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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. Chapter 235, Hawaii Revised Statutes, is  
2 amended by adding a new section to part VI to be appropriately  
3 designated and to read as follows:

4           "§235-           Cybersecurity and artificial intelligence  
5 business investment tax credit. (a) There shall be allowed to  
6 each taxpayer subject to the taxes imposed by this chapter a  
7 cybersecurity and artificial intelligence business investment  
8 tax credit that shall be deductible from the taxpayer's net  
9 income tax liability, if any, imposed by this chapter for the  
10 taxable year in which the investment was made and the following  
11 four years provided the credit is properly claimed. The tax  
12 credit shall be as follows:

- 13           (1) In the year the investment was made, thirty-five per  
14           cent;  
15           (2) In the first year following the year in which the  
16           investment was made, twenty-five per cent;



1       (3) In the second year following the investment, twenty  
2           per cent;

3       (4) In the third year following the investment, ten per  
4           cent; and

5       (5) In the fourth year following the investment, ten per  
6           cent;

7       of the investment made by the taxpayer in each qualified  
8       business, up to a maximum allowed credit in the year the  
9       investment was made, \$700,000; in the first year following the  
10       year in which the investment was made, \$500,000; in the second  
11       year following the year in which the investment was made,  
12       \$400,000; in the third year following the year in which the  
13       investment was made, \$200,000; and in the fourth year following  
14       the year in which the investment was made, \$200,000.

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

20       (c) If the tax credit under this section exceeds the  
21       taxpayer's income tax liability for any of the five years that



1 the credit is taken, the excess of the tax credit over liability  
 2 may be used as a credit against the taxpayer's income tax  
 3 liability in subsequent years until exhausted. Every claim,  
 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 (d) If at the close of any taxable year in the five-year  
 10 period in subsection (a):

11 (1) The business no longer qualifies as a qualified  
 12 business;

13 (2) The business or an interest in the business has been  
 14 sold by the taxpayer investing in the qualified  
 15 business; or

16 (3) The taxpayer has withdrawn the taxpayer's investment  
 17 wholly or partially from the qualified business;

18 the credit claimed under this section shall be recaptured. The  
 19 recapture shall be equal to ten per cent of the amount of the  
 20 total tax credit claimed under this section in the preceding two  
 21 taxable years. The amount of the credit recaptured shall apply



1 only to the investment in the particular qualified business that  
2 meets the requirements of paragraph (1), (2), or (3). The  
3 recapture provisions of this subsection shall not apply to a tax  
4 credit claimed for a qualified business that does not fall  
5 within the provisions of paragraph (1), (2), or (3). 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 under this subsection.

9 (e) Every taxpayer, before March 31 of each year in which  
10 an investment in a qualified business was made in the previous  
11 taxable year, shall submit a written, certified statement to the  
12 director of taxation identifying:

- 13 (1) Qualified investments, if any, expended in the  
14 previous taxable year; and
- 15 (2) The amount of tax credits claimed pursuant to this  
16 section, if any, in the previous taxable year.

17 (f) The department shall:  
18 (1) Maintain records of the names and addresses of the  
19 taxpayers claiming the credits under this section and  
20 the total amount of the qualified investment costs  
21 upon which the tax credit is based;



- 1       (2) Verify the nature and amount of the qualifying
- 2           investments;
- 3       (3) Total all qualifying and cumulative investments that
- 4           the department certifies; and
- 5       (4) Certify the amount of the tax credit for each taxable
- 6           year and cumulative amount of the tax credit.

7       Upon each determination made under this subsection, the  
8 department shall issue a certificate to the taxpayer verifying  
9 information submitted to the department, including qualifying  
10 investment amounts, the credit amount certified for each taxable  
11 year, and the cumulative amount of the tax credit during the  
12 credit period. The taxpayer shall file the certificate with the  
13 taxpayer's tax return with the department.

14       The director of taxation may assess and collect a fee to  
15 offset the costs of certifying tax credit claims under this  
16 section. All fees collected under this section shall be  
17 deposited into the tax administration special fund established  
18 under section 235-20.5.

19       (g) As used in this section:



1       "Investment tax credit allocation ratio" means, with  
2 respect to a taxpayer that has made an investment in a qualified  
3 business, the ratio of:

4       (1) The amount of the credit under this section that is,  
5 or is to be, received by or allocated to the taxpayer  
6 over the life of the investment, as a result of the  
7 investment; to

8       (2) The amount of the investment in the qualified  
9 business.

10       "Qualified business" means a business, employing or owning  
11 capital or property, or maintaining an office, in this State;  
12 provided that:

13       (1) More than fifty per cent of its total business  
14 activities are the development of cybersecurity and  
15 artificial intelligence; and provided further that the  
16 business conducts more than seventy-five per cent of  
17 these development activities in this State; or

18       (2) More than seventy-five per cent of its gross income is  
19 derived from the development of cybersecurity and  
20 artificial intelligence; and provided further that  
21 this income is received from:



1           (A) Products sold from, manufactured in, or produced  
2           in this State; or

3           (B) Services performed in this State.

4           (h) Common law principles, including the doctrine of  
5 economic substance and business purpose, shall apply to any  
6 investment. There exists a presumption that a transaction  
7 satisfies the doctrine of economic substance and business  
8 purpose to the extent that the special allocation of the  
9 cybersecurity and artificial intelligence business tax credit  
10 has an investment tax credit ratio of 1.5 or less of credit for  
11 every dollar invested.

12           Transactions for which an investment tax credit allocation  
13 ratio greater than 1.5 but not more than 2.0 of credit for every  
14 dollar invested and claimed may be reviewed by the department  
15 for applicable doctrines of economic substance and business  
16 purpose.

17           Businesses claiming a tax credit for transactions with  
18 investment tax credit allocation ratios greater than 2.0 of  
19 credit for every dollar invested shall substantiate economic  
20 merit and business purpose consistent with this section."



1 SECTION 2. Chapter 241, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§241- Cybersecurity and artificial intelligence  
5 business investment tax credit. The cybersecurity and  
6 artificial intelligence business investment tax credit provided  
7 under section 235- shall be operative for this chapter on the  
8 effective date of this Act."

9 SECTION 3. Chapter 431, article 7, part II, Hawaii Revised  
10 Statutes, is amended by adding a new section to be appropriately  
11 designated and to read as follows:

12 "§431:7- Cybersecurity and artificial intelligence  
13 business investment tax credit. The cybersecurity and  
14 artificial intelligence business investment tax credit provided  
15 under section 235- shall be operative for this chapter on the  
16 effective date of this Act."

17 SECTION 4. Section 235-20.5, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "§235-20.5 Tax administration special fund; established.

20 (a) There is established a tax administration special fund,  
21 into which shall be deposited:





- 1 (1) Fees collected under sections 235-20 [~~and~~],  
2 235-110.9[+], and 235-\_\_\_\_\_;
- 3 (2) Revenues collected by the special enforcement section  
4 pursuant to section 231-85; provided that in each  
5 fiscal year, of the total revenues collected by the  
6 special enforcement section, all revenues in excess of  
7 \$2,000,000 shall be deposited into the general fund;  
8 and
- 9 (3) Fines assessed pursuant to section 237D-4.
- 10 (b) The moneys in the fund shall be used for the following  
11 purposes:
- 12 (1) Issuing comfort letters, letter rulings, written  
13 opinions, and other guidance to taxpayers;
- 14 (2) Issuing certificates under [~~section~~] sections  
15 235-110.9[+] and 235-\_\_\_\_\_;
- 16 (3) Administering the operations of the special  
17 enforcement section;
- 18 (4) Funding support staff positions in the special  
19 enforcement section; and
- 20 (5) Developing, implementing, and providing taxpayer  
21 education programs, including tax publications."



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

3 SECTION 6. This Act shall take effect upon its approval;  
4 provided that:

5 (1) Section 1 of this Act shall apply to taxable years  
6 beginning after December 31, 2020, for investments  
7 made pursuant to section 235- , Hawaii Revised  
8 Statutes, on or after the effective date of this Act;  
9 and

10 (2) Section 4 of this Act shall apply to taxable years  
11 beginning after December 31, 2020.  
12

INTRODUCED BY: *Samuel King*  
JAN 22 2021



# H.B. NO. 454

**Report Title:**

Taxation; Technology; Cybersecurity; Artificial Intelligence

**Description:**

Establishes an income tax credit for investment in qualified businesses that develop cybersecurity and artificial intelligence.

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

