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# A BILL FOR AN ACT

RELATING TO PERFORMING ARTS BUSINESSES.

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

1           SECTION 1. The legislature finds that Hawaii's film,  
2 television, and digital media industry is fledgling, but holds  
3 much promise for the economic and cultural future of the State.  
4 It is a crucial point for the industry, as the industry is  
5 currently on the verge of growing immensely and further  
6 investments would allow it to flourish. Without the State's  
7 support, the industry and its workforce will remain in limbo and  
8 continue to have an uncertain future. As many other states and  
9 foreign countries have already done in recent years, the  
10 legislature finds that the State can play a vital role in  
11 stimulating the growth of this potential film and digital media  
12 industry, allowing it to become a self-sustaining and dependable  
13 provider of steady, highly skilled, highly paid, and twenty-  
14 first-century jobs for Hawaii's residents.

15           The purpose of this Act is to grow the performing arts  
16 businesses in our state by creating a program which allows the  
17 State to purchase high technology business investment tax  
18 credits from performing arts qualified high technology



1 businesses at a discount. Such a program would limit the  
2 exposure of state funds with respect to certain performing arts  
3 qualified high technology businesses, while at the same time  
4 enhancing the economic benefits the credits were designed to  
5 bring.

6 While performing arts qualified high technology businesses  
7 would still have the option of raising investment and maximizing  
8 credit claims, the option to transfer credits back to the State  
9 is an attractive alternative because it is direct, guaranteed,  
10 hassle-free, and a better deal for the qualified high technology  
11 businesses and the State.

12 Currently, only about ten to fifteen per cent of investment  
13 dollars are going back to the performing arts qualified high  
14 technology businesses in the form of investment tax credits,  
15 with the majority of the credits going to investors. A state  
16 buy-back program ensures that credits go back to the performing  
17 arts qualified high technology businesses they were meant to  
18 stimulate, thereby directly benefiting them. By redirecting the  
19 way credits are issued, the State can reap higher economic  
20 benefits (stimulating more productions) at likely lower costs.

21 The program would also help to redirect a higher percentage  
22 of local investment dollars toward smaller, independent



1 performing arts qualified high technology businesses and other  
2 types of qualified high technology businesses whose ability to  
3 remain in business relies greatly on investment dollars  
4 stimulated by the credit.

5 This Act also requires a production partaking of the buy-  
6 back program to contribute one half of one per cent of its  
7 aggregate qualified investments to the Hawaii television and  
8 film development special fund, for the purpose of directly  
9 funding local projects which further the development of the  
10 local film and television industry.

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

14 **"§235- Transferability of the high technology business**  
15 **investment tax credit.** (a) Any taxpayer entitled to a tax  
16 credit under section 235-110.9 based on an investment in a  
17 performing arts qualified high technology business may elect to  
18 treat the credit as earned by the performing arts qualified high  
19 technology business. The election shall be made for all of the  
20 credit earned over the five-year period provided in section 235-  
21 110.9. The election shall be filed with the tax return for the  
22 performing arts qualified high technology business and the



1 taxpayer's tax return for the taxable year that the taxpayer  
2 made the investment.

3 (b) Any performing arts qualified high technology business  
4 for which an election under subsection (a) has been made may  
5 transfer the tax credit provided in section 235-110.9 to the  
6 department of taxation for twenty per cent of the face value of  
7 the credit earned and paid over five years pursuant to the pay-  
8 out schedule established in section 235-110.9; provided that  
9 the maximum allowed credits per taxpayer set forth by section  
10 235-110.9 shall not apply to credits transferred pursuant to  
11 this section.

12 (c) To qualify to transfer the tax credit to the  
13 department of taxation as provided in subsection (b):

14 (1) All taxpayers who have made an investment in the  
15 performing arts qualified high technology business  
16 during the taxable year of the qualified high  
17 technology business shall elect to treat the credit as  
18 earned by the performing arts qualified high  
19 technology business; and

20 (2) The performing arts qualified high technology business  
21 shall transfer all of the credit that it is treated as  
22 earning to the department of taxation.



1       (d) Any performing arts qualified high technology business  
2 or related entity that has transferred any credit to the  
3 department of taxation pursuant to subsection (b) in a given  
4 taxable year shall also sell or waive the motion picture and  
5 film production income tax credit set forth in section 235-17  
6 and the capital goods excise tax credit set forth in section  
7 235-110.7 in that same taxable year in the manner provided in  
8 subsection (b).

9       (e) Prior to making an election under subsection (a), the  
10 performing arts qualified high technology business shall apply  
11 to the director of taxation for approval of the election. The  
12 director of taxation shall approve all qualifying elections to  
13 transfer credits under this section in the order that the  
14 requests for approval are received by the director of taxation;  
15 provided that the director of taxation shall only approve  
16 qualifying elections to transfer credits under this section for  
17 the first \$25,000,000 in the aggregate paid to all performing  
18 arts qualified high technology businesses making elections under  
19 this section in any year. In any year in which the department  
20 of taxation approves the transfer of less than \$25,000,000 in  
21 the aggregate to all performing arts qualified high technology



1 businesses, the excess revenue may be carried over and applied  
2 to subsequent years.

3 (f) This section shall not apply to any investments that  
4 are part of a transaction, or series of transactions, structured  
5 to avoid the purposes of this section so that a production could  
6 use both this section, and section 235-110.7, 235-110.9, or 235-  
7 17.

8 (g) To qualify to transfer tax credits to the department  
9 of taxation pursuant to subsection (b), a performing arts  
10 qualified high technology business shall contribute one half of  
11 one per cent of its aggregate qualified investments to the  
12 Hawaii television and film development special fund set forth in  
13 section 201-113.

14 (h) Every performing arts qualified high technology  
15 business, on or before March 31 of each year in which credits  
16 are to be transferred for the previous taxable year, shall  
17 submit the following to the department of business, economic  
18 development, and tourism:

19 (1) A check for the contribution to the Hawaii television  
20 and film development special fund, equal to one half  
21 of one per cent of its aggregate qualified investments



1           in the previous taxable year, pursuant to subsection  
2           (g);

3           (2) The total amount of qualified research costs per  
4           project per taxable year; and

5           (3) The number of total hires versus the number of local  
6           hires by category, such as department, and by county,  
7           per project, per taxable year.

8           (i) For purposes of this section:

9           "Aggregate qualified investments" means qualified  
10          investments earned over the five-year period in section 235-  
11          110.9.

12          "Performing arts products" means the same as defined in  
13          section 235-7.3.

14          "Performing arts qualified high technology business" means  
15          a qualified high technology business whose "qualified research"  
16          consists solely of "performing arts products."

17          "Qualified high technology business" means the same as  
18          defined in section 235-110.9.

19          "Qualified investment" means investments that qualify for  
20          tax credits under section 235-110.9.

21          "Qualified research" means the same as defined in section  
22          235-7.3."



- 1 SECTION 3. New statutory material is underscored.
- 2 SECTION 4. This Act shall take effect on July 1, 2006.





**Report Title:**

Taxes; investment tax credits

**Description:**

Establishes a program which allows the state to buy back tax credits from qualified high technology businesses (QHTB) at a deeply discounted rate of 20 percent of the face value of the credits distributed over 5 years. Requires performing arts QHTB that transfer tax credits back to the State to contribute 0.5 percent of their aggregate qualified investments per year to the Hawaii television and film development special fund. (HB2421 HD1)

