
A BILL FOR AN ACT

RELATING TO HIGH TECHNOLOGY.

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

1 SECTION 1. Research and development is the core of
2 innovation. Without innovation, there would be no technology
3 industry and the subsequent growth of our economy would be
4 stunted with no new products, services, or processes. Research
5 and development is the critical first step in the product
6 development cycle. During the research and development stage,
7 ideas and theories are tested to determine feasibility. Due to
8 the increasingly interconnected and competitive global economy,
9 fostering and encouraging innovation is essential to a
10 comprehensive economic strategy for the State. The key to
11 developing more jobs and more prosperity is the creation and
12 development of new products, services, and processes.

13 Innovation is essential for creating new jobs in high
14 technology and traditional sectors. In recent years, innovation
15 has led to new jobs in many different sectors as diverse as
16 defense or dual-use, software and information technology, life
17 sciences and biotechnology, and clean energy. At the same time,
18 innovations ripple through the economy, creating jobs for



1 workers building advanced infrastructure, including clean energy
2 solutions, installing broadband networks, and utilizing new
3 devices and products in the service industries such as health
4 care and tourism.

5 The Internal Revenue Code provides support for scientific
6 experimentation through a tax credit at twenty per cent of the
7 cost of the qualified research. Hawaii has previously allowed
8 the same credit against state taxes at an average program cost
9 to the State of approximately \$11,000,000 per year over the last
10 nine years, and in 2006, provided funding to over four hundred
11 companies. This tax credit has been a great source of support
12 for local companies, especially to the research and development
13 companies that are still in the start-up and early stages, and
14 is seen as helping to level the playing field of our high-cost
15 State as Hawaii companies compete with their national and
16 international competitors. It has also been useful in providing
17 support for early-stage research and development companies that
18 are not yet profitable and have few sources of funding.
19 Further, the refundable element is helping to attract new
20 technology companies to Hawaii.

21 Additionally, the legislature finds that the aerospace
22 industry offers great potential for sustainable long-term



1 economic growth that will help drive investment to Hawaii and
2 create high paying, sustainable, green jobs both now and in the
3 future. Development of an aerospace high technology park on the
4 island of Hawaii will create an environment that will attract
5 major aerospace and lunar transportation companies that will
6 have access to an analog research site providing these companies
7 the ability to test equipment and technologies in environments
8 identical to those in outer space, such as on the moon and near
9 earth objects, as well as access to the University of Hawaii and
10 to each other.

11 To ensure the smooth development of an aerospace high
12 technology park, the State must make it clear that the
13 activities in the park are considered a permitted use of the
14 agricultural zoning district that includes the location of the
15 proposed park, precluding the need to obtain variances or other
16 exceptions from the appropriate government entities.

17 The purpose of this Act is to:

- 18 (1) Extend the income tax credit for qualified research
19 activities for an additional five years and to add
20 extensive reporting requirements related to the tax
21 credit;



1 (2) Allow for aerospace high technology to be considered a
2 permitted land use in an agricultural land use
3 district; and

4 (3) Extend the land lease for the high technology
5 development corporation.

6 SECTION 2. Section 235-110.91, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§235-110.91 Tax credit for research activities.** (a)

9 Section 41 (with respect to the credit for increasing research
10 activities) and section 280C(c) (with respect to certain
11 expenses for which the credit for increasing research activities
12 are allowable) of the Internal Revenue Code shall be operative
13 for the purposes of this chapter as provided in this section[~~+~~
14 ~~except that references to the base amount shall not apply and~~
15 ~~credit for all qualified research expenses may be taken without~~
16 ~~regard to the amount of expenses for previous years]. If
17 section 41 of the Internal Revenue Code is repealed or
18 terminated prior to January 1, [~~2011,~~] 2017, its provisions
19 shall remain in effect for purposes of the income tax law of the
20 State as modified by this section, as provided for in subsection
21 [~~(j)~~] (n).~~



1 (b) All references to Internal Revenue Code sections
2 within sections 41 and 280C(c) of the Internal Revenue Code
3 shall be operative for purposes of this section.

4 (c) There shall be allowed to each qualified high
5 technology business subject to the tax imposed by this chapter
6 an income tax credit for qualified research activities equal to
7 fifty per cent of the credit for research activities provided by
8 section 41 of the Internal Revenue Code and as modified by this
9 section. The credit shall be deductible from the taxpayer's net
10 income tax liability, if any, imposed by this chapter for the
11 taxable year in which the credit is properly claimed.

12 (d) Every qualified high technology business, before
13 March 31 of each year in which qualified research and
14 development activity was conducted in the previous taxable year,
15 shall submit a written, certified statement to the director of
16 taxation identifying:

- 17 (1) Qualified expenditures, if any, expended in the
18 previous taxable year; and
19 (2) The amount of tax credits claimed pursuant to this
20 section, if any, in the previous taxable year.

21 (e) The department of taxation shall:



- 1 (1) Maintain records of the names and addresses of the
2 taxpayers claiming the credits under this section and
3 the total amount of the qualified research and
4 development activity costs upon which the tax credit
5 is based;
- 6 (2) Verify the nature and amount of the qualifying costs
7 or expenditures;
- 8 (3) Total all qualifying and cumulative costs or
9 expenditures that the department of taxation
10 certifies; and
- 11 (4) Certify the amount of the tax credit for each taxable
12 year and cumulative amount of the tax credit.

13 Upon each determination made under this subsection, the
14 department of taxation shall issue a certificate to the taxpayer
15 verifying information submitted to the department[-] of taxation
16 including the qualifying costs or expenditure amounts, the
17 credit amount certified for each taxable year, and the
18 cumulative amount of the tax credit during the credit period.
19 The taxpayer shall file the certificate with the taxpayer's tax
20 return with the department of taxation.

21 The director of taxation may assess and collect a fee to
22 offset the costs of certifying tax credit claims under this



1 section. All fees collected under this section shall be
2 deposited into the tax administration special fund established
3 under section 235-20.5.

4 (f) As used in this section:

5 [~~"Basic research" under section 41(e) of the Internal~~
6 ~~Revenue Code shall not include research conducted outside of the~~
7 ~~State.~~]

8 "Qualified high technology business" means [~~the same as in~~
9 ~~section 235-110.9.~~] a business employing or owning capital or
10 property or maintaining an office in the State; provided that
11 more than fifty per cent of its total business activities are
12 qualified research and more than fifty per cent of its qualified
13 research is in this State.

14 "Qualified research" [~~under~~] means the same as in section
15 41(d)(1) of the Internal Revenue Code shall not include research
16 conducted outside of the State.

17 (g) If the tax credit for qualified research activities
18 claimed by a taxpayer exceeds the amount of income tax payment
19 due from the taxpayer, the excess of the tax credit over
20 payments due shall be refunded to the taxpayer[~~; provided that~~
21 ~~no refund on account of the tax credit allowed by this section~~
22 ~~shall be made for amounts less than \$1~~].



1 (h) All claims for a tax credit under this section shall
2 be filed on or before the end of the twelfth month following the
3 close of the taxable year for which the credit may be claimed.
4 Failure to properly claim the credit shall constitute a waiver
5 of the right to claim the credit.

6 (i) A qualified high technology business that claims a tax
7 credit under this section shall complete and file with the
8 director of taxation through the department of taxation website,
9 an annual survey on electronic forms prepared and prescribed by
10 the department of taxation. The annual survey shall be filed
11 before June 30 of each calendar year following the calendar year
12 in which the credit may be claimed under this section. The
13 department of taxation may adjust the due date of the annual
14 survey by rule.

15 A qualified high technology business that claims a tax
16 credit under this section and fails to file the survey by the
17 due date shall be assessed a fine of not more than \$1,000 for
18 each month of failure to file and shall forfeit the credit under
19 this section.

20 (j) The annual survey shall include the following
21 information for the time period or periods specified by the
22 department of taxation:



- 1 (1) Identification of the industry sector or sectors in
2 which the qualified high technology business conducts
3 business, as set forth in paragraphs (2) to (8) of the
4 definition of "qualified research" in section
5 235-7.3(c);
- 6 (2) Qualified expenditures, if any, expended in the
7 previous taxable year;
- 8 (3) Revenue and expense data;
- 9 (4) Hawaii employment and wage data, including the numbers
10 of full- and part-time employees retained, new jobs,
11 temporary positions, external services procured by the
12 business, and payroll taxes;
- 13 (5) Filed intellectual property, including invention
14 disclosures, provisional patents, and patents issued
15 or granted; and
- 16 (6) Federal and state income tax returns and documents
17 related to deductions for tax credits for research
18 activities.

19 The department of taxation shall request information in
20 each of these categories sufficient to measure the effectiveness
21 of the tax credit. The department of taxation may request any
22 additional information necessary to measure the effectiveness of



1 the tax credit, such as information related to patents. In
2 preparing the survey and requesting any additional information,
3 the department of taxation shall ensure that qualified high
4 technology businesses are not subject to duplicative reporting
5 requirements.

6 (k) The department of taxation shall use information
7 collected under this section and through other reporting
8 requirements of the department of taxation to prepare summary
9 descriptive statistics by category. The information shall be
10 reported at the aggregate level to prevent compromising
11 identities of qualified high technology business investors or
12 other confidential information. The department of taxation
13 shall also identify each qualified high technology business that
14 is the beneficiary of tax credits claimed under this section.
15 The department of taxation shall report the information required
16 under this subsection to the legislature by September 1 of each
17 year.

18 (l) The department of taxation shall use the information
19 collected to study the effectiveness of the tax credit under
20 this section. The department of taxation shall report on the
21 amount of tax credits claimed and total taxes paid by qualified
22 high technology businesses, the number of qualified high



1 technology businesses in each industry sector, jobs created,
2 external services and materials procured by the businesses,
3 compensation levels, qualified research activities, and other
4 factors as the department determines to the legislature by
5 December 1 of each year.

6 [~~(i)~~] (m) The director of taxation may adopt any rules
7 under chapter 91 and forms necessary to carry out this section.

8 [~~(j)~~] (n) This section shall not apply to taxable years
9 beginning after December 31, [~~2010-~~] 2016."

10 SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) Within the agricultural district, all lands with soil
13 classified by the land study bureau's detailed land
14 classification as overall (master) productivity rating class A
15 or B shall be restricted to the following permitted uses:

16 (1) Cultivation of crops, including crops for bioenergy,
17 flowers, vegetables, foliage, fruits, forage, and
18 timber;

19 (2) Game and fish propagation;

20 (3) Raising of livestock, including poultry, bees, fish,
21 or other animal or aquatic life that are propagated
22 for economic or personal use;



- 1 (4) Farm dwellings, employee housing, farm buildings, or
2 activities or uses related to farming and animal
3 husbandry. "Farm dwelling", as used in this
4 paragraph, means a single-family dwelling located on
5 and used in connection with a farm, including clusters
6 of single-family farm dwellings permitted within
7 agricultural parks developed by the State, or where
8 agricultural activity provides income to the family
9 occupying the dwelling;
- 10 (5) Public institutions and buildings that are necessary
11 for agricultural practices;
- 12 (6) Public and private open area types of recreational
13 uses, including day camps, picnic grounds, parks, and
14 riding stables, but not including dragstrips,
15 airports, drive-in theaters, golf courses, golf
16 driving ranges, country clubs, and overnight camps;
- 17 (7) Public, private, and quasi-public utility lines and
18 roadways, transformer stations, communications
19 equipment buildings, solid waste transfer stations,
20 major water storage tanks, and appurtenant small
21 buildings such as booster pumping stations, but not
22 including offices or yards for equipment, material,



- 1 vehicle storage, repair or maintenance, treatment
2 plants, corporation yards, or other similar
3 structures;
- 4 (8) Retention, restoration, rehabilitation, or improvement
5 of buildings or sites of historic or scenic interest;
- 6 (9) Roadside stands for the sale of agricultural products
7 grown on the premises;
- 8 (10) Buildings and uses, including mills, storage, and
9 processing facilities, maintenance facilities, and
10 vehicle and equipment storage areas that are normally
11 considered directly accessory to the above-mentioned
12 uses and are permitted under section 205-2(d);
- 13 (11) Agricultural parks;
- 14 (12) Plantation community subdivisions, which as used in
15 this chapter means an established subdivision or
16 cluster of employee housing, community buildings, and
17 agricultural support buildings on land currently or
18 formerly owned, leased, or operated by a sugar or
19 pineapple plantation; provided that the existing
20 structures may be used or rehabilitated for use, and
21 new employee housing and agricultural support



1 buildings may be allowed on land within the
2 subdivision as follows:

3 (A) The employee housing is occupied by employees or
4 former employees of the plantation who have a
5 property interest in the land;

6 (B) The employee housing units not owned by their
7 occupants shall be rented or leased at affordable
8 rates for agricultural workers; or

9 (C) The agricultural support buildings shall be
10 rented or leased to agricultural business
11 operators or agricultural support services;

12 (13) Agricultural tourism conducted on a working farm, or a
13 farming operation as defined in section 165-2, for the
14 enjoyment, education, or involvement of visitors;
15 provided that the agricultural tourism activity is
16 accessory and secondary to the principal agricultural
17 use and does not interfere with surrounding farm
18 operations; and provided further that this paragraph
19 shall apply only to a county that has adopted
20 ordinances regulating agricultural tourism under
21 section 205-5;



1 (14) Wind energy facilities, including the appurtenances
2 associated with the production and transmission of
3 wind generated energy; provided that the wind energy
4 facilities and appurtenances are compatible with
5 agriculture uses and cause minimal adverse impact on
6 agricultural land;

7 (15) Biofuel processing facilities, including the
8 appurtenances associated with the production and
9 refining of biofuels that is normally considered
10 directly accessory and secondary to the growing of the
11 energy feedstock; provided that biofuels processing
12 facilities and appurtenances do not adversely impact
13 agricultural land and other agricultural uses in the
14 vicinity.

15 For the purposes of this paragraph:

16 "Appurtenances" means operational infrastructure
17 of the appropriate type and scale for economic
18 commercial storage and distribution, and other similar
19 handling of feedstock, fuels, and other products of
20 biofuels processing facilities.

21 "Biofuel processing facility" means a facility
22 that produces liquid or gaseous fuels from organic



1 sources such as biomass crops, agricultural residues,
2 and oil crops, including palm, canola, soybean, and
3 waste cooking oils; grease; food wastes; and animal
4 residues and wastes that can be used to generate
5 energy;

6 (16) Agricultural-energy facilities, including
7 appurtenances necessary for an agricultural-energy
8 enterprise; provided that the primary activity of the
9 agricultural-energy enterprise is agricultural
10 activity. To be considered the primary activity of an
11 agricultural-energy enterprise, the total acreage
12 devoted to agricultural activity shall be not less
13 than ninety per cent of the total acreage of the
14 agricultural-energy enterprise. The agricultural-
15 energy facility shall be limited to lands owned,
16 leased, licensed, or operated by the entity conducting
17 the agricultural activity.

18 As used in this paragraph:

19 "Agricultural activity" means any activity
20 described in paragraphs (1) to (3) of this subsection.

21 "Agricultural-energy enterprise" means an
22 enterprise that integrally incorporates an



1 agricultural activity with an agricultural-energy
2 facility.

3 "Agricultural-energy facility" means a facility
4 that generates, stores, or distributes renewable
5 energy as defined in section 269-91 or renewable fuel
6 including electrical or thermal energy or liquid or
7 gaseous fuels from products of agricultural activities
8 from agricultural lands located in the State.

9 "Appurtenances" means operational infrastructure
10 of the appropriate type and scale for the economic
11 commercial generation, storage, distribution, and
12 other similar handling of energy, including equipment,
13 feedstock, fuels, and other products of agricultural-
14 energy facilities;

15 (17) Construction and operation of wireless communication
16 antennas; provided that, for the purposes of this
17 paragraph, "wireless communication antenna" means
18 communications equipment that is either freestanding
19 or placed upon or attached to an already existing
20 structure and that transmits and receives
21 electromagnetic radio signals used in the provision of
22 all types of wireless communications services;



1 provided further that nothing in this paragraph shall
2 be construed to permit the construction of any new
3 structure that is not deemed a permitted use under
4 this subsection;

5 (18) Agricultural education programs conducted on a farming
6 operation as defined in section 165-2, for the
7 education and participation of the general public;
8 provided that the agricultural education programs are
9 accessory and secondary to the principal agricultural
10 use of the parcels or lots on which the agricultural
11 education programs are to occur and do not interfere
12 with surrounding farm operations. For the purposes of
13 this section, "agricultural education programs" means
14 activities or events designed to promote knowledge and
15 understanding of agricultural activities and practices
16 conducted on a farming operation as defined in section
17 165-2; [~~or~~]

18 (19) Solar energy facilities that do not occupy more than
19 ten per cent of the acreage of the parcel, or twenty
20 acres of land, whichever is lesser; provided that this
21 use shall not be permitted on lands with soil
22 classified by the land study bureau's detailed land



1 classification as overall (master) productivity rating
2 class A[-]; or
3 (20) Aerospace high technology parks; provided that this
4 paragraph shall apply only to land with soil
5 classified by the land study bureau's detailed land
6 classification as overall (master) productivity rating
7 class C, D, or E; and provided further that the
8 aerospace high technology park has obtained a special
9 permit under section 205-6.

10 As used in this paragraph:

11 "Aerospace high technology park" include
12 aerospace, processing, manufacturing, research, or
13 instructional enterprises for aerospace high
14 technology, commercial or experimental rocketry,
15 satellite, lunar, nextgen avionics, solid waste
16 resource recovery systems, enterprises for the
17 development, processing, or transmission of
18 alternative energy, industrial parks as defined in
19 section 206M-1, retail, including food serving
20 establishments, and wholesale, industry, processing,
21 transportation, or manufacturing enterprises the
22 primary purpose of which is to serve or provide



1 products to the aerospace high technology enterprises
2 or their employees.

3 "Alternative energy" means energy derived other
4 than from the processing of petroleum.

5 "High technology" includes computer software and
6 hardware, microprocessors, telecommunication devices,
7 and robotics."

8 SECTION 4. The University of Hawaii shall extend the
9 current land lease agreement with the high technology
10 development corporation, located at 2800 Woodlawn Drive, Manoa,
11 Honolulu, Hawaii, identified as tax map key 2-9-26: por. 3, 37,
12 and 38, on the same terms and for a period no less than twenty-
13 five years from the expiration date of the existing lease.

14 SECTION 5. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 6. This Act shall take effect on July 1, 2112;
17 provided that section 2 shall apply to taxable years beginning
18 after December 31, 2011.



Report Title:

Taxation; Technology; Tax Credit for Research Activities; Aerospace High Technology Parks; Land Use; High Technology Development Corporation; University of Hawaii; Land Lease

Description:

Defines qualified high technology business. Adds reporting requirements. Establishes a fine for failure to file the survey information in the reporting requirements. Extends the tax credit through 2016. Applies to tax years beginning after 12/31/2011. Authorizes aerospace high technology parks as a permitted use within certain agricultural districts. Requires parks to obtain a special permit. Requires the University of Hawaii to extend the current land lease with the high technology development corporation. Effective July 1, 2112. (SB2941 HD1)

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