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# A BILL FOR AN ACT

RELATING TO TAX CREDITS.

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

1           SECTION 1. The legislature finds that the leeward coast of  
2 Oahu has levels of poverty in excess of twenty per cent in each  
3 of the census tracts comprising this region. This condition has  
4 existed for over forty years despite the efforts of federal,  
5 state, and county programs to alleviate the suffering or reduce  
6 the numbers of individuals and families impacted.

7           The legislature finds that two key elements impact each  
8 resident's quality of life - housing and education and training  
9 opportunities. In 2003, pursuant to Act 100, Session Laws of  
10 Hawaii 2003, the legislature found that the development of  
11 Ko Olina Resort "would bring extensive economic benefits and  
12 result in the creation of thousands of construction and  
13 permanent jobs." With that finding, the legislature approved  
14 \$75,000,000 in tax credits for the development of a world-class  
15 aquarium, and other attractions and educational facilities  
16 within the resort. Since that time, while Ko Olina has not used  
17 any of the tax credits earned, the existence of the tax credit



1 has created economic and job revitalization for the West Oahu  
2 area, as was originally intended by the legislation.

3 The continued development of Ko Olina and the continued  
4 strength of the State's visitor industry has expanded the need  
5 for affordable workforce housing and training to prepare for the  
6 State's future economic growth. Because of the success of Ko  
7 Olina, the Ko Olina Resort is amendable to the redesignation of  
8 the tax credits, if the tax credits will continue to be used to  
9 serve and revive the leeward coast through affordable rental  
10 housing and visitor industry education and training  
11 opportunities within the region.

12 The purpose of this Act is to:

- 13 (1) Repeal the attractions and educational facilities tax  
14 credit for Ko Olina Resort and Marina, and Makaha  
15 Resort; and
- 16 (2) Establish a Leeward coast revitalization tax credit  
17 for affordable rental housing and educational and  
18 training facilities.

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



1           "§235- Leeward coast revitalization tax credit for  
2 affordable rental housing and educational and training  
3 facilities. (a) There shall be allowed to each qualified  
4 taxpayer subject to the taxes imposed by this chapter, a tax  
5 credit that may be claimed for taxable years beginning after  
6 December 31, 2007, for qualified costs in the development of  
7 affordable rental housing and educational and training  
8 facilities for leeward coast revitalization efforts. The tax  
9 credit shall be deductible from the taxpayer's net income tax  
10 liability, if any, imposed by this chapter for taxpayers  
11 qualified under subsection (c).

12           (b) The tax credit earned shall be equal to the qualified  
13 costs incurred from June 1, 2007, through May 31, 2012, up to a  
14 maximum of \$75,000,000 of credits in the aggregate for all  
15 qualified taxpayers for all years; provided:

16           (1) Notwithstanding the amount of tax credits earned in  
17 any year, a maximum of \$7,500,000 of tax credits in  
18 the aggregate for all qualified taxpayers may be used  
19 in any one taxable year;

20           (2) A maximum of \$50,000,000 of credits may be used for  
21 qualifying affordable housing projects; and

1       (3) A maximum of \$25,000,000 may be granted for qualifying  
2       educational and training facilities.

3       The credits over \$7,500,000 shall be used as provided in  
4       subsection (d). In the case of a partnership, limited liability  
5       company, S corporation, estate, trust, or association of  
6       apartment owners, the tax credit allowable is for qualified  
7       costs incurred by the entity. The costs upon which the tax  
8       credit is computed shall be determined at the entity level.

9       (c) To qualify for the tax credit, a taxpayer shall:

10       (1) Have expended qualified costs on affordable rental  
11       housing units within the leeward coast; provided that  
12       the units for which the tax credits are earned are not  
13       part of any city or state requirement for affordable  
14       housing development; or

15       (2) Have expended qualified costs on a qualifying  
16       educational and/or training facility within the  
17       leeward coast.

18       (d) If the tax credit under this section exceeds  
19       \$7,500,000 in the aggregate for all qualified taxpayers for any  
20       taxable year or exceeds the taxpayer's tax liability under this  
21       chapter for any year for which the credit is taken, the excess  
22       of the tax credit may be used as a credit against the taxpayer's



1 tax liability for the income tax in subsequent years until  
2 exhausted; provided that the taxpayer may continue to claim the  
3 credit provided in this section if the qualified costs are  
4 incurred before June 1, 2012, subject to the monetary ceilings  
5 in subsection (b).

6 (e) Every claim, including amended claims, for a tax  
7 credit under this section shall be filed on or before the end of  
8 the twelfth month following the close of the taxable year for  
9 which the credit may be claimed. Failure to comply with the  
10 foregoing provision shall constitute a waiver of the right to  
11 claim the credit.

12 (f) If, at any time during the six-year period in which  
13 tax credits are earned under this section, the costs incurred no  
14 longer meet the definition of qualified costs, the credits  
15 claimed under this section shall be recaptured. The recapture  
16 shall be equal to one hundred per cent of the total tax credits  
17 claimed under this section for the preceding taxable year;  
18 provided that the amount of the credits recaptured shall apply  
19 only to those costs that no longer meet the definition of  
20 qualified costs. The amount of the recaptured tax credits  
21 determined under this subsection shall be added to the



1 taxpayer's tax liability for the taxable year in which the  
2 recapture occurs under this subsection.

3 (g) If any credit is claimed under this section, then no  
4 taxpayer shall claim a credit under this chapter for the same  
5 qualified costs for which a credit is claimed under this  
6 section.

7 (h) The director of taxation shall prepare any forms that  
8 may be necessary to claim a credit under this section. The  
9 director may also require the taxpayer to furnish information to  
10 ascertain the validity of the claims for credits made under this  
11 section and may adopt rules necessary to effectuate the purposes  
12 of this section pursuant to chapter 91.

13 Every qualified taxpayer, no later than April 1 of each  
14 year in which qualified costs were expended in the previous  
15 taxable year, shall submit a written, certified statement to the  
16 director of business, economic development, and tourism, in the  
17 form specified by the director of business, economic  
18 development, and tourism, identifying:

19 (1) Qualified costs, if any, expended in the previous  
20 taxable year;

21 (2) The amount of tax credits claimed pursuant to this  
22 section, if any, in the previous taxable year; and



1       (3) The tax liability under this chapter against which the  
2       tax credits are claimed.

3       Any other law to the contrary notwithstanding, a statement  
4       submitted under this subsection shall be a public document.

5       (i) The department of business, economic development, and  
6       tourism shall maintain records of the names of taxpayers  
7       eligible for the credits and the total amount of qualified costs  
8       incurred from June 1, 2007, through May 31, 2012. The  
9       department of business, economic development, and tourism shall  
10       verify all qualified costs and, upon each determination, shall  
11       issue a certificate to the taxpayer certifying:

12       (1) The amount of the qualified costs; and

13       (2) The amount of tax credit that the taxpayer is allowed  
14       to use for the taxable year.

15       The department of business, economic development, and  
16       tourism shall certify no more than \$7,500,000 in credits in the  
17       aggregate for all taxpayers for each taxable year; provided that  
18       the department may verify qualified costs of no more than  
19       \$75,000,000 from June 1, 2007, through May 31, 2012. The  
20       taxpayer shall file the certificate with the taxpayer's return  
21       with the department of taxation. The department of business,  
22       economic development, and tourism shall determine which credits



1 go to each qualified project and shall issue a credit  
2 certification. Once the maximum aggregate amounts of credit  
3 have been certified, as provided in this section, the department  
4 of business, economic development, and tourism shall provide  
5 notice to the public that the maximum amounts of certifiable  
6 credits have been issued. Furthermore, because of the annual  
7 cap of \$7,500,000 of tax credits that can be used in a given  
8 year, no later than \_\_\_\_\_ of each year, the department of  
9 business, economic development, and tourism shall also allocate  
10 the amount of tax credits any taxpayer may use in a given year  
11 on a pro rata basis, based upon the total outstanding tax  
12 credits as of the end of the previous year.

13 (j) As used in this section:

14 "Affordable rental housing" means a residential housing  
15 project in which all of the units shall be committed through  
16 deed restriction or other recorded encumbrance on the property:

17 (1) To be rental units for a period of not less than  
18 thirty years and that may only be sold as a single  
19 property and not as individual units; and

20 (2) One hundred per cent of the units shall be for rental  
21 to households with incomes at or below sixty per cent  
22 of the median income for the Honolulu metropolitan





1 statistical area, adjusted for household size, as most  
2 recently determined by the United States Department of  
3 Housing and Urban Development.

4 "Leeward coast" means the geographic area encompassed in  
5 the twenty-first state senatorial district, as it is defined as  
6 of January 1, 2007.

7 "Qualified costs" means:

8 (1) For affordable rental housing projects: any costs for  
9 plans, design, acquisition of land and construction,  
10 costs for equipment that is permanently affixed to a  
11 residential building or structure; provided that if  
12 costs are incurred for the planning, designing,  
13 acquiring of land and construction, or for equipment  
14 that is permanently affixed to an affordable  
15 residential building or structure, and ultimately, no  
16 affordable residential units are constructed, the  
17 costs incurred for such activities shall not be deemed  
18 as qualified costs and any tax credit claimed shall be  
19 recaptured; and

20 (2) For education and/or training projects: any costs for  
21 plans, design, and construction, costs for equipment  
22 that is permanently affixed to a building or



1 structure, and facilities for educational and/or  
2 training facilities located within the leeward coast  
3 for a visitor industry or hotel management training  
4 facility that is operated in conjunction with an  
5 actually operating hotel, timeshare, or resort  
6 operation within the leeward coast and that is  
7 developed or operated in cooperation with the  
8 University of Hawaii, its West Oahu campus or  
9 community colleges, or other education institution;  
10 provided that if costs are incurred for the planning,  
11 designing, acquiring of land and construction, or for  
12 equipment for facilities for educational and/or  
13 training facilities within the leeward coast for a  
14 visitor industry or hotel management or training  
15 facility pursuant to this section, and ultimately, no  
16 such facility is constructed, the costs incurred for  
17 such activities shall not be deemed as qualified costs  
18 and any tax credit claimed shall be recaptured;  
19 provided that under these definitions, qualified costs shall be  
20 available for this credit up to a total of \$75,000,000 in the  
21 aggregate, incurred after May 31, 2007, and before June 1, 2012.



1        "Qualified taxpayer" means a person who fulfills the  
2 requirements of subsection (c)."

3        SECTION 3. Section 235-110.46, Hawaii Revised Statutes, is  
4 repealed.

5        [~~§235-110.46~~] ~~Attractions and educational facilities tax~~  
6 ~~credit; Ko Olina Resort and Marina; Makaha Resort.~~ (a) ~~There~~  
7 ~~shall be allowed to each qualified taxpayer subject to the taxes~~  
8 ~~imposed by this chapter or chapter 237, 237D, 238, 239, 241, or~~  
9 ~~431, a tax credit [that] may be claimed for taxable years~~  
10 ~~beginning after December 31, 2004, for qualified costs in the~~  
11 ~~development of facilities for attractions and educational~~  
12 ~~purposes at Ko Olina Resort and Marina and at Makaha Resort.~~  
13 ~~The tax credit shall be deductible from the taxpayer's net~~  
14 ~~income tax liability, if any, imposed by this chapter and, at~~  
15 ~~the election of the taxpayer, from the tax liability imposed by~~  
16 ~~chapters 237, 237D, 238, 239, 241, and 431.~~

17        ~~(b) The tax credit earned shall be equal to the qualified~~  
18 ~~costs incurred from June 1, 2003, through May 31, 2009, up to a~~  
19 ~~maximum of \$75,000,000 of credits in the aggregate for all~~  
20 ~~qualified taxpayers for all years; provided that notwithstanding~~  
21 ~~the amount of tax credits earned in any year, a maximum of~~  
22 ~~\$7,500,000 of tax credits in the aggregate for all qualified~~



1 ~~taxpayers may be used in any one taxable year. The credits over~~  
2 ~~\$7,500,000 shall be used as provided in subsection (d). In the~~  
3 ~~case of a partnership, limited liability company, S corporation,~~  
4 ~~estate, trust, or association of apartment owners, the tax~~  
5 ~~credit allowable is for qualified costs incurred by the entity.~~  
6 ~~The costs upon which the tax credit is computed shall be~~  
7 ~~determined at the entity level.~~

8 ~~(c) To qualify for the tax credit, a taxpayer shall:~~

9 ~~(1) Have expended qualified costs on and be developing a~~  
10 ~~world class aquarium and marine science and mammal~~  
11 ~~research facility at Ko Olina Resort and Marina; and~~

12 ~~(2) Dedicate one half of the net operating income of the~~  
13 ~~world class aquarium to the State, beginning on the~~  
14 ~~first day of the seventeenth year following the year~~  
15 ~~in which the attractions and educational facilities~~  
16 ~~credit was first taken; or~~

17 ~~(3) Acquire or own the Makaha Resort, and lease or sell a~~  
18 ~~portion of the Makaha Resort for use as training and~~  
19 ~~educational facilities for a period of not less than~~  
20 ~~six years to a taxpayer meeting the requirements of~~  
21 ~~subsection (c) (1).~~



1       ~~(d) If the tax credit under this section exceeds~~  
2       ~~\$7,500,000 in the aggregate for all qualified taxpayers for any~~  
3       ~~taxable year or exceeds the taxpayer's tax liability under this~~  
4       ~~chapter or chapters 237, 237D, 238, 239, 241, and 431 for any~~  
5       ~~year for which the credit is taken, the excess of the tax credit~~  
6       ~~may be used as a credit against the taxpayer's tax liability for~~  
7       ~~the taxes set forth in this section in subsequent years until~~  
8       ~~exhausted; provided that the taxpayer may continue to claim the~~  
9       ~~credit provided in this section if the qualified costs are~~  
10       ~~incurred before June 1, 2009, subject to the monetary ceilings~~  
11       ~~in subsection (b).~~

12       ~~(e) Every claim, including amended claims, for a tax~~  
13       ~~credit under this section shall be filed on or before the end of~~  
14       ~~the twelfth month following the close of the taxable year for~~  
15       ~~which the credit may be claimed. Failure to comply with the~~  
16       ~~foregoing provision shall constitute a waiver of the right to~~  
17       ~~claim the credit.~~

18       ~~(f) If, at any time during the six year period in which~~  
19       ~~tax credits are earned under this section, the costs incurred no~~  
20       ~~longer meet the definition of qualified costs, the credits~~  
21       ~~claimed under this section shall be recaptured. The recapture~~  
22       ~~shall be equal to one hundred per cent of the total tax credits~~



1 ~~claimed under this section for the preceding taxable year,~~  
2 ~~provided that the amount of the credits recaptured shall apply~~  
3 ~~only to those costs that no longer meet the definition of~~  
4 ~~qualified costs. The amount of the recaptured tax credits~~  
5 ~~determined under this subsection shall be added to the~~  
6 ~~taxpayer's tax liability for the taxable year in which the~~  
7 ~~recapture occurs under this subsection.~~

8 ~~(g) If any credit is claimed under this section, then no~~  
9 ~~taxpayer shall claim a credit under any chapter identified in~~  
10 ~~this section for the same qualified costs for which a credit is~~  
11 ~~claimed under this section.~~

12 ~~(h) The director of taxation shall prepare any forms that~~  
13 ~~may be necessary to claim a credit under this section. The~~  
14 ~~director may also require the taxpayer to furnish information to~~  
15 ~~ascertain the validity of the claims for credits made under this~~  
16 ~~section and may adopt rules necessary to effectuate the purposes~~  
17 ~~of this section pursuant to chapter 91.~~

18 ~~Every qualified taxpayer, no later than March 31 of each~~  
19 ~~year in which qualified costs were expended in the previous~~  
20 ~~taxable year, shall submit a written, certified statement to the~~  
21 ~~director of business, economic development, and tourism, in the~~



1 ~~form specified by the director of business, economic~~  
2 ~~development, and tourism, identifying:~~

3 ~~(1) Qualified costs, if any, expended in the previous~~  
4 ~~taxable year;~~

5 ~~(2) The amount of tax credits claimed pursuant to this~~  
6 ~~section, if any, in the previous taxable year; and~~

7 ~~(3) The tax liability under this chapter and chapters 237,~~  
8 ~~237D, 238, 239, 241, and 431 against which the tax~~  
9 ~~credits are claimed.~~

10 ~~Any other law to the contrary notwithstanding, a statement~~  
11 ~~submitted under this subsection shall be a public document.~~

12 ~~(i) The department of business, economic development, and~~  
13 ~~tourism shall maintain records of the names of taxpayers~~  
14 ~~eligible for the credits and the total amount of qualified costs~~  
15 ~~incurred from June 1, 2003, through May 31, 2009. The~~  
16 ~~department of business, economic development, and tourism shall~~  
17 ~~verify all qualified costs and, upon each determination, shall~~  
18 ~~issue a certificate to the taxpayer certifying:~~

19 ~~(1) The amount of the qualified costs; and~~

20 ~~(2) The amount of tax credit that the taxpayer is allowed~~  
21 ~~to use for the taxable year.~~



1       ~~The department of business, economic development, and~~  
2 ~~tourism shall certify no more than \$7,500,000 in credits in the~~  
3 ~~aggregate for all taxpayers for each taxable year; provided that~~  
4 ~~the department may verify qualified costs of no more than~~  
5 ~~\$75,000,000 from June 1, 2003, through May 31, 2009. The~~  
6 ~~taxpayer shall file the certificate with the taxpayer's return~~  
7 ~~with the department of taxation.~~

8       ~~(j) As used in this section:~~

9       ~~"Ke Olina Resort and Marina" means the six hundred forty-~~  
10 ~~two acres reclassified to urban district by Decision and Order~~  
11 ~~entered on September 12, 1985, in Docket A83 562, by the land~~  
12 ~~use commission.~~

13       ~~"Makaha Resort" means the three hundred thirty two acre~~  
14 ~~property identified as tax map keys (1) 8 04 002 parcels 51, 52,~~  
15 ~~53, 54, 55, and 67 and (1) 8 04 029 142.~~

16       ~~"Qualified costs" means any costs for plans, design, and~~  
17 ~~construction, costs for equipment that is permanently affixed to~~  
18 ~~a building or structure, and acquisition of facilities for~~  
19 ~~educational purposes, up to a total of \$75,000,000 in the~~  
20 ~~aggregate, incurred after May 31, 2003, and before June 1, 2009,~~  
21 ~~at either or both of:~~





1       ~~(1) Ko Olina Resort and Marina for the development of~~  
2           ~~facilities for attractions and educational purposes,~~  
3           ~~and for infrastructure within the Ko Olina Resort and~~  
4           ~~Marina that is directly related to those facilities,~~  
5           ~~including a world class aquarium, marine science and~~  
6           ~~mammal research facilities, international sports~~  
7           ~~training complex, a travel industry management intern~~  
8           ~~campus, infrastructure for the transfer of ocean~~  
9           ~~waters to the aquarium or marine mammal facilities, or~~  
10          ~~both, seawater air conditioning, and other educational~~  
11          ~~facilities developed or operated in cooperation with~~  
12          ~~the University of Hawaii or other educational~~  
13          ~~institutions; or~~

14       ~~(2) Makaha Resort for the development of a training and~~  
15           ~~educational facility within a working resort and~~  
16           ~~hotel;~~

17       ~~provided that "qualified costs" shall not include land~~  
18       ~~acquisition costs.~~

19           ~~"Qualified taxpayer" means a person who fulfills the~~  
20       ~~requirements of subsection (c)."]~~

21       SECTION 4. Statutory material to be repealed is bracketed  
22       and stricken. New statutory material is underscored.



1 SECTION 5. This Act shall take effect upon its approval  
2 and shall apply to taxable years beginning after December 31,  
3 2006; provided that the provisions of this Act shall apply to  
4 costs incurred after May 31, 2007, and before June 1, 2012.



**Report Title:**

Leeward Coast Tax Credit; Repeal Ko Olina and Makaha Tax Credit

**Description:**

Establishes a tax credit for the revitalization of the leeward coast. Provides an income tax credit for affordable rental housing and educational and training facilities constructed on the leeward coast of Oahu. Repeals the Ko Olina Resort and Marina and Makaha Resort tax credit. (SD1)

