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# A BILL FOR AN ACT

RELATING TO TAX CREDITS.

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

1           SECTION 1. The legislature finds that the leeward coast of  
2 Oahu has levels of poverty in excess of twenty per cent in each  
3 of the census tracts comprising this region. This condition has  
4 existed for over forty years despite the efforts of federal,  
5 state, and county programs to alleviate the suffering or reduce  
6 the numbers of individuals and families impacted.

7           The legislature finds that two key elements impact each  
8 resident's quality of life - housing and education and training  
9 opportunities. In 2003, pursuant to Act 100, Session Laws of  
10 Hawaii 2003, the legislature found that the development of  
11 Ko Olina Resort "would bring extensive economic benefits and  
12 result in the creation of thousands of construction and  
13 permanent jobs." With that finding, the legislature approved  
14 \$75,000,000 in tax credits for the development of a world-class  
15 aquarium, and other attractions and educational facilities  
16 within the resort. Since that time, while Ko Olina has not used  
17 any of the tax credits earned, the existence of the tax credit



1 has created economic and job revitalization for the West Oahu  
2 area, as was originally intended by the legislation.

3 The continued development of Ko Olina and the continued  
4 strength of the State's visitor industry has expanded the need  
5 for affordable workforce housing and training to prepare for the  
6 State's future economic growth.

7 The purpose of this Act is to:

8 (1) Repeal the attractions and educational facilities tax  
9 credit for Ko Olina Resort and Marina, and Makaha  
10 Resort; and

11 (2) Establish for the leeward coast and nearby areas a  
12 revitalization tax credit for affordable rental  
13 housing and educational and training facilities for  
14 the visitor industry and for media, film, and music.

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

18 "§235- Leeward coast revitalization tax credit for  
19 affordable rental housing; educational and training facilities  
20 for the visitor industry; media, film, and music educational  
21 facilities. (a) There shall be allowed to each qualified  
22 taxpayer subject to the taxes imposed by this chapter, a



1 refundable tax credit that may be claimed for taxable years  
2 beginning after December 31, 2007, for qualified costs relating  
3 to leeward coast revitalization efforts in the development of:

4 (1) Affordable rental housing;

5 (2) Educational and training facilities for the visitor  
6 industry; or

7 (3) Media, film, and music educational facilities.

8 The tax credit shall be deductible from the taxpayer's tax  
9 liability, if any, imposed by this chapter for taxpayers  
10 qualified under subsection (d).

11 (b) The tax credit earned shall be equal to the qualified  
12 costs incurred after May 31, 2007, and before June 1, 2012, up  
13 to a maximum of \$75,000,000 of credits in the aggregate for all  
14 qualified taxpayers for all years; provided that notwithstanding  
15 the amount of tax credits earned in any year:

16 (1) A maximum of \$5,000,000 of tax credits in the  
17 aggregate for all qualified taxpayers may be used or  
18 refunded in any one taxable year for credits earned  
19 for affordable rental housing developments;

20 (2) A maximum of \$1,250,000 of tax credits in the  
21 aggregate for all qualified taxpayers may be used or  
22 refunded in any one taxable year for credits earned



1 for educational or training facilities, or both, for  
2 the visitor industry; and

3 (3) A maximum of \$1,250,000 of tax credits in the  
4 aggregate for all qualified taxpayers may be used or  
5 refunded in any one taxable year for credits earned  
6 for media, film, and music educational facilities;  
7 for a maximum of \$7,500,000 per year for all credits earned by  
8 all taxpayers under this subsection.

9 (c) Of the \$75,000,000, the maximum aggregate amount of  
10 credits for all qualified taxpayers for all years of the  
11 qualified costs under this section shall be:

12 (1) \$50,000,000 in the aggregate may be used for the  
13 qualified costs of affordable rental housing projects;

14 (2) \$12,500,000 in the aggregate may be used for the  
15 qualified costs of educational or training facilities,  
16 or both for the visitor industry; and

17 (3) \$12,500,000 in the aggregate may be used for the  
18 qualified costs for media, film, and music educational  
19 facilities.

20 The credits over the allowable annual caps in any taxable year  
21 shall be used as provided in subsection (e). In the case of a  
22 partnership, limited liability company, S corporation, estate,



1 trust, or association of apartment owners, the tax credit  
2 allowable is for qualified costs incurred by the entity. The  
3 costs upon which the tax credit is computed shall be determined  
4 at the entity level.

- 5 (d) To qualify for the tax credit, a taxpayer shall:
- 6 (1) Have expended qualified costs on affordable rental  
7 housing units within the leeward coast; provided that  
8 the units for which the tax credits are earned are not  
9 part of any city or state requirement for affordable  
10 housing development;
  - 11 (2) Have expended qualified costs on a visitor industry  
12 educational or training facility, or both, located  
13 within the leeward coast; or
  - 14 (3) Have expended qualified costs on a media, film, and  
15 music educational facility located within the leeward  
16 coast.

17 (e) To the extent any of the tax credits under this  
18 section exceeds the allowable annual cap in the aggregate for  
19 all qualified taxpayers for any taxable year, the excess of the  
20 tax credit may be refunded or used as a credit against the  
21 taxpayer's tax liability for the income tax in subsequent years  
22 until exhausted; provided the taxpayer may continue to claim the



1 tax credit under this section after May 31, 2012, if the  
2 qualified costs are incurred before June 1, 2012, subject to the  
3 monetary ceilings under subsection (b).

4 (f) If the tax credit claimed by the taxpayer in any year  
5 exceeds the amount of income tax payment due from the taxpayer,  
6 the excess amount of the tax credit over payments due shall be  
7 refunded to the taxpayer; provided that no refund on account of  
8 the tax credit allowed by this section shall be made for amounts  
9 less than \$1.

10 (g) Every claim, including amended claims, for a tax  
11 credit under this section shall be filed on or before the end of  
12 the twelfth month following the close of the taxable year for  
13 which the credit may be claimed. Failure to comply with the  
14 foregoing provision shall constitute a waiver of the right to  
15 claim the credit.

16 (h) If, at any time the costs incurred no longer meet the  
17 definition of qualified costs, the credits claimed under this  
18 section shall be recaptured. The recapture shall be equal to  
19 one hundred per cent of the total tax credits claimed under this  
20 section; provided that the amount of the credits recaptured  
21 shall apply only to those costs that no longer meet the  
22 definition of qualified costs. The amount of the recaptured tax



1 credits determined under this subsection shall be added to the  
2 taxpayer's tax liability for the taxable year in which the  
3 recapture occurs under this subsection.

4 (i) If any credit is claimed under this section, then no  
5 taxpayer shall claim another credit under this chapter for the  
6 same qualified costs for which the taxpayer receives any other  
7 state, federal, or county tax credit.

8 (j) The director of taxation shall prepare any forms that  
9 may be necessary to claim a credit under this section. The  
10 director may also require the taxpayer to furnish information to  
11 ascertain the validity of the claims for credits made under this  
12 section and may adopt rules necessary to effectuate the purposes  
13 of this section pursuant to chapter 91.

14 Every qualified taxpayer, no later than April 1 of each  
15 year in which qualified costs were expended in the previous  
16 taxable year, shall submit a written, certified statement to the  
17 director of business, economic development, and tourism, in the  
18 form specified by the director of business, economic  
19 development, and tourism, identifying:

20 (1) Qualified costs, if any, expended in the previous  
21 taxable year; and



1       (2) The amount of tax credits or refund or both claimed  
2           pursuant to this section, if any, in the previous  
3           taxable year.

4 Any other law to the contrary notwithstanding, a statement  
5 submitted under this subsection shall be a public document.

6       (k) The department of business, economic development, and  
7 tourism shall maintain records of the names of taxpayers  
8 eligible for the credits and the total amount of qualified costs  
9 incurred after May 31, 2007, and before June 1, 2012. The  
10 department of business, economic development, and tourism shall  
11 verify all qualified costs and, upon each determination, shall  
12 issue a certificate to the taxpayer certifying:

13       (1) The amount of the qualified costs; and

14       (2) The amount of tax credit that the taxpayer is allowed  
15       to use for the taxable year.

16       The department of business, economic development, and  
17 tourism shall certify no more than \$7,500,000 in credits in the  
18 aggregate for all taxpayers for each taxable year in accordance  
19 with subsection (b); provided that the department may verify  
20 qualified costs of no more than \$75,000,000, after May 31, 2007,  
21 and before June 1, 2012. The taxpayer shall file the



1 certificate with the taxpayer's return with the department of  
2 taxation.

3 The department of business, economic development, and  
4 tourism shall determine which credits go to each qualified  
5 project and shall issue a credit certification. Once the  
6 maximum aggregate amounts of credit have been certified, as  
7 provided in this section, the department of business, economic  
8 development, and tourism shall provide notice to the public that  
9 the maximum amounts of certifiable credits have been issued.  
10 Furthermore, because of the annual cap of \$7,500,000 of tax  
11 credits that can be used in a given year, no later than April 1  
12 of each year, the department of business, economic development,  
13 and tourism shall also allocate the amount of tax credits any  
14 taxpayer may use in a given year on a pro rata basis, based upon  
15 the total outstanding tax credits as of the end of the previous  
16 year.

17 (1) As used in this section:

18 "Affordable rental housing" means a residential rental  
19 housing project in which all of the units shall be committed  
20 through deed restriction or other recorded encumbrance on the  
21 property:



- 1        (1) To be rental units for a period of not less than  
2        thirty years, and that may only be sold together as  
3        one single property and not as individual units;
- 4        (2) Ninety per cent of the units shall be for rental to  
5        households with incomes at or below eighty per cent of  
6        the median income for the Honolulu metropolitan  
7        statistical area, adjusted for household size, as most  
8        recently determined by the United States Department of  
9        Housing and Urban Development; and
- 10       (3) Ten per cent of the units shall be for rental to  
11       households with incomes at or below sixty per cent of  
12       the medium income for the Honolulu metropolitan  
13       statistical area, adjusted for household size, as most  
14       recently determined by the United States Department of  
15       Housing and Urban Development.

16       "Leeward coast" means the geographic area encompassed in  
17       the nineteenth and twenty-first state senatorial districts, as  
18       defined as of January 1, 2007, and those lands owned by the  
19       department of Hawaiian home lands within the nineteenth  
20       senatorial district as it is defined as of January 1, 2007.

21       "Qualified costs" means:



- 1        (1) For affordable rental housing, costs for planning,  
2        design, acquisition of land and construction for  
3        affordable rental housing within the leeward coast,  
4        and costs for onsite infrastructure and equipment that  
5        is permanently affixed to a residential building or  
6        structure;
- 7        (2) For educational, or training projects, or both, costs  
8        for planning, design, and construction, and costs for  
9        equipment that is permanently affixed to a building or  
10       structure for facilities for educational or training,  
11       or both, located within the leeward coast for a  
12       visitor industry or hotel management training facility  
13       that is operated in conjunction with an actual  
14       operating hotel, timeshare, or resort operation within  
15       the leeward coast and that is developed or operated  
16       for a period of not less than eight years as an  
17       educational or training facility in cooperation with  
18       the University of Hawaii, its West Oahu campus or  
19       community colleges, or other education institution;  
20       and
- 21       (3) For media, film, and music educational facilities,  
22       costs for planning, design, and construction of



1 buildings or structures, and costs for equipment that  
2 is permanently affixed to a building or structure, for  
3 purposes of media, film, music, or multimedia within  
4 the leeward coast that is developed and operated for a  
5 period of not less than eight years as a training  
6 facility or educational facility, or both, in  
7 cooperation with the University of Hawaii, its West  
8 Oahu campus or community college, or other educational  
9 institution;

10 provided that, in the case of paragraph (1) of this definition,  
11 if a planned development that utilizes the credit under this  
12 section is not constructed or operated as affordable rental  
13 housing for a period of not less than thirty years, or in the  
14 case of paragraph (2) or (3) of this definition, a facility is  
15 not used as an educational or training facility, or both, for a  
16 period of not less than eight years or ultimately no such  
17 facility is constructed, then the costs incurred shall not be  
18 deemed as qualified costs under paragraph (1), (2), or (3) of  
19 this definition and any tax credit claimed shall be recaptured  
20 under subsection (h).

21 "Qualified taxpayer" means a person who fulfills the  
22 requirements of subsection (d)."



SECTION 3. Section 235-110.46, Hawaii Revised Statutes, is

repealed.

["§235-110.46] Attractions and educational facilities tax

credit; Ko Olina Resort and Marina; Makaha Resort. (a) There

shall be allowed to each qualified taxpayer subject to the taxes

imposed by this chapter or chapter 237, 237B, 238, 239, 241, or

431, a tax credit [that] may be claimed for taxable years

beginning after December 31, 2004, for qualified costs in the

development of facilities for attractions and educational

purposes at Ko Olina Resort and Marina and at Makaha Resort.

The tax credit shall be deductible from the taxpayer's net

income tax liability, if any, imposed by this chapter and, at

the election of the taxpayer, from the tax liability imposed by

chapters 237, 237B, 238, 239, 241, and 431.

(b) The tax credit earned shall be equal to the qualified

costs incurred from June 1, 2003, through May 31, 2009, up to a

maximum of \$75,000,000 of credits in the aggregate for all

qualified taxpayers for all years, provided that notwithstanding

the amount of tax credits earned in any year, a maximum of

\$7,500,000 of tax credits in the aggregate for all qualified

taxpayers may be used in any one taxable year. The credits over

\$7,500,000 shall be used as provided in subsection (d). In the



1 ~~case of a partnership, limited liability company, S corporation,~~  
2 ~~estate, trust, or association of apartment owners, the tax~~  
3 ~~credit allowable is for qualified costs incurred by the entity.~~  
4 ~~The costs upon which the tax credit is computed shall be~~  
5 ~~determined at the entity level.~~

6 ~~(c) To qualify for the tax credit, a taxpayer shall:~~

7 ~~(1) Have expended qualified costs on and be developing a~~  
8 ~~world class aquarium and marine science and mammal~~

9 ~~research facility at Ko Olina Resort and Marina; and~~

10 ~~(2) Dedicate one half of the net operating income of the~~  
11 ~~world class aquarium to the State, beginning on the~~

12 ~~first day of the seventeenth year following the year~~  
13 ~~in which the attractions and educational facilities~~

14 ~~credit was first taken; or~~

15 ~~(3) Acquire or own the Makaha Resort, and lease or sell a~~

16 ~~portion of the Makaha Resort for use as training and~~  
17 ~~educational facilities for a period of not less than~~

18 ~~six years to a taxpayer meeting the requirements of~~

19 ~~subsection (c) (1).~~

20 ~~(d) If the tax credit under this section exceeds~~

21 ~~\$7,500,000 in the aggregate for all qualified taxpayers for any~~

22 ~~taxable year or exceeds the taxpayer's tax liability under this~~



~~1 chapter or chapters 237, 237D, 238, 239, 241, and 431 for any  
2 year for which the credit is taken, the excess of the tax credit  
3 may be used as a credit against the taxpayer's tax liability for  
4 the taxes set forth in this section in subsequent years until  
5 exhausted; provided that the taxpayer may continue to claim the  
6 credit provided in this section if the qualified costs are  
7 incurred before June 1, 2009, subject to the monetary ceilings  
8 in subsection (b).~~

~~9 (e) Every claim, including amended claims, for a tax  
10 credit under this section shall be filed on or before the end of  
11 the twelfth month following the close of the taxable year for  
12 which the credit may be claimed. Failure to comply with the  
13 foregoing provision shall constitute a waiver of the right to  
14 claim the credit.~~

~~15 (f) If, at any time during the six year period in which  
16 tax credits are earned under this section, the costs incurred no  
17 longer meet the definition of qualified costs, the credits  
18 claimed under this section shall be recaptured. The recapture  
19 shall be equal to one hundred per cent of the total tax credits  
20 claimed under this section for the preceding taxable year,  
21 provided that the amount of the credits recaptured shall apply  
22 only to those costs that no longer meet the definition of~~



1 ~~qualified costs. The amount of the recaptured tax credits~~  
2 ~~determined under this subsection shall be added to the~~  
3 ~~taxpayer's tax liability for the taxable year in which the~~  
4 ~~recapture occurs under this subsection.~~

5 ~~(g) If any credit is claimed under this section, then no~~  
6 ~~taxpayer shall claim a credit under any chapter identified in~~  
7 ~~this section for the same qualified costs for which a credit is~~  
8 ~~claimed under this section.~~

9 ~~(h) The director of taxation shall prepare any forms that~~  
10 ~~may be necessary to claim a credit under this section. The~~  
11 ~~director may also require the taxpayer to furnish information to~~  
12 ~~ascertain the validity of the claims for credits made under this~~  
13 ~~section and may adopt rules necessary to effectuate the purposes~~  
14 ~~of this section pursuant to chapter 91.~~

15 ~~Every qualified taxpayer, no later than March 31 of each~~  
16 ~~year in which qualified costs were expended in the previous~~  
17 ~~taxable year, shall submit a written, certified statement to the~~  
18 ~~director of business, economic development, and tourism, in the~~  
19 ~~form specified by the director of business, economic~~  
20 ~~development, and tourism, identifying:~~

21 ~~(1) Qualified costs, if any, expended in the previous~~  
22 ~~taxable year;~~



1       ~~(2) The amount of tax credits claimed pursuant to this~~  
2           ~~section, if any, in the previous taxable year; and~~

3       ~~(3) The tax liability under this chapter and chapters 237,~~  
4           ~~237D, 238, 239, 241, and 431 against which the tax~~  
5           ~~credits are claimed.~~

6       ~~Any other law to the contrary notwithstanding, a statement~~  
7       ~~submitted under this subsection shall be a public document.~~

8       ~~(i) The department of business, economic development, and~~  
9       ~~tourism shall maintain records of the names of taxpayers~~  
10       ~~eligible for the credits and the total amount of qualified costs~~  
11       ~~incurred from June 1, 2003, through May 31, 2009. The~~  
12       ~~department of business, economic development, and tourism shall~~  
13       ~~verify all qualified costs and, upon each determination, shall~~  
14       ~~issue a certificate to the taxpayer certifying:~~

15           ~~(1) The amount of the qualified costs; and~~

16           ~~(2) The amount of tax credit that the taxpayer is allowed~~  
17           ~~to use for the taxable year.~~

18       ~~The department of business, economic development, and~~  
19       ~~tourism shall certify no more than \$7,500,000 in credits in the~~  
20       ~~aggregate for all taxpayers for each taxable year; provided that~~  
21       ~~the department may verify qualified costs of no more than~~  
22       ~~\$75,000,000 from June 1, 2003, through May 31, 2009. The~~



1 ~~taxpayer shall file the certificate with the taxpayer's return~~  
2 ~~with the department of taxation.~~

3 ~~(j) As used in this section:~~

4 ~~"Ko Olina Resort and Marina" means the six hundred forty-~~  
5 ~~two acres reclassified to urban district by Decision and Order~~  
6 ~~entered on September 12, 1985, in Docket A83-562, by the land~~  
7 ~~use commission.~~

8 ~~"Makaha Resort" means the three hundred thirty two acre~~  
9 ~~property identified as tax map keys (1) 8-04-002 parcels 51, 52,~~  
10 ~~53, 54, 55, and 67 and (1) 8-04-029-142.~~

11 ~~"Qualified costs" means any costs for plans, design, and~~  
12 ~~construction, costs for equipment that is permanently affixed to~~  
13 ~~a building or structure, and acquisition of facilities for~~  
14 ~~educational purposes, up to a total of \$75,000,000 in the~~  
15 ~~aggregate, incurred after May 31, 2003, and before June 1, 2009,~~  
16 ~~at either or both of:~~

- 17 ~~(1) Ko Olina Resort and Marina for the development of~~
- 18 ~~facilities for attractions and educational purposes,~~
- 19 ~~and for infrastructure within the Ko Olina Resort and~~
- 20 ~~Marina that is directly related to those facilities,~~
- 21 ~~including a world class aquarium, marine science and~~
- 22 ~~mammal research facilities, international sports~~



1 ~~training complex, a travel industry management intern~~  
2 ~~campus, infrastructure for the transfer of ocean~~  
3 ~~waters to the aquarium or marine mammal facilities, or~~  
4 ~~both, seawater air conditioning, and other educational~~  
5 ~~facilities developed or operated in cooperation with~~  
6 ~~the University of Hawaii or other educational~~  
7 ~~institutions, or~~

8 ~~(2) Makaha Resort for the development of a training and~~  
9 ~~educational facility within a working resort and~~  
10 ~~hotel,~~

11 ~~provided that "qualified costs" shall not include land~~  
12 ~~acquisition costs.~~

13 ~~"Qualified taxpayer" means a person who fulfills the~~  
14 ~~requirements of subsection (c)."]~~

15 SECTION 4. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect upon its approval  
18 and shall apply to taxable years beginning after December 31,  
19 2050; provided that the provisions of this Act shall apply to  
20 costs incurred after May 31, 2007, and before June 1, 2012.



**Report Title:**

Leeward Coast Tax Credit; Repeal Ko Olina and Makaha Tax Credit

**Description:**

Establishes an income tax credit for the revitalization of the leeward coast. Provides an income tax credit for affordable rental housing and educational and training facilities, and educational media facilities, constructed in the leeward coast of Oahu. Repeals the Ko Olina Resort and Marina and Makaha Resort tax credit. (SD3)

