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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 supports the growth of commerce in the State  
6 and supports maritime jobs. In light of state support provided  
7 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 qualified infrastructure tenant subject  
13 to the taxes imposed by this chapter a capital infrastructure  
14 tax credit that shall be deductible from the taxpayer's net  
15 income tax liability, if any, imposed by this chapter for the  
16 taxable year in which the investment was made; provided that the  
17 credit is properly claimed.

18 (b) For the purpose of this section:

19 "Capital infrastructure costs" means:

20 (1) The same as "capital expenditures" as defined in  
21 Section 263 of the Internal Revenue Code and the  
22 regulations promulgated thereunder; and



1       (2) Paid or incurred in connection with the displaced  
2       tenant's move of tenant's current active trade or  
3       business to the tenant's new location.

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

6       "Qualified infrastructure tenant" means a business that:

7       (1) Currently owns capital or property or maintains an  
8       office, operations, or facilities at the former  
9       Kapalama military reservation site;

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

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

17       (c) The amount of the tax credit shall be equal to  
18       per cent of the capital infrastructure costs incurred by the  
19       taxpayer during the taxable year up to a maximum of \$  
20       in capital infrastructure costs in any taxable year.

21       (d) The credit allowed under this section shall be claimed  
22       against the net income tax liability for the taxable year. If



1 the tax credit under this section exceeds the taxpayer's income  
2 tax liability, the excess of the tax credit over liability may  
3 be used as a credit against the taxpayer's net income tax  
4 liability in subsequent years until exhausted. Every claim,  
5 including amended claims, for a tax credit under this section  
6 shall be filed on or before the end of the twelfth month  
7 following the close of the taxable year for which the credit may  
8 be claimed. Failure to comply with this subsection shall  
9 constitute a waiver of the right to claim the credit.

10 (e) This section shall not apply to taxable years  
11 beginning after December 31, 2019.

12 (f) If at the close of any taxable year:

13 (1) The qualified infrastructure tenant no longer  
14 qualifies for the tax credit established under this  
15 section;

16 (2) The qualified infrastructure tenant or an interest in  
17 the qualified infrastructure tenant has been sold by  
18 the taxpayer making a base investment in the qualified  
19 infrastructure tenant; or

20 (3) The taxpayer has withdrawn the taxpayer's base  
21 investment wholly or partially from the qualified  
22 infrastructure tenant,



1 the tax credit claimed under this section shall be recaptured.

2 The recapture shall be equal to per cent of the  
3 amount of the total tax credit claimed under this section in the  
4 preceding five taxable years. The amount of the tax credit  
5 recaptured shall apply only to the investment in capital  
6 infrastructure costs as defined in subsection (b). The amount  
7 of the recaptured tax credit determined under this subsection  
8 shall be added to the taxpayer's tax liability for the taxable  
9 year in which the recapture occurs pursuant to this subsection.

10 (g) Pursuant to chapter 91, the director of taxation may  
11 adopt any rules or forms necessary to carry out this section."

12 SECTION 3. Section 235-2.45, Hawaii Revised Statutes, is  
13 amended by amending subsection (d) to read as follows:

14 "(d) Section 704 of the Internal Revenue Code (with  
15 respect to a partner's distributive share) shall be operative  
16 for purposes of this chapter; except that section 704(b)(2)  
17 shall not apply to:

- 18 (1) Allocations of the high technology business investment  
19 tax credit allowed by section 235-110.9 for  
20 investments made before May 1, 2009;
- 21 (2) Allocations of net operating loss pursuant to section  
22 235-111.5;



1 (3) Allocations of the attractions and educational  
2 facilities tax credit allowed by section 235-110.46;  
3 [~~or~~]

4 (4) Allocations of low-income housing tax credits among  
5 partners under section 235-110.8[~~-~~]; or

6 (5) Allocations of the capital infrastructure tax credit  
7 allowed by section 235- ."

8 SECTION 4. Section 235-110.51, Hawaii Revised Statutes, is  
9 amended by amending subsections (h) and (i) to read as follows:

10 "(h) The tax credit allowed under this section shall [~~not~~]  
11 be available for taxable years beginning after December 31,  
12 2000, and ending on December 31, 2010[~~-~~], or for taxable years  
13 beginning after December 31, 2013, and ending on December 31,  
14 2019.

15 (i) As used in this section:

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

18 "Renovation costs" means costs incurred [~~after~~]:

19 (1) After December 31, 2000, and through December 31,  
20 2010; or

21 (2) After December 31, 2013, and through December 31,  
22 2019,



1 to plan, design, install, construct, and purchase technology-  
2 enabled infrastructure equipment to provide a commercial  
3 building with technology-enabled infrastructure.

4 "Technology-enabled infrastructure" means:

- 5 (1) High speed telecommunications systems that provide  
6 Internet access, direct satellite communications  
7 access, and videoconferencing facilities;
- 8 (2) Physical security systems that identify and verify  
9 valid entry to secure spaces, detect invalid entry or  
10 entry attempts, and monitor activity in these spaces;
- 11 (3) Environmental systems to include heating, ventilation,  
12 air conditioning, fire detection and suppression, and  
13 other life safety systems; and
- 14 (4) Backup and emergency electric power systems."

15 SECTION 5. If any provision of this Act, or the  
16 application thereof to any person or circumstance, is held  
17 invalid, the invalidity does not affect other provisions or  
18 applications of the Act that can be given effect without the  
19 invalid provision or application, and to this end the provisions  
20 of this Act are severable.

21 SECTION 6. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.





1           SECTION 7. This Act shall take effect on July 1, 2050, and  
2 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 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. Reestablishes the technology infrastructure renovation tax credit through 2019. Takes effect 7/1/2050. (SD1)

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

