

STAND. COM. REP. NO.

998

Honolulu, Hawaii

MAR 27 2009

RE: H.B. No. 1451
H.D. 2
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Economic Development and Technology, to which was referred H.B. No. 1451, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO TAXATION,"

begs leave to report as follows:

The purpose of this measure is to continue providing financial support for Hawaii's high tech industry while also mitigating revenue losses to the State.

Specifically, this measure is intended to achieve the following:

- (1) Extend the availability of the Technology Infrastructure Renovation Tax Credit, High Technology Business Investment Tax Credit, and Tax Credit for Research Activities to December 31, 2015; and
- (2) Establish a limit of \$10,000,000 on the aggregate of High Technology Business Investment Tax Credits that may be claimed by taxpayers in a taxable year for investments in a single qualified high technology business and a limit of \$50,000,000 on the aggregate of High Technology Business Investment Tax Credits claimed in a taxable year by all taxpayers for investments in qualified high technology businesses.



Testimony in support of this measure was submitted by the Office of the Governor, the Department of Taxation, County of Hawaii Department of Research and Development, and Hawaii Government Employees Association. Testimony in opposition of this measure was submitted by the Maui Economic Development Board, Hawaii Crop Improvement Association, PacificCap Group LLC, Hawaii Venture Capital Association, Hawaii Angels, Goodsill Anderson Quinn & Stifel LLP, Cardax Pharmaceuticals Inc., Gay & Robinson Inc., Carbon Diversion Inc., Oceanit, Ocean Engineering and Energy Systems, Oceantronics, Atco Software Inc., e-telligents LLC, Deep Seawater International Inc., Ventura Technology Ltd., Archinoetics LLC, Marine Minerals Technology Center Associates, Kona Blue Water Farms, Datahouse Consulting Inc., People Bridge, Cellular Bioengineering Inc., OmniGreen Renewables LLC, Honolulu Seawater Air Conditioning LLC, Innovasc LLC, Decision Research Corporation, Akamai Initiative, Peletex, Inc., Pacific LightNet Communications, Pacific Biodiesel, Mauna Kea Infrared, LLC, Pacific Light and Power, Production Partners, Inc., Makai Motion Pictures, Island Film Group, Hawaii Movie Studios LLC, Hyperspective Studios, Edutainment Resources Inc., Production Assistance Unlimited of Hawaii, Event Group Hawaii Inc., IATSE Local 665, BAE Systems, Grant Thornton LLP, and Noni Biotech International, and five concerned individuals. Comments on this measure were submitted by Central Pacific Bank and Accuity LLP. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Your Committee finds that various high technology and research activity tax credits serve as economic incentives to the private sector that are vital to the development of emerging industries in Hawaii. Your Committee also finds that taking into consideration the State's current economic condition and budget crisis that certain safeguards should be put in place to preserve or even bolster the State's general fund through the receipt of more tax revenues.

Your Committee has adopted in this measure a \$100,000,000 limit on the aggregate amount of tax credits that can be claimed by all taxpayers for the High Technology Business Investment Tax Credit in a single year. The purpose of the aggregate limit is to provide the State savings of over \$85,000,000 in fiscal years 2010 and 2011 combined. The tax savings generated from the aggregate limit are derived from projections adopted by the Council on Revenues, which estimates taxpayer claims for the High Technology Business Investment Tax Credits to be in excess of \$140,000,000 in each of the fiscal years 2010 and 2011.



Furthermore, your Committee has incorporated several of the recommendations suggested by technology industry representatives to develop a framework for the State to realize additional tax savings from the credits provided by Act 221. Your Committee has adopted recommendations from technology industry representatives that serve to tighten up on abuses that have been alleged regarding Act 221 credits in the past, such as through the creation of "drop-down subsidiaries."

Your Committee has amended this measure by:

- (1) Deleting sections 1 through 5;
- (2) Reducing the extension of time to claim a Technology Infrastructure Renovation Tax Credit from December 31, 2015, to December 31, 2012;
- (3) Increasing the aggregate limit for High Technology Business Investment Tax Credits claimed by all taxpayers for investments made in qualified high technology businesses from \$50,000,000 to \$100,000,000 for each of the following periods:
 - (A) From July 1, 2009, through December 31, 2009;
 - (B) From January 1, 2010, through December 31, 2010;
 - (C) From January 1, 2011, through December 31, 2011;
and
 - (D) From January 1, 2012, through December 31, 2012;
- (4) Changing the aggregate limitation period for purposes of the High Technology Business Investment Tax Credit from taxable years beginning after December 31, 2009, to investments made after June 30, 2009;
- (5) Clarifying that the application of the five-year tax credit period for the High Technology Business Investment Tax Credit is for new investments made in qualified high technology businesses on or before December 31, 2012;



- (6) Clarifying that the term "taxpayer" as used for the High Technology Business Investment Tax Credit means the respective partners, members, or other beneficial owners of a pass-through entity and not the actual partnership, limited liability company, or other pass-through entity;
- (7) Reducing the High Technology Business Investment Tax Credit recapture percentage from fifty per cent to ten per cent;
- (8) Clarifying that if a recapture event occurs during the five-year period applicable to the High Technology Business Investment Tax Credit, then one hundred per cent of the tax credit is disallowed in the year of the recapture event and each year thereafter during the five-year period;
- (9) Deleting the application of sections 6676, 6694, 6700, and 7404 of the Internal Revenue Code to the High Technology Business Investment Tax Credit;
- (10) Increasing the time to claim a High Technology Business Investment Tax Credit from December 31, 2011, to December 31, 2012;
- (11) Adding the requirement for qualified high technology businesses to file a claim for a High Technology Business Investment Tax Credit allotment on a form prescribed by the Department of Taxation;
- (12) Adding the requirement for each qualified high technology business to provide evidence or proof of the investment amount received to the Department of Taxation before a credit allotment amount is provided to the qualified high technology business;
- (13) Requiring a qualified high technology business that constitutes a "drop-down subsidiary" to obtain a comfort letter ruling from the Department of Taxation prior to qualifying for the High Technology Business Investment Tax Credit;
- (14) Defining the meaning of a "drop-down subsidiary" for purposes of the High Technology Business Investment Tax Credit;



- (15) Reducing the time period for the application of section 41 of the Internal Revenue Code to the Tax Credit for Research Activities from January 1, 2015, to January 1, 2012, if section 41 of the Internal Revenue Code is repealed or terminated before January 1, 2012;
- (16) Increasing the time to claim the Tax Credit for Research Activities from December 31, 2011, to December 31, 2012;
- (17) Extending the date of the repeal and reenactment of Act 206, Session Laws of Hawaii 2007, from January 1, 2011, to January 1, 2013; and
- (18) Making technical, nonsubstantive amendments for the purpose of clarity.

As affirmed by the record of votes of the members of your Committee on Economic Development and Technology that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1451, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1451, H.D. 2, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Economic
Development and Technology,

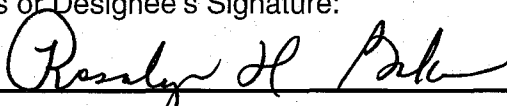


CAROL FUKUNAGA, Chair



The Senate
Twenty-Fifth Legislature
State of Hawaii

Record of Votes
Committee on Economic Development and Technology
EDT

Bill / Resolution No.:* HB1451, HD2	Committee Referral: EDT, WAM	Date: 3-23-09		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
FUKUNAGA, Carol (C)	✓			
BAKER, Rosalyn H. (VC)	✓			
HEE, Clayton				✓
IGE, David Y.	✓			
SLOM, Sam	✓			
TOTAL	4	-	-	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes