
A BILL FOR AN ACT

RELATING TO ECONOMIC DEVELOPMENT.

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

1 PART I

2 SECTION 1. The legislature finds that, during this robust
3 economy, long-range planning is essential to ensure that
4 Hawaii's economy is diversified, provides high-paying jobs to
5 retain the best and brightest of its children, and can sustain
6 growth into the future. The legislature finds that emerging
7 Hawaii-based entrepreneurs in the fields of high technology,
8 life sciences, and renewable energy represent the future for
9 Hawaii. These types of enterprises are poised at the earliest
10 stages of product development and need public financial support
11 to move to the next level on the road to commercial success.

12 The purpose of this Act is to aggressively jump-start a new
13 economy in Hawaii based upon high technology, life sciences, and
14 renewable energy by establishing funds within the high
15 technology development corporation to invest in these
16 entrepreneurial ventures and by streamlining the State's high
17 technology development bureaucracy by combining the high

1 technology development corporation and the Hawaii strategic
2 development corporation into one entity.

3 PART II

4 SECTION 2. Chapter 206M, Hawaii Revised Statutes, is
5 amended by adding three new sections to be appropriately
6 designated and to read as follows:

7 **"§206M-A Innovations research and development grant**

8 **program.** (a) The development corporation shall establish a
9 research and development grant program to provide:

10 (1) Startup funding for major research and development
11 initiatives;

12 (2) Seed capital to develop a commercially viable new idea
13 for a product or service in the fields of high
14 technology, life sciences, or renewable energy; and

15 (3) Technical business support to projects funded by the
16 grant program.

17 (b) Grants shall be awarded to Hawaii-based research
18 institutions and enterprises through a competitive process and
19 reviewed by technical advisory committees with subject matter
20 expertise.

21 (c) The criteria for the award of grants for major
22 research and development initiatives shall include:

- 1 (1) Commercialization potential of research;
- 2 (2) Industry participation;
- 3 (3) Ability to leverage non-state funds for on-going
- 4 operations; and
- 5 (4) Overall business and scientific merit based upon
- 6 expert review.

7 (d) The criteria for the award of grants for seed funding
8 of product or service ideas shall include:

- 9 (1) Market need for the product or service;
- 10 (2) Commercial viability;
- 11 (3) Development timeline;
- 12 (4) Ability to receive matching funding from other
- 13 sources;
- 14 (5) Potential to return within seven years revenue or
- 15 profit sharing, royalties, license fees, or other
- 16 income equal to three times the amount of the initial
- 17 grant; and
- 18 (6) Potential to provide high-paying jobs for residents.

19 (e) The technical advisory committees shall make
20 recommendations to the development corporation on grant awards,
21 which shall be approved by a majority of the quorum of the board
22 of directors of the development corporation or rejected by a



1 two-thirds majority of the board. Startup funding for major
2 research and development initiatives shall not exceed \$3,000,000
3 per grant and may be allocated over two or more years. Seed
4 capital grants shall not exceed \$250,000 for a project. No
5 additional funding shall be awarded except upon demonstrated
6 progress toward product development and commercial success.

7 **§206M-B Cooperation with the development corporation by**
8 **state agencies.** Every state agency may render services to the
9 development corporation upon request of the development
10 corporation.

11 **§206M-C Annual audit.** The books and records of the
12 development corporation shall be subject to an annual audit by
13 an independent auditor."

14 SECTION 3. Section 206M-1, Hawaii Revised Statutes, is
15 amended by adding four new definitions to be appropriately
16 inserted and to read as follows:

17 "Life sciences" means biology, cancer research, community
18 healthcare, ocean sciences, agriculture, pharmacology,
19 biotechnology, medical technology, or related fields.

20 "Renewable energy" means new and emerging technologies to
21 produce electrical energy, without the use of fossil fuels, by
22 wind, solar energy, hydropower, landfill gas, waste to energy,

1 geothermal resources, ocean thermal energy conversion, wave
2 energy, biomass, including municipal solid waste, biofuels, or
3 fuels derived from organic sources, hydrogen fuels derived from
4 renewable energy, or fuel cells where the fuel is derived from
5 renewable sources.

6 "Seed capital" means:

7 (1) Financing provided for the earliest stage of business
8 development that enables a project or idea to develop
9 into a business;

10 (2) Equity or loan capital provided for a new or existing
11 business undertaking;

12 (3) Funding to develop a concept or product idea to the
13 state at which its practical and commercial viability
14 can be assessed; and

15 (4) Funds invested in new and young companies that have
16 not yet fully established commercial operations.

17 "Venture capital investment" means any of the following
18 investments in a business:

19 (1) Common or preferred stock and equity securities
20 without a repurchase requirement for at least five
21 years;

22 (2) A right to purchase stock or equity securities;



- 1 (3) Any debenture or loan, whether or not convertible or
2 having stock purchase rights, which are subordinated,
3 together with security interests against the assets of
4 the borrower, by their terms to all borrowings of the
5 borrower from other institutional lenders, and that is
6 for a term of not less than three years, and that has
7 no part amortized during the first three years; or
8 (4) General or limited partnership interests."

9 SECTION 4. Section 206M-1, Hawaii Revised Statutes, is
10 amended by amending the definition of "high technology" to read
11 as follows:

12 ""High technology" means industries that are technology-
13 intensive, including but not limited to electronics,
14 biotechnology, software, computers, telecommunications, digital
15 media, sensor and optic technology, information technologies,
16 and other computer-related technologies."

17 SECTION 5. Section 206M-2, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§206M-2 Establishment of the high technology development**
20 **corporation; purpose.** (a) There is established the high
21 technology development corporation, which shall be a public body
22 corporate and politic and an instrumentality and agency of the



1 State. The development corporation shall be placed within the
2 department of business, economic development, and tourism for
3 administrative purposes, pursuant to section 26-35. The purpose
4 of the development corporation shall be to facilitate the growth
5 and development of the commercial high technology industry in
6 Hawaii. Its duties shall include, but not be limited to:

- 7 (1) Developing and encouraging industrial parks as high
8 technology innovation centers and developing or
9 assisting with the development of projects within or
10 outside of industrial parks, including participating
11 with the private sector in such development;
- 12 (2) Providing financial and other support and services to
13 Hawaii-based high technology companies;
- 14 (3) Collecting and analyzing information on the state of
15 commercial high technology activity in Hawaii;
- 16 (4) Promoting and marketing Hawaii as a site for
17 commercial high technology activity; and
- 18 (5) Providing advice on policy and planning for
19 technology-based economic development.

20 (b) The governing body of the development corporation
21 shall consist of a board of directors having [~~eleven~~] fifteen
22 voting members. [~~Seven~~] Eleven of the members shall be



1 appointed by the governor for staggered terms pursuant to
2 section 26-34. [~~Six of the~~] Of the eleven members appointed by
3 the governor, three shall be appointed from a list of nominees
4 submitted by the president of the senate and three shall be
5 appointed from a list of nominees submitted by the speaker of
6 the house of representatives. The appointed members shall be
7 from the general public and selected on the basis of their
8 knowledge, interest, and proven expertise in, but not limited
9 to, one or more of the following fields: finance, commerce and
10 trade, corporate management, marketing, economics, engineering,
11 [~~and~~] telecommunications, [~~and other high technology fields.~~
12 ~~The other appointed member shall be selected from the faculty of~~
13 ~~the University of Hawaii.~~] high technology, life sciences, or
14 renewable energy technologies. All appointed members of the
15 board shall continue in office until their respective successors
16 have been appointed. The director of business, economic
17 development, and tourism, the director of finance, [~~an appointed~~
18 ~~member from the board of the Hawaii strategic development~~
19 ~~corporation,~~] the president of the University of Hawaii, and an
20 appointed member from the board of the natural energy laboratory
21 of Hawaii authority, or their designated representatives, shall
22 serve as ex officio voting members of the board. [~~The director~~



1 ~~of business, economic development, and tourism shall serve as~~
2 ~~the chairperson until such time as a chairperson is elected by~~
3 ~~the board from the membership.] The board shall elect [such]~~
4 the chairperson of the board and other officers as it deems
5 necessary.

6 (c) A board member shall not participate in any
7 development corporation decision to invest in, purchase from,
8 sell to, borrow from, loan to, contract with, or otherwise deal
9 with any person with whom or entity in which the board member
10 has a substantial financial interest.

11 ~~(+e)~~ (d) The members of the board appointed under
12 subsection (b) shall serve without compensation, but may be
13 reimbursed for expenses, including travel expenses, incurred in
14 the performance of their duties.

15 ~~(+d)~~ (e) The board shall appoint a chief executive
16 officer, who shall serve at the pleasure of the board and shall
17 be exempt from chapter 76. The board shall set the salary and
18 duties of the executive officer.

19 ~~(+e)~~ (f) The board shall appoint a management advisory
20 committee for each industrial park and related project or
21 projects governed by the board. Each committee shall have five
22 members, who shall serve without compensation but may be



1 reimbursed for expenses incurred in the performance of their
2 duties. The members shall be drawn from fields of activity
3 related to each industrial park and related project or projects.

4 (g) A majority of all members of the board shall
5 constitute a quorum to do business. Notwithstanding section
6 92-15, and except as provided in sections 206M-I and 206M-M, the
7 board's decisions shall be made based upon majority vote of the
8 quorum, except that decisions to reject recommendations from
9 technical advisory committees relating to research and
10 development grants pursuant to section 206M-A shall be made
11 based upon a two-thirds majority of the board."

12 SECTION 6. Section 206M-15.6, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "~~{}~~§206M-15.6~~{}~~ ~~Hawaii~~ High technology ~~[loan revolving]~~
15 research and grant special fund. (a) There is established the
16 ~~[Hawaii]~~ high technology ~~[loan revolving]~~ research and grant
17 special fund for the purpose of investing in technology
18 development in Hawaii~~[-]~~ through the innovations research and
19 development grant program established pursuant to section
20 206M-A. The following shall be deposited into the ~~[Hawaii]~~ high
21 technology ~~[loan revolving]~~ research and grant special fund:

22 (1) Appropriations from the legislature;



- 1 ~~[(2) Moneys received as repayments of loans;~~
- 2 ~~+(3)]~~ (2) Investment earnings; and
- 3 ~~[(4) Royalties;~~
- 4 ~~+(5) Premiums, or fees or equity charged by the~~
- 5 ~~corporation, or otherwise received by the corporation;~~
- 6 ~~and~~
- 7 ~~+(6) Loans that are convertible to equity;]~~
- 8 (3) Any gifts, donations, or other sources of income that
- 9 the special fund may receive;

10 provided that the total amount of moneys in the fund shall not
 11 exceed [~~\$2,000,000~~] \$ _____ at the end of any fiscal year.

12 (b) Subject to legislative appropriation, the development
 13 corporation may expend moneys in the fund for the innovations
 14 research and development grant program pursuant to section 206M-
 15 A, including costs to administer the program; provided that the
 16 expenditures shall not exceed \$ _____ in any fiscal year."

17 SECTION 7. (a) The high technology development
 18 corporation shall develop a master plan for the direction of
 19 high technology in the State, which shall include:

- 20 (1) A list of goals established for the high technology
- 21 sector in the State;
- 22 (2) A plan to reach the established goals; and



1 (3) A timeline for implementation and completion.

2 (b) The high technology development corporation shall
3 submit the master plan and a report, including proposed
4 legislation, to the legislature and the governor, not later than
5 twenty days prior to the convening of regular session of 2007,
6 and shall issue an updated report every December thereafter that
7 reassesses the master plan.

8 SECTION 8. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$, or so
10 much thereof as may be necessary for fiscal year 2006-2007 to be
11 deposited into the Hawaii technology loan revolving fund.

12 SECTION 9. There is appropriated out of the Hawaii
13 technology loan revolving fund the sum of \$, or so
14 much thereof as may be necessary for fiscal year 2006-2007 to be
15 used for the purposes of this part.

16 The sum appropriated shall be expended by the high
17 technology development corporation for the purposes of this
18 part.

19 PART III

20 SECTION 10. Chapter 206M, Hawaii Revised Statutes, is
21 amended by adding a new part to be appropriately designated and
22 to read as follows:

1 "PART . STRATEGIC DEVELOPMENT

2 A. General Provisions

3 §206M-D Definitions. As used in this part:

4 "Economic development project" means an endeavor related to
5 industrial, commercial, or advanced technology-based
6 agricultural enterprise. Economic development project shall not
7 include that portion of an endeavor devoted to the construction
8 of housing.

9 "Enterprise" means a person with a place of business in
10 Hawaii that is, or proposes to be, engaged in business in
11 Hawaii, provided that the endeavor shall not be devoted to the
12 sale of goods at retail, construction of housing, or tourism-
13 related services.

14 "Minority-owned businesses" means businesses at least fifty
15 per cent owned, controlled, and managed by socially or
16 economically disadvantaged persons.

17 "Person" means a sole proprietorship, partnership, joint
18 venture, corporation, or other association of persons organized
19 for commercial or industrial purposes.

20 "Professional investor" means any bank, bank holding
21 company, savings institution, trust company, insurance company,
22 investment company registered under the Federal Investment



1 Company Act of 1940, financial services loan company, pension or
2 profit-sharing trust or other financial institution or
3 institutional buyer, licensee under the Federal Small Business
4 Investment Act of 1958, or any person, partnership, or other
5 entity of whose resources a substantial amount is dedicated to
6 investing in securities or debt instruments and whose net worth
7 exceeds \$250,000.

8 **§206M-E High technology development corporation; purpose**
9 **under this part.** (a) The purpose of the development
10 corporation under this part shall be to encourage economic
11 development and diversification in Hawaii through innovative
12 actions in cooperation with private enterprises. The
13 development corporation shall establish programs to stimulate
14 private capital investment in Hawaii toward investments that
15 promote the welfare of citizens in this State, economic growth,
16 employment, and economic diversification.

17 (b) The development corporation may use public funds to
18 provide incentives to private investment activity, by co-
19 investing public funds in private financial organizations to
20 increase the impact of the public investment, while utilizing
21 the investment acumen of the private sector, and by using public
22 funds to reduce the risks of private investments. The



1 development corporation shall have the flexibility to provide
2 various types of financial assistance. When providing financial
3 assistance, the development corporation shall make provision for
4 the recovery of its expenditures, to the extent practicable.

5 **§206M-F Powers of the development corporation.** (a) In
6 addition to the powers authorized under section 206M-3, the
7 development corporation shall have all of the powers necessary
8 to carry out its purposes that shall include but not be limited
9 to the power to:

- 10 (1) Finance, conduct, or cooperate in financing or
11 conducting technological, business, financial, or
12 other investigations that are related to or likely to
13 lead to business and economic development by making
14 and entering into contracts and other appropriate
15 arrangements, including the provision of loans, start-
16 up and expansion capital, and other forms of
17 assistance;
- 18 (2) Solicit, study, and assist in the preparation of
19 business plans and proposals;
- 20 (3) Provide advice and technical and marketing assistance,
21 support, and promotion to enterprises in which
22 investments have been made;



- 1 (4) Coordinate the development corporation's programs with
2 any education and training program;
- 3 (5) Carry out specialized programs designed to encourage
4 the development of new products, businesses, and
5 markets;
- 6 (6) Prepare, publish, and distribute technical studies,
7 reports, bulletins, and other materials as it deems
8 appropriate, subject only to the maintenance and
9 respect for confidentiality of client proprietary
10 information;
- 11 (7) Organize, conduct, sponsor, or cooperate in and assist
12 in the conduct of conferences, demonstrations, and
13 studies relating to the stimulation and formation of
14 businesses and to fulfilling the objectives and
15 purposes of chapter 211G;
- 16 (8) Provide and pay for advisory services and technical,
17 managerial, and marketing assistance, support, and
18 promotion as may be necessary or desirable to carry
19 out the purposes of this part;
- 20 (9) Acquire, hold, and sell qualified securities;
- 21 (10) Consent, subject to the provisions of any contract
22 with noteholders or bondholders, whenever the



1 corporation deems it necessary or desirable in the
2 fulfillment of the purposes of this part, to the
3 modification, with respect to rate of interest, time
4 of payment of any installment of principal or
5 interest, or any other terms, of any contract or
6 agreement of any kind to which the development
7 corporation is a party;

8 (11) Accept donations, grants, bequests, and devises of
9 money, property, service, or other things of value
10 that may be received from the United States or any
11 agency thereof, any governmental agency, or any public
12 or private institution, person, firm, or corporation,
13 to be held, used, or applied for any or all of the
14 purposes specified in this part. Receipt of each
15 donation or grant shall be detailed in the annual
16 report of the development corporation. The report
17 shall include the identity of the donor or lender, the
18 nature of the transaction, and any conditions
19 attaching thereto;

20 (12) Invest any funds held in reserves or sinking funds, or
21 any funds not required for immediate disbursement, in



1 these investments as may be lawful for fiduciaries in
2 the State;

3 (13) Acquire real property, or an interest therein, by
4 purchase or foreclosure, where that acquisition is
5 necessary or appropriate to protect or secure any
6 investment or loan in which the development
7 corporation has an interest, and sell, transfer, and
8 convey the property to a buyer and, if the sale,
9 transfer, or conveyance cannot be effected with
10 reasonable promptness or at a reasonable price, to
11 lease the property to a tenant;

12 (14) Acquire, own, hold, dispose of, and encumber personal
13 property of any nature, or any interest therein;

14 (15) Enter into agreements or other transactions with any
15 federal, state, or county agency;

16 (16) Make contracts and execute all instruments necessary
17 or convenient for the carrying on of its business;

18 (17) Appear in its own behalf before state, county, or
19 federal agencies;

20 (18) Procure insurance as may be necessary;

21 (19) Appoint officers, including a chief investment
22 officer, employees, consultants, agents, and advisors,



1 who shall not be subject to chapter 76, and prescribe
2 their duties and fix compensation within the
3 limitations provided by law;

4 (20) Appoint advisory committees as deemed necessary; and

5 (21) Exercise any other powers of a corporation organized
6 under the laws of the State.

7 (b) To avoid any conflicts of interest, the development
8 corporation shall keep its venture capital investment operations
9 separate from other operations of the development corporation.

10 (c) The development corporation shall not promise to
11 answer for the debts of any other person.

12 **§206M-G High technology investment revolving fund. (a)**

13 There is established the high technology investment revolving
14 fund. The following moneys shall be deposited into the high
15 technology investment revolving fund and shall not be considered
16 part of the general fund:

17 (1) All moneys appropriated by the legislature;

18 (2) Moneys received as repayments of loans;

19 (3) Moneys earned on investments;

20 (4) Moneys received;

21 (A) Pursuant to a venture agreement;

22 (B) As royalties;



1 (C) As premiums or fees charged by the corporation;
 2 or
 3 (D) Otherwise received by the development
 4 corporation.

5 (b) Moneys in the high technology investment revolving
 6 fund may be used for investments in Hawaii-based businesses,
 7 including high technology, life sciences research, and renewable
 8 energy and in venture capital investments; provided that the
 9 expenditures shall not exceed \$ in any fiscal year.

10 **§206M-H Cancer detection development revolving fund;**

11 **establishment.** (a) There is established the cancer detection
 12 development revolving fund to be administered by the development
 13 corporation to assist enterprises that develop healthcare and
 14 biomedical technology to detect cancer, including cervical
 15 cancer, in its early stages.

16 (b) The cancer detection development revolving fund shall
 17 not be considered part of the general fund and shall consist of
 18 moneys:

- 19 (1) Appropriated by the legislature;
- 20 (2) Received as repayments of loans;
- 21 (3) Earned on investments;
- 22 (4) Received pursuant to a venture agreement;



1 (5) Received as royalties; and

2 (6) Received as premiums or fees charged by the
3 development corporation or otherwise received by the
4 development corporation.

5 **§206M-I Actions of the development corporation;**

6 **guidelines.** (a) The development corporation shall take actions
7 necessary to achieve the purposes and objectives of this part.

8 The development corporation shall evaluate all programs after
9 three years to determine their effectiveness. The development
10 corporation shall establish rules to ensure equal opportunity to
11 minority-owned businesses, and shall encourage the development
12 of minority-owned businesses. The development corporation shall
13 support and encourage participation by Hawaii companies in
14 federal grant programs, such as the Small Business Innovation
15 Research Program.

16 (b) Financial participation shall be made on the condition
17 that the recipient of the assistance shall utilize the money to
18 assist economic development projects within the State that have
19 potential for creating new jobs or retaining current jobs within
20 the State.

21 (c) Financial participation by the development corporation
22 in private financial investment funds shall be made with the

1 provision that the private fund shall make investments in Hawaii
2 in amounts at least equal to the amount of state participation.

3 (d) The development corporation shall not make direct
4 investments in individual businesses. The development
5 corporation shall not acquire securities to an extent that would
6 provide the development corporation effective voting control of
7 any enterprise, after giving effect to the conversion of all
8 outstanding convertible securities of the enterprise.

9 **§206M-J Business and industry evaluation and priorities**
10 **for job opportunity and economic development.** The development
11 corporation shall develop procedures to set priorities as to
12 which types of businesses and industries are most likely to
13 provide significant opportunities for economic development and
14 diversification in the State, consistent with the purposes of
15 this part. This evaluation shall take into account the
16 guidelines provided by the state plan for economic development.
17 Based upon these findings, the development corporation shall
18 establish targets by which the operations and programs of the
19 development corporation shall be guided.

20 **§206M-K Requests for assistance from the development**
21 **corporation; procedure.** (a) The board shall approve or
22 disapprove requests for assistance within ninety days of



1 receiving a written application. Upon written request by an
2 applicant, the board may reconsider its denial of an application
3 for assistance or may waive the ninety-day deadline for
4 approving or disapproving an application.

5 (b) Any person who submits any statement, report,
6 application, or other document to the development corporation
7 that is known to the person to be false in any material respect
8 shall be guilty of a class C felony.

9 (c) The development corporation may condition any
10 assistance of any type by placing restrictions on the recipient
11 in regard to the recipient's assets or indebtedness or in any
12 other manner deemed appropriate by the development corporation.
13 A recipient who accepts assistance from the development
14 corporation shall be deemed to agree to be bound by any
15 conditions or restrictions imposed by the development
16 corporation.

17 **§206M-L Private sector financial support.** Significant
18 private sector financial support shall be associated with any
19 economic development project for which the development
20 corporation provides assistance.

21 **§206M-M Limitations on debt owed to the development**
22 **corporation.** Not more than \$5,000,000 in financial assistance,



1 excluding rights and royalties under a venture capital
 2 agreement, shall be provided to any one enterprise at any time.
 3 The direct investments of the corporation shall not exceed five
 4 per cent of the assets of the development corporation, excluding
 5 rights and royalties under a venture capital agreement; provided
 6 that by a two-thirds vote of the board, this amount may be
 7 increased to a limit of twenty-five per cent of the total assets
 8 of the development corporation.

9 **§206M-N Annual report.** Notwithstanding section 206M-3.5,
 10 the development corporation shall submit a complete and detailed
 11 report of the development corporation's specific activities
 12 under this part to the legislature. The report shall be
 13 submitted not later than twenty days before the convening of the
 14 regular session of 2007, and every year thereafter.

15 **§206M-O Construction of this part.** This part shall be
 16 liberally construed to effect its purposes.

17 B. Program for Seed Capital Assistance

18 **§206M-P Establishment.** The development corporation shall
 19 establish a program for seed capital assistance.

20 **§206M-Q Seed capital investments.** Subject to this part,
 21 the development corporation may invest in:

- 1 (1) A certified development company under sections 501 to
2 503 of the Small Business Investment Act of 1958, 15
3 U.S.C. 695 to 697, and the regulations adopted under
4 those sections;
- 5 (2) A small business investment company under the Small
6 Business Investment Act, 15 U.S.C. 631 to 634, 636 to
7 649, and the regulations adopted under those sections;
- 8 (3) A minority enterprise small business investment
9 corporation or equivalent venture capital corporation;
- 10 (4) A similar entity that may leverage its capital under a
11 federal program; or
- 12 (5) A seed capital fund or partnership.

13 **§206M-R Purposes and terms of investments. (a)**

14 Investments may be used for any purpose consistent with the
15 purposes and objectives of this part, including but not limited
16 to:

- 17 (1) Developing a working prototype;
- 18 (2) Preparing a development plan;
- 19 (3) Performing an initial market analysis;
- 20 (4) Organizing a management team; and
- 21 (5) Any other purpose reasonably related to an economic
22 development project.



1 (b) Investments may be made on terms and conditions as the
2 development corporation determines to be reasonable,
3 appropriate, and consistent with the purposes and objectives of
4 this part.

5 C. Program for Venture Capital Assistance

6 **§206M-S Establishment.** The development corporation shall
7 establish a program for venture capital.

8 **§206M-T Venture capital investments.** Subject to this
9 part, the development corporation may invest in:

- 10 (1) A certified development company under sections 501 to
11 503 of the Small Business Investment Act of 1958, 15
12 U.S.C. 695 to 697, and the regulations adopted under
13 those sections;
- 14 (2) A small business investment company under the Small
15 Business Investment Act, 15 U.S.C. 631 to 634, 636 to
16 649, and the regulations adopted under those sections;
- 17 (3) A minority enterprise small business investment
18 corporation or equivalent venture capital corporation;
- 19 (4) A similar entity that may leverage its capital under a
20 federal program; or
- 21 (5) A venture capital fund or partnership.



1 **§206M-U Purposes and terms of investments.** (a)

2 Investments may be used for any purpose consistent with the
3 purposes and objectives of this part.

4 (b) Investments may be made on terms and conditions as the
5 development corporation determines to be reasonable,
6 appropriate, and consistent with the purposes and objectives of
7 this part.

8 D. Program for Capital Access

9 **§206M-V Establishment.** The development corporation shall
10 establish a program for capital access.

11 **§206M-W Financial assistance.** The development

12 corporation, through the program for capital access, may:

13 (1) Procure insurance, a guarantee, or a letter of credit
14 from any source for all or a part of a loan,
15 debenture, or lease of others, public or private, or a
16 revenue bond issue of the State or other entity or
17 authority authorized by law to issue revenue bonds;
18 and

19 (2) Procure insurance, a guarantee, or a letter of credit
20 for either a single loan, debenture, or lease or for
21 any combination of loans, debentures, or leases or a

1 single revenue bond issue or for all or a part of any
2 combination of revenue bond issues.

3 **§206M-X Purposes and priorities required in the procuring**
4 **of insurance, loan guarantees, or letters of credit. (a)**

5 Insurance, guarantees, or letters of credit procured pursuant to
6 section 206M-U shall be procured only for economic development
7 projects within the State that are consistent with the purposes
8 and objectives of this part.

9 (b) The development corporation shall give paramount
10 priority in procuring insurance, guarantees, and letters of
11 credit to economic development projects that have the greatest
12 potential for creating new jobs or retaining current jobs within
13 the State.

14 **§206M-Y Conditions for procuring of insurance, loan**
15 **guarantees, or letters of credit. (a)** Insurance, guarantees,
16 or letters of credit shall not be procured pursuant to section
17 206M-U unless the development corporation is assured that the
18 loans, debentures, or leases insured, or guaranteed, or for
19 which letters of credit are issued, shall be used to assist
20 economic development projects that also have significant private
21 sector financial support.



1 (b) Insurance, guarantees, or letters of credit may be
2 procured on terms and conditions as the development corporation,
3 in its sole discretion, determines to be reasonable,
4 appropriate, and consistent with the purposes and objectives of
5 this part.

6 (c) The development corporation shall charge the lender or
7 the borrower, or both, a fee or premium for procuring loan,
8 debenture, or lease insurance, guarantee, or a letter of credit.
9 Rules for premiums or fees shall be established by the
10 development corporation pursuant to chapter 91.

11 **§206M-Z Program for capital access participation**

12 **agreements.** The development corporation shall enter into
13 agreements with lenders for participation in the program for
14 capital access that shall include but not be limited to:

15 (1) Authorization for the lender to determine, collect,
16 and transmit to the development corporation a fee or
17 premium charge within a specified range established
18 consistent with the purposes and objectives of the
19 development corporation;

20 (2) Specification of whether the premium charge shall be
21 paid by the lender, the borrower, the development



1 corporation, or by a combination thereof in specified
2 proportions;

3 (3) The procedure by which a lender may make a claim upon
4 the development corporation upon default by the
5 borrower and the conditions under which a claim may be
6 made; and

7 (4) The maximum amount of claims a lender may make upon
8 the development corporation, which amount may be equal
9 to or less than the proportion of the total premiums
10 contributed by the development corporation.

11 **§206M-AA Establishment of special funds to secure loan**
12 **insurance obligations; source of funds.** The development
13 corporation may establish a special fund or funds for capital
14 access into which fees or premiums collected by the development
15 corporation are deposited.

16 E. Hawaii Technology Investment Program

17 **§206M-BB Definitions.** As used in this subpart:

18 "Biotechnology" means fundamental knowledge regarding the
19 function of biological systems from the macro level to the
20 molecular subatomic levels that has application to development
21 including the development of novel products, services,
22 technologies, and subtechnologies from insights gained from



1 research advances that add to that body of fundamental
2 knowledge.

3 "Computer data" means any representation of information,
4 knowledge, facts, concepts, or instructions that is being
5 prepared or has been prepared and is intended to be processed,
6 is being processed, or has been processed in a computer or
7 computer network.

8 "Computer program" means an ordered set of computer data
9 representing coded instructions or statements that, when
10 executed by a computer, causes the computer to perform one or
11 more computer operations.

12 "Computer software" means computer data, a computer
13 program, or a set of computer programs, procedures, or
14 associated documentation concerned with the operation and
15 function of a computer system and includes both systems and
16 application programs and subdivisions, such as assemblers,
17 compilers, routines, generators, and utility programs.

18 "Financial organization" means an organization authorized
19 to do business in Hawaii that is:

- 20 (1) Certified as an insurer by the insurance commissioner;
21 (2) Licensed or chartered as a financial institution by
22 the commissioner of financial institutions;



- 1 (3) Chartered by an agency of the federal government;
- 2 (4) Subject to the jurisdiction and regulation of the
- 3 federal Securities and Exchange Commission; or
- 4 (5) Any other entity otherwise authorized to do business
- 5 in the State that meets the requirements of this
- 6 subpart.

7 "Program" means the Hawaii technology investment program.

8 "Program manager means a financial organization selected by
9 the development corporation to manage the program.

10 "Qualified high technology business":

11 (1) Means a business, employing or owning capital or
12 property, or maintaining an office, in this State
13 that:

14 (A) Conducts more than fifty per cent of its
15 activities in performing qualified research in
16 this State; or

17 (B) Receives more than fifty per cent of its gross
18 income derived from qualified research; provided
19 that the income is received from:

20 (i) Products sold from, manufactured in, or
21 produced in the State; or

22 (ii) Services performed in this State.



- 1 (2) Does not include:
- 2 (A) Any trade or business involving the performance
- 3 of services in the field of law, architecture,
- 4 accounting, actuarial science, consulting,
- 5 athletics, financial services, or brokerage
- 6 services;
- 7 (B) Any banking, insurance, financing, leasing,
- 8 rental, investing, or similar business; any
- 9 farming business, including the business of
- 10 raising or harvesting trees; any business
- 11 involving the production or extraction of
- 12 products of a character with respect to which a
- 13 deduction is allowable under section 611 (with
- 14 respect to allowance of deduction for depletion),
- 15 613 (with respect to basis for percentage
- 16 depletion), or 613A (with respect to limitation
- 17 on percentage depleting in cases of oil and gas
- 18 wells) of the Internal Revenue Code;
- 19 (C) Any business operating a hotel, motel,
- 20 restaurant, or similar business; and
- 21 (D) Any trade or business involving a hospital, a
- 22 private office of a licensed health care



1 professional, a group practice of licensed health
2 care professionals, or a nursing home.

3 "Qualified research" means:

- 4 (1) The same as in section 41(d) of the Internal Revenue
5 Code; or
- 6 (2) The development and design of computer software using
7 fourth generation or higher software development tools
8 or native programming languages to design and
9 construct unique and specific code to create
10 applications and design databases for sale or license;
11 or
- 12 (3) Biotechnology;

13 provided that more than fifty per cent of the business'
14 activities are qualified research.

15 "Venture capital investment" means any of the following
16 investments in a qualified high technology business:

- 17 (1) Common or preferred stock and equity securities
18 without a repurchase requirement for at least five
19 years;
- 20 (2) A right to purchase stock or equity securities;
- 21 (3) Any debenture or loan, whether or not convertible or
22 having stock purchase rights, which:



1 (A) Is subordinated, together with security interests
2 against the assets of the borrower, by their
3 terms to all borrowings of the borrower from
4 other institutional lenders;

5 (B) Is for a term of not less than three years; and

6 (C) Has no part amortized during the first three
7 years;

8 (4) General or limited partnership interests; and

9 (5) Membership interests in limited liability companies.

10 **§206M-CC Formation of Hawaii technology investment**

11 **program.** (a) The development corporation shall establish the
12 Hawaii technology investment program for the purpose of allowing
13 individual investors to contribute to the program to invest
14 venture capital in businesses in Hawaii.

15 (b) The development corporation may implement the Hawaii
16 technology investment program through a regulated investment
17 company under the terms and conditions established by this
18 section. The development corporation may make changes to the
19 program as required for participants to obtain the federal and
20 state income tax benefits or treatment provided by sections 851
21 to 855 of the federal Internal Revenue Code of 1986, as amended.



1 The development corporation may establish a program in
2 which the dividends distributed by the regulated investment
3 company are exempt from income taxation under chapter 235. If
4 the development corporation establishes a program that is
5 proposed to be exempt from income taxation under chapter 235, it
6 shall furnish sufficient information and notify the department
7 of taxation and investors of the tax exempt status of that
8 program.

9 (c) The development corporation may implement the program
10 through the use of financial organizations as program managers.
11 Under the program, individuals may establish accounts directly
12 with a program manager.

13 (d) The development corporation may solicit proposals from
14 one or more financial organizations to act as a program manager.
15 Financial organizations submitting proposals shall describe the
16 investment instrument. The development corporation shall select
17 as program managers the financial organizations from among the
18 bidding financial organizations that demonstrate the most
19 advantageous combination, both to potential program participants
20 and this State, based on the following factors:

21 (1) The financial stability and integrity of the financial
22 organization;



- 1 (2) The ability of the financial organization to establish
2 or act as a regulated investment company for the
3 purposes of this subpart;
- 4 (3) The ability of the financial organization to satisfy
5 recordkeeping and reporting requirements for the
6 purposes of a program that allows a program that is
7 exempt from taxation under chapter 235;
- 8 (4) The financial organization's plan for promoting the
9 program and the resources it is willing to allocate to
10 promote the program;
- 11 (5) The fees, if any, proposed to be charged to persons
12 for opening accounts;
- 13 (6) The minimum initial deposit and minimum contributions,
14 subject to this section that the financial
15 organization will require;
- 16 (7) Other benefits to the State or its residents included
17 in the proposal, including fees payable to the State
18 to cover expenses to operate the program.
- 19 (e) The development corporation may enter into a
20 management contract of up to ten years with a financial
21 organization. The financial organization shall provide
22 investment instruments meeting the requirements of this section.



1 The management contract shall include, at a minimum, terms
2 requiring the financial organization to:

3 (1) Take any action required to keep the program in
4 compliance with requirements of this section and to
5 manage the program to meet the requirements of
6 sections 851 to 855 of the federal Internal Revenue
7 Code of 1986, as amended;

8 (2) Keep adequate records of each account, keep each
9 account segregated from each other's account, and
10 provide the development corporation with the
11 information necessary to prepare any necessary
12 statements;

13 (3) Provide the development corporation with the
14 information necessary to determine compliance with
15 this section;

16 (4) Provide the development corporation with access to the
17 books and records of the financial organization to the
18 extent needed to determine compliance with the
19 contract;

20 (5) Hold all accounts for the benefit of the account
21 owner;



1 (6) Be audited at least annually by a firm of independent
2 certified public accountants, selected by the
3 financial organization, and provide the results of the
4 audit to the development corporation; and

5 (7) Provide the development corporation with copies of all
6 regulatory filings and reports related to the program
7 made by the financial organization during the term of
8 the management contract or while it is holding any
9 accounts, other than confidential filings or reports
10 that will not become part of the program. The
11 financial organization shall make available, for
12 review by the development corporation, the results of
13 any periodic examination of the financial organization
14 by any state or federal banking, insurance, or
15 securities commission, except to the extent that the
16 report or reports may not be disclosed under
17 applicable law or the rules of the examining agency.

18 (f) The development corporation may require an audit to be
19 conducted of the operations and financial position of the
20 program manager at any time if the development corporation has
21 any reason to be concerned about the financial position, the

1 recordkeeping practices, or the status of accounts of the
2 program manager.

3 (g) During the term of any contract with a program
4 manager, the development corporation shall conduct an
5 examination of the program manager and its handling of accounts.
6 The examination shall be conducted at least biennially if the
7 program manager is not otherwise subject to periodic examination
8 by the commissioner of financial institutions, the Federal
9 Deposit Insurance Corporation, or other similar entity.

10 (h) If selection of a financial organization as a program
11 manager is not renewed, after the end of the term:

12 (1) Accounts previously established and held in investment
13 instruments at the financial organization may be
14 terminated;

15 (2) Additional contributions may be made to the accounts;

16 (3) No new accounts may be placed with the financial
17 organization; and

18 (4) Existing accounts held by the financial organization
19 shall remain subject to all oversight and reporting
20 requirements established by the development
21 corporation.



1 If the development corporation terminates a financial
2 organization as a program manager, the development corporation
3 shall take custody of accounts held by the financial
4 organization and shall seek to promptly transfer the accounts to
5 another financial organization that is selected as a program
6 manager and into investment instruments as similar to the
7 original instruments as possible.

8 (i) The development corporation may enter into contracts
9 for the services of consultants for rendering professional and
10 technical assistance and advice and any other contracts that are
11 necessary and proper for the implementation of the program.

12 (j) The program shall only allow contributions from
13 individual investors in amounts ranging from a minimum of \$1,000
14 to a maximum of \$100,000 per investor.

15 (k) The program manager shall invest all contributions
16 received from investors in securities not limited to legal
17 investments under state laws relating to the investment of trust
18 fund assets by trust companies, including those authorized by
19 article 8 of chapter 412. Contributions shall be used for
20 venture capital investment. Investment may be made in any
21 manner the program deems correct. If no venture capital
22 investment is available at the time a contribution is made to



1 the program, the program manager may invest the contribution in
2 any manner allowed a regulated investment company until a
3 venture capital investment opportunity occurs. While the
4 program manager should make a best effort to make venture
5 capital investments as defined in section 206M-BB, if no such
6 venture capital investment is available in Hawaii, then the
7 program manager may make venture capital investments outside
8 Hawaii.

9 (1) The development corporation may adopt any necessary
10 rules under chapter 91."

11 PART IV

12 SECTION 11. Section 211G-1, Hawaii Revised Statutes, is
13 amended by amending the definition of "corporation" to read as
14 follows:

15 "Corporation" means the [~~Hawaii strategic~~] high technology
16 development corporation, a public body corporate and politic and
17 an instrumentality and agency of the State, established under
18 chapter [~~211F-~~] 206M."

19 SECTION 12. Chapter 211F, Hawaii Revised Statutes, is
20 repealed.

21 SECTION 13. On the effective date of this Act, all moneys
22 existing in the Hawaii strategic development corporation



1 revolving fund established pursuant to section 211F-5, Hawaii
2 Revised Statutes, shall be transferred and deposited into the
3 high technology investment revolving fund established under
4 section 206M-F, Hawaii Revised Statutes.

5 SECTION 14. All rights, powers, functions, and duties of
6 the Hawaii strategic development corporation are transferred to
7 the high technology development corporation.

8 All officers and employees whose functions are transferred
9 by this Act shall be transferred with their functions and shall
10 continue to perform their regular duties upon their transfer,
11 subject to the state personnel laws and this Act.

12 No officer or employee of the State having tenure shall
13 suffer any loss of salary, seniority, prior service credit,
14 vacation, sick leave, or other employee benefit or privilege as
15 a consequence of this Act, and such officer or employee may be
16 transferred or appointed to a civil service position without the
17 necessity of examination; provided that the officer or employee
18 possesses the minimum qualifications for the position to which
19 transferred or appointed; and provided that subsequent changes
20 in status may be made pursuant to applicable civil service and
21 compensation laws.



1 On the effective date of this Act, the president of the
2 Hawaii strategic development corporation shall be the chief
3 investment officer of the high technology development
4 corporation and shall perform the duties in accordance with
5 section 10 of this Act and as may be assigned by the board of
6 directors composed under section 16 of this Act.

7 An officer or employee of the State who does not have
8 tenure and who may be transferred or appointed to a civil
9 service position as a consequence of this Act shall become a
10 civil service employee without the loss of salary, seniority,
11 prior service credit, vacation, sick leave, or other employee
12 benefits or privileges and without the necessity of examination;
13 provided that such officer or employee possesses the minimum
14 qualifications for the position to which transferred or
15 appointed.

16 If an office or position held by an officer or employee
17 having tenure is abolished, the officer or employee shall not
18 thereby be separated from public employment, but shall remain in
19 the employment of the State with the same pay and classification
20 and shall be transferred to some other office or position for
21 which the officer or employee is eligible under the personnel



1 laws of the State as determined by the head of the department or
2 the governor.

3 SECTION 15. All appropriations, records, equipment,
4 machines, files, supplies, contracts, books, papers, documents,
5 maps, and other personal property heretofore made, used,
6 acquired, or held by the Hawaii strategic development
7 corporation relating to the functions transferred to the high
8 technology development corporation shall be transferred with the
9 functions to which they relate.

10 SECTION 16. (a) To ensure continuity during the merger
11 required under part III of this Act, notwithstanding any law to
12 the contrary, including the numerical limitations placed on the
13 composition of the board of directors of the high technology
14 development corporation under this Act, upon the effective date
15 of this Act, the board of directors of the Hawaii strategic
16 development corporation shall serve on the board of directors of
17 the high technology development corporation until such time as
18 their respective terms of office expire; provided that:

19 (1) The board members of the Hawaii strategic development
20 corporation may only vote on matters germane to the
21 new part established pursuant to part III of this Act;



- 1 (2) The board members of the Hawaii strategic development
2 corporation shall have all the powers and duties
3 vested in the board of directors pursuant to part III
4 of this Act;
- 5 (3) The department of business, economic development, and
6 tourism shall only have one ex-officio member on the
7 board composed under this section; and
- 8 (4) No member who concurrently sat on both the high
9 technology development corporation's and the Hawaii
10 strategic development corporation's boards of
11 directors prior to the effective date of this Act, nor
12 any person appointed to temporarily replace any such
13 board member, shall have more than one vote on matters
14 before the board composed under this section.
- 15 (b) No directorship on the boards of directors for the
16 high technology development corporation or the Hawaii strategic
17 development corporation for which the term of office expires on
18 either June 30, 2006, or June 30, 2007, shall be refilled for
19 any subsequent term upon the expiration of the affected board
20 member's term; provided that this subsection shall not apply to
21 an ex-officio member whose selection to either board is due to
22 the member's governmental position.



1 (c) The governor may stagger the terms of high technology
2 development corporation board members appointed after the
3 effective date of this Act to ensure that the number of high
4 technology development corporation board members equal seventeen
5 by July 1, 2008.

6 SECTION 17. In codifying the new sections added by
7 sections 2 and 10 of this Act, the revisor of statutes shall
8 substitute appropriate section numbers for the letters used in
9 designating the new sections in this Act.

10 SECTION 18. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 19. This Act shall take effect on July 1, 2006.



Report Title:

Innovations Research and Development; Capital Investments

Description:

Establishes innovations research and development grant program in HTDC; merges the HSDC into the HTDC; establishes new part in HTDC statute to ensure continuity of HSDC programs and investments; unspecified appropriations. (SD1)

