

PROPOSED

HOUSE OF REPRESENTATIVES  
TWENTY-THIRD LEGISLATURE, 2006  
STATE OF HAWAII

H.B. NO. 2181  
H.D. 2  
S.D. 1

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# 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 two 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; and
- 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.

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

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

- 21 (1) Commercialization potential of research;
- 22 (2) Industry participation;

- 1        (3) Ability to leverage non-state funds for on-going  
2        operations; and
- 3        (4) Overall business and scientific merit based upon  
4        expert review.
- 5        (d) The criteria for the award of grants for seed funding  
6 of product or service ideas shall include:
- 7        (1) Market need for the product or service;  
8        (2) Commercial viability;  
9        (3) Development timeline;  
10       (4) Ability to receive matching funding from other  
11       sources;
- 12       (5) Potential to return within seven years revenue or  
13       profit sharing, royalties, license fees, or other  
14       income equal to three times the amount of the initial  
15       grant; and
- 16       (6) Potential to provide high-paying jobs for residents.
- 17       (e) The technical advisory committees shall make  
18 recommendations to the development corporation on grant awards,  
19 which shall be approved by a majority of the quorum of the board  
20 of directors of the development corporation or rejected by a  
21 two-thirds majority of the board. Startup funding for major  
22 research and development initiatives shall not exceed \$3,000,000



1 per grant and may be allocated over two or more years. Seed  
2 capital grants shall not exceed \$250,000 for a project. No  
3 additional funding shall be awarded except upon demonstrated  
4 progress toward product development and commercial success.

5 **§206M-Q Cooperation with the development corporation by**  
6 **state agencies.** Every state agency may render services to the  
7 development corporation upon request of the development  
8 corporation."

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

12 "Life sciences" means biology, cancer research, community  
13 healthcare, ocean sciences, agriculture, pharmacology,  
14 biotechnology, medical technology, or related fields.

15 "Renewable energy" means new and emerging technologies to  
16 produce electrical energy, without the use of fossil fuels, by  
17 wind, solar energy, hydropower, landfill gas, waste to energy,  
18 geothermal resources, ocean thermal energy conversion, wave  
19 energy, biomass, including municipal solid waste, biofuels, or  
20 fuels derived from organic sources, hydrogen fuels derived from  
21 renewable energy, or fuel cells where the fuel is derived from  
22 renewable sources.

1       "Seed capital" means:

2       (1) Financing provided for the earliest stage of business  
3       development that enables a project or idea to develop  
4       into a business;

5       (2) Equity or loan capital provided for a new or existing  
6       business undertaking;

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

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

12       "Venture capital investment" means any of the following  
13 investments in a business:

14       (1) Common or preferred stock and equity securities  
15       without a repurchase requirement for at least five  
16       years;

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

18       (3) Any debenture or loan, whether or not convertible or  
19       having stock purchase rights, which are subordinated,  
20       together with security interests against the assets of  
21       the borrower, by their terms to all borrowings of the  
22       borrower from other institutional lenders, and that is



1           for a term of not less than three years, and that has  
2           no part amortized during the first three years; or  
3           (4) General or limited partnership interests."

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

7           ""High technology" means industries that are technology-  
8 intensive, including but not limited to electronics,  
9 biotechnology, software, computers, telecommunications, digital  
10 media, sensor and optic technology, information technologies,  
11 and other computer-related technologies."

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

14           "**§206M-2 Establishment of the high technology development**  
15 **corporation; purpose.** (a) There is established the high  
16 technology development corporation, which shall be a public body  
17 corporate and politic and an instrumentality and agency of the  
18 State. The development corporation shall be placed within the  
19 department of business, economic development, and tourism for  
20 administrative purposes, pursuant to section 26-35. The purpose  
21 of the development corporation shall be to facilitate the growth

1 and development of the commercial high technology industry in  
2 Hawaii. Its duties shall include, but not be limited to:

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

16 (b) The governing body of the development corporation  
17 shall consist of a board of directors having ~~[eleven]~~ seventeen  
18 voting members. ~~[Seven]~~ Fourteen of the members shall be  
19 appointed by the governor for staggered terms pursuant to  
20 section 26-34. Of the fourteen members appointed by the  
21 governor, three shall be appointed from a list of nominees  
22 submitted by the president of the senate and three shall be

1 appointed from a list of nominees submitted by the speaker of  
2 the house of representatives. [Six] Thirteen of the appointed  
3 members shall be from the general public and selected on the  
4 basis of their knowledge, interest, and proven expertise in, but  
5 not limited to, one or more of the following fields: finance,  
6 commerce and trade, corporate management, marketing, economics,  
7 engineering, [~~and~~] telecommunications, and other high technology  
8 fields[~~-~~] or technical knowledge in the fields of high  
9 technology, life sciences, or renewable energy technologies.

10 The other appointed member shall be selected by the governor  
11 from a list of nominees submitted by the president of the  
12 University of Hawaii from the faculty of the University of  
13 Hawaii. All appointed members of the board shall continue in  
14 office until their respective successors have been appointed.

15 The director of business, economic development, and tourism, the  
16 director of finance, [~~an appointed member from the board of the~~  
17 ~~Hawaii strategic development corporation,~~] and an appointed  
18 member from the board of the natural energy laboratory of Hawaii  
19 authority, or their designated representatives, shall serve as  
20 ex officio voting members of the board. The director of  
21 business, economic development, and tourism shall serve as the  
22 chairperson until such time as a chairperson is elected by the



1 board from the membership. The board shall elect [~~such~~] other  
2 officers as it deems necessary.

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

8 [~~(c)~~] (d) The members of the board appointed under  
9 subsection (b) shall serve without compensation, but may be  
10 reimbursed for expenses, including travel expenses, incurred in  
11 the performance of their duties.

12 [~~(d)~~] (e) The board shall appoint a chief executive  
13 officer, who shall serve at the pleasure of the board and shall  
14 be exempt from chapter 76. The board shall set the salary and  
15 duties of the executive officer.

16 [~~(e)~~] (f) The board shall appoint a management advisory  
17 committee for each industrial park and related project or  
18 projects governed by the board. Each committee shall have five  
19 members, who shall serve without compensation but may be  
20 reimbursed for expenses incurred in the performance of their  
21 duties. The members shall be drawn from fields of activity  
22 related to each industrial park and related project or projects.



1        (g) A majority of all members of the board shall  
 2 constitute a quorum to do business. Notwithstanding section 92-  
 3 15, and except as provided in sections 206M-F and 206M-J, the  
 4 board's decisions shall be made based upon majority vote of the  
 5 quorum, except that decisions to reject recommendations from  
 6 technical advisory committees relating to research and  
 7 development grants pursuant to section 206M-A shall be made  
 8 based upon a two-thirds majority of the board."

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

11        "~~[+]§206M-15.6[+]~~ **Hawaii technology loan revolving fund.**

12        (a) There is established the Hawaii technology loan revolving  
 13 fund for the purpose of investing in technology development in  
 14 Hawaii. The following shall be deposited into the Hawaii  
 15 technology loan revolving fund:

- 16        (1) Appropriations from the legislature;
- 17        (2) Moneys received as repayments of loans;
- 18        (3) Moneys received pursuant to a venture agreement;
- 19        [~~+3~~] (4) Investment earnings;
- 20        [~~+4~~] (5) Royalties;



1        [~~5~~] (6) Premiums[~~7~~] or fees or equity charged by the  
2                                    corporation[~~7~~] or otherwise received by the  
3                                    corporation; and

4        [~~6~~] (7) Loans that are convertible to equity;  
5 provided that the total amount of moneys in the fund shall not  
6 exceed [~~\$2,000,000~~] \$ \_\_\_\_\_ at the end of any fiscal year.

7            (b) Subject to legislative appropriation, the development  
8 corporation may expend moneys in the fund for:

9            (1) Innovations research and development grant program  
10                                    pursuant to section 206M-A, including costs to  
11                                    administer the program; provided that the expenditures  
12                                    shall not exceed \$ \_\_\_\_\_ in any fiscal year; and

13            (2) Investments in Hawaii-based businesses, including high  
14                                    technology, life sciences research, and renewable  
15                                    energy and in venture capital investments; provided  
16                                    that the expenditures shall not exceed \$ \_\_\_\_\_ in  
17                                    any fiscal year."

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

21            (1) A list of goals established for the high technology  
22                                    sector in the State;



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

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

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

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

20 PART III



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

4 **"PART . STRATEGIC DEVELOPMENT**

5 A. General Provisions

6 **§206M-B Definitions.** As used in this part:

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

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

17 "Minority-owned businesses" means businesses at least fifty  
18 per cent owned, controlled, and managed by socially or  
19 economically disadvantaged persons.

20 "Person" means a sole proprietorship, partnership, joint  
21 venture, corporation, or other association of persons organized  
22 for commercial or industrial purposes.



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

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

20 (b) The development corporation may use public funds to  
 21 provide incentives to private investment activity, by co-  
 22 investing public funds in private financial organizations to

1 increase the impact of the public investment, while utilizing  
2 the investment acumen of the private sector, and by using public  
3 funds to reduce the risks of private investments. The  
4 development corporation shall have the flexibility to provide  
5 various types of financial assistance. When providing financial  
6 assistance, the development corporation shall make provision for  
7 the recovery of its expenditures, to the extent practicable.

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

13       (1) Finance, conduct, or cooperate in financing or  
14 conducting technological, business, financial, or  
15 other investigations that are related to or likely to  
16 lead to business and economic development by making  
17 and entering into contracts and other appropriate  
18 arrangements, including the provision of loans, start-  
19 up and expansion capital, and other forms of  
20 assistance;

21       (2) Solicit, study, and assist in the preparation of  
22 business plans and proposals;

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



- 1           (9) Acquire, hold, and sell qualified securities;
- 2           (10) Consent, subject to the provisions of any contract  
3           with noteholders or bondholders, whenever the  
4           corporation deems it necessary or desirable in the  
5           fulfillment of the purposes of this part, to the  
6           modification, with respect to rate of interest, time  
7           of payment of any installment of principal or  
8           interest, or any other terms, of any contract or  
9           agreement of any kind to which the development  
10          corporation is a party;
- 11          (11) Accept donations, grants, bequests, and devises of  
12          money, property, service, or other things of value  
13          that may be received from the United States or any  
14          agency thereof, any governmental agency, or any public  
15          or private institution, person, firm, or corporation,  
16          to be held, used, or applied for any or all of the  
17          purposes specified in this part. Receipt of each  
18          donation or grant shall be detailed in the annual  
19          report of the development corporation. The report  
20          shall include the identity of the donor or lender, the  
21          nature of the transaction, and any conditions  
22          attaching thereto;



- 1           (12) Invest any funds held in reserves or sinking funds, or  
2                    any funds not required for immediate disbursement, in  
3                    these investments as may be lawful for fiduciaries in  
4                    the State;
- 5           (13) Acquire real property, or an interest therein, by  
6                    purchase or foreclosure, where that acquisition is  
7                    necessary or appropriate to protect or secure any  
8                    investment or loan in which the development  
9                    corporation has an interest, and sell, transfer, and  
10                  convey the property to a buyer and, if the sale,  
11                  transfer, or conveyance cannot be effected with  
12                  reasonable promptness or at a reasonable price, to  
13                  lease the property to a tenant;
- 14          (14) Acquire, own, hold, dispose of, and encumber personal  
15                  property of any nature, or any interest therein;
- 16          (15) Enter into agreements or other transactions with any  
17                  federal, state, or county agency;
- 18          (16) Make contracts and execute all instruments necessary  
19                  or convenient for the carrying on of its business;
- 20          (17) Appear in its own behalf before state, county, or  
21                  federal agencies;
- 22          (18) Procure insurance as may be necessary;

1 (19) Appoint officers, employees, consultants, agents, and  
2 advisors, who shall not be subject to chapter 76, and  
3 prescribe their duties and fix compensation within the  
4 limitations provided by law;

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

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

8 (b) The development corporation shall not promise to  
9 answer for the debts of any other person.

10 **§206M-E 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-F 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 except upon a two-thirds  
5 vote of the board in each case considered. When deciding  
6 whether to enter into a direct investment, the development  
7 corporation shall consider whether:

- 8 (1) The project is economically sound;
- 9 (2) The project can be successfully completed;
- 10 (3) The project will promote economic diversification;
- 11 (4) The project is located in or will locate in the State  
12 and has a reasonable potential to create desirable  
13 employment opportunities for residents of the State;
- 14 (5) The project has been unable to obtain sufficient  
15 funding on reasonable terms through ordinary means;  
16 and
- 17 (6) The project can be partially financed through ordinary  
18 means at reasonable terms.

19 The development corporation shall not acquire securities to an  
20 extent that would provide the corporation effective voting  
21 control of any enterprise after giving effect to the conversion  
22 of all outstanding convertible securities of the enterprise.

1 (e) Investments by the development corporation to persons  
2 shall be made on the basis of solicitation and a competitive  
3 technical review process, subject to the availability of funds  
4 allocated to the development corporation for making investments.  
5 Investments by the development corporation shall not be subject  
6 to chapter 42F. Any organization applying for an investment  
7 shall meet the following standards:

8 (1) Have bylaws or policies that describe the manner in  
9 which business is conducted and policies relating to  
10 nepotism and management of potential conflict of  
11 interest situations;

12 (2) Be licensed and accredited, as applicable, in  
13 accordance with the requirements of federal, state,  
14 and county governments;

15 (3) Comply with applicable federal and state laws  
16 prohibiting discrimination against any person on the  
17 basis of race, color, national origin, religion,  
18 creed, sex, age, or physical handicap; and

19 (4) Comply with other requirements as the board may  
20 prescribe.

21 **§206M-G Business and industry evaluation and priorities**  
22 **for job opportunity and economic development.** The development

1 corporation shall develop procedures to set priorities as to  
 2 which types of businesses and industries are most likely to  
 3 provide significant opportunities for economic development and  
 4 diversification in the State, consistent with the purposes of  
 5 this part. This evaluation shall take into account the  
 6 guidelines provided by the state plan for economic development.  
 7 Based upon these findings, the development corporation shall  
 8 establish targets by which the operations and programs of the  
 9 development corporation shall be guided.

10 **§206M-H Requests for assistance from the development**

11 **corporation; procedure.** (a) The board shall approve or  
 12 disapprove requests for assistance within ninety days of  
 13 receiving a written application. Upon written request by an  
 14 applicant, the board may reconsider its denial of an application  
 15 for assistance or may waive the ninety-day deadline for  
 16 approving or disapproving an application.

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

21 (c) The development corporation may condition any  
 22 assistance of any type by placing restrictions on the recipient

1 in regard to the recipient's assets or indebtedness or in any  
2 other manner deemed appropriate by the development corporation.

3 A recipient who accepts assistance from the development  
4 corporation shall be deemed to agree to be bound by any  
5 conditions or restrictions imposed by the development  
6 corporation.

7 **§206M-I Private sector financial support.** Significant  
8 private sector financial support shall be associated with any  
9 economic development project for which the development  
10 corporation provides assistance.

11 **§206M-J Limitations on debt owed to the development**  
12 **corporation.** Not more than \$5,000,000 in financial assistance,  
13 excluding rights and royalties under a venture capital  
14 agreement, shall be provided to any one enterprise at any time.  
15 The direct investments of the corporation shall not exceed five  
16 per cent of the assets of the development corporation, excluding  
17 rights and royalties under a venture capital agreement; provided  
18 that by a two-thirds vote of the board, this amount may be  
19 increased to a limit of twenty-five per cent of the total assets  
20 of the development corporation.

21 **§206M K Annual report.** Notwithstanding section 206M-3.5,  
22 the development corporation shall submit a complete and detailed





1 report of the development corporation's specific activities  
2 under this part to the legislature. The report shall be  
3 submitted not later than twenty days before the convening of the  
4 regular session of 2007, and every year thereafter.

5 **§206M-L Annual audit.** The books and records of the  
6 development corporation shall be subject to an annual audit by  
7 an independent auditor.

8 **§206M-M Construction of this part.** This part shall be  
9 liberally construed to effect its purposes.

10 B. Program for Seed Capital Assistance

11 **§206M-N Establishment.** The development corporation shall  
12 establish a program for seed capital assistance.

13 **§206M-O Seed capital investments.** Subject to this part,  
14 the development corporation may invest in:

15 (1) A certified development company under sections 501 to  
16 503 of the Small Business Investment Act of 1958, 15  
17 U.S.C. 695 to 697, and the regulations adopted under  
18 those sections;

19 (2) A small business investment company under the Small  
20 Business Investment Act, 15 U.S.C. 631 to 634, 636 to  
21 649, and the regulations adopted under those sections;

- 1           (3) A minority enterprise small business investment
- 2                   corporation or equivalent venture capital corporation;
- 3           (4) A similar entity that may leverage its capital under a
- 4                   federal program; or
- 5           (5) A seed capital fund or partnership.

6           **§206M-P Purposes and terms of investments.** (a)

7 Investments may be used for any purpose consistent with the  
8 purposes and objectives of this part, including but not limited  
9 to:

- 10           (1) Developing a working prototype;
- 11           (2) Preparing a development plan;
- 12           (3) Performing an initial market analysis;
- 13           (4) Organizing a management team; and
- 14           (5) Any other purpose reasonably related to an economic
- 15                   development project.

16           (b) Investments may be made on terms and conditions as the  
17 development corporation determines to be reasonable,  
18 appropriate, and consistent with the purposes and objectives of  
19 this part.

20                   C. Program for Venture Capital Assistance

21           **§206M-R Establishment.** The development corporation shall  
22 establish a program for venture capital.

1           **§206M-S Venture capital investments.** Subject to this  
2 part, the development corporation may invest in:

3           (1) A certified development company under sections 501 to  
4           503 of the Small Business Investment Act of 1958, 15  
5           U.S.C. 695 to 697, and the regulations adopted under  
6           those sections;

7           (2) A small business investment company under the Small  
8           Business Investment Act, 15 U.S.C. 631 to 634, 636 to  
9           649, and the regulations adopted under those sections;

10          (3) A minority enterprise small business investment  
11          corporation or equivalent venture capital corporation;

12          (4) A similar entity that may leverage its capital under a  
13          federal program; or

14          (5) A venture capital fund or partnership.

15          **§206M-T Purposes and terms of investments.** (a)

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

18          (b) Investments may be made on terms and conditions as the  
19 development corporation determines to be reasonable,  
20 appropriate, and consistent with the purposes and objectives of  
21 this part.

22                                       D. Program for Capital Access

1           **§206M-U Establishment.** The development corporation shall  
2 establish a program for capital access.

3           **§206M-V Financial assistance.** The development  
4 corporation, through the program for capital access, may:

5           (1) Procure insurance, a guarantee, or a letter of credit  
6 from any source for all or a part of a loan,  
7 debenture, or lease of others, public or private, or a  
8 revenue bond issue of the State or other entity or  
9 authority authorized by law to issue revenue bonds;  
10 and

11           (2) Procure insurance, a guarantee, or a letter of credit  
12 for either a single loan, debenture, or lease or for  
13 any combination of loans, debentures, or leases or a  
14 single revenue bond issue or for all or a part of any  
15 combination of revenue bond issues.

16           **§206M-W Purposes and priorities required in the procuring**  
17 **of insurance, loan guarantees, or letters of credit.** (a)

18 Insurance, guarantees, or letters of credit procured pursuant to  
19 section 206M-T shall be procured only for economic development  
20 projects within the State that are consistent with the purposes  
21 and objectives of this part.

1           (b) The development corporation shall give paramount  
2 priority in procuring insurance, guarantees, and letters of  
3 credit to economic development projects that have the greatest  
4 potential for creating new jobs or retaining current jobs within  
5 the State.

6           **§206M-X Conditions for procuring of insurance, loan**  
7 **guarantees, or letters of credit.** (a) Insurance, guarantees,  
8 or letters of credit shall not be procured pursuant to section  
9 206M-T unless the development corporation is assured that the  
10 loans, debentures, or leases insured, or guaranteed, or for  
11 which letters of credit are issued, shall be used to assist  
12 economic development projects that also have significant private  
13 sector financial support.

14           (b) Insurance, guarantees, or letters of credit may be  
15 procured on terms and conditions as the development corporation,  
16 in its sole discretion, determines to be reasonable,  
17 appropriate, and consistent with the purposes and objectives of  
18 this part.

19           (c) The development corporation shall charge the lender or  
20 the borrower, or both, a fee or premium for procuring loan,  
21 debenture, or lease insurance, guarantee, or a letter of credit.

1 Rules for premiums or fees shall be established by the  
2 development corporation pursuant to chapter 91.

3 **§206M-Y Program for capital access participation**

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

7 (1) Authorization for the lender to determine, collect,  
8 and transmit to the development corporation a fee or  
9 premium charge within a specified range established  
10 consistent with the purposes and objectives of the  
11 development corporation;

12 (2) Specification of whether the premium charge shall be  
13 paid by the lender, the borrower, the development  
14 corporation, or by a combination thereof in specified  
15 proportions;

16 (3) The procedure by which a lender may make a claim upon  
17 the development corporation upon default by the  
18 borrower and the conditions under which a claim may be  
19 made; and

20 (4) The maximum amount of claims a lender may make upon  
21 the development corporation, which amount may be equal



1 to or less than the proportion of the total premiums  
2 contributed by the development corporation.

3 **§206M-Z Establishment of special funds to secure loan**  
4 **insurance obligations; source of funds.** The development  
5 corporation may establish a special fund or funds for capital  
6 access into which fees or premiums collected by the development  
7 corporation are deposited.

8 E. Hawaii Technology Investment Program

9 **§206M-AA Definitions.** As used in this subpart:

10 "Biotechnology" means fundamental knowledge regarding the  
11 function of biological systems from the macro level to the  
12 molecular subatomic levels that has application to development  
13 including the development of novel products, services,  
14 technologies, and subtechnologies from insights gained from  
15 research advances that add to that body of fundamental  
16 knowledge.

17 "Computer data" means any representation of information,  
18 knowledge, facts, concepts, or instructions that is being  
19 prepared or has been prepared and is intended to be processed,  
20 is being processed, or has been processed in a computer or  
21 computer network.

1 "Computer program" means an ordered set of computer data  
2 representing coded instructions or statements that, when  
3 executed by a computer, causes the computer to perform one or  
4 more computer operations.

5 "Computer software" means computer data, a computer  
6 program, or a set of computer programs, procedures, or  
7 associated documentation concerned with the operation and  
8 function of a computer system and includes both systems and  
9 application programs and subdivisions, such as assemblers,  
10 compilers, routines, generators, and utility programs.

11 "Financial organization" means an organization authorized  
12 to do business in Hawaii that is:

- 13 (1) Certified as an insurer by the insurance commissioner;
- 14 (2) Licensed or chartered as a financial institution by  
15 the commissioner of financial institutions;
- 16 (3) Chartered by an agency of the federal government;
- 17 (4) Subject to the jurisdiction and regulation of the  
18 federal Securities and Exchange Commission; or
- 19 (5) Any other entity otherwise authorized to do business  
20 in the State that meets the requirements of this  
21 subpart.

22 "Program" means the Hawaii technology investment program.



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

3 "Qualified high technology business":

4 (1) Means a business, employing or owning capital or  
5 property, or maintaining an office, in this State  
6 that:

7 (A) Conducts more than fifty per cent of its  
8 activities in performing qualified research in  
9 this State; or

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

13 (i) Products sold from, manufactured in, or  
14 produced in the State; or

15 (ii) Services performed in this State.

16 (2) Does not include:

17 (A) Any trade or business involving the performance  
18 of services in the field of law, architecture,  
19 accounting, actuarial science, consulting,  
20 athletics, financial services, or brokerage  
21 services;

1 (B) Any banking, insurance, financing, leasing,  
 2 rental, investing, or similar business; any  
 3 farming business, including the business of  
 4 raising or harvesting trees; any business  
 5 involving the production or extraction of  
 6 products of a character with respect to which a  
 7 deduction is allowable under section 611 (with  
 8 respect to allowance of deduction for depletion),  
 9 613 (with respect to basis for percentage  
 10 depletion), or 613A (with respect to limitation  
 11 on percentage depleting in cases of oil and gas  
 12 wells) of the Internal Revenue Code;

13 (C) Any business operating a hotel, motel,  
 14 restaurant, or similar business; and

15 (D) Any trade or business involving a hospital, a  
 16 private office of a licensed health care  
 17 professional, a group practice of licensed health  
 18 care professionals, or a nursing home.

19 "Qualified research" means:

20 (1) The same as in section 41(d) of the Internal Revenue  
 21 Code; or



1           (2) The development and design of computer software using  
2           fourth generation or higher software development tools  
3           or native programming languages to design and  
4           construct unique and specific code to create  
5           applications and design databases for sale or license;  
6           or

7           (3) Biotechnology;  
8           provided that more than fifty per cent of the business'  
9           activities are qualified research.

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

12           (1) Common or preferred stock and equity securities  
13           without a repurchase requirement for at least five  
14           years;

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

16           (3) Any debenture or loan, whether or not convertible or  
17           having stock purchase rights, which:

18           (A) Is subordinated, together with security interests  
19           against the assets of the borrower, by their  
20           terms to all borrowings of the borrower from  
21           other institutional lenders;

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



1 (C) Has no part amortized during the first three  
2 years;

3 (4) General or limited partnership interests; and

4 (5) Membership interests in limited liability companies.

5 **§206M-BB Formation of Hawaii technology investment**

6 **program.** (a) The development corporation shall establish the  
7 Hawaii technology investment program for the purpose of allowing  
8 individual investors to contribute to the program to invest  
9 venture capital in businesses in Hawaii.

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

17 The development corporation may establish a program in  
18 which the dividends distributed by the regulated investment  
19 company are exempt from income taxation under chapter 235. If  
20 the development corporation establishes a program that is  
21 proposed to be exempt from income taxation under chapter 235, it  
22 shall furnish sufficient information and notify the department



1 of taxation and investors of the tax exempt status of that  
2 program.

3 (c) The development corporation may implement the program  
4 through the use of financial organizations as program managers.  
5 Under the program, individuals may establish accounts directly  
6 with a program manager.

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

- 15 (1) The financial stability and integrity of the financial  
16 organization;
- 17 (2) The ability of the financial organization to establish  
18 or act as a regulated investment company for the  
19 purposes of this subpart;
- 20 (3) The ability of the financial organization to satisfy  
21 recordkeeping and reporting requirements for the



1           purposes of a program that allows a program that is  
 2           exempt from taxation under chapter 235;

3           (4) The financial organization's plan for promoting the  
 4           program and the resources it is willing to allocate to  
 5           promote the program;

6           (5) The fees, if any, proposed to be charged to persons  
 7           for opening accounts;

8           (6) The minimum initial deposit and minimum contributions,  
 9           subject to this section that the financial  
 10          organization will require;

11          (7) Other benefits to the State or its residents included  
 12          in the proposal, including fees payable to the State  
 13          to cover expenses to operate the program.

14          (e) The development corporation may enter into a  
 15          management contract of up to ten years with a financial  
 16          organization. The financial organization shall provide  
 17          investment instruments meeting the requirements of this section.  
 18          The management contract shall include, at a minimum, terms  
 19          requiring the financial organization to:

20               (1) Take any action required to keep the program in  
 21               compliance with requirements of this section and to  
 22               manage the program to meet the requirements of

- 1 sections 851 to 855 of the federal Internal Revenue  
2 Code of 1986, as amended;
- 3 (2) Keep adequate records of each account, keep each  
4 account segregated from each other's account, and  
5 provide the development corporation with the  
6 information necessary to prepare any necessary  
7 statements;
- 8 (3) Provide the development corporation with the  
9 information necessary to determine compliance with  
10 this section;
- 11 (4) Provide the development corporation with access to the  
12 books and records of the financial organization to the  
13 extent needed to determine compliance with the  
14 contract;
- 15 (5) Hold all accounts for the benefit of the account  
16 owner;
- 17 (6) Be audited at least annually by a firm of independent  
18 certified public accountants, selected by the  
19 financial organization, and provide the results of the  
20 audit to the development corporation; and
- 21 (7) Provide the development corporation with copies of all  
22 regulatory filings and reports related to the program



1           made by the financial organization during the term of  
2           the management contract or while it is holding any  
3           accounts, other than confidential filings or reports  
4           that will not become part of the program. The  
5           financial organization shall make available, for  
6           review by the development corporation, the results of  
7           any periodic examination of the financial organization  
8           by any state or federal banking, insurance, or  
9           securities commission, except to the extent that the  
10          report or reports may not be disclosed under  
11          applicable law or the rules of the examining agency.

12          (f) The development corporation may require an audit to be  
13          conducted of the operations and financial position of the  
14          program manager at any time if the development corporation has  
15          any reason to be concerned about the financial position, the  
16          recordkeeping practices, or the status of accounts of the  
17          program manager.

18          (g) During the term of any contract with a program  
19          manager, the development corporation shall conduct an  
20          examination of the program manager and its handling of accounts.  
21          The examination shall be conducted at least biennially if the  
22          program manager is not otherwise subject to periodic examination



1 by the commissioner of financial institutions, the Federal  
2 Deposit Insurance Corporation, or other similar entity.

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

5 (1) Accounts previously established and held in investment  
6 instruments at the financial organization may be  
7 terminated;

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

9 (3) No new accounts may be placed with the financial  
10 organization; and

11 (4) Existing accounts held by the financial organization  
12 shall remain subject to all oversight and reporting  
13 requirements established by the development  
14 corporation.

15 If the development corporation terminates a financial  
16 organization as a program manager, the development corporation  
17 shall take custody of accounts held by the financial  
18 organization and shall seek to promptly transfer the accounts to  
19 another financial organization that is selected as a program  
20 manager and into investment instruments as similar to the  
21 original instruments as possible.



1 (i) The development corporation may enter into contracts  
2 for the services of consultants for rendering professional and  
3 technical assistance and advice and any other contracts that are  
4 necessary and proper for the implementation of the program.

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

8 (k) The program manager shall invest all contributions  
9 received from investors in securities not limited to legal  
10 investments under state laws relating to the investment of trust  
11 fund assets by trust companies, including those authorized by  
12 article 8 of chapter 412. Contributions shall be used for  
13 venture capital investment. Investment may be made in any  
14 manner the program deems correct. If no venture capital  
15 investment is available at the time a contribution is made to  
16 the program, the program manager may invest the contribution in  
17 any manner allowed a regulated investment company until a  
18 venture capital investment opportunity occurs. While the  
19 program manager should make a best effort to make venture  
20 capital investments as defined in section 206M-AA, if no such  
21 venture capital investment is available in Hawaii, then the

1 program manager may make venture capital investments outside  
2 Hawaii.

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

5 PART IV

6 SECTION 11. Chapter 211F, Hawaii Revised Statutes, is  
7 repealed.

8 SECTION 12. On the effective date of this Act, all moneys  
9 existing in the Hawaii strategic development corporation  
10 revolving fund established pursuant to section 211F-5, Hawaii  
11 Revised Statutes, shall be transferred and deposited into the  
12 Hawaii technology loan revolving fund established under section  
13 206M-15.6, Hawaii Revised Statutes.

14 SECTION 13. All rights, powers, functions, and duties of  
15 the Hawaii strategic development corporation are transferred to  
16 the high technology development corporation.

17 All officers and employees whose functions are transferred  
18 by this Act shall be transferred with their functions and shall  
19 continue to perform their regular duties upon their transfer,  
20 subject to the state personnel laws and this Act.

21 No officer or employee of the State having tenure shall  
22 suffer any loss of salary, seniority, prior service credit,



1 vacation, sick leave, or other employee benefit or privilege as  
2 a consequence of this Act, and such officer or employee may be  
3 transferred or appointed to a civil service position without the  
4 necessity of examination; provided that the officer or employee  
5 possesses the minimum qualifications for the position to which  
6 transferred or appointed; and provided that subsequent changes  
7 in status may be made pursuant to applicable civil service and  
8 compensation laws.

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

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



1 which the officer or employee is eligible under the personnel  
2 laws of the State as determined by the head of the department or  
3 the governor.

4 SECTION 14. All appropriations, records, equipment,  
5 machines, files, supplies, contracts, books, papers, documents,  
6 maps, and other personal property heretofore made, used,  
7 acquired, or held by the Hawaii strategic development  
8 corporation relating to the functions transferred to the high  
9 technology development corporation shall be transferred with the  
10 functions to which they relate.

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

- 20 (1) The board members of the Hawaii strategic development  
21 corporation may only vote on matters germane to the  
22 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 II  
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 16. 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 17. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 18. This Act shall take effect on July 1, 2006.



# PROPOSED

**Report Title:**

Innovations Research and Development; Capital Investments

**Description:**

Merges the HSDC into the HTDC. Establishes an innovations research and development grant program and allows the high technology development corporation to invest in enterprises in high technology, life sciences, and renewable energy fields.  
(SD1)

