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# A BILL FOR AN ACT

RELATING TO HIGH TECHNOLOGY TAX INCENTIVES.

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

1 SECTION 1. The legislature finds that the legislature  
2 renewed its commitment to the growth and development of high  
3 technology businesses in Hawaii under Act 221, Session Laws of  
4 Hawaii 2001 (Act 221), which expanded tax incentives for  
5 qualified high technology businesses to provide a direct means  
6 of addressing the urgent need for venture financing.

7 In providing these expanded incentives, the legislature's  
8 purpose was to nurture and grow the high tech sector of Hawaii's  
9 economy; establish a clean industry with a relatively low need  
10 for land, energy, and other physical resources; and provide  
11 Hawaii's residents with highly skilled, living wage jobs.

12 However, there is a need for more information that would  
13 allow the legislature to evaluate whether the Act 221 incentives  
14 have been successful. The 2005-2007 Tax Review Commission,  
15 stated that definitive results on the costs and benefits of the  
16 high technology business investment tax credit could not be  
17 calculated because of the inability to gather current data on



1 the credits. Specifically, data after tax year 2003 was  
2 unavailable on the amount of the tax credits claimed and the  
3 employment statistics of qualified high technology businesses  
4 that were assisted by the credit. It appears that the  
5 appropriate information is being filed with the department of  
6 taxation, but the department has not been able to issue the  
7 desired reports.

8 Reports by the department of taxation and the department of  
9 business, economic development, and tourism on the effectiveness  
10 of the credits were confusing and inconsistent. All parties  
11 agree that better information is needed to evaluate the true  
12 costs and benefits associated with the tax incentives and to  
13 determine the best means of ensuring that the incentives achieve  
14 their intended objectives.

15 The purpose of this Act is to increase the transparency of,  
16 and allow a more accurate evaluation of Hawaii's high-tech tax  
17 incentives by requiring:

18 (1) The department of taxation to make an initial report  
19 to the legislature by October 1, 2007 of summary  
20 statistics on all currently available information and  
21 data collected from high technology businesses;



1 (2) Qualified high technology businesses benefiting from  
2 the high technology business investment and research  
3 activities tax credits to submit employment  
4 information to the department of taxation for taxable  
5 years beginning after December 2006; and

6 (3) The department of taxation to annually report summary  
7 statistics and an evaluation of the effectiveness of  
8 the tax credits to the legislature by September 1<sup>st</sup> of  
9 2008, and September 1<sup>st</sup> of each year thereafter,

10 and by appropriating funds for these purposes.

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

14 **"§235- High technology; other reporting requirements.**

15 (a) A qualified high technology business claiming a tax credit  
16 under section 235-110.9 or 235-110.91, or receiving an  
17 investment for which the credit under section 235-110.9 may be  
18 claimed, shall complete and file a complete annual survey with  
19 the director of taxation on forms prepared and prescribed by the  
20 department. The annual survey shall be filed before March 31 of  
21 each year following the year in which:



1       (1) An investment in the qualified high technology

2               business was made; or

3       (2) Qualified research and development activity was

4               conducted.

5       The department may adjust the due date of the annual survey by

6       rule.

7       (b) The annual survey shall include the following

8       information for the time period or periods specified by the

9       department:

10       (1) The taxpayer's net income tax liability;

11       (2) Whether the credit was assigned under section 235-

12               110.9 or 235-110.91 and who assigned the credit; and

13       (3) Information about the employment positions in the

14               qualified high technology business in the state,

15               including:

16               (A) The total number of positions;

17               (B) The number of these positions filled by Hawaii

18                       residents;

19               (C) The number of new positions;

20               (D) The number of new positions filled by Hawaii

21                       residents;



1           (E) Full-time, part-time, and temporary positions as  
2           a per cent of total employment;

3           (F) Of the total number of positions, the number of  
4           positions falling within the following wage  
5           bands:

6           (i) Less than \$30,000;

7           (ii) \$30,000 or greater, but less than \$60,000;

8           or

9           (iii) \$60,000 or greater; provided that a wage

10           band containing fewer than three individuals

11           may be combined with another wage band;

12           and

13           (G) For each of the wage bands in subparagraph (F),

14           the number of positions that have employer-

15           provided medical, dental, and retirement

16           benefits.

17           The department may request additional information necessary to

18           measure the results of the tax credit program, to be submitted

19           at the same time as the survey. In preparing the survey the

20           department shall ensure that qualified high technology

21           businesses are not subject to duplicative reporting

22           requirements. The department shall define "full-time position",



1 "part-time position", "temporary position", and "new position"  
2 by rule.

3 (c) If a qualified high technology business fails to file  
4 a complete annual survey under this section with the department  
5 by the due date or any extension thereof, the qualified high  
6 technology business otherwise entitled to the tax credit shall  
7 be assessed a penalty of \$1,000 per month for each month the  
8 annual survey is not filed, up to a maximum of three months. If  
9 a complete annual survey has not been filed three months after  
10 the due date or any extension thereof, the qualified high  
11 technology business otherwise entitled to the tax credit shall  
12 not be eligible to claim or assign the credit under section 235-  
13 110.9 or 235-110.91, as the case may be, for the taxable year  
14 prior to the year in which the person failed to timely file a  
15 complete annual survey.

16 (d) The department shall use information collected under  
17 this section or under other requirements of the department to  
18 prepare the report under section 231-3.4(b).

19 (e) The reporting requirements under this section shall  
20 only be applicable to qualified high technology businesses and  
21 shall not apply to individual investors.



1       (f) The department shall adopt rules pursuant to chapter  
2 91 to implement this section."

3       SECTION 3. Section 231-3.4, Hawaii Revised Statutes, is  
4 amended to read as follows:

5       "~~§~~**231-3.4**~~]~~   **Publication of reports.** (a) The  
6 department of taxation shall publish reports on the following:

- 7       (1) Hawaii income patterns--individuals;
- 8       (2) Hawaii income patterns--corporations, proprietorships,
- 9             and partnerships; and
- 10       (3) Tax credits.

11 The department shall make each of these reports available in  
12 both paper form and commonly accessible electronic forms for a  
13 reasonable fee.

14       (b) The department shall, no later than October 1, 2007,  
15 and annually thereafter, prepare and submit to the legislature a  
16 report pertaining to qualified high technology businesses and  
17 related tax incentives provided under sections 235-7.3, 235-9.5,  
18 235-110.51, 235-110.9, and 235-110.91.

19       In preparing the report, the department of taxation shall  
20 include summary descriptive statistics on the aforementioned  
21 sections; provided that no fewer than three taxpayers shall be  
22 included in any category.



1 Reports prepared after October 1, 2007 shall also:

2 (1) Identify each qualified high technology business  
3 receiving credits under section 235-110.9 or 235-  
4 110.91; and

5 (2) Evaluate the effectiveness of the tax credits under  
6 sections 235-110.9 and 235-110.91. The department  
7 shall measure the effect of the tax credits on job  
8 creation, the number of jobs created in the state,  
9 company growth, the diversification of the state's  
10 economy, the movement of firms, the introduction of  
11 new products, growth in research and development  
12 investment, the consolidation of firms operating in  
13 the state, and other factors as the department  
14 determines.

15 The department's initial report shall be based on all  
16 information currently available to the department. Reports  
17 prepared after October 1, 2007, shall be submitted to the  
18 legislature no later than September 1 of the current year. All  
19 reports shall be public, and the department shall make reports  
20 available in both paper form and commonly accessible electronic  
21 forms for a reasonable fee.





1            [~~(b)~~] (c) The department shall explore and implement all  
2 reasonable methods of covering the costs of publication and  
3 distribution of the reports, including but not limited to:

4            (1) Setting reasonable fees that will cover the costs of  
5            producing and distributing the reports in paper and  
6            electronic form; and

7            (2) Negotiating licensing fees with commercial information  
8 providers for rights to carry the reports on-line or in other  
9 electronic storage methods."

10           SECTION 4. Section 235-110.9, Hawaii Revised Statutes, is  
11 amended as follows:

12           1. By amending subsection (b) to read:

13           "(b) The credit allowed under this section shall be claimed  
14 against the net income tax liability for the taxable year. For  
15 the purpose of this section, "net income tax liability" means  
16 net income tax liability reduced by all other credits allowed  
17 under this chapter. By claiming the credit, a qualified high  
18 technology business consents to the public disclosure of the  
19 taxpayer's name and the taxpayer's status as a claimant of the  
20 credit under this section."

21           2. By amending subsections (e) and (f) to read:



1 (e) Every taxpayer, before March 31 of each year in which  
2 an investment in a qualified high technology business was made  
3 in the previous taxable year, shall submit a written, certified  
4 statement to the director of taxation identifying:

5 (1) Qualified investments, if any, expended in the  
6 previous taxable year; and

7 (2) The amount of tax credits claimed pursuant to this  
8 section, if any, in the previous taxable year.

9 Every qualified high technology business that claims a credit or  
10 receives an investment for which a credit may be claimed under  
11 this section shall also submit the annual survey required by  
12 section 235- to the director of taxation.

13 (f) The department shall:

14 (1) Maintain records of the names and addresses of the  
15 taxpayers claiming the credits under this section and  
16 the total amount of the qualified investment costs  
17 upon which the tax credit is based;

18 (2) Verify the nature and amount of the qualifying  
19 investments;

20 (3) Total all qualifying and cumulative investments that  
21 the department certifies; and



1           (4) Certify the amount of the tax credit for each taxable  
2           year and cumulative amount of the tax credit.  
3 Upon each determination made under this subsection, the  
4 department shall issue a certificate to the taxpayer verifying  
5 information submitted to the department, including qualifying  
6 investment amounts, the credit amount certified for each taxable  
7 year, [~~and~~] the cumulative amount of the tax credit during the  
8 credit period[~~-~~], and any survey required under section 235- .  
9 The taxpayer shall file the certificate with the taxpayer's tax  
10 return with the department.

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

16           SECTION 5. Section 235-110.91, Hawaii Revised Statutes, is  
17 amended by amending subsections (c) to (e) to read as follows:

18           "(c) There shall be allowed to each qualified high  
19 technology business subject to the tax imposed by this chapter  
20 an income tax credit for qualified research activities equal to  
21 the credit for research activities provided by section 41 of the  
22 Internal Revenue Code and as modified by this section. The



1 credit shall be deductible from the taxpayer's net income tax  
2 liability, if any, imposed by this chapter for the taxable year  
3 in which the credit is properly claimed. By claiming the  
4 credit, the taxpayer consents to the public disclosure of the  
5 taxpayer's name and the taxpayer's status as a claimant of the  
6 credit under this section."

7 (d) Every qualified high technology business, before March  
8 31 of each year in which qualified research and development  
9 activity was conducted in the previous taxable year, shall  
10 submit a written, certified statement to the director of  
11 taxation identifying:

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

16 Every qualified high technology business shall also submit the  
17 annual survey required by section 235- to the director of  
18 taxation.

19 (e) The department shall:

- 20 (1) Maintain records of the names and addresses of the  
21 taxpayers claiming the credits under this section and  
22 the total amount of the qualified research and



1 development activity costs upon which the tax credit  
2 is based;

3 (2) Verify the nature and amount of the qualifying costs  
4 or expenditures;

5 (3) Total all qualifying and cumulative costs or  
6 expenditures that the department certifies; and

7 (4) Certify the amount of the tax credit for each taxable  
8 year and cumulative amount of the tax credit.

9 Upon each determination made under this subsection, the  
10 department shall issue a certificate to the taxpayer verifying  
11 information submitted to the department, including the  
12 qualifying costs or expenditure amounts, the credit amount  
13 certified for each taxable year, [~~and~~] the cumulative amount of  
14 the tax credit during the credit period[~~],~~ and the survey  
15 required under section 235- . The taxpayer shall file the  
16 certificate with the taxpayer's tax return with the department."

17 SECTION 6. There is appropriated out of the general  
18 revenues of the State of Hawaii the sum of \$ , or so  
19 much thereof as may be necessary for fiscal year 2007-2008, and  
20 the same sum, or so much thereof as may be necessary for fiscal  
21 year 2008-2009, for additional resources as may be necessary to  
22 prepare the reports required under section 3 pertaining to



1 qualified high technology businesses and related tax incentives  
2 provided under sections 235-7.3, 235-9.5, 235-110.51, 235-110.9,  
3 and 235-110.91, Hawaii Revised Statutes.

4 The sums appropriated shall be expended by the department  
5 of taxation for the purposes of this Act.

6 SECTION 7. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 8. This Act shall take effect on July 1, 2007.



**Report Title:**

High Technology Tax Incentives; Industry and Agency Reporting

**Description:**

Requires Department of Taxation to report to the Legislature on all available information and data collected from high technology businesses and thereafter submit an annual report of summary statistics on tax incentives and an evaluation of the effectiveness of high tech investment and research tax credits. Requires qualified high technology businesses benefiting from the high tech business investment and research activities tax credits to submit employment information to the Department of Taxation. Appropriates funds. (SB898 HD1)

