
A BILL FOR AN ACT

RELATING TO THE CAPITAL INFRASTRUCTURE TAX CREDIT.

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

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

17 The legislature finds that the Kapalama container terminal
18 project is critical to modernizing commercial harbors and that



1 completion of the project will assure that harbor infrastructure
2 is adequate to support sustained economic growth. The
3 legislature also finds that supporting those maritime and
4 waterfront dependent tenants displaced by the Kapalama container
5 terminal project supports the growth of commerce in the State
6 and supports maritime jobs. In light of state support provided
7 for University of Hawaii-related tenants that have been
8 displaced by the Kapalama container terminal project, the
9 legislature finds it prudent and fair to also support the
10 maritime dependent operators in Kapalama who are being displaced
11 by the project. The solution proposed in this Act is to provide
12 a capital infrastructure tax credit to help displaced tenants
13 raise private equity capital. This approach is expected to:

- 14 (1) Mobilize private equity and near-equity capital for
15 investment in critical waterfront infrastructure in
16 Honolulu harbor;
- 17 (2) Retain the private sector culture of focusing on rate
18 of return in the investing process;
- 19 (3) Secure and retain the services of high quality trade
20 labor in the maritime industry in Hawaii; and



1 (4) Accomplish the foregoing in a return-driven manner
2 with the goal of minimizing any adverse impact on
3 state tax revenues.

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

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

11 **"§235- Capital infrastructure tax credit.** (a) There
12 shall be allowed to each investor subject to the taxes imposed
13 by this chapter a capital infrastructure tax credit for an
14 investment in a qualified infrastructure tenant that shall be
15 deductible from the taxpayer's net income tax liability, if any,
16 imposed by this chapter for the taxable year in which the
17 capital infrastructure investment was made; provided that the
18 credit is properly claimed.

19 (b) For the purpose of this section:

20 "Capital infrastructure costs" means capital expenditures,
21 as defined in Section 263 of the Internal Revenue Code and the
22 regulations promulgated thereunder; provided that the capital



1 expenditures are paid or incurred in connection with the
2 displaced tenant's move of the tenant's current active trade or
3 business to the tenant's new location.

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

6 "Qualified infrastructure tenant" means a business that:

7 (1) Currently owns capital or property or maintains an
8 office, operations, or facilities at the former
9 Kapalama military reservation site;

10 (2) Whose principal business is ship repair, maritime, and
11 waterfront dependent, and is included under the
12 State's plan to relocate the business to piers twenty-
13 four through twenty-eight within Honolulu harbor; and

14 (3) Will be displaced and relocated by the State pursuant
15 to the Kapalama container terminal project.

16 (c) The amount of the tax credit shall be equal to
17 per cent of the capital infrastructure costs incurred by the
18 taxpayer during the taxable year up to a maximum of \$
19 in capital infrastructure costs in any taxable year.

20 (d) The credit allowed under this section shall be claimed
21 against the net income tax liability for the taxable year. If
22 the tax credit under this section exceeds the taxpayer's income



1 tax liability, the excess of the tax credit over liability may
2 be used as a credit against the taxpayer's net income tax
3 liability in subsequent years until exhausted. All claims,
4 including amended claims, for a tax credit under this section
5 shall be filed on or before the end of the twelfth month
6 following the close of the taxable year for which the credit may
7 be claimed. Failure to comply with the foregoing provision
8 shall constitute a waiver of the right to claim the credit.

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

11 (f) If at the close of any taxable year:

12 (1) The qualified infrastructure tenant no longer
13 qualifies for the tax credit established under this
14 section;

15 (2) The qualified infrastructure tenant or an interest in
16 the qualified infrastructure tenant has been sold by
17 the taxpayer making a base investment in the qualified
18 infrastructure tenant; or

19 (3) The taxpayer has withdrawn the taxpayer's base
20 investment wholly or partially from the qualified
21 infrastructure tenant,

22 the tax credit claimed under this section shall be recaptured.



1 The recapture shall be equal to per cent of the
2 amount of the total tax credit claimed under this section in the
3 preceding five taxable years. The amount of the tax credit
4 recaptured shall apply only to the investment in capital
5 infrastructure costs as defined in subsection (b). The amount
6 of the recaptured tax credit determined under this subsection
7 shall be added to the taxpayer's tax liability for the taxable
8 year in which the recapture occurs pursuant to this subsection.

9 (g) 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 claim for credit made under this
13 section. The director of taxation may adopt rules to effectuate
14 the purposes of this section pursuant to chapter 91."

15 SECTION 3. Section 235-2.45, Hawaii Revised Statutes, is
16 amended by amending subsection (d) to read as follows:

17 "(d) Section 704 of the Internal Revenue Code (with
18 respect to a partner's distributive share) shall be operative
19 for purposes of this chapter; except that section 704(b)(2)
20 shall not apply to:

- 1 (1) Allocations of the high technology business investment
- 2 tax credit allowed by section 235-110.9 for
- 3 investments made before May 1, 2009;
- 4 (2) Allocations of net operating loss pursuant to section
- 5 235-111.5;
- 6 (3) Allocations of the attractions and educational
- 7 facilities tax credit allowed by section 235-110.46;
- 8 [~~or~~]
- 9 (4) Allocations of low-income housing tax credits among
- 10 partners under section 235-110.8[-]; or
- 11 (5) Allocations of the capital infrastructure tax credit
- 12 allowed by section 235- ."

13 SECTION 4. If any provision of this Act, or the

14 application thereof to any person or circumstance, is held

15 invalid, the invalidity does not affect other provisions or

16 applications of the Act that can be given effect without the

17 invalid provision or application, and to this end the provisions

18 of this Act are severable.

19 SECTION 5. Statutory material to be repealed is bracketed

20 and stricken. New statutory material is underscored.

21



1 SECTION 6. This Act shall take effect on July 1, 2050, and
2 shall apply to taxable years beginning after December 31, 2013.



Report Title:

Capital Infrastructure Tax Credit; Kapalama Container Terminal Project; Displaced Tenants

Description:

Creates a capital infrastructure tax credit for investors who invest in qualified infrastructure tenants who are displaced by the Kapalama container terminal project. Allows allocations of the capital infrastructure tax credit to a partner under a partnership agreement even if the allocation does not have substantial economic effect. Recaptures an unspecified percentage of the capital infrastructure tax credit if the qualified infrastructure tenant does not meet certain conditions at the close of any taxable year. Effective 7/1/2050. (SD1)

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