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



1 building advanced infrastructure; incorporating clean energy  
2 solutions; installing broadband networks; and using new devices  
3 and products in the service industries, such as healthcare and  
4 tourism.

5 Innovation is also critical for sustaining the vitality and  
6 resilience of the state economy. Future challenges, natural or  
7 man-made, are impossible to predict. However, it is certain that  
8 an economy better able to respond to such events by adapting  
9 innovative solutions and re-deploying old activities, jobs, and  
10 industries will be less susceptible to adversity.

11 Innovation is the key to remaining competitive globally,  
12 creating new and better jobs, and developing a resilient economy.  
13 The legislature recognizes this and supports research and  
14 development as the stimulus for an innovation economy.

15 This tax credit parallels, with enhancements tailored to  
16 Hawaii's unique position, the former federal tax credit providing  
17 support for scientific experimentation at twenty per cent of the  
18 cost of the qualified research. The program cost to the State  
19 averaged about \$11,000,000 per year between 2002 and 2011, and in  
20 2006 provided funding to over four hundred companies. This tax  
21 credit has been a great source of support for local companies,  
22 especially for research and development companies that are still in



1 the start-up and early stages, and is seen as helping to level the  
2 playing field of this high-cost state as Hawaii companies compete  
3 against national and international rivals. The tax credit has  
4 also been useful in providing support for early-stage research and  
5 development companies that are not yet profitable and have few  
6 sources of funding. Furthermore, the refundable element has  
7 helped to attract new technology companies to Hawaii.

8 The purpose of this Act is to extend the income tax credit  
9 for qualified research activities for an additional five years and  
10 to add extensive reporting requirements related to the tax  
11 credit.

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

14 **"§235-110.91 Tax credit for research activities. (a)**  
15 Section 41 (with respect to the credit for increasing research  
16 activities) and section 280C(c) (with respect to certain  
17 expenses for which the credit for increasing research activities  
18 are allowable) of the Internal Revenue Code shall be operative  
19 for the purposes of this chapter as provided in this section;  
20 ~~[except that references to the base amount shall not apply and~~  
21 ~~credit for all qualified research expenses may be taken without~~  
22 ~~regard to the amount of expenses for previous years. If section~~



1 ~~41 of the Internal Revenue Code is repealed or terminated prior~~  
2 ~~to January 1, 2012, its provisions shall remain in effect for~~  
3 ~~purposes of the income tax law of the State as modified by this~~  
4 ~~section, as provided for in subsection (j).]~~ provided that the  
5 federal tax provisions in section 41 as that section was enacted  
6 on December 31, 2011, shall remain in effect for purposes of  
7 determining the state income tax credit under this section;  
8 provided further that the federal tax provisions in section 41  
9 as enacted on December 31, 2011, shall apply only to expenses  
10 incurred for qualified research activities after December 31,  
11 2012.

12 ~~[(b) All references to Internal Revenue Code sections~~  
13 ~~within sections 41 and 280C(e) of the Internal Revenue Code~~  
14 ~~shall be operative for purposes of this section.~~

15 ~~(e)]~~ (b) There shall be allowed to each qualified high  
16 technology business subject to the tax imposed by this chapter  
17 an income tax credit for qualified research activities equal to  
18 the credit for research activities provided by section 41 of the  
19 Internal Revenue Code and as modified by this section. The  
20 credit shall be deductible from the taxpayer's net income tax  
21 liability, if any, imposed by this chapter for the taxable year  
22 in which the credit is properly claimed.



- 1       ~~[(d) Every qualified high technology business, before~~  
2 ~~March 31 of each year in which qualified research and~~  
3 ~~development activity was conducted in the previous taxable year,~~  
4 ~~shall submit a written, certified statement to the director of~~  
5 ~~taxation identifying:~~
- 6       ~~(1) Qualified expenditures, if any, expended in the~~  
7       ~~previous taxable year; and~~
- 8       ~~(2) The amount of tax credits claimed pursuant to this~~  
9       ~~section, if any, in the previous taxable year.~~
- 10       ~~(c) The department shall:~~
- 11       ~~(1) Maintain records of the names and addresses of the~~  
12       ~~taxpayers claiming the credits under this section and~~  
13       ~~the total amount of the qualified research and~~  
14       ~~development activity costs upon which the tax credit~~  
15       ~~is based;~~
- 16       ~~(2) Verify the nature and amount of the qualifying costs~~  
17       ~~or expenditures;~~
- 18       ~~(3) Total all qualifying and cumulative costs or~~  
19       ~~expenditures that the department certifies; and~~
- 20       ~~(4) Certify the amount of the tax credit for each taxable~~  
21       ~~year and cumulative amount of the tax credit.~~



1       ~~Upon each determination made under this subsection, the~~  
2 ~~department shall issue a certificate to the taxpayer verifying~~  
3 ~~information submitted to the department, including the~~  
4 ~~qualifying costs or expenditure amounts, the credit amount~~  
5 ~~certified for each taxable year, and the cumulative amount of~~  
6 ~~the tax credit during the credit period. The taxpayer shall~~  
7 ~~file the certificate with the taxpayer's tax return with the~~  
8 ~~department.~~

9       ~~The director of taxation may assess and collect a fee to~~  
10 ~~offset the costs of certifying tax credit claims under this~~  
11 ~~section. All fees collected under this section shall be~~  
12 ~~deposited into the tax administration special fund established~~  
13 ~~under section 235-20.5.~~

14       ~~(f)]~~ (c) As used in this section:

15       "Basic research" under section 41(e) of the Internal  
16 Revenue Code shall not include research conducted outside of the  
17 State.

18       "Qualified high technology business" means the same as in  
19 section ~~[235-110.9.]~~ 235-7.3(c).

20       "Qualified research" under section 41(d)(1) of the Internal  
21 Revenue Code shall not include research conducted outside of the  
22 State.



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

7           ~~[(h)]~~ (e) All claims for a tax credit under this section  
8 shall be filed on or before the end of the twelfth month  
9 following the close of the taxable year for which the credit may  
10 be claimed. Failure to properly claim the credit shall  
11 constitute a waiver of the right to claim the credit.

12           (f) A qualified high technology business that claims the  
13 credit under this section shall complete and file with the director  
14 of taxation through the department website, an annual survey on  
15 electronic forms prepared and prescribed by the department. The  
16 annual survey shall be filed before June 30 of each calendar year  
17 following the calendar year in which the credit may be claimed under  
18 this section. The department may adjust the due date of the annual  
19 survey by rule. Failure to file the annual survey by the due date  
20 shall result in a fine of \$2,000 per month.

21           A qualified high technology business shall not file a  
22 return to claim a tax credit under this section until it has



1 filed an annual survey with the department pursuant to this  
2 subsection.

3 (g) The annual survey shall include the following information  
4 for the time period or periods specified by the department of  
5 taxation:

6 (1) Identification of the industry sector or sectors in  
7 which the qualified high technology business conducts  
8 business, as set forth in paragraphs (2) to (8) of the  
9 definition of "qualified research" in section 235-7.3(c);

10 (2) Qualified expenditures, if any, expended in the previous  
11 taxable year;

12 (3) Revenue and expense data;

13 (4) Hawaii employment and wage data, including the numbers  
14 of full-time and part-time employees retained, new jobs,  
15 temporary positions, external services procured by the  
16 business, and payroll taxes; and

17 (5) Filed intellectual property, including provisional  
18 patents, full patents submitted, and patents issued or  
19 granted.

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





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

6 The department of taxation shall allow the department of  
7 business, economic development, and tourism to access data  
8 collected under this section to conduct economic impact analyses  
9 and produce legislative reports pursuant to subsection (i).

10 (h) The department of business, economic development, and  
11 tourism shall use information collected under this section and  
12 through other reporting requirements of the department of taxation  
13 to prepare summary descriptive statistics by category. The  
14 information shall be reported at the aggregate level to prevent  
15 compromising identities of qualified high technology business  
16 investors or other confidential information. The department of  
17 business, economic development, and tourism shall also identify  
18 each qualified high technology business that is the beneficiary of  
19 tax credits claimed under this section. The department of  
20 business, economic development, and tourism shall report the  
21 information required under this subsection to the legislature by  
22 December 21 of each year.



1        (i) The department of business, economic development, and  
2 tourism shall use the information collected to study the  
3 effectiveness of the tax credit under this section. The  
4 department of business, economic development, and tourism shall  
5 report on the amount of tax credits claimed and total taxes paid  
6 by qualified high technology businesses; the number of qualified  
7 high technology businesses in each industry sector; jobs created;  
8 external services and materials procured by the businesses;  
9 compensation levels; qualified research activities; and other factors  
10 the department of business, economic development, and tourism deems  
11 appropriate. The department of business, economic development, and  
12 tourism shall report the results of its study to the legislature  
13 by December 21 of each year.

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

16        [~~(j)~~] (k) This section shall not apply to taxable years  
17 beginning after December 31, [~~2010-~~] 2017."

18        SECTION 3. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

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1 SECTION 4. This Act shall take effect upon its approval,  
 2 and shall apply to taxable years beginning after December 31,  
 3 2012.

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INTRODUCED BY:

*J. Phil Gish*

*[Signature]*  
*[Signature]*  
*[Signature]*  
*[Signature]*

*[Signature]*  
*[Signature]*



# S.B. NO. 736

**Report Title:**

High Technology; Tax Credit for Research Activities

**Description:**

Extends the tax credit for qualified research activities for an additional five years. Clarifies the method of calculating the tax credit. Amends the definition of "qualified high technology business". Repeals existing certification requirements and establishes new reporting requirements. Requires the department of business, economic development, and tourism to conduct studies to measure the effectiveness of the tax credit and submit reports to the legislature.

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

