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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           SECTION 1. 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     .   HAWAII STRATEGIC DEVELOPMENT

5   A. General Provisions

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

7           "Committee" means the Hawaii strategic development advisory  
8 committee.

9           "Direct investment" means an investment by the development  
10 corporation in qualified securities of an enterprise to provide  
11 capital to an enterprise.

12           "Economic development project" means an endeavor related to  
13 industrial, commercial, or advanced technology-based  
14 agricultural enterprise. Economic development project shall not  
15 include that portion of an endeavor devoted to the construction  
16 of housing.

17           "Enterprise" means a person with a place of business in  
18 Hawaii which is, or proposes to be, engaged in business in



1 Hawaii; provided that the endeavor shall not be devoted to the  
2 sale of goods at retail, construction of housing, or tourism-  
3 related services.

4 "Minority-owned businesses" means businesses at least fifty  
5 per cent owned, controlled, and managed by socially or  
6 economically disadvantaged persons.

7 "Person" means a sole proprietorship, partnership, joint  
8 venture, corporation, or other association of persons organized  
9 for commercial or industrial purposes.

10 "Professional investor" means any bank, bank holding  
11 company, savings institution, trust company, insurance company,  
12 investment company registered under the Federal Investment  
13 Company Act of 1940, financial services loan company, pension or  
14 profit-sharing trust or other financial institution or  
15 institutional buyer, licensee under the Federal Small Business  
16 Investment Act of 1958, or any person, partnership, or other  
17 entity of whose resources a substantial amount is dedicated to  
18 investing in securities or debt instruments and whose net worth  
19 exceeds \$250,000.

20 "Qualified security" means any note, stock, treasury stock  
21 bond, debenture, evidence of indebtedness, certificate of  
22 interest or participation in any profit-sharing agreement,



1 preorganization certificate of subscription, transferable share,  
2 investment contract, certificate of deposit for a security,  
3 certificate of interest or participation in a patent or patent  
4 application, or in royalty or other payments under such a patent  
5 or application, or, in general, any interest or instrument  
6 commonly known as a "security" or any certificate for, receipt  
7 for, or option, warrant, or right to subscribe to or purchase  
8 any of the foregoing.

9 "Seed capital" means financing provided for the earliest  
10 stage of business development, including but not limited to  
11 developing a working prototype, preparing a business plan,  
12 performing an initial market analysis, or organizing a  
13 management team.

14 "Venture capital investment" means any of the following  
15 investments in a business:

- 16 (1) Common or preferred stock and equity securities  
17 without a repurchase requirement for at least five  
18 years;
- 19 (2) A right to purchase stock or equity securities;
- 20 (3) Any debenture or loan, whether or not convertible or  
21 having stock purchase rights, which are subordinated,  
22 together with security interests against the assets of



1           the borrower, by their terms to all borrowings of the  
2           borrower from other institutional lenders, and that is  
3           for a term of not less than three years, and that has  
4           no part amortized during the first three years; and

5           (4) General or limited partnership interests.

6           206M-B Hawaii strategic development; purpose. The purpose  
7 of the development corporation under this part shall be to  
8 encourage economic development and diversification in Hawaii  
9 through innovative actions in cooperation with private  
10 enterprises. The development corporation shall establish  
11 programs to stimulate private capital investment in Hawaii  
12 toward investments that promote the welfare of citizens in this  
13 State, economic growth, employment, and economic  
14 diversification. The development corporation may use public  
15 funds to provide incentives to private investment activity, by  
16 co-investing public funds in private financial organizations to  
17 increase the impact of the public investment while using the  
18 investment acumen of the private sector, and by using public  
19 funds to reduce the risks of private investments. The  
20 development corporation shall have the flexibility to provide  
21 various types of financial assistance. When providing financial



1 assistance, the development corporation shall make provision for  
2 the recovery of its expenditures, as far as possible.

3 §206M-C Hawaii strategic development advisory committee.

4 (a) There is established a Hawaii strategic development  
5 advisory committee which shall advise the development  
6 corporation on matters relating to the implementation of this  
7 part. The committee shall consist of eleven members to be  
8 appointed by the governor for staggered terms pursuant to  
9 section 26-34 as follows:

- 10 (1) Three to be appointed directly by the governor;
- 11 (2) Three to be appointed from a list of nominees from the  
12 general public submitted by the president of the  
13 senate; and
- 14 (3) Three to be appointed from a list of nominees from the  
15 general public submitted by the speaker of the house  
16 of representatives,

17 and shall be selected on the basis of their knowledge, skill,  
18 and experience in the scientific, business, or financial fields.

19 The director of business, economic development, and tourism and  
20 a member from the board of the natural energy laboratory of

21 Hawaii authority appointed by the governor, or their designated  
22 representatives, shall serve as ex officio voting members. Not



1 more than two of the six members of the committee appointed from  
2 the lists of nominees submitted by the president of the senate  
3 and the speaker of the house of representatives, during their  
4 term of office on the committee, shall be employees of the  
5 State. All appointed members of the committee shall continue in  
6 office until their respective successors have been appointed.

7 (b) The director of business, economic development, and  
8 tourism shall serve as chairperson of the committee until such  
9 time as a chairperson is elected by the committee from the  
10 membership. The committee shall elect such other officers as it  
11 deems necessary.

12 (c) The members of the committee shall serve without  
13 compensation, but may be reimbursed for expenses, including  
14 travel expenses, incurred in the performance of their duties.

15 §206M-D Powers of development corporation. The  
16 development corporation in addition to its powers under section  
17 206M-3 shall have all of the powers necessary to carry out its  
18 purposes under this part, including:

19 (1) Adopting rules pursuant to chapter 91 to carry out the  
20 purposes of this part;

21 (2) Appearing in its own behalf before state, county, or  
22 federal agencies;



- 1           (3) Entering into agreements or other transactions with  
2                   any federal, state, or county agency;
- 3           (4) Appointing officers, employees, consultants, agents,  
4                   and advisors who shall not be subject to chapter 76,  
5                   and prescribing their duties and fixing their  
6                   compensation within the limitations provided by law;
- 7           (5) Contracting with others, public or private, for the  
8                   provision of all or a portion of the services  
9                   necessary for the operation of this part;
- 10          (6) Appointing advisory committees as deemed necessary;
- 11          (7) Providing and paying for such advisory services and  
12                   technical, managerial, and marketing assistance,  
13                   support, and promotion as may be necessary or  
14                   desirable to carry out the purposes of this part;
- 15          (8) Financing, conducting, or cooperating in the financing  
16                   or conducting of technological, business, financial,  
17                   or other investigations that are related to or likely  
18                   to lead to business and economic development by making  
19                   and entering into contracts and other appropriate  
20                   arrangements, including the provision of loans, start-  
21                   up and expansion capital, and other forms of  
22                   assistance;



- 1           (9) Acquiring, owning, holding, disposing of, and  
2           encumbering personal property of any nature, or any  
3           interest therein;
- 4           (10) Acquiring real property, or an interest therein, by  
5           purchase or foreclosure, where that acquisition is  
6           necessary or appropriate to protect or secure any  
7           investment or loan in which the development  
8           corporation has an interest; selling, transferring, and  
9           conveying the property to a buyer and if the sale,  
10          transfer, or conveyance cannot be effected with  
11          reasonable promptness or at a reasonable price,  
12          leasing the property to a tenant;
- 13          (11) Accepting donations, grants, bequests, and devises of  
14          money, property, service, or other things of value  
15          that may be received from the United States or any  
16          agency thereof, any governmental agency, or any public  
17          or private institution, person, firm, or corporation,  
18          to be held, used, or applied for any or all of the  
19          purposes specified in this part;
- 20          (12) Using all appropriations, grants, contractual  
21          reimbursements, and all other funds not appropriated  
22          for a designated purpose to pay for the proper general





- 1 expenses of the development corporation under this  
2 part and to carry out the purposes of this part;
- 3 (13) Carrying out specialized programs designed to  
4 encourage the development of new products, businesses,  
5 and markets;
- 6 (14) Coordinating the development corporation's programs  
7 with any education and training program;
- 8 (15) Organizing, conducting, sponsoring, or cooperating and  
9 assisting in the conduct of conferences,  
10 demonstrations, and studies relating to the  
11 stimulation and formation of businesses and to  
12 fulfilling the objectives and purposes of this part;
- 13 (16) Preparing, publishing, and distributing such technical  
14 studies, reports, bulletins, and other materials as it  
15 deems appropriate, subject only to the maintenance and  
16 respect for confidentiality of client proprietary  
17 information; and
- 18 (17) Exercising any other powers of a corporation organized  
19 under the laws of the State.

20 **§206M-E Actions of development corporation; guidelines.**

- 21 (a) All actions taken by the development corporation under this  
22 part shall be necessary to achieve the purposes and objectives



1 of this part; provided that a board member shall not participate  
2 in any development corporation decision to invest in, purchase  
3 from, sell to, borrow from, loan to, contract with, or otherwise  
4 deal with any person with whom or entity in which the board  
5 member has a substantial financial interest. The board may  
6 delegate to its staff, employees, or others those functions and  
7 powers that the board deems necessary or appropriate, including  
8 but not limited to the oversight and supervision of employees of  
9 the corporation.

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

18 (c) Financial participation shall be made on the condition  
19 that the recipient of the assistance shall use the money to  
20 assist economic development projects within the state that have  
21 potential for creating new jobs or retaining current jobs within  
22 the state.



1           (d) Financial participation by the development corporation  
2 in private financial investment funds shall be made with the  
3 provision that the private fund shall make investments in Hawaii  
4 in amounts at least equal to the amount of state participation.

5           (e) The development corporation shall not make direct  
6 investments in individual businesses except upon a two-thirds  
7 vote of the board in each case considered. When deciding  
8 whether to enter into a direct investment, the development  
9 corporation shall consider whether:

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



1 The development corporation shall not acquire securities to an  
2 extent that would provide the development corporation effective  
3 voting control of any enterprise after giving effect to the  
4 conversion of all outstanding convertible securities of the  
5 enterprise.

6 (f) Investments by the development corporation to persons  
7 shall be made on the basis of solicitation and a competitive  
8 technical review process, subject to the availability of funds  
9 allocated to the development corporation for making investments.  
10 Investments by the development corporation shall not be subject  
11 to chapter 42F. Any organization applying for an investment  
12 shall meet the following standards:

13 (1) Have bylaws or policies that describe the manner in  
14 which business is conducted and policies relating to  
15 nepotism and management of potential conflict of  
16 interest situations;

17 (2) Be licensed and accredited, as applicable, in  
18 accordance with the requirements of federal, state,  
19 and county governments;

20 (3) Comply with applicable federal and state laws  
21 prohibiting discrimination against any person on the



1 basis of race, color, national origin, religion,  
2 creed, sex, age, or physical handicap; and

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

5 (g) The development corporation shall segregate its  
6 operations under this part from other development corporation  
7 operations. The development corporation shall not promise to  
8 answer for the debts of any other person.

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

20 206M-G Confidentiality of trade secrets or the like;  
21 disclosure of financial information. Notwithstanding chapter  
22 92, 92F, or any other law to the contrary, any documents or data



1 made or received by any member or employee of the development  
2 corporation under this part, to the extent that the material or  
3 data consist of trade secrets, commercial or financial  
4 information regarding the operation of any business conducted by  
5 an applicant for, or recipient of, any form of assistance that  
6 the development corporation is empowered to render, or regarding  
7 the competitive position of that applicant in a particular field  
8 of endeavor, shall not be a public record; provided that if the  
9 development corporation purchases a qualified security from an  
10 applicant, the commercial and financial information, excluding  
11 confidential business information, shall be deemed to become a  
12 public record of the development corporation. If the  
13 information is made or received by any member or employee of the  
14 development corporation after the purchase of the qualified  
15 security, it shall become a public record three years from the  
16 date the information was made or received. Any discussion or  
17 consideration of trade secrets or commercial or financial  
18 information, shall be held by the board, or any subcommittee of  
19 the board, in executive sessions closed to the public; provided  
20 that the purpose of any such executive session shall be set  
21 forth in the official minutes of the development corporation and  
22 business which is not related to that purpose shall not be



1 transacted, nor shall any vote be taken during the executive  
2 sessions.

3       206M-H Requests for assistance from the development  
4 corporation; procedure. (a) The board shall approve or  
5 disapprove requests for assistance under this part within ninety  
6 days of receiving a written application. Upon written request  
7 by an applicant, the board may reconsider its denial of an  
8 application for assistance or may waive the ninety-day deadline  
9 for approving or disapproving an application.

10       (b) Any person who submits any statement, report,  
11 application, or other document to the development corporation  
12 which is known to the person to be false in any material respect  
13 shall be guilty of a class C felony.

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



1           206M-I Private sector financial support. Significant  
2 private sector financial support shall be associated with any  
3 economic development project for which the development  
4 corporation provides assistance under this part.

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

15           §206M-K Hawaii strategic development revolving fund.  
16 There is established the Hawaii strategic development revolving  
17 fund. The following moneys received by the development  
18 corporation under this section shall be deposited into the  
19 Hawaii strategic development revolving fund and shall not be  
20 considered part of the general fund: all moneys appropriated by  
21 the legislature, received as repayments of loans, earned on  
22 investments, received pursuant to a venture agreement, received





1 as royalties, received as premiums or fees charged by the  
2 development corporation, or otherwise received by the  
3 development corporation under this section.

4 206M-L Cancer detection development revolving fund;  
5 establishment. (a) There is established the cancer detection  
6 development revolving fund to be administered by the  
7 development corporation to assist enterprises that develop  
8 healthcare and biomedical technology to detect cancer, including  
9 cervical cancer, in its early stages.

10 (b) The fund shall not be considered part of the general  
11 fund and shall consist of moneys:

- 12 (1) Appropriated by the legislature;
- 13 (2) Received as repayments of loans;
- 14 (3) Earned on investments;
- 15 (4) Received pursuant to a venture agreement;
- 16 (5) Received as royalties; or
- 17 (6) Received as premiums, or fees charged by the  
18 development corporation or otherwise received by the  
19 development corporation.

20 206M-M Hydrogen investment capital special fund. (a)  
21 There is established the hydrogen investment capital special  
22 fund, into which shall be deposited:



- 1       (1) Appropriations made by the legislature to the fund;
- 2       (2) All contributions from public or private partners;
- 3       (3) All interest earned on or accrued to moneys deposited
- 4             in the special fund; and
- 5       (4) Any other moneys made available to the special fund
- 6             from other sources.
- 7       (b) Moneys in the fund shall be used to:
- 8       (1) Provide seed capital for and venture capital
- 9             investments in private sector and federal projects for
- 10            research, development, testing, and implementation of
- 11            the Hawaii renewable hydrogen program, as set forth in
- 12            section 196-10; and
- 13       (2) For any other purpose deemed necessary to carry out
- 14            the purposes of section 196-10.

15       206M-N Annual report. The development corporation shall

16 submit a complete and detailed report of the development

17 corporation's activities to the legislature. The annual report

18 shall include the receipt of each donation or grant by the

19 development corporation under this part, the identity of the

20 donor or lender, the nature of the transaction, and any

21 conditions attaching thereto. The report shall be submitted no



1 later than twenty days before the convening of each regular  
2 session of the legislature.

3 206M-O Annual audit. The books and records of the  
4 development corporation under this part shall be subject to an  
5 annual audit by an independent auditor.

6 206M-P Construction of part. This part shall be liberally  
7 construed to effect its purposes.

8 B. Program for Seed Capital Assistance

9 206M-Q Establishment. The development corporation shall  
10 establish a program for seed capital assistance.

11 206M-R Seed capital investments. Subject to this part,  
12 the development corporation may invest in:

13 (1) A certified development company under sections 501 to  
14 503 of the Small Business Investment Act of 1958, 15  
15 United States Code 695 to 697, and the regulations  
16 adopted under those sections;

17 (2) A small business investment company under the Small  
18 Business Investment Act, 15 United States Code 631 to  
19 634, 636 to 649, and the regulations adopted under  
20 those sections;

21 (3) A minority enterprise small business investment  
22 corporation or equivalent venture capital corporation;



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

3 (5) A seed capital fund or partnership.

4 206M-S Purposes and terms of investments. (a)

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

8 (1) Developing a working prototype;

9 (2) Preparing a development plan;

10 (3) Performing an initial market analysis;

11 (4) Organizing a management team; and

12 (5) Any other purpose reasonably related to an economic  
13 development project.

14 (b) Investments may be made on such terms and conditions  
15 as the development corporation shall determine to be reasonable,  
16 appropriate, and consistent with the purposes and objectives of  
17 this part.

18 C. Program for Venture Capital Assistance

19 206M-T Establishment. The development corporation shall  
20 establish a program for venture capital.

21 206M-U Venture capital investments. Subject to this part,  
22 the development corporation may invest in:



1           (1) A certified development company under sections 501 to  
2           503 of the Small Business Investment Act of 1958, 15  
3           United States Code 695 to 697, and the regulations  
4           adopted under those sections;

5           (2) A small business investment company under the Small  
6           Business Investment Act, 15 United States Code 631 to  
7           634, 636 to 649, and the regulations adopted under  
8           those sections;

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

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

13          (5) A venture capital fund or partnership.

14          206M-V Purposes and terms of investments. (a)

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

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



1 D. Program for Capital Access

2 206M-W Establishment. The development corporation shall  
3 establish a program for capital access.

4 206M-X Financial assistance. The development corporation,  
5 through the program for capital access, may:

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

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

17 206M-Y Purposes and priorities required in the procuring  
18 of insurance, loan guarantees, or letters of credit. (a)  
19 Insurance, guarantees, or letters of credit procured pursuant to  
20 section 206M-X shall be procured only for economic development  
21 projects within the state that are consistent with the purposes  
22 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-Z    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-X 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 such terms and conditions as the development  
16 corporation, in its sole discretion, shall determine to be  
17 reasonable, appropriate, and consistent with the purposes and  
18 objectives of 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.

3 206M-AA 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  
19 be 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-BB 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-CC 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 part.

21 "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-DD Formation of Hawaii technology investment program.

6 (a) The development corporation shall establish the Hawaii  
7 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 part;

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; and

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 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 financial  
19 organization, and provide the results of the audit to  
20 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 review  
6           by the development corporation, the results of any  
7           periodic examination of the financial organization by  
8           any state or federal banking, insurance, or securities  
9           commission, except to the extent that the report or  
10          reports may not be disclosed under applicable law or  
11          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-CC, 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 206M-EE Limitation of liability. In no case shall the  
4 development corporation, officers or employees of the  
5 development corporation, or the State be liable for the monetary  
6 losses of individuals contributing to the program. In all  
7 cases, the program manager shall inform individual contributors  
8 of the risk involved in contributing to the program."

9 SECTION 2. Section 206M-2, Hawaii Revised Statutes, is  
10 amended by amending subsection (b) to read as follows:

11 "(b) The governing body of the development corporation  
12 shall consist of a board of directors having [~~eleven~~] ten voting  
13 members. Seven of the members shall be appointed by the  
14 governor for staggered terms pursuant to section 26-34. Six of  
15 the appointed members shall be from the general public and  
16 selected on the basis of their knowledge, interest, and proven  
17 expertise in[7] but not limited to[7] one or more of the  
18 following fields: finance, commerce and trade, corporate  
19 management, marketing, economics, engineering, and  
20 telecommunications, and other high technology fields. The other  
21 appointed member shall be selected from the faculty of the  
22 University of Hawaii. All appointed members of the board shall



1 continue in office until their respective successors have been  
2 appointed. The director of business, economic development, and  
3 tourism, the director of finance, [~~an appointed member from the~~  
4 ~~board of the Hawaii strategic development corporation,~~] and an  
5 appointed member from the board of the natural energy laboratory  
6 of Hawaii authority, or their designated representatives, shall  
7 serve as ex officio voting members of the board. The director  
8 of business, economic development, and tourism shall serve as  
9 the chairperson until such time as a chairperson is elected by  
10 the board from the membership. The board shall elect such other  
11 officers as it deems necessary."

12 SECTION 3. Section 211G-1, Hawaii Revised Statutes, is  
13 amended by amending the definition of "corporation" to read as  
14 follows:

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

19 SECTION 4. Section 227D-2, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:

21 "(b) The governing body of the authority shall consist of  
22 a board of directors having [~~thirteen~~] twelve voting members.



1 Three members from the general public shall be appointed by the  
2 governor for staggered terms pursuant to section 26-34, except  
3 that one of these members shall be a resident of the county of  
4 Hawaii. The members shall be selected on the basis of their  
5 knowledge, interest, and proven expertise in[7] but not limited  
6 to[7] one or more of the following fields: finance, commerce  
7 and trade, corporate management, marketing, economics,  
8 engineering, energy management, real estate development,  
9 property management, aquaculture, and ocean science. The  
10 chairperson and secretary of the research advisory committee  
11 shall serve on the board. The director of business, economic  
12 development, and tourism, the chairperson of the board of land  
13 and natural resources, the president of the University of  
14 Hawaii, the mayor of the county of Hawaii, and an appointed  
15 member from the board of the high technology development  
16 corporation, [~~and an appointed member from the board of the~~  
17 ~~Hawaii strategic development corporation,~~] or their designated  
18 representatives, shall serve as ex officio, voting members of  
19 the board. The tenants of the authority shall elect two members  
20 to the board from among the tenants of the authority, of which  
21 one member shall serve a two-year term, and one member shall  
22 serve a four-year term. In electing the tenant members, each



1 tenant shall be entitled to cast one vote for each member  
2 position. The tenant members shall be recused from voting on  
3 setting lease rents, water rates, or utility rates, but may  
4 participate in discussions. The director of business, economic  
5 development, and tourism shall serve as the chairperson until  
6 such time as a chairperson is elected by the board from the  
7 membership. The board shall elect other officers as it deems  
8 necessary."

9 SECTION 5. Chapter 211F, Hawaii Revised Statutes, is  
10 repealed.

11 SECTION 6. All rights, powers, functions, and duties of  
12 the Hawaii strategic development corporation are transferred to  
13 the high technology development corporation.

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

18 No officer or employee of the State having tenure shall  
19 suffer any loss of salary, seniority, prior service credit,  
20 vacation, sick leave, or other employee benefit or privilege as  
21 a consequence of this Act, and such officer or employee may be  
22 transferred or appointed to a civil service position without the





1 necessity of examination; provided that the officer or employee  
2 possesses the minimum qualifications for the position to which  
3 transferred or appointed; and provided that subsequent changes  
4 in status may be made pursuant to applicable civil service and  
5 compensation laws.

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

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



1           SECTION 7. All appropriations, records, equipment,  
2 machines, files, supplies, contracts, books, papers, maps, and  
3 other moneys or personal property heretofore made, used,  
4 acquired, or held by the Hawaii strategic development  
5 corporation relating to the functions transferred to the high  
6 technology development corporation shall be transferred with the  
7 functions to which they relate. All moneys held in the Hawaii  
8 strategic development corporation revolving fund shall be  
9 transferred to the Hawaii strategic development revolving fund  
10 established under this Act. All moneys held in the cancer  
11 detection development revolving fund established under chapter  
12 211F, Hawaii Revised Statutes, shall be deemed transferred to  
13 the cancer detection development revolving fund established by  
14 this Act. All moneys held in the hydrogen investment capital  
15 special fund established under chapter 211F, Hawaii Revised  
16 Statutes, shall be deemed transferred to the hydrogen investment  
17 capital special fund established by this Act.

18           SECTION 8. All deeds, leases, contracts, loans,  
19 agreements, permits, or other documents executed or entered into  
20 by or on behalf of the Hawaii strategic development corporation  
21 relating to the functions transferred to the high technology  
22 development corporation shall remain in full force and effect.



1 Effective January 1, 2011, every reference to the Hawaii  
2 strategic development corporation therein shall be construed as  
3 a reference to the high technology development corporation.

4 SECTION 9. All rules adopted by the Hawaii strategic  
5 development corporation in effect on the day prior to the  
6 effective date of this Act shall remain in full force and effect  
7 until such time that the high technology development corporation  
8 adopts new rules superseding the rules of the Hawaii strategic  
9 development corporation and implementing this Act.

10 SECTION 10. In codifying the new sections added by section  
11 1 of this Act, the revisor of statutes shall substitute  
12 appropriate section numbers for the letters used in designating  
13 the new sections in this Act.

14 SECTION 11. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 12. This Act shall take effect on January 1, 2011.

17

INTRODUCED BY:

Calvin K. King

JAN 27 2010



**Report Title:**

Hawaii Strategic Development Corporation

**Description:**

Transfers the powers and responsibilities of the Hawaii Strategic Development Corporation (HSDC) to the High Technology Development Corporation; makes the HSDC board an advisory committee on issues pertaining to HSDC functions.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

