented; and
- (5) \$677,808 for fiscal year 2000-2001 to develop new programs and enhance existing programs at the University of Hawaii at Hilo to prepare students for the workforce of the new economy.

The legislature further finds that funding programs related to developing the new economy at the University of Hawaii will lessen the need to import workers and increase job opportunities for Hawaii's residents by improving their skills in these areas.

The purpose of this Part is to appropriate funds:

- (1) To expand the department of education's E Academies; and
- (2) For the high technology development corporation for marketing and promoting high technology development in Hawaii.

SECTION 14. There is appropriated out of the general revenues of the State of Hawaii the sum of \$800,000 or so much thereof as may be necessary for fiscal year 2000-2001 for the expansion of the department of education's E Academies to

provide students at virtual onsite locations based at selected high schools with industry and academic standards-based instruction and assessments in technology, science, math, and engineering, and for the laptops for learning program.

The sum appropriated shall be expended by the department of education for the purposes of this Part.

SECTION 15. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2000-2001 for marketing and promoting high technology development in Hawaii by the high technology development corporation.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Part.

PART IV

SECTION 16. The legislature finds that the governor's special advisory council for technology development, which was established under section 3 of Act 178, Session Laws of Hawaii 1999, has the potential to make significant contributions to the development of the State's high technology industry. The intent of the advisory council was to attract leaders in high technology development from around the world to Hawaii. However, the legislature finds it highly unlikely that these individuals will come to Hawaii for this purpose if they are faced with a possibly lengthy senate confirmation process and must file financial disclosure forms with the state ethics commission.

The legislature finds that there is no reason to subject these individuals to confirmation hearings and the filing of ethics disclosure forms, in view of the fact that the advisory council is strictly advisory in nature and the members of that council have no influence over spending or budgetary matters. The legislature also recognizes the need to bring in persons who have international prestige and expertise in high technology. It would be extremely difficult to find such highly qualified people to serve on the council before its expiration on December 31, 2005. Accordingly, the purpose of this Part is to exempt the members of the governor's special advisory council for technology development from the senate confirmation process and from the need to file a disclosure of financial interests with the state ethics commission.

SECTION 17. Section 27-42, Hawaii Revised Statutes, is amended to read as follows:

“[[§27-42]] Governor's special advisory council for technology development; establishment; appointment, number, and term of members; duties.

(a) There is established within the office of the governor, for administrative purposes, an advisory council to be known as the governor's special advisory council for technology development, that shall review and make recommendations on matters relating to the marketing and promotion of Hawaii as a location for high technology companies. The council shall be composed of at least eleven but no more than twenty-five members appointed [in accordance with] ~~not subject to~~ section 26-34, and shall include representatives of the high technology industry, business leaders, educators, government leaders, and legislators.

(b) The members shall be appointed by the governor for four years, except that the terms of the members first appointed shall be for two and four years, respectively, as designated by the governor at the time of appointment. The council shall elect a chairperson from among its members.

(c) In appointing members, the governor shall select persons who have knowledge of the high technology industry, the educational needs of the industry, or in the marketing and promotion of high technology industries. The members of the council shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(d) The council shall assist the special advisor for technology development in developing and coordinating the marketing and promotion of the high technology industry in Hawaii.

(e) In carrying out the duties of this section, the council shall seek and [utilize] use any available funding sources, including grant moneys.

(f) The council shall develop, establish, and implement ethics and conflict of interest guidelines for its members.

[(f)] (g) This section is repealed on December 31, 2005.’’

SECTION 18. Section 84-17, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The following persons shall file annually with the state ethics commission a disclosure of financial interests:

- (1) The governor, the lieutenant governor, the members of the legislature, and delegates to the constitutional convention; provided that delegates to the constitutional convention shall only be required to file initial disclosures;
- (2) The directors and their deputies, the division chiefs, the executive directors and the executive secretaries and their deputies, the purchasing agents and the fiscal officers, regardless of the titles by which the foregoing persons are designated, of every state agency and department;
- (3) The permanent employees of the legislature and its service agencies, other than persons employed in clerical, secretarial, or similar positions;
- (4) The administrative director of the State, and the assistants in the office of the governor and the lieutenant governor, other than persons employed in clerical, secretarial, or similar positions;
- (5) The hearings officers of every state agency and department;
- (6) The president, the vice presidents, assistant vice presidents, the chancellors, and the provosts of the University of Hawaii and its community colleges;
- (7) The superintendent, the deputy superintendent, the assistant superintendents, the district superintendents, the state librarian, and the deputy state librarian of the department of education;
- (8) The administrative director and the deputy director of the courts;
- (9) The members of every state board or commission whose original terms of office are for periods exceeding one year and whose functions are not solely advisory; provided that the governor’s special advisory council for technology development established pursuant to section 27-42 not otherwise subject to this subsection shall be exempt from this subsection;
- (10) Candidates for state elective offices, including candidates for election to the constitutional convention, provided that candidates shall only be required to file initial disclosures; and
- (11) The administrator and assistant administrator of the office of Hawaiian affairs.’’

PART V

SECTION 19. The legislature finds that the internet is a critical component of the new economy because of its enormous potential to increase efficiency and raise productivity. Internet commerce, which is probably the most significant component of electronic commerce, or "e-commerce", includes such areas as online financial services, consumer retail and business-to-business transactions, media, infrastructure, and consumer and business internet access services.

The legislature further finds that the total United States internet economy more than doubled between 1996 and 1997, from \$15,500,000,000 to \$38,800,000,000. By 2001, it has been projected that the total United States internet economy will be over \$350,000,000,000. Of this amount, business-to-business e-commerce is expected to account for the largest share, while consumer retail activity is expected to emerge more slowly, totaling over \$18,000,000,000 in the year 2001.

The purpose of this Part is to increase the State's share of this significant economic activity and the facilitation of e-commerce in Hawaii through the development of partnerships between the Hawaii tourism authority and Hawaii's business community to promote the State, through a coordinated statewide effort, as an internet and server-friendly place to conduct electronic commerce.

SECTION 20. Section 201B-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The authority may enter into contracts and agreements that include the following:

- (1) Tourism promotion, marketing, and development;
- (2) Market development-related research;
- (3) Product development and diversification issues;
- (4) Promotion, development, and coordination of sports-related activities and events;
- (5) Promotion of Hawaii, through a coordinated statewide effort, as a place to do high technology business;
- [(5)] (6) Reduction of barriers to travel;
- [(6)] (7) Tourism public information and educational programs;
- [(7)] (8) Programs to monitor and investigate complaints about the problems resulting from the tourism industry in the State; and
- [(8)] (9) Any and all other activities necessary to carry out the intent of this chapter;

provided that for the purposes of continuity, the Hawaii Visitors and Convention Bureau shall be the designated agency to conduct the marketing and promotion of the State until the end of fiscal year 1998-1999 or until a date specified by the board."

PART VI

SECTION 21. The purpose of this Part is to improve the effectiveness of the high technology development corporation by providing increased autonomy and authority over its personnel and fiscal matters.

SECTION 22. Chapter 206M, Hawaii Revised Statutes, is amended as follows:

1. By adding four new sections to be appropriately designated and to read:

"**§206M- Hawaii technology loan revolving fund.** There is established the Hawaii technology loan revolving fund for the purpose of investing in technol-

ogy development in Hawaii. The following shall be deposited into the Hawaii technology loan revolving fund:

- (1) Appropriations from the legislature;
- (2) Moneys received as repayments of loans;
- (3) Investment earnings;
- (4) Royalties;
- (5) Premiums, or fees or equity charged by the corporation, or otherwise received by the corporation; and
- (6) Loans that are convertible to equity;

provided that the total amount of moneys in the fund shall not exceed \$2,000,000 at the end of any fiscal year.

§206M- Contracts for services necessary for management and operation of corporation. The corporation may contract with others, public or private persons, for the provision of all or a portion of the services necessary for the management and operation of the corporation. The corporation shall have the power to use all appropriations, grants, contractual reimbursements, and all other funds not appropriated for a designated purpose to pay for the proper general expenses and to carry out the purposes of the corporation.

§206M- Confidentiality of trade secrets or the like; disclosure of financial information. (a) Notwithstanding chapters 92, 92F, or any other law to the contrary, any documents or data made or received by any member or employee of the corporation shall not be a public record to the extent that the material or data:

- (1) Consists of trade secrets;
- (2) Consists of commercial or financial information regarding the operation of any business conducted by an applicant for, or recipient of, any form of assistance that the corporation is empowered to render; or
- (3) Relates to the competitive position of that applicant in a particular field of endeavor;

provided that if the corporation purchases a qualified security from an applicant, the commercial and financial information, excluding confidential business information, shall be deemed to become a public record of the corporation. If the information is made or received by any member or employee of the corporation after the purchase of the qualified security, it shall become a public record three years from the date the information was made or received.

(b) Any discussion or consideration of trade secrets or commercial or financial information shall be held by the board, or the subcommittee of the board, in executive sessions closed to the public; provided that the purpose of any such executive session shall be set forth in the official minutes of the corporation, and business that is not related to that purpose shall not be transacted nor shall any vote be taken during the executive sessions.

§206M- Limitation on liability. Chapters 661 and 662 or any other law to the contrary notwithstanding, nothing in this chapter shall create an obligation, debt, claim, cause of action, claim for relief, charge, or any other liability of any kind whatsoever in favor of any person or entity, against the State or its officers and employees, without regard to whether that person or entity receives any benefits under this chapter. The State and its officers and employees shall not be liable for the results of any investment, purchase of securities, loan, or other assistance provided pursuant to this chapter. Nothing in this chapter shall be construed as authorizing any claim against the corporation in excess of any note, loan, or other specific indebtedness incurred by the corporation or in excess of any insurance policy acquired for the corporation or its employees.”

2. By amending section 206M-1 by adding two new definitions to be appropriately inserted and to read:

““Direct investment” means an investment by the corporation in qualified securities of an enterprise to provide capital to an enterprise.

“Qualified security” means any note, stock, treasury stock bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, preorganization certificate of subscription, transferable share, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or patent application, or in royalty or other payments under such a patent or application, or, in general, any interest or instrument commonly known as a “security” or any certificate for, receipt for, or option, warrant, or right to subscribe to or purchase any of the foregoing.”

SECTION 23. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“§36-27 Transfers from special funds for central service expenses. Except as provided in this section, and notwithstanding any other law to the contrary, from time to time,⁴ the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special summer school and intersession fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital and operations special fund under section 206X-10.5;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Domestic violence prevention special fund under section 321-1.3;
- (11) Spouse and child abuse special account under section 346-7.5;
- (12) Spouse and child abuse special account under section 601-3.6;
- (13) Funds of the employees’ retirement system created by section 88-109;
- (14) Unemployment compensation fund established under section 383-121;
- (15) Hawaii hurricane relief fund established under chapter 431P;
- (16) Hawaii health systems corporation special funds;
- (17) Boiler and elevator safety revolving fund established under section 397-5.5;
- (18) Tourism special fund established under section 201B-11;
- (19) Department of commerce and consumer affairs’ special funds;
- (20) Compliance resolution fund established under section 26-9;
- (21) Universal service fund established under chapter 269;
- (22) Integrated tax information management systems special fund under section 231-3.2;
- (23) Insurance regulation fund under section 431:2-215;
- (24) Hawaii tobacco settlement special fund under section 328L-2; [and]
- (25) Emergency budget and reserve fund under section 328L-3; and
- (26) High technology special fund under section 206M-15.5;

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these

transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 24. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;
- (2) Special summer school and intersession fund under section 302A-1310;
- (3) School cafeteria special funds of the department of education;
- (4) Special funds of the University of Hawaii;
- (5) State educational facilities improvement special fund;
- (6) Special funds established by section 206E-6;
- (7) Aloha Tower fund created by section 206J-17;
- (8) Domestic violence prevention special fund under section 321-1.3;
- (9) Spouse and child abuse special account under section 346-7.5;
- (10) Spouse and child abuse special account under section 601-3.6;
- (11) Funds of the employees’ retirement system created by section 88-109;
- (12) Unemployment compensation fund established under section 383-121;
- (13) Hawaii hurricane relief fund established under chapter 431P;
- (14) Convention center capital and operations special fund established under section 206X-10.5;
- (15) Hawaii health systems corporation special funds;
- (16) Tourism special fund established under section 201B-11;
- (17) Compliance resolution fund established under section 26-9;
- (18) Universal service fund established under chapter 269;
- (19) Integrated tax information management systems special fund;
- (20) Insurance regulation fund under section 431:2-215;
- (21) Hawaii tobacco settlement special fund under section 328L-2; [and]
- (22) Emergency and budget reserve fund under section 328L-3; and
- (23) High technology special fund under section 206M-15.5;

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.”

SECTION 25. Section 206M-2, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) There is established the high technology development corporation, which shall be a public body corporate and politic and an instrumentality and agency of the State. The development corporation shall be placed within the department of business, economic development, and tourism for administrative purposes, pursuant to section 26-35. The purpose of the development corporation shall be to facilitate the growth and development of the commercial high technology industry in Hawaii. Its duties shall include, but not be limited to: [developing]

- (1) Developing and encouraging industrial parks as high technology innovation centers and the developing of projects within or outside of industrial parks[; providing], including participating with the private sector in such development;
- (2) Providing support and services to Hawaii-based high technology companies; [collecting]

- (3) Collecting and analyzing information on the state of commercial high technology activity in Hawaii; [promoting]
- (4) Promoting and marketing Hawaii as a site for commercial high technology activity; [and providing]
- (5) Providing advice on policy and planning for technology-based economic development.

(b) The governing body of the development corporation shall consist of a board of directors having [nine] eleven voting members. Seven of the members shall be appointed by the governor for staggered terms pursuant to section 26-34. Six of the appointed members shall be from the general public and selected on the basis of their knowledge, interest, and proven expertise in, but not limited to, one or more of the following fields: finance, commerce and trade, corporate management, marketing, economics, engineering, and telecommunications, and other high technology fields. The other appointed member shall be selected from the faculty of the University of Hawaii. All appointed members of the board shall continue in office until their respective successors have been appointed. The director of business, economic development, and tourism [and], the director of finance, an appointed member from the board of the Hawaii strategic development corporation, and an appointed member from the board of the natural energy laboratory of Hawaii authority, or their designated representatives, shall serve as ex officio voting members of the board. The director of business, economic development, and tourism shall serve as the chairperson until such time as a chairperson is elected by the board from the membership. The board shall elect such other officers as it deems necessary.”

SECTION 26. Section 206M-2.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§206M-2.5] Meetings of the board.** (a) The meetings of the board shall be open to the public as provided in section 92-3, except that when it is necessary for the board to receive information that is proprietary to a particular enterprise that seeks entry into or use of one of its facilities or the disclosure of which might be harmful to the business interests of the enterprise, the board may enter into an executive meeting that is closed to the public.

(b) The board shall be subject to the procedural requirements of section 92-4, and this authorization shall be an addition to the exceptions listed in section 92-5, to enable the development corporation to respect the proprietary requirements of enterprises with which it has business dealings.

(c) The board shall be exempt from section 26-35(4) and (5).”

SECTION 27. Section 206M-3, Hawaii Revised Statutes, is amended to read as follows:

“**§206M-3 Powers, generally.** (a) The development corporation shall have all the powers necessary to carry out its purposes, including the [following powers:] powers to:

- (1) [To sue] Sue and be sued;
- (2) [To have] Have a seal and alter the same at its pleasure;
- (3) [To make] Make and execute, enter into, amend, supplement, and carry out contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter including, subject to approval of the governor, a project agreement with a qualified person, and any other agreement whereby the obligations of a qualified person under a project agreement shall be unconditionally

- guaranteed or insured by, or the performance thereof assigned to, or guaranteed or insured by, a person or persons other than the qualified person; and [to] grant options or renew any project agreement entered into by it in connection with any project or industrial park, on terms and conditions as it deems advisable;
- (4) [To make] Make and alter bylaws for its organization and internal management;
 - (5) [To adopt] Adopt rules under chapter 91 necessary to effectuate this chapter in connection with industrial parks, projects, and the operations, properties, and facilities of the development corporation;
 - (6) Through its chief executive officer, [to] appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapters 76 and 77;
 - (7) [To prepare] Prepare or cause to be prepared development plans for industrial parks;
 - (8) [To acquire,] Acquire, own, lease, hold, clear, improve, and rehabilitate real, personal, or mixed property and [to] assign, exchange, transfer, convey, lease, sublease, or encumber any project including by way of easements;
 - (9) [To construct,] Construct, reconstruct, rehabilitate, improve, alter, or repair, or provide for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project and [to] designate a qualified person as its agent for such purpose[, and to own,];
 - (10)⁵ Own hold, assign, transfer, convey, exchange, lease, sublease, or encumber any project;
 - [(10)] (11) [To arrange] Arrange or initiate appropriate action for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, easements, or other places, the furnishing of improvements, the acquisition of property or property rights, or the furnishing of property or services in connection with an industrial park;
 - [(11)] (12) [To prepare] Prepare, or cause to be prepared, plans, specifications, designs, and estimates of cost for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project or industrial park, and from time to time [to] modify such plans, specifications, designs, or estimates;
 - [(12)] (13) [To engage] Engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
 - [(13)] (14) [To procure] Procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;
 - [(14)] (15) [To accept] Accept and expend gifts or grants in any form from any public agency or from any other source;
 - [(15)] (16) [To issue] Issue bonds pursuant to this chapter in such principal amounts as may be authorized from time to time by law to finance the cost of a project or an industrial park as authorized by law and [to] provide for the security thereof as permitted by this chapter;
 - [(16)] (17) [To lend] Lend or otherwise apply the proceeds of the bonds issued for a project or an industrial park either directly or through a trustee or a qualified person for use and application in the acquisition, construction, installation, or modification of a project or industrial park, or agree with the qualified person whereby any of these activities shall be undertaken or supervised by that qualified person or by a person designated by the qualified person;

- [(17)] (18) With or without terminating a project agreement, [to] exercise any and all rights provided by law for entry and [re-entry] reentry upon or [to] take possession of a project at any time or from time to time upon breach or default by a qualified person under a project agreement, including any action at law or in equity for the purpose of effecting its rights of entry or [re-entry] reentry or obtaining possession of the project or for the payments of rentals, user taxes, or charges, or any other sum due and payable by the qualified person to the development corporation pursuant to the project agreement;
- [(18)] (19) [To enter] Enter into arrangements with qualified county development entities whereby the board would provide financial support to qualified projects proposed;
- [(19)] (20) [To create] Create an environment in which to support high technology economic development, including but not limited to: supporting all aspects of technology-based economic development; developing instructive programs, identifying issues and impediments to the growth of high technology industry in Hawaii; and providing policy analysis and information important to the development of high technology industries in Hawaii;
- [(20)] (21) [To develop] Develop programs that support start-up and existing high technology companies in Hawaii and [to] attract new companies to relocate to or establish operations in Hawaii by assessing the needs of these companies and providing the physical and technical infrastructure to support their operations;
- [(21)] (22) [To coordinate] Coordinate its efforts with other public and private agencies involved in stimulating technology-based economic development in Hawaii, including but not limited to: the department of business, economic development, and tourism; the Pacific international center for high technology research; and the office of technology transfer and economic development of the University of Hawaii;
- [(22)] (23) [To promote] Promote and market Hawaii as a site for commercial high technology activity[;], including the expenditure of funds for protocol purposes at the discretion of the board;
- [(23)] (24) [To provide] Provide advice on policy and planning for technology-based economic development; [and]
- (25) Finance, conduct, or cooperate in financing or conducting technological, business, financial, or other investigations that are related to or likely to lead to business, technology, and economic development by making and entering into contracts and other appropriate arrangements, including the provision of loans, start-up and expansion capital, loan guaranty, loans convertible to equity, equity charged and received by the corporation, and other forms of assistance;
- (26) Solicit, study, and assist in the preparation of business plans and proposals of new or established businesses;
- (27) Provide advice, technical and marketing assistance, support, and promotion to enterprises in which investments have been made;
- (28) Acquire, hold, and sell qualified securities;
- (29) Consent, subject to the provisions of any contract with noteholders or bondholders, whenever the corporation deems it necessary or desirable in the fulfillment of the purposes of this chapter, to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, or any other terms, of any contract or agreement of any kind to which the corporation is a party;

- (30) Invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in such investments as may be lawful for fiduciaries in the State; and
- [24] To do] (31) Do all things necessary or proper to carry out the purposes of this chapter.
 - (b) The corporation shall be exempt from chapters 102 and 103D.”

SECTION 28. Section 206M-15.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§206M-15.5]] High technology special fund. There is established in the state treasury a fund to be known as the high technology special fund, into which shall be deposited all moneys [and], fees, and equity from tenants or other users of the development corporation’s industrial parks, projects, other leased facilities, and other services and publications[.]; provided that the total amount of moneys in the fund shall not exceed \$3,000,000 at the end of any fiscal year. All moneys in the fund are hereby appropriated for the purposes of and shall be expended by the development corporation for the operation, maintenance, and management of its industrial parks, projects, facilities, services, and publications.”

SECTION 29. Section 210-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) There is established the Hawaii capital loan revolving fund into which shall be deposited all moneys received as repayment of loans and interest payments as provided in this chapter. The department may utilize a portion of the moneys contained in the Hawaii capital loan revolving fund for programs associated with administering the fund and its mandated purpose. The department may transfer moneys from the Hawaii capital loan revolving fund established by this section to the Hawaii technology loan revolving fund established by section 206M-___, the state disaster revolving loan fund established by section 209-34, the Hawaii innovation development fund established by section 211E-2, or the Hawaii strategic development corporation fund established by chapter 211F, and moneys from these funds shall be disbursed by the department or the director pursuant to chapters 206M, 209, 210, 211E, and 211F, respectively. The department or the director may transfer moneys from the state disaster revolving loan fund and the Hawaii innovation development fund to the Hawaii capital loan revolving fund for disbursement pursuant to this chapter.

(b) The total amount of moneys transferred to the state disaster revolving loan fund, the Hawaii capital loan revolving fund, or the Hawaii innovation development fund shall not exceed \$1,000,000 for each respective fund within the calendar year. Any transfers to or from the [Hawaii strategic development corporation fund] Hawaii technology loan revolving fund shall be approved by the corporation’s board of directors.”

SECTION 30. Section 211F-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The governing body of the corporation shall be a board of directors consisting of [nine] eleven members. Eight of the members shall be from the general public and appointed by the governor for staggered terms pursuant to section 26-34, and shall be selected on the basis of their knowledge, skill, and experience in the scientific, business, or financial fields. The director of business, economic development, and tourism, an appointed member from the board of the high technology development corporation, and an appointed member from the board of the natural energy laboratory of Hawaii authority, or [a] their designated [subordinate,]

representatives, shall serve as [an] ex officio voting [member.] members. Not more than two of the eight appointed members of the board, during their term of office on the board, shall be employees of the State. Of the members appointed by the governor, one member shall be appointed from a list of nominees provided by the speaker of the house of representatives and one member shall be appointed from a list of nominees provided by the president of the senate. All appointed members of the board shall continue in office until their respective successors have been appointed.”

SECTION 31. Section 227D-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The governing body of the authority shall consist of a board of directors having [nine] eleven voting members. Three members from the general public shall be appointed by the governor for staggered terms pursuant to section 26-34, except that one of these members shall be a resident of the county of Hawaii. [For the first term, one of these members shall be appointed from the board of the high technology development corporation.] The members shall be selected on the basis of their knowledge, interest, and proven expertise in, but not limited to, one or more of the following fields: finance, commerce and trade, corporate management, marketing, economics, engineering, energy management, real estate development, property management, aquaculture, and ocean science. The chairperson and secretary of the research advisory committee shall serve on the board. The director of business, economic development, and tourism, the chairperson of the board of land and natural resources, the president of the University of Hawaii, [and] the mayor of the county of Hawaii, an appointed member from the board of the high technology development corporation, and an appointed member from the board of the Hawaii strategic development corporation, or their designated representatives, shall serve as ex officio, voting members of the board. The director of business, economic development, and tourism shall serve as the chairperson until such time as a chairperson is elected by the board from the membership. The board shall elect other officers as it deems necessary.”

PART VII

SECTION 32. The legislature finds that there are many investors in Hawaii who would like to invest in local start-up companies or in commercialization of research efforts, such as those carried out by the University of Hawaii. However, these investors are often unable to meet the standards of an accredited investor—which require \$2,000,000 in net assets and an annual income of \$250,000—and thus cannot invest in the majority of private placements being offered.

The legislature further finds that there is a need for an investment vehicle to allow participation by smaller investors, as a means of providing additional options for Hawaii investors, and aid in the growth of Hawaii technology companies.

The purpose of this Part is to create such a program, the Hawaii technology investment program, for small individual investors.

SECTION 33. Chapter 211F, Hawaii Revised Statutes, is amended by adding a new Part to be appropriately designated and to read as follows:

“PART . THE HAWAII TECHNOLOGY INVESTMENT PROGRAM

§211F- Definitions. As used in this part:

“Biotechnology” means fundamental knowledge regarding the function of biological systems from the macro level to the molecular subatomic levels that has

application to development including the development of novel products, services, technologies, and subtechnologies from insights gained from research advances that add to that body of fundamental knowledge.

“Computer data” means any representation of information, knowledge, facts, concepts, or instructions that is being prepared or has been prepared and is intended to be processed, is being processed, or has been processed in a computer or computer network.

“Computer program” means an ordered set of computer data representing coded instructions or statements, that, when executed by a computer, causes the computer to perform one or more computer operations.

“Computer software” means computer data, a computer program, or a set of computer programs, procedures, or associated documentation concerned with the operation and function of a computer system, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

“Financial organization” means an organization authorized to do business in Hawaii that is:

- (1) Certified as an insurer by the insurance commissioner;
- (2) Licensed or chartered as a financial institution by the commissioner of financial institutions;
- (3) Chartered by an agency of the federal government;
- (4) Subject to the jurisdiction and regulation of the federal Securities and Exchange Commission; or
- (5) Any other entity otherwise authorized to do business in the State that meets the requirements of this part.

“Program” means the Hawaii technology investment program.

“Program manager” means a financial organization selected by the corporation to manage the program.

“Qualified high technology business”:

- (1) Means a business, employing or owning capital or property, or maintaining an office, in this State that:
 - (A) Conducts more than fifty per cent of its activities in performing qualified research in this State; or
 - (B) Receives more than fifty per cent of its gross income derived from qualified research; provided that the income is received from:
 - (i) Products sold from, manufactured in, or produced in the State; or
 - (ii) Services performed in this State.
- (2) Does not include:
 - (A) Any trade or business involving the performance of services in the field of law, architecture, accounting, actuarial science, consulting, athletics, financial services, or brokerage services;
 - (B) Any banking, insurance, financing, leasing, rental, investing, or similar business; any farming business, including the business of raising or harvesting trees; any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 611 (with respect to allowance of deduction for depletion), 613 (with respect to basis for percentage depletion), or 613A (with respect to limitation on percentage depleting in cases of oil and gas wells) of the Internal Revenue Code;
 - (C) Any business operating a hotel, motel, restaurant, or similar business; and

- (D) Any trade or business involving a hospital, a private office of a licensed health care professional, a group practice of licensed health care professionals, or a nursing home.

“Qualified research” means:

- (1) The same as in section 41(d) of the Internal Revenue Code; or
- (2) The development and design of computer software using fourth generation or higher software development tools or native programming languages to design and construct unique and specific code to create applications and design databases for sale or license; or
- (3) Biotechnology;

provided that more than fifty per cent of the business’ activities are qualified research.

“Venture capital investment” means any of the following investments in a qualified high technology business:

- (1) Common or preferred stock and equity securities without a repurchase requirement for at least five years;
- (2) A right to purchase stock or equity securities;
- (3) Any debenture or loan, whether or not convertible or having stock purchase rights, which:
 - (A) Is subordinated, together with security interests against the assets of the borrower, by their terms to all borrowings of the borrower from other institutional lenders;
 - (B) Is for a term of not less than three years; and
 - (C) Has no part amortized during the first three years;
- (4) General or limited partnership interests; and
- (5) Membership interests in limited liability companies.

§211F- Formation of Hawaii technology investment program. (a) The corporation shall establish the Hawaii technology investment program for the purpose of allowing individual investors to contribute to the program to invest venture capital in businesses in Hawaii.

(b) The corporation may implement the Hawaii technology investment program through a regulated investment company under the terms and conditions established by this section. The corporation may make changes to the program as required for participants to obtain the federal and state income tax benefits or treatment provided by sections 851 to 855 of the federal Internal Revenue Code of 1986, as amended.

The corporation may establish a program in which the dividends distributed by the regulated investment company are exempt from income taxation under chapter 235. If the corporation establishes a program that is proposed to be exempt from income taxation under chapter 235, it shall furnish sufficient information and notify the department of taxation and investors of the tax exempt status of that program.

(c) The corporation may implement the program through the use of financial organizations as program managers. Under the program, individuals may establish accounts directly with a program manager.

(d) The corporation may solicit proposals from one or more financial organizations to act as a program manager. Financial organizations submitting proposals shall describe the investment instrument. The corporation shall select as program managers the financial organizations from among the bidding financial organizations that demonstrate the most advantageous combination, both to potential program participants and this State, based on the following factors:

- (1) The financial stability and integrity of the financial organization;

- (2) The ability of the financial organization to establish or act as a regulated investment company for the purposes of this part;
- (3) The ability of the financial organization to satisfy recordkeeping and reporting requirements for the purposes of a program that allows a program that is exempt from taxation under chapter 235;
- (4) The financial organization's plan for promoting the program and the resources it is willing to allocate to promote the program;
- (5) The fees, if any, proposed to be charged to persons for opening accounts;
- (6) The minimum initial deposit and minimum contributions, subject to this section that the financial organization will require;
- (7) Other benefits to the State or its residents included in the proposal, including fees payable to the State to cover expenses to operate the program.

(e) The corporation may enter into a management contract of up to ten years with a financial organization. The financial organization shall provide investment instruments meeting the requirements of this section. The management contract shall include, at a minimum, terms requiring the financial organization to:

- (1) Take any action required to keep the program in compliance with requirements of this section and to manage the program to meet the requirements of sections 851 to 855 of the federal Internal Revenue Code of 1986, as amended;
- (2) Keep adequate records of each account, keep each account segregated from each other's account, and provide the corporation with the information necessary to prepare any necessary statements;
- (3)⁶ Provide the corporation with the information necessary to determine compliance with this section;
- (4) Provide the corporation access to the books and records of the financial organization to the extent needed to determine compliance with the contract;
- (5) Hold all accounts for the benefit of the account owner;
- (6) Be audited at least annually by a firm of independent certified public accountants selected by the financial organization, and provide the results of the audit to the corporation; and
- (7) Provide the corporation with copies of all regulatory filings and reports related to the program made by the financial organization during the term of the management contract or while it is holding any accounts, other than confidential filings or reports that will not become part of the program. The financial organization shall make available for review by the corporation, the results of any periodic examination of the financial organization by any state or federal banking, insurance, or securities commission, except to the extent that the report or reports may not be disclosed under applicable law or the rules of the examining agency.

(f) The corporation may require an audit to be conducted of the operations and financial position of the program manager at any time if the corporation has any reason to be concerned about the financial position, the recordkeeping practices, or the status of accounts of the program manager.

(g) During the term of any contract with a program manager, the corporation shall conduct an examination of the program manager and its handling of accounts. The examination shall be conducted at least biennially if the program manager is not otherwise subject to periodic examination by the commissioner of financial institutions, the Federal Deposit Insurance Corporation, or other similar entity.

(h) If selection of a financial organization as a program manager is not renewed, after the end of the term:

- (1) Accounts previously established and held in investment instruments at the financial organization may be terminated;
- (2) Additional contributions may be made to the accounts;
- (3) No new accounts may be placed with the financial organization; and
- (4) Existing accounts held by the financial organization shall remain subject to all oversight and reporting requirements established by the corporation.

If the corporation terminates a financial organization as a program manager, the corporation shall take custody of accounts held by the financial organization and shall seek to promptly transfer the accounts to another financial organization that is selected as a program manager and into investment instruments as similar to the original instruments as possible.

(i) The corporation may enter into contracts for the services of consultants for rendering professional and technical assistance and advice and any other contracts that are necessary and proper for the implementation of the program.

(j) The program shall only allow contributions from individual investors in amounts ranging from a minimum of \$1,000 to a maximum of \$100,000 per investor.

(k) The program manager shall invest all contributions received from investors in securities not limited to legal investments under state laws relating to the investment of trust fund assets by trust companies, including those authorized by article 8 of chapter 412. Contributions shall be used for venture capital investment. Investment may be made in any manner the program deems correct. If no venture capital investment is available at the time a contribution is made to the program, the program manager may invest the contribution in any manner allowed a regulated investment company until a venture capital investment opportunity occurs. While the program manager should make a best effort to make venture capital investments as defined in section 211F- , if no such venture capital investment is available in Hawaii, then the program manager may make venture capital investments outside Hawaii.

- (l) The corporation may adopt any necessary rules under chapter 91.

§211F- Limitation of liability. In no case shall the corporation, officers or employees of the corporation, or the State be liable for the monetary losses of individuals contributing to the program. In all cases, the program manager shall inform individual contributors of the risk involved in contributing to the program.”

SECTION 34. Statutory material to be repealed is bracketed. New statutory material is underscored.⁷

SECTION 35. This Act shall take effect upon its approval; provided that:

- (1) Part I, upon its approval, shall apply to taxable years beginning after December 31, 1999; and
- (2) Part III shall take effect on July 1, 2000.

(Approved July 5, 2000.)

Notes

1. “Any” should be underscored.
2. Prior to amendment “receives” appeared here.
3. So in original.
4. Comma should be underscored.
5. “(10)” should be underscored.
6. Paragraphs (3) to (7) renumbered from (4) to (8).
7. Edited pursuant to HRS §23G-16.5.