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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. Research and development is the core of  
2 innovation. Without innovation, there is no technology industry  
3 and the subsequent growth of our economy is stunted with no new  
4 products, services, or processes. Research and development is  
5 the critical first step in the product development cycle.  
6 During the research and development stage, ideas and theories  
7 are tested to determine feasibility. Due to the increasingly  
8 interconnected and competitive global economy, fostering and  
9 encouraging innovation is essential to a comprehensive economic  
10 strategy for the State. The key to developing more jobs and  
11 more prosperity will be to create and deploy new products,  
12 services, and processes.

13           Innovation is essential for creating new jobs in high  
14 technology and traditional sectors. In recent years, innovation  
15 has led to new jobs in many different sectors as diverse as  
16 defense or dual-use, software and information technology, life  
17 sciences and biotechnology, and clean energy. At the same time,  
18 innovations ripple through the economy, creating jobs for



1 workers building advanced infrastructure (clean energy  
2 solutions), installing broadband networks, and utilizing new  
3 devices and products in the service industries, such as health  
4 care and tourism.

5 Innovation is also critical for sustaining the vitality and  
6 resilience of our economy. Future challenges (natural or man-  
7 made) are impossible to predict. However, it is certain that an  
8 economy better able to respond to such events by adopting  
9 innovative solutions and re-deploying old activities, jobs, and  
10 industries will be less susceptible to adversity.

11 Innovation is the key to remaining competitive globally,  
12 new and better jobs, and a resilient economy. The legislature  
13 recognizes this and supports research and development as the  
14 stimulant to our innovation economy.

15 The current law parallels, with enhancements tailored to  
16 Hawaii's unique position, the Internal Revenue Code, providing  
17 support for scientific experimentation through a tax credit at  
18 twenty per cent of the cost of the qualified research. The  
19 program cost to the State has averaged about \$11,000,000 per  
20 year over the last nine years, and in 2006, provided funding to  
21 over four hundred companies. This tax credit has been a great  
22 source of support for local companies, especially to the



1 research and development companies that are still in the start-  
2 up or early growth stage, and is seen as helping to level the  
3 playing field of our high-cost State, as Hawaii companies  
4 compete with national and international competition. It has  
5 also been useful in providing support for research and  
6 development companies that are in the early growth stage and not  
7 yet profitable, and have few sources of funding. Further, the  
8 refundable element of the tax credit is helping to attract new  
9 technology companies to Hawaii.

10 The purpose of this Act is to extend the income tax credit  
11 for qualified research activities for an additional five years  
12 and to add extensive reporting requirements related to the tax  
13 credit.

14 SECTION 2. Section 235-110.91, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 **"§235-110.91 Tax credit for research activities.** (a)  
17 Section 41 (with respect to the credit for increasing research  
18 activities) and section 280C(c) (with respect to certain  
19 expenses for which the credit for increasing research activities  
20 are allowable) of the Internal Revenue Code shall be operative  
21 for the purposes of this chapter as provided in this section;  
22 except that references to the base amount shall not apply and



1 credit for all qualified research expenses may be taken without  
2 regard to the amount of expenses for previous years. If section  
3 41 of the Internal Revenue Code is repealed or terminated prior  
4 to January 1, [~~2011~~] 2017, its provisions shall remain in  
5 effect for purposes of the income tax law of the State as  
6 modified by this section, as provided for in subsection [~~(j)~~]  
7 (n).

8 (b) All references to Internal Revenue Code sections  
9 within sections 41 and 280C(c) of the Internal Revenue Code  
10 shall be operative for purposes of this section.

11 (c) There shall be allowed to each qualified high  
12 technology business subject to the tax imposed by this chapter  
13 an income tax credit for qualified research activities equal to  
14 the credit for research activities provided by section 41 of the  
15 Internal Revenue Code and as modified by this section. The  
16 credit shall be deductible from the taxpayer's net income tax  
17 liability, if any, imposed by this chapter for the taxable year  
18 in which the credit is properly claimed.

19 (d) Every qualified high technology business, before  
20 March 31 of each year in which qualified research and  
21 development activity was conducted in the previous taxable year,



1 shall submit a written, certified statement to the director of  
2 taxation identifying:

- 3 (1) Qualified expenditures, if any, expended in the  
4 previous taxable year; and
- 5 (2) The amount of tax credits claimed pursuant to this  
6 section, if any, in the previous taxable year.
- 7 (e) The department shall:
  - 8 (1) Maintain records of the names and addresses of the  
9 taxpayers claiming the credits under this section and  
10 the total amount of the qualified research and  
11 development activity costs upon which the tax credit  
12 is based;
  - 13 (2) Verify the nature and amount of the qualifying costs  
14 or expenditures;
  - 15 (3) Total all qualifying and cumulative costs or  
16 expenditures that the department certifies; and
  - 17 (4) Certify the amount of the tax credit for each taxable  
18 year and cumulative amount of the tax credit.

19 Upon each determination made under this subsection, the  
20 department shall issue a certificate to the taxpayer verifying  
21 information submitted to the department, including the  
22 qualifying costs or expenditure amounts, the credit amount



1 certified for each taxable year, and the cumulative amount of  
2 the tax credit during the credit period. The taxpayer shall  
3 file the certificate with the taxpayer's tax return with the  
4 department.

5 The director of taxation may assess and collect a fee to  
6 offset the costs of certifying tax credit claims under this  
7 section. All fees collected under this section shall be  
8 deposited into the tax administration special fund established  
9 under section 235-20.5.

10 (f) As used in this section:

11 [~~"Basic research" under section 41(e) of the Internal~~  
12 ~~Revenue Code shall not include research conducted outside of the~~  
13 ~~State.]~~

14 "Qualified high technology business" means [~~the same as in~~  
15 ~~section 235-110.9.] a business employing or owning capital or  
16 property, or maintaining an office, in this State; provided that  
17 more than fifty per cent of its total business activities are  
18 qualified research and more than fifty per cent of its qualified  
19 research is in this State.~~

20 "Qualified research" [~~under~~] means the same as in section  
21 41(d)(1) of the Internal Revenue Code [~~shall not include~~  
22 research conducted outside of the State].



1 (g) If the tax credit for qualified research activities  
2 claimed by a taxpayer exceeds the amount of income tax payment  
3 due from the taxpayer, the excess of the tax credit over  
4 payments due shall be refunded to the taxpayer; provided that no  
5 refund on account of the tax credit allowed by this section  
6 shall be made for amounts less than \$1.

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

12 (i) A qualified high technology business that claims a tax  
13 credit under this section shall complete and file with the  
14 director of taxation through the department website, an annual  
15 survey on electronic forms prepared and prescribed by the  
16 department. The annual survey shall be filed before June 30 of  
17 each calendar year following the calendar year in which the  
18 credit may be claimed under this section. The department may  
19 adjust the due date of the annual survey by rule.

20 A qualified high technology business that claims a tax  
21 credit under this section and wilfully fails to file the survey



1 by the due date shall be assessed a fine of not more than \$1,000  
2 for each month of failure to file.

3 (j) The annual survey shall include the following  
4 information for the time period or periods specified by the  
5 department:

6 (1) Identification of the industry sector or sectors in  
7 which the qualified high technology business conducts  
8 business, as set forth in paragraphs (2) to (8) of the  
9 definition of "qualified research" in section  
10 235-7.3(c);

11 (2) Qualified expenditures, if any, expended in the  
12 previous taxable year;

13 (3) Revenue and expense data;

14 (4) Hawaii employment and wage data, including the numbers  
15 of full- and part-time employees retained, new jobs,  
16 temporary positions, external services procured by the  
17 business, and payroll taxes;

18 (5) Filed intellectual property, including invention  
19 disclosures, provisional patents, and patents issued  
20 or granted; and





1       (6) Federal and state income tax returns and documents  
2           related to deductions for tax credits for research  
3           activities.

4       The department shall request information in each of these  
5       categories sufficient to measure the effectiveness of the tax  
6       credit. The department may request any additional information  
7       necessary to measure the effectiveness of the tax credit, such  
8       as information related to patents. In preparing the survey and  
9       requesting any additional information, the department shall  
10       ensure that qualified high technology businesses are not subject  
11       to duplicative reporting requirements.

12       (k) The department shall use information collected under  
13       this section and through other reporting requirements of the  
14       department to prepare summary descriptive statistics by  
15       category. The information shall be reported at the aggregate  
16       level to prevent compromising identities of qualified high  
17       technology business investors or other confidential information.  
18       The department shall also identify each qualified high  
19       technology business that is the beneficiary of tax credits  
20       claimed under this section. The department shall report the  
21       information required under this subsection to the legislature by  
22       September 1 of each year.



1       (1) The department shall use the information collected to  
2 study the effectiveness of the tax credit under this section.  
3 The department shall report on the amount of tax credits claimed  
4 and total taxes paid by qualified high technology businesses,  
5 the number of qualified high technology businesses in each  
6 industry sector, jobs created, external services and materials  
7 procured by the businesses, compensation levels, qualified  
8 research activities, and other factors as the department  
9 determines. The department shall report the results of its  
10 study to the legislature by December 1 of each year.

11       ~~(i)~~ (m) The director of taxation may adopt any rules  
12 under chapter 91 and forms necessary to carry out this section.

13       ~~(j)~~ (n) This section shall not apply to taxable years  
14 beginning after December 31, ~~2010.~~ 2016."

15       SECTION 3. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17       SECTION 4. This Act shall take effect on July 1, 2012, and  
18 apply to taxable years beginning after December 31, 2011.



**Report Title:**

Taxation; Technology; Tax Credit for Research Activities

**Description:**

Defines "qualified high technology business" to mean a business employing or owning capital or property, or maintaining an office, in this State; provided that more than fifty per cent of its total business activities are qualified research and more than fifty per cent of its qualified research is in this State; adds reporting requirements to measure the effectiveness of the tax credit for research activities; establishes a fine for failure to file the survey information in the reporting requirements; includes federal and state income tax returns and documents related to deductions for tax credits for research activities to be filed as part of the survey; extends the tax credit through 2016; applies to tax years beginning after 12/31/2011. (Proposed SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*





**\*SFS-HB1617 SD1 PROPOSED\***

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# A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1           SECTION 1. The legislature finds that to widen Saddle  
2 road, in the county of Hawaii, the department of land and  
3 natural resources established conservation easements on public  
4 land leased for pasture or special livestock use. Consequently,  
5 the lessee ranchers suffered serious financial losses.

6           The department of land and natural resources established  
7 conservation easements on approximately six thousand acres of  
8 leased lands, preventing the lessees from grazing cattle and  
9 effectively depriving the lessees of their use of the land.

10 Although the department of land and natural resources reduced  
11 the lease rent in proportion to the taking of the land, the  
12 lessees received no other compensation. The final report on  
13 discussions with affected ranchers in connection with the Saddle  
14 road realignment project prepared in response to Act 236,  
15 Session Laws of Hawaii 2001, states that the United States  
16 Department of Transportation Highways Division will provide  
17 compensation to the existing lessees. However, according to the  
18 lessees, the department of land and natural resources has taken



1 the position that because Hawaii law did not provide for any  
2 compensation, none was required.

3 Chapter 171, Hawaii Revised Statutes, provides for rent  
4 reductions if the land withdrawn causes the land to become  
5 unusable for the specific use or uses for which it was  
6 originally leased. However, the law provides no other method of  
7 compensation. Despite this lack of compensation, the lessees  
8 are required by their leases to maintain insurance on the land  
9 and pay taxes for the land they cannot use for the specific  
10 purpose for which it was originally leased.

11 In addition, several lessees had to reduce their herd and  
12 suffered financial losses as a result of the sale of their  
13 cattle. One of the long-term effects of a reduced herd is that  
14 lessees cannot mitigate the long-term, fixed costs associated  
15 with operating a ranch in the way they anticipated when the  
16 lease was negotiated. Thus, the lessees have experienced  
17 financial hardship for an extended period of time that is not  
18 sufficiently mitigated by a reduction in their lease rent.

19 S.B. No. 2951, C.D. 1, regular session of 2010, a measure  
20 that attempted to address this issue by providing fair  
21 compensation when leased public land for agricultural or  
22 pastoral uses is withdrawn, condemned, or taken for public



1 purposes, passed the legislature but was vetoed by then-Governor  
 2 Lingle on the grounds that the bill "disproportionately and  
 3 inappropriately compensates these lessees of public lands above  
 4 other lessees of State lands." In testimony opposing the  
 5 measure, the department of land and natural resources posited  
 6 that rent reduction under existing law is sufficiently fair, and  
 7 that easements do not prevent the lessee from making any  
 8 beneficial use of the land even when it prevents them using the  
 9 land for its original intended purpose. However, the  
 10 legislature believes that rent reduction is insufficient,  
 11 especially where the lessor fails to recognize that the law is  
 12 designed to take into account the lessee's original intended  
 13 purpose for leasing the land, and finds that this Act is  
 14 necessary to provide more equitable relief to lessees of public  
 15 lands in partial takings or condemnations where the lessee is  
 16 prevented from using the lands as originally intended.

17 The purpose of this Act is to provide fair compensation to  
 18 lessees when a withdrawal or taking of leased land renders the  
 19 land unusable for the lessee's original intended purpose.

20 SECTION 2. Chapter 171, Hawaii Revised Statutes, is  
 21 amended by adding a new section to be appropriately designated  
 22 and to read as follows:



1           "§171-       Withdrawal of leased land; fair compensation;  
2 lease extension.   (a) Upon a withdrawal or taking of leased  
3 land pursuant to section 171-37(3) that causes any portion of  
4 the land to become unusable for the specific use or uses for  
5 which it was leased, the lease rent shall be reduced in  
6 proportion to the value of the land withdrawn or made unusable;  
7 provided that if any permanent improvement made to or  
8 constructed upon the land by the lessee is destroyed or made  
9 unusable in the process of the withdrawal or taking, the  
10 proportionate value thereof shall be paid to the lessee based  
11 upon the unexpired term of the lease. No land that is under  
12 cultivation shall be withdrawn or taken until the crops are  
13 harvested, unless the board pays the lessee the value of the  
14 crops.

15           Upon a withdrawal, any person with a long-term lease shall  
16 be compensated for the present value of all permanent  
17 improvements in place at the time of the withdrawal that were  
18 legally made to or constructed upon the land by the lessee of  
19 the leased land being withdrawn. In the case of tree-crops, as  
20 defined in section 171-37, the board shall pay to the lessee the  
21 residual value of the trees taken and, if there are unharvested  
22 crops, the value of the crops. In the case of breeding





1 livestock that cannot be relocated or marketed for the breeding  
2 value, the board shall pay to the lessee the difference between  
3 the appraised breeding value and the salvage value, including  
4 the cost of transportation to market.

5 (b) In addition to compensation received under subsection  
6 (a) or section 171-38, a lessee shall be entitled to  
7 compensation for costs attributable to the diminished use of the  
8 leased land, including but not limited to reimbursement for the  
9 cost of any insurance required by the board to be maintained, or  
10 property tax paid by the lessee; provided that a lessee of land  
11 subject to easements shall be entitled to compensation under  
12 this subsection only if the easements are placed upon the land  
13 subsequent to the original lease and prevent the lessee from  
14 using the land for the original intended use."

15 SECTION 3. Section 171-37, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 **"§171-37 Lease restrictions; intensive agricultural and**  
18 **pasture uses.** In addition to the restrictions provided in  
19 section 171-36, the following restrictions shall apply to all  
20 leases for intensive agricultural and pasture uses:

21 (1) The lease term shall [~~be~~] not be less than fifteen  
22 years nor more than thirty-five years, except that if



1 the type of disposition requires the lessee to occupy  
2 the premises as the lessee's own personal residence,  
3 ~~it~~ the lease term may be longer than thirty-five  
4 years~~, but~~; provided that the lease term shall not  
5 be in excess of seventy-five years, ~~and~~ except in  
6 the case of a tree-crop orchard lease the term of  
7 which shall not be in excess of forty-five years.

8 (2) If the land being leased is not immediately productive  
9 and requires extensive expenditures for clearing,  
10 conditioning of the soil, the securing of water, the  
11 planting of grasses, or the construction of  
12 improvements, as the result of which a longer term is  
13 necessary to amortize the lessee's investment, then  
14 the lease term may be longer than thirty-five years,  
15 but not in excess of fifty-five years.

16 (3) The land leased hereunder, or any portion thereof,  
17 shall be subject to withdrawal by the board ~~of land~~  
18 ~~and natural resources~~ at any time during the term of  
19 the lease with reasonable notice and ~~without~~  
20 compensation, ~~except as provided herein,~~ as provided  
21 in section 171- , for public uses or purposes,  
22 including residential, commercial, industrial, or



1 resort developments, for constructing new roads or  
2 extensions, or changes in line or grade of existing  
3 roads, for rights-of-way and easements of all kinds,  
4 and shall be subject to the right of the board to  
5 remove soil, rock, or gravel as may be necessary for  
6 the construction of roads and rights-of-way within or  
7 without the demised premises [~~;~~ provided that upon the  
8 withdrawal, or upon the taking which causes any  
9 portion of the land originally demised to become  
10 unusable for the specific use or uses for which it was  
11 demised, the rent shall be reduced in proportion to  
12 the value of the land withdrawn or made unusable, and  
13 if any permanent improvement constructed upon the land  
14 by the lessee is destroyed or made unusable in the  
15 process of the withdrawal or taking, the proportionate  
16 value thereof shall be paid based upon the unexpired  
17 term of the lease; provided further that no withdrawal  
18 or taking shall be had as to those portions of the  
19 land which are then under cultivation with crops until  
20 the crops are harvested, unless the board pays to the  
21 lessee the value of the crops; and provided further  
22 that upon withdrawal any person with a long term lease

1           ~~shall be compensated for the present value of all~~  
2           ~~permanent improvements in place at the time of~~  
3           ~~withdrawal that were legally constructed upon the land~~  
4           ~~by the lessee to the leased land being withdrawn. In~~  
5           ~~the case of tree crops, the board shall pay to the~~  
6           ~~lessee the residual value of the trees taken and, if~~  
7           ~~there are unharvested crops, the value of the crops~~  
8           ~~also].~~

9           "Tree-crop", as used in this section, shall be exclusive of  
10          papaya and banana."

11           SECTION 4. Section 171-38, Hawaii Revised Statutes, is  
12          amended to read as follows:

13           "**§171-38 Condemnation of leases.** The lease shall provide  
14          that whenever a portion of the public land under lease is  
15          condemned for public purposes by the State, or any county or  
16          city and county, or any other governmental agency or  
17          subdivision, the rental shall be reduced in proportion to the  
18          value of the portion of the premises condemned, and the lessee  
19          shall be entitled to receive from the condemning authority:

20           (1) ~~[the]~~ The value of growing crops, if any, ~~[which]~~ that  
21           the lessee is not permitted to harvest; and

1 (2) [~~the~~] The proportionate value of the lessee's  
2 permanent improvements so taken in the proportion that  
3 it bears to the unexpired term of the lease[~~,- provided~~  
4 ~~that the~~].

5 The lessee [~~may~~], in the alternative, may remove and relocate  
6 the lessee's improvements to the remainder of the lands occupied  
7 by the lessee. The foregoing rights of the lessee shall not be  
8 exclusive of any other to which the lessee may be entitled by  
9 law[~~-~~], including those rights established in section 171- .

10 Where the portion so taken renders the remainder unsuitable for  
11 the uses for which the land was leased, the lessee shall have  
12 the option to surrender the lessee's lease and be discharged for  
13 any further liability therefor; provided that the lessee may  
14 remove the lessee's permanent improvements within [~~such~~] a  
15 reasonable period allowed by the board [~~of land and natural~~  
16 ~~resources~~]."

17 SECTION 5. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.

20 SECTION 6. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

22

1 SECTION 7. This Act shall take effect on July 1, 2050.



**Report Title:**

Leased Public Lands; Withdrawal; Compensation

**Description:**

Provides for fair compensation when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes. Effective 7/1/2050. (Proposed SD1)

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