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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.

7 To implement these goals, the legislature finds that areas  
8 near the Leeward Coast should also support workforce housing and  
9 training, including Kapolei and Ewa. In addition, commercial  
10 projects that provide adequate returns on development and  
11 investment could be a viable basis to support workforce  
12 development and housing.

13 The purpose of this Act is to:

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



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

4 "§235- Leeward coast revitalization tax credit for  
5 affordable rental housing; educational and training facilities;  
6 commercial projects. (a) There shall be allowed to each  
7 qualified taxpayer subject to the taxes imposed by this chapter  
8 and chapters 237 and 237D, a tax credit that may be claimed for  
9 taxable years beginning after December 31, 2007, for qualified  
10 costs in the development of affordable rental housing,  
11 educational and training facilities, and commercial projects,  
12 for leeward coast revitalization efforts. The tax credit shall  
13 be deductible from the taxpayer's tax liability, if any, imposed  
14 by this chapter and chapters 237 and 237D for taxpayers  
15 qualified under subsection (c).

16 (b) The tax credit earned shall be equal to the qualified  
17 costs incurred after May 31, 2007, and before June 1, 2012, up  
18 to a maximum of \$75,000,000 of credits in the aggregate for all  
19 qualified taxpayers for all years; provided that notwithstanding  
20 the amount of tax credits earned in any year: a maximum of  
21 \$7,500,000 of tax credits in the aggregate for all qualified  
22 taxpayers may be used in any one taxable year. Of the



1 \$75,000,000, the maximum aggregate amount of credits for all  
2 qualified taxpayers for all years for the projects authorized in  
3 this section shall be:

4 (1) \$ \_\_\_\_\_ of credits in the aggregate may be granted  
5 for development of affordable housing projects;

6 (2) \$ \_\_\_\_\_ in the aggregate may be granted for  
7 development of educational and training facilities or  
8 both; and

9 (3) \$ \_\_\_\_\_ in the aggregate may be granted for  
10 development of commercial projects.

11 The credits over \$7,500,000 in any taxable year shall be used as  
12 provided in subsection (d). In the case of a partnership,  
13 limited liability company, S corporation, estate, trust, or  
14 association of apartment owners, the tax credit allowable is for  
15 qualified costs incurred by the entity. The costs upon which  
16 the tax credit is computed shall be determined at the entity  
17 level.

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

19 (1) Have expended qualified costs on affordable rental  
20 housing units within the leeward coast; provided that  
21 the units for which the tax credits are earned are not



1           part of any city or state requirement for affordable  
2           housing development;

3           (2) Have expended qualified costs on an educational and/or  
4           training facility within the leeward coast; or

5           (3) Have expended qualified costs on a commercial project  
6           within the leeward coast.

7           (d) If the tax credit under this section exceeds  
8           \$7,500,000 in the aggregate for all qualified taxpayers for any  
9           taxable year or exceeds the taxpayer's tax liability under this  
10           chapter for any year for which the credit is taken, the excess  
11           of the tax credit may be used as a credit against the taxpayer's  
12           tax liability for the income tax in subsequent years until  
13           exhausted; provided that the taxpayer may continue to claim the  
14           credit provided in this section after May 31, 2012, if the  
15           qualified costs are incurred before June 1, 2012, subject to the  
16           monetary ceilings in subsection (b).

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



1       (f) If, at any time during the six-year period in which  
2 tax credits are earned under this section, the costs incurred no  
3 longer meet the definition of qualified costs, the credits  
4 claimed under this section shall be recaptured. The recapture  
5 shall be equal to one hundred per cent of the total tax credits  
6 claimed under this section for the preceding taxable year;  
7 provided that the amount of the credits recaptured shall apply  
8 only to those costs that no longer meet the definition of  
9 qualified costs. The amount of the recaptured tax credits  
10 determined under this subsection shall be added to the  
11 taxpayer's tax liability for the taxable year in which the  
12 recapture occurs under this subsection.

13       (g) If any credit is claimed under this section, then no  
14 taxpayer shall claim a credit under this chapter for the same  
15 qualified costs for which a credit is claimed under this  
16 section.

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



1       Every qualified taxpayer, no later than April 1 of each  
2 year in which qualified costs were expended in the previous  
3 taxable year, shall submit a written, certified statement to the  
4 director of business, economic development, and tourism, in the  
5 form specified by the director of business, economic  
6 development, and tourism, identifying:

7       (1) Qualified costs, if any, expended in the previous  
8 taxable year;

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

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

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

15       (i) The department of business, economic development, and  
16 tourism shall maintain records of the names of taxpayers  
17 eligible for the credits and the total amount of qualified costs  
18 incurred after May 31, 2007, and before June 1, 2012. The  
19 department of business, economic development, and tourism shall  
20 verify all qualified costs and, upon each determination, shall  
21 issue a certificate to the taxpayer certifying:

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



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

3       The department of business, economic development, and  
4       tourism shall certify no more than \$7,500,000 in credits in the  
5       aggregate for all taxpayers for each taxable year; provided that  
6       the department may verify qualified costs of no more than  
7       \$75,000,000 after May 31, 2007, and before June 1, 2012. The  
8       taxpayer shall file the certificate with the taxpayer's return  
9       with the department of taxation. The department of business,  
10       economic development, and tourism shall determine which credits  
11       go to each qualified project and shall issue a credit  
12       certification. Once the maximum aggregate amounts of credit  
13       have been certified, as provided in this section, the department  
14       of business, economic development, and tourism shall provide  
15       notice to the public that the maximum amounts of certifiable  
16       credits have been issued. Furthermore, because of the annual  
17       cap of \$7,500,000 of tax credits that can be used in a given  
18       year, no later than April 1 of each year, the department of  
19       business, economic development, and tourism shall also allocate  
20       the amount of tax credits any taxpayer may use in a given year  
21       on a pro rata basis, based upon the total outstanding tax  
22       credits as of the end of the previous year.





1        (j) As used in this section:

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

5        (1) To be rental units for a period of not less than  
6 thirty years, and that may only be sold together as  
7 one single property and not as individual units; and

8        (2) One hundred per cent of the units shall be for rental  
9 to households with incomes at or below eighty per cent  
10 of the median income for the Honolulu metropolitan  
11 statistical area, adjusted for household size, as most  
12 recently determined by the United States Department of  
13 Housing and Urban Development.

14        "Leeward coast" means the geographic area encompassed in  
15 the                    state senatorial districts, as they are defined  
16 as of January 1, 2007; provided that the first preference for  
17 qualified costs shall be for those lands owned by the department  
18 of Hawaiian home lands as of January 1, 2007, and any unused  
19 credits may be applied to other qualified costs in the  
20                           districts.

21        "Qualified costs" means:



- 1        (1) For affordable rental housing: any costs for plans,  
2        design, acquisition of land and construction, and  
3        costs for equipment that is permanently affixed to a  
4        residential building or structure; provided that if  
5        costs are incurred for such facilities and ultimately,  
6        no such facilities are constructed, the costs incurred  
7        shall not be deemed as qualified costs and any tax  
8        credit claimed shall be recaptured; and
- 9        (2) For educational and training projects or both: any  
10       costs for plans, design, and construction, and costs  
11       for equipment that is permanently affixed to a  
12       building or structure, and facilities for educational  
13       and training facilities or both located within the  
14       leeward coast for a visitor industry or hotel  
15       management training facility that is operated in  
16       conjunction with an actual operating hotel, timeshare,  
17       or resort operation within the leeward coast and that  
18       is developed or operated in cooperation with the  
19       University of Hawaii, its West Oahu campus or  
20       community colleges, or other education institution;  
21       provided that if costs are incurred for such  
22       facilities, and ultimately, no such facility is



1           constructed, the costs incurred shall not be deemed as  
2           qualified costs and any tax credit claimed shall be  
3           recaptured; and

4           (3) For commercial projects: any costs for plans, design,  
5           acquisition of land, construction of buildings or  
6           structures, and costs for equipment that is  
7           permanently affixed to a building or structure, for  
8           purposes of retail, theater, film and multimedia  
9           studio, restaurant, hotel, condominium, or timeshare  
10           facilities located within the leeward coast; provided  
11           that if costs are incurred for such facilities  
12           pursuant to this section, and ultimately, no such  
13           facility is constructed, the costs incurred shall not  
14           be deemed as qualified costs and any tax credit shall  
15           be recaptured;

16           provided that under these definitions, qualified costs shall be  
17           available for this credit up to a total of \$75,000,000 in the  
18           aggregate, incurred after May 31, 2007, and before June 1, 2012.

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

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



1           ~~["§235-110.46] Attractions and educational facilities tax~~  
2 ~~credit; Ko Olina Resort and Marina; Makaha Resort. (a) There~~  
3 ~~shall be allowed to each qualified taxpayer subject to the taxes~~  
4 ~~imposed by this chapter or chapter 237, 237D, 238, 239, 241, or~~  
5 ~~431, a tax credit [that] may be claimed for taxable years~~  
6 ~~beginning after December 31, 2004, for qualified costs in the~~  
7 ~~development of facilities for attractions and educational~~  
8 ~~purposes at Ko Olina Resort and Marina and at Makaha Resort.~~  
9 ~~The tax credit shall be deductible from the taxpayer's net~~  
10 ~~income tax liability, if any, imposed by this chapter and, at~~  
11 ~~the election of the taxpayer, from the tax liability imposed by~~  
12 ~~chapters 237, 237D, 238, 239, 241, and 431.~~

13           ~~(b) The tax credit earned shall be equal to the qualified~~  
14 ~~costs incurred from June 1, 2003, through May 31, 2009, up to a~~  
15 ~~maximum of \$75,000,000 of credits in the aggregate for all~~  
16 ~~qualified taxpayers for all years, provided that notwithstanding~~  
17 ~~the amount of tax credits earned in any year, a maximum of~~  
18 ~~\$7,500,000 of tax credits in the aggregate for all qualified~~  
19 ~~taxpayers may be used in any one taxable year. The credits over~~  
20 ~~\$7,500,000 shall be used as provided in subsection (d). In the~~  
21 ~~case of a partnership, limited liability company, S corporation,~~  
22 ~~estate, trust, or association of apartment owners, the tax~~



1 ~~credit allowable is for qualified costs incurred by the entity.~~

2 ~~The costs upon which the tax credit is computed shall be~~

3 ~~determined at the entity level.~~

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

5 ~~(1) Have expended qualified costs on and be developing a~~

6 ~~world class aquarium and marine science and mammal~~

7 ~~research facility at Ko Olina Resort and Marina; and~~

8 ~~(2) Dedicate one half of the net operating income of the~~

9 ~~world class aquarium to the State, beginning on the~~

10 ~~first day of the seventeenth year following the year~~

11 ~~in which the attractions and educational facilities~~

12 ~~credit was first taken; or~~

13 ~~(3) Acquire or own the Makaha Resort, and lease or sell a~~

14 ~~portion of the Makaha Resort for use as training and~~

15 ~~educational facilities for a period of not less than~~

16 ~~six years to a taxpayer meeting the requirements of~~

17 ~~subsection (c) (1).~~

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 or chapters 237, 237D, 238, 239, 241, and 431 for any~~

22 ~~year for which the credit is taken, the excess of the tax credit~~



1 ~~may be used as a credit against the taxpayer's tax liability for~~  
2 ~~the taxes set forth in this section in subsequent years until~~  
3 ~~exhausted, provided that the taxpayer may continue to claim the~~  
4 ~~credit provided in this section if the qualified costs are~~  
5 ~~incurred before June 1, 2009, subject to the monetary ceilings~~  
6 ~~in subsection (b).~~

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

13 ~~(f) If, at any time during the six year period in which~~  
14 ~~tax credits are earned under this section, the costs incurred no~~  
15 ~~longer meet the definition of qualified costs, the credits~~  
16 ~~claimed under this section shall be recaptured. The recapture~~  
17 ~~shall be equal to one hundred per cent of the total tax credits~~  
18 ~~claimed under this section for the preceding taxable year,~~  
19 ~~provided that the amount of the credits recaptured shall apply~~  
20 ~~only to those costs that no longer meet the definition of~~  
21 ~~qualified costs. The amount of the recaptured tax credits~~  
22 ~~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 any chapter identified in~~  
5 ~~this section for the same qualified costs for which a credit is~~  
6 ~~claimed under this 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 March 31 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 and chapters 237,~~  
2               ~~237D, 238, 239, 241, and 431 against which the tax~~  
3               ~~credits are claimed.~~

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

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

13           ~~(1) The amount of the qualified costs, and~~

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

16       ~~The department of business, economic development, and~~  
17       ~~tourism shall certify no more than \$7,500,000 in credits in the~~  
18       ~~aggregate for all taxpayers for each taxable year, provided that~~  
19       ~~the department may verify qualified costs of no more than~~  
20       ~~\$75,000,000 from June 1, 2003, through May 31, 2009. The~~  
21       ~~taxpayer shall file the certificate with the taxpayer's return~~  
22       ~~with the department of taxation.~~





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

2 ~~"Ko Olina Resort and Marina" means the six hundred forty-~~  
3 ~~two acres reclassified to urban district by Decision and Order~~  
4 ~~entered on September 12, 1985, in Docket A83 562, by the land~~  
5 ~~use commission.~~

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

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

15 ~~(1) Ko Olina Resort and Marina for the development of~~  
16 ~~facilities for attractions and educational purposes,~~  
17 ~~and for infrastructure within the Ko Olina Resort and~~  
18 ~~Marina that is directly related to those facilities,~~  
19 ~~including a world class aquarium, marine science and~~  
20 ~~mammal research facilities, international sports~~  
21 ~~training complex, a travel industry management intern~~  
22 ~~campus, infrastructure for the transfer of ocean~~



1           ~~waters to the aquarium or marine mammal facilities, or~~  
 2           ~~both, seawater air conditioning, and other educational~~  
 3           ~~facilities developed or operated in cooperation with~~  
 4           ~~the University of Hawaii or other educational~~  
 5           ~~institutions; or~~  
 6           ~~(2) Makaha Resort for the development of a training and~~  
 7           ~~educational facility within a working resort and~~  
 8           ~~hotel;~~

9           ~~provided that "qualified costs" shall not include land~~  
 10           ~~acquisition costs.~~

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

13           SECTION 4. Statutory material to be repealed is bracketed  
 14           and stricken. New statutory material is underscored.

15           SECTION 5. This Act shall take effect upon its approval  
 16           and shall apply to taxable years beginning after December 31,  
 17           2050; provided that the provisions of this Act shall apply to  
 18           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, educational and training facilities, and commercial projects constructed on the leeward coast of Oahu. Repeals the Ko Olina Resort and Marina and Makaha Resort tax credit. (SD2)

