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# A BILL FOR AN ACT

RELATING TO THE CAPITAL INFRASTRUCTURE TAX CREDIT.

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

1           SECTION 1. The legislature finds that development of a new  
2 overseas container terminal and piers at the lower Kapalama  
3 military reservation site requires improvements on fast and  
4 submerged lands associated with piers twenty-four through  
5 twenty-eight to accommodate maritime dependent operators at  
6 Kapalama who are to be evicted and displaced. The total cost  
7 for the proposed master plan at the Kapalama site is estimated  
8 to be \$243,000,000, which is being financed entirely by the  
9 State through revenue bonds and revenues from harbor tariffs and  
10 leases. None of these funds, however, will go toward assisting  
11 displaced maritime and waterfront dependent tenants of the  
12 Kapalama site. The displaced tenants will be relocated to  
13 various piers that have limited infrastructure, facilities, and  
14 utilities. These tenants must find ways to finance not only  
15 their move, but also significant capital improvements to state-  
16 owned land.

17           The legislature finds that the Kapalama container terminal  
18 project is critical to modernizing commercial harbors and that



1 completion of the project will assure that harbor infrastructure  
2 is adequate to support sustained economic growth. The  
3 legislature also finds that supporting those maritime and  
4 waterfront dependent tenants displaced by the Kapalama container  
5 terminal project will facilitate the growth of commerce in the  
6 State and support maritime jobs. In light of state support  
7 provided for University of Hawaii-related tenants that have been  
8 displaced by the Kapalama container terminal project, the  
9 legislature finds it prudent and fair to also support the  
10 maritime dependent operators in Kapalama who are being displaced  
11 by the project. The solution proposed in this Act is to provide  
12 a capital infrastructure tax credit to help displaced tenants  
13 raise private equity capital. This approach is expected to:

- 14 (1) Mobilize private equity and near-equity capital for  
15 investment in critical waterfront infrastructure in  
16 Honolulu harbor;
- 17 (2) Retain the private sector culture of focusing on rate  
18 of return in the investing process;
- 19 (3) Secure and retain the services of high quality trade  
20 labor in the maritime industry in Hawaii; and



1 (4) Accomplish the foregoing in a return-driven manner  
2 with the goal of minimizing any adverse impact on  
3 state tax revenues.

4 Accordingly, the purpose of this Act is to establish a  
5 capital infrastructure tax credit to help tenants displaced by  
6 the Kapalama container terminal project in raising capital to  
7 make improvements on state-owned property upon relocation.

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

11 "§235- Capital infrastructure tax credit. (a) There  
12 shall be allowed to each taxpayer subject to the taxes imposed  
13 by this chapter a capital infrastructure tax credit that shall  
14 be deductible from the taxpayer's net income tax liability, if  
15 any, imposed by this chapter for the taxable year in which the  
16 capital infrastructure costs were paid or incurred.

17 (b) For the purpose of this section:

18 "Base investment" means the amount of money invested by an  
19 investor.

20 "Capital infrastructure costs" means capital expenditures,  
21 as used in section 263 of the Internal Revenue Code and the  
22 regulations promulgated thereunder; provided that the capital



1 expenditures are for real property and fixtures that are paid or  
2 incurred in connection with the displaced tenant's move of the  
3 tenant's current active trade or business to the tenant's new  
4 location; provided further that the capital infrastructure costs  
5 shall not include amounts for which another credit is claimed.

6 "Net income tax liability" means income tax liability  
7 reduced by all other credits allowed under this chapter.

8 "Qualified infrastructure tenant" means a business:

9 (1) That currently owns capital or property or maintains  
10 an office, operations, or facilities at the former  
11 Kapalama military reservation site;

12 (2) Whose principal business is maritime, and waterfront  
13 dependent, and is included under the State's plan to  
14 relocate the business to piers twenty-four through  
15 twenty-eight within Honolulu harbor; and

16 (3) Will be displaced and relocated by the State pursuant  
17 to the Kapalama container terminal project.

18 (c) The amount of the tax credit shall be equal to fifty  
19 per cent of the capital infrastructure costs paid or incurred by  
20 the qualified infrastructure tenant during the taxable year up  
21 to a maximum of \$2,500,000 in capital infrastructure costs in  
22 any taxable year, provided that the qualified infrastructure



1 tenant shall notify the taxpayer claiming the credit under  
2 subsection (a) of the amount of capital infrastructure costs  
3 which may be claimed.

4 (d) In the case of an entity taxed as a partnership,  
5 credit shall be determined at the entity level, but distribution  
6 and share of the credit may be determined notwithstanding  
7 section 704 of the Internal Revenue Code.

8 (e) The credit allowed under this section shall be claimed  
9 against the net income tax liability for the taxable year. If  
10 the tax credit under this section exceeds the taxpayer's income  
11 tax liability, the excess of the tax credit over liability may  
12 be used as a credit against the taxpayer's net income tax  
13 liability in subsequent years until exhausted. All claims,  
14 including amended claims, for a tax credit under this section  
15 shall be filed on or before the end of the twelfth month  
16 following the close of the taxable year for which the credit may  
17 be claimed. Failure to comply with the foregoing provision  
18 shall constitute a waiver of the right to claim the credit.

19 (f) This section shall not apply to taxable years  
20 beginning after December 31, 2019.



1        (g) Any credit claimed under this section shall be  
2 recaptured following the close of the taxable year for which the  
3 credit is claimed if within three years:

4        (1) The qualified infrastructure tenant fails to continue  
5 the line of business it conducted as of July 1, 2014;

6        or

7        (2) The interest in the qualified infrastructure tenant,  
8 whether in whole or in part, has been sold, exchanged,  
9 withdrawn, or otherwise disposed of by the taxpayer  
10 claiming a credit under this section.

11 The recapture shall be equal to one hundred per cent of the  
12 amount of the total tax credit claimed under this section in the  
13 preceding five taxable years, and shall be added to the  
14 taxpayer's tax liability for the taxable year in which the  
15 recapture occurs pursuant to this subsection.

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



1 SECTION 3. Chapter 241, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§241- Capital infrastructure tax credit. The capital  
5 infrastructure tax credit established by section 235- shall  
6 be operative for this chapter for taxable years beginning after  
7 December 31, 2013."

8 SECTION 4. If any provision of this Act, or the  
9 application thereof to any person or circumstance, is held  
10 invalid, the invalidity does not affect other provisions or  
11 applications of the Act that can be given effect without the  
12 invalid provision or application, and to this end the provisions  
13 of this Act are severable.

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, 2014, and  
17 shall apply to taxable years beginning after December 31, 2013.



**Report Title:**

Capital Infrastructure Tax Credit; Kapalama Container Terminal Project; Displaced Tenants

**Description:**

Creates a capital infrastructure tax credit for investors who invest in qualified infrastructure tenants who are displaced by the Kapalama container terminal project. Allows allocations of the capital infrastructure tax credit to a partner under a partnership agreement even if the allocation does not have substantial economic effect. Recaptures an unspecified percentage of the capital infrastructure tax credit if the qualified infrastructure tenant does not meet certain conditions at the close of any taxable year. (HB1702 CD1)

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