## ACT 200 H.B. NO. 1702

A Bill for an Act Relating to the Capital Infrastructure Tax Credit.

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

SECTION 1. The legislature finds that development of a new overseas container terminal and piers at the lower Kapalama military reservation site requires improvements on fast and submerged lands associated with piers twenty-four through twenty-eight to accommodate maritime dependent operators at Kapalama who are to be evicted and displaced. The total cost for the proposed master plan at the Kapalama site is estimated to be $243,000,000, which is being financed entirely by the State through revenue bonds and revenues from harbor tariffs and leases. None of these funds, however, will go toward assisting displaced maritime and waterfront dependent tenants of the Kapalama site. The displaced tenants will be relocated to various piers that have limited infrastructure, facilities, and utilities. These tenants must find ways to finance not only their move, but also significant capital improvements to state-owned land.

The legislature finds that the Kapalama container terminal project is critical to modernizing commercial harbors and that completion of the project will assure that harbor infrastructure is adequate to support sustained economic growth. The legislature also finds that supporting those maritime and waterfront dependent tenants displaced by the Kapalama container terminal project will facilitate the growth of commerce in the State and support maritime jobs. In light of state support provided for University of Hawaii-related tenants that have been displaced by the Kapalama container terminal project, the legislature finds it prudent and fair to also support the maritime dependent operators in Kapalama who are being displaced by the project. The solution proposed in this Act is to provide a capital infrastructure tax credit to help displaced tenants raise private equity capital. This approach is expected to:

(1) Mobilize private equity and near-equity capital for investment in critical waterfront infrastructure in Honolulu harbor;
(2) Retain the private sector culture of focusing on rate of return in the investing process;
(3) Secure and retain the services of high quality trade labor in the maritime industry in Hawaii; and
(4) Accomplish the foregoing in a return-driven manner with the goal of minimizing any adverse impact on state tax revenues.

Accordingly, the purpose of this Act is to establish a capital infrastructure tax credit to help tenants displaced by the Kapalama container terminal project in raising capital to make improvements on state-owned property upon relocation.

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

"§235- **Capital infrastructure tax credit.** (a) There shall be allowed to each taxpayer subject to the taxes imposed by this chapter a capital infrastructure 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 capital infrastructure costs were paid or incurred.

(b) For the purpose of this section:

"Base investment" means the amount of money invested by an investor.

"Capital infrastructure costs" means capital expenditures, as used in section 263 of the Internal Revenue Code and the regulations promulgated thereunder; provided that the capital expenditures are for real property and fixtures that are paid or incurred in connection with the displaced tenant's move of the tenant's current active trade or business to the tenant's new location; provided further that the capital infrastructure costs shall not include amounts for which another credit is claimed.

"Net income tax liability" means income tax liability reduced by all other credits allowed under this chapter.

"Qualified infrastructure tenant" means a business:

(1) That currently owns capital or property or maintains an office, operations, or facilities at the former Kapalama military reservation site;
(2) Whose principal business is maritime, and waterfront dependent, and is included under the State's plan to relocate the business to piers twenty-four through twenty-eight within Honolulu harbor; and
(3) Will be displaced and relocated by the State pursuant to the Kapalama container terminal project.

(c) The amount of the tax credit shall be equal to fifty per cent of the capital infrastructure costs paid or incurred by the qualified infrastructure tenant during the taxable year up to a maximum of $2,500,000 in capital infrastructure costs in any taxable year, provided that the qualified infrastructure tenant shall notify the taxpayer claiming the credit under subsection (a) of the amount of capital infrastructure costs which may be claimed.

(d) In the case of an entity taxed as a partnership, credit shall be determined at the entity level, but distribution and share of the credit may be determined notwithstanding section 704 of the Internal Revenue Code.

(e) The credit allowed under this section shall be claimed against the net income tax liability for the taxable year. 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 net income tax liability in subsequent years until exhausted. All claims, including amended claims, for a tax credit 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.

(f) This section shall not apply to taxable years beginning after December 31, 2019.

(g) Any credit claimed under this section shall be recaptured following the close of the taxable year for which the credit is claimed if within three years:

(1) The qualified infrastructure tenant fails to continue the line of business it conducted as of July 1, 2014; or

(2) The interest in the qualified infrastructure tenant, whether in whole or in part, has been sold, exchanged, withdrawn, or otherwise disposed of by the taxpayer claiming a credit under this section.

The recapture shall be equal to one hundred per cent of the amount of the total tax credit claimed under this section in the preceding five taxable years, and shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs pursuant to this subsection.

(h) The director of taxation shall prepare any forms that may be necessary to claim a credit under this section. The director may also require the taxpayer to furnish information to ascertain the validity of the claim for credit made under this section. The director of taxation may adopt rules to effectuate the purposes of this section pursuant to chapter 91."

SECTION 3. Chapter 241, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§241- Capital infrastructure tax credit.** The capital infrastructure tax credit established by section 235- shall be operative for this chapter for taxable years beginning after December 31, 2013."

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.[1]

SECTION 6. This Act shall take effect on July 1, 2014, and shall apply to taxable years beginning after December 31, 2013.

(Approved July 1, 2014.)

**Note**

1. Edited pursuant to HRS §23G-16.5.