



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 5, 2019

GOV. MSG. NO. 1363

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 5, 2019, the following bill was signed into law:

SB1314 SD1 HD1 CD1

RELATING TO TAX CREDITS.
ACT 261 (19)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

A BILL FOR AN ACT

RELATING TO TAX CREDITS.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

PART I

SECTION 1. Section 235-20.5, Hawaii Revised Statutes, is amended to read as follows:

"§235-20.5 Tax administration special fund; established.

(a) There is established a tax administration special fund, into which shall be deposited:

(1) Fees collected under sections 235-20[7] and 235-110.9 [~~and 235-110.91~~];

(2) Revenues collected by the special enforcement section pursuant to section 231-85; provided that in each fiscal year, of the total revenues collected by the special enforcement section, all revenues in excess of \$2,000,000 shall be deposited into the general fund; and

(3) Fines assessed pursuant to section 237D-4.

(b) The moneys in the fund shall be used for the following purposes:



- 1 (1) Issuing comfort letters, letter rulings, written
- 2 opinions, and other guidance to taxpayers;
- 3 (2) Issuing certificates under sections 235-110.9 [and
- 4 ~~235-110.91~~];
- 5 (3) Administering the operations of the special
- 6 enforcement section;
- 7 (4) Funding support staff positions in the special
- 8 enforcement section; and
- 9 (5) Developing, implementing, and providing taxpayer
- 10 education programs, including tax publications."

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

13 "§235-110.91 Tax credit for research activities. (a)
 14 Section 41 (with respect to the credit for increasing research
 15 activities) and section 280C(c) (with respect to certain
 16 expenses for which the credit for increasing research activities
 17 are allowable) of the Internal Revenue Code shall be operative
 18 for the purposes of this chapter as provided in this section;
 19 provided that the federal tax provisions in section 41 of the
 20 Internal Revenue Code, as that section was enacted on
 21 December 31, 2011, irrespective of any subsequent changes to



1 ~~section 41 of the Internal Revenue Code, shall remain in effect~~
2 for purposes of determining the state income tax credit under
3 this section; provided further that the federal tax provisions
4 in section 41 of the Internal Revenue Code, as enacted on
5 December 31, 2011, irrespective of any subsequent amendments to
6 section 41 of the Internal Revenue Code, shall apply only to
7 expenses incurred for qualified research activities after
8 December 31, 2012.

9 (b) All references to Internal Revenue Code sections
10 within sections 41 and 280C(c) of the Internal Revenue Code
11 shall be operative for purposes of this section[-]; provided
12 that references to the base amount in section 41 of the Internal
13 Revenue Code shall not apply, and credit for all qualified
14 research expenses may be taken without regard to the amount of
15 expenses for previous years.

16 (c) There shall be allowed to each qualified high
17 technology business subject to the tax imposed by this chapter
18 an income tax credit for qualified research activities equal to
19 the credit for research activities provided by section 41 of the
20 Internal Revenue Code and as modified by this section; provided
21 that, in addition to any other requirements established in this



1 section, in order to qualify for the tax credit established in
2 this section, the qualified high technology business shall also
3 claim a federal tax credit for the same qualified research
4 activities under section 41 of the Internal Revenue Code, as
5 enacted on December 31, 2011, irrespective of any subsequent
6 amendments to section 41 of the Internal Revenue Code. The
7 credit shall be deductible from the taxpayer's net income tax
8 liability, if any, imposed by this chapter for the taxable year
9 in which the credit is properly claimed.

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

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

20 (e) The department of business, economic development, and
21 tourism 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 of the qualifying research activity
7 and the amount of the qualifying costs or
8 expenditures;

9 (3) Total all qualifying and cumulative costs or
10 expenditures that the department 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 business, economic development, and tourism shall
15 issue a certificate to the taxpayer verifying information
16 submitted to the department [7] of business, economic
17 development, and tourism, including the qualifying costs or
18 expenditure amounts, the credit amount certified for each
19 taxable year, and the cumulative amount of the tax credit during
20 the credit period. The taxpayer shall file the certificate with
21 the taxpayer's tax return with the department [7] of taxation.



1 Notwithstanding the authority of the department of business,
2 economic development, and tourism under this section, the
3 director of taxation may audit and adjust the tax credit amount
4 to conform to the facts.

5 The ~~[director of taxation]~~ department of business, economic
6 development, and tourism may assess and collect a fee to offset
7 the costs of certifying tax credit claims under this section.
8 ~~[All fees collected under this section shall be deposited into~~
9 ~~the tax administration special fund established under section~~
10 ~~235-20.5.~~

11 ~~(f) As used in this section:~~

12 ~~"Qualified high technology business" shall have the same~~
13 ~~meaning as in section 235-7.3(c).~~

14 ~~"Qualified research" shall have the same meaning as in~~
15 ~~section 41(d) of the Internal Revenue Code.~~

16 ~~"Qualified research expenses" shall have the same meaning~~
17 ~~as in section 41(b) of the Internal Revenue Code; provided that~~
18 ~~it shall not include research expenses incurred outside of the~~
19 ~~State.]~~

20 (f) If in any taxable year the annual amount of certified
21 credits reaches \$5,000,000 in the aggregate, the department of



1 business, economic development, and tourism shall immediately
2 discontinue certifying credits and notify the department of
3 taxation. In no instance shall the department of business,
4 economic development, and tourism certify a total amount of
5 credits exceeding \$5,000,000 per taxable year. To comply with
6 this restriction, the department of business, economic
7 development, and tourism shall certify credits on a first come,
8 first served basis.

9 The department of taxation shall not allow the aggregate
10 amount of credits claimed to exceed that amount per taxable
11 year.

12 (g) If the tax credit for qualified research activities
13 claimed by a taxpayer exceeds the amount of income tax payment
14 due from the taxpayer, the excess of the tax credit over
15 payments due shall be refunded to the taxpayer; provided that no
16 refund on account of the tax credit allowed by this section
17 shall be made for amounts less than \$1.

18 (h) All claims for a tax credit under this section shall
19 be filed on or before the end of the twelfth month following the
20 close of the taxable year for which the credit may be claimed.



1 Failure to properly claim the credit shall constitute a waiver
2 of the right to claim the credit.

3 (i) A qualified high technology business that claims the
4 credit under this section shall complete and file with the
5 department of business, economic development, and tourism,
6 through that department's website, an annual survey on
7 electronic forms prepared and prescribed by the department of
8 business, economic development, and tourism. The annual survey
9 shall be filed before June 30 of each calendar year following
10 the calendar year in which the credit may be claimed under this
11 section. The department of business, economic development, and
12 tourism may adjust the due date of the annual survey by rules
13 adopted pursuant to chapter 91.

14 (j) The annual survey under subsection (i) shall include
15 the following information for the time period or periods
16 specified by the department of business, economic development,
17 and tourism:

18 (1) Identification of the industry sector or sectors in
19 which the qualified high technology business conducts
20 business, as set forth in paragraphs (2) to (8) of the



- 1 definition of "qualified research" in section
2 235-7.3(c);
- 3 (2) Total expenditures and the qualified expenditures, if
4 any, expended in the previous taxable year;
- 5 (3) Revenue and expense data, including a breakdown of any
6 licensing royalty or other forms of income generated
7 from intellectual property;
- 8 (4) Hawaii employment and wage data, including the numbers
9 of full-time and part-time employees retained, new
10 jobs, temporary positions, external services procured
11 by the business, and payroll taxes;
- 12 (5) Filed intellectual property, including invention
13 disclosures, provisional patents, and patents issued
14 or granted; and
- 15 (6) The number of new companies spun out or established to
16 commercialize the intellectual property owned by the
17 qualified high technology business.

18 The department of business, economic development, and
19 tourism shall request information in each of these categories
20 sufficient to measure the effectiveness of the tax credit under
21 this section. The department of business, economic development,



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

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



1 (1) The department of business, economic development, and
2 tourism, in collaboration with the department of taxation, shall
3 use the information collected to study the effectiveness of the
4 tax credit under this section. The department of business,
5 economic development, and tourism shall submit a report to the
6 legislature on the following:

- 7 (1) The amount of tax credits claimed and total taxes paid
8 by qualified high technology businesses;
- 9 (2) The number of qualified high technology businesses in
10 each industry sector;
- 11 (3) The numbers and types of jobs created by qualified
12 high technology businesses;
- 13 (4) External services and materials procured by the
14 businesses;
- 15 (5) The compensation levels of jobs provided by qualified
16 high technology businesses;
- 17 (6) Qualified research activities; and
- 18 (7) Any other factors the department of business, economic
19 development, and tourism deems relevant.



1 The department of business, economic development, and tourism
2 shall submit the report to the legislature by September 1 of
3 each year.

4 (m) The director of taxation may adopt any rules under
5 chapter 91 and forms necessary to carry out this section.

6 (n) This section shall not apply to taxable years
7 beginning after December 31, [~~2019~~] 2024.

8 (o) As used in this section:

9 "Qualified high technology business" shall have the same
10 meaning as in section 235-7.3(c).

11 "Qualified research" shall have the same meaning as in
12 section 41(d) of the Internal Revenue Code.

13 "Qualified research expenses" shall have the same meaning
14 as in section 41(b) of the Internal Revenue Code; provided that
15 it shall not include research expenses incurred outside of the
16 State."

17 PART II

18 SECTION 3. Section 235-110.91, Hawaii Revised Statutes, is
19 repealed.

20 [~~§235-110.91 Tax credit for research activities. (a)~~
21 ~~Section 41 (with respect to the credit for increasing research~~



1 ~~activities) and section 280C(e) (with respect to certain~~
2 ~~expenses for which the credit for increasing research activities~~
3 ~~are allowable) of the Internal Revenue Code shall be operative~~
4 ~~for the purposes of this chapter as provided in this section;~~
5 ~~provided that the federal tax provisions in section 41 of the~~
6 ~~Internal Revenue Code, as that section was enacted on~~
7 ~~December 31, 2011, irrespective of any subsequent changes to~~
8 ~~section 41 of the Internal Revenue Code, shall remain in effect~~
9 ~~for purposes of determining the state income tax credit under~~
10 ~~this section; provided further that the federal tax provisions~~
11 ~~in section 41 of the Internal Revenue Code, as enacted on~~
12 ~~December 31, 2011, irrespective of any subsequent amendments to~~
13 ~~section 41 of the Internal Revenue Code, shall apply only to~~
14 ~~expenses incurred for qualified research activities after~~
15 ~~December 31, 2012.~~

16 ~~(b) All references to Internal Revenue Code sections~~
17 ~~within sections 41 and 280C(e) of the Internal Revenue Code~~
18 ~~shall be operative for purposes of this section; provided that~~
19 ~~references to the base amount in section 41 of the Internal~~
20 ~~Revenue Code shall not apply, and credit for all qualified~~



~~1 research expenses may be taken without regard to the amount of
2 expenses for previous years.~~

~~3 (c) There shall be allowed to each qualified high
4 technology business subject to the tax imposed by this chapter
5 an income tax credit for qualified research activities equal to
6 the credit for research activities provided by section 41 of the
7 Internal Revenue Code and as modified by this section, provided
8 that, in addition to any other requirements established in this
9 section, in order to qualify for the tax credit established in
10 this section, the qualified high technology business shall also
11 claim a federal tax credit for the same qualified research
12 activities under section 41 of the Internal Revenue Code, as
13 enacted on December 31, 2011, irrespective of any subsequent
14 amendments to section 41 of the Internal Revenue Code. The
15 credit shall be deductible from the taxpayer's net income tax
16 liability, if any, imposed by this chapter for the taxable year
17 in which the credit is properly claimed.~~

~~18 (d) Every qualified high technology business, before
19 March 31 of each year in which qualified research and
20 development activity was conducted in the previous taxable year,~~



1 ~~shall submit a written, certified statement to the department of~~
2 ~~business, economic development, and tourism identifying:~~

3 ~~(1) Qualified expenditures, if any, expended in the~~
4 ~~previous taxable year; and~~

5 ~~(2) The amount of tax credits claimed pursuant to this~~
6 ~~section, if any, in the previous taxable year.~~

7 ~~(e) The department of business, economic development, and~~
8 ~~tourism shall:~~

9 ~~(1) Maintain records of the names and addresses of the~~
10 ~~taxpayers claiming the credits under this section and~~
11 ~~the total amount of the qualified research and~~
12 ~~development activity costs upon which the tax credit~~
13 ~~is based;~~

14 ~~(2) Verify the nature of the qualifying research activity~~
15 ~~and the amount of the qualifying costs or~~
16 ~~expenditures;~~

17 ~~(3) Total all qualifying and cumulative costs or~~
18 ~~expenditures that the department certifies; and~~

19 ~~(4) Certify the amount of the tax credit for each taxable~~
20 ~~year and cumulative amount of the tax credit.~~



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

10 ~~Notwithstanding the authority of the department of business,~~
11 ~~economic development, and tourism under this section, the~~
12 ~~director of taxation may audit and adjust the tax credit amount~~
13 ~~to conform to the facts.~~

14 ~~The department of business, economic development, and~~
15 ~~tourism may assess and collect a fee to offset the costs of~~
16 ~~certifying tax credit claims under this section.~~

17 ~~(f) If in any taxable year the annual amount of certified~~
18 ~~credits reaches \$5,000,000 in the aggregate, the department of~~
19 ~~business, economic development, and tourism shall immediately~~
20 ~~discontinue certifying credits and notify the department of~~
21 ~~taxation. In no instance shall the department of business,~~



1 ~~economic development, and tourism certify a total amount of~~
2 ~~credits exceeding \$5,000,000 per taxable year. To comply with~~
3 ~~this restriction, the department of business, economic~~
4 ~~development, and tourism shall certify credits on a first come,~~
5 ~~first served basis.~~

6 ~~The department of taxation shall not allow the aggregate~~
7 ~~amount of credits claimed to exceed that amount per taxable~~
8 ~~year.~~

9 ~~(g) If the tax credit for qualified research activities~~
10 ~~claimed by a taxpayer exceeds the amount of income tax payment~~
11 ~~due from the taxpayer, the excess of the tax credit over~~
12 ~~payments due shall be refunded to the taxpayer, provided that no~~
13 ~~refund on account of the tax credit allowed by this section~~
14 ~~shall be made for amounts less than \$1.~~

15 ~~(h) All claims for a tax credit under this section shall~~
16 ~~be filed on or before the end of the twelfth month following the~~
17 ~~close of the taxable year for which the credit may be claimed.~~
18 ~~Failure to properly claim the credit shall constitute a waiver~~
19 ~~of the right to claim the credit.~~

20 ~~(i) A qualified high technology business that claims the~~
21 ~~credit under this section shall complete and file with the~~



1 ~~department of business, economic development, and tourism,~~
2 ~~through that department's website, an annual survey on~~
3 ~~electronic forms prepared and prescribed by the department of~~
4 ~~business, economic development, and tourism. The annual survey~~
5 ~~shall be filed before June 30 of each calendar year following~~
6 ~~the calendar year in which the credit may be claimed under this~~
7 ~~section. The department of business, economic development, and~~
8 ~~tourism may adjust the due date of the annual survey by rules~~
9 ~~adopted pursuant to chapter 91.~~

10 ~~(j) The annual survey under subsection (i) shall include~~
11 ~~the following information for the time period or periods~~
12 ~~specified by the department of business, economic development,~~
13 ~~and tourism:~~

14 ~~(1) Identification of the industry sector or sectors in~~
15 ~~which the qualified high technology business conducts~~
16 ~~business, as set forth in paragraphs (2) to (8) of the~~
17 ~~definition of "qualified research" in section~~
18 ~~235-7.3(c);~~

19 ~~(2) Total expenditures and the qualified expenditures, if~~
20 ~~any, expended in the previous taxable year;~~



- 1 ~~(3) Revenue and expense data, including a breakdown of any~~
- 2 ~~licensing royalty or other forms of income generated~~
- 3 ~~from intellectual property;~~
- 4 ~~(4) Hawaii employment and wage data, including the numbers~~
- 5 ~~of full time and part time employees retained, new~~
- 6 ~~jobs, temporary positions, external services procured~~
- 7 ~~by the business, and payroll taxes;~~
- 8 ~~(5) Filed intellectual property, including invention~~
- 9 ~~disclosures, provisional patents, and patents issued~~
- 10 ~~or granted; and~~
- 11 ~~(6) The number of new companies spun out or established to~~
- 12 ~~commercialize the intellectual property owned by the~~
- 13 ~~qualified high technology business.~~

14 ~~The department of business, economic development, and~~

15 ~~tourism shall request information in each of these categories~~

16 ~~sufficient to measure the effectiveness of the tax credit under~~

17 ~~this section. The department of business, economic development,~~

18 ~~and tourism may request any additional information necessary to~~

19 ~~measure the effectiveness of the tax credit, such as information~~

20 ~~related to patents. In preparing the survey and requesting any~~

21 ~~additional information, the department of business, economic~~



1 ~~development, and tourism shall ensure that qualified high~~
2 ~~technology businesses are not subject to duplicative reporting~~
3 ~~requirements.~~

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

17 ~~(l) The department of business, economic development, and~~
18 ~~tourism, in collaboration with the department of taxation, shall~~
19 ~~use the information collected to study the effectiveness of the~~
20 ~~tax credit under this section. The department of business,~~



1 ~~economic development, and tourism shall submit a report to the~~
2 ~~legislature on the following:~~

3 ~~(1) The amount of tax credits claimed and total taxes paid~~
4 ~~by qualified high technology businesses;~~

5 ~~(2) The number of qualified high technology businesses in~~
6 ~~each industry sector;~~

7 ~~(3) The numbers and types of jobs created by qualified~~
8 ~~high technology businesses;~~

9 ~~(4) External services and materials procured by the~~
10 ~~businesses;~~

11 ~~(5) The compensation levels of jobs provided by qualified~~
12 ~~high technology businesses;~~

13 ~~(6) Qualified research activities; and~~

14 ~~(7) Any other factors the department of business, economic~~
15 ~~development, and tourism deems relevant.~~

16 ~~The department of business, economic development, and tourism~~
17 ~~shall submit the report to the legislature by September 1 of~~
18 ~~each year.~~

19 ~~(m) The director of taxation may adopt any rules under~~
20 ~~chapter 91 and forms necessary to carry out this section.~~



1 ~~(n) This section shall not apply to taxable years~~
2 ~~beginning after December 31, 2024.~~

3 ~~(o) As used in this section:~~

4 ~~"Qualified high technology business" shall have the same~~
5 ~~meaning as in section 235-7.3(c).~~

6 ~~"Qualified research" shall have the same meaning as in~~
7 ~~section 41(d) of the Internal Revenue Code.~~

8 ~~"Qualified research expenses" shall have the same meaning~~
9 ~~as in section 41(b) of the Internal Revenue Code; provided that~~
10 ~~it shall not include research expenses incurred outside of the~~
11 ~~State."]~~

12 PART III

13 SECTION 4. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect upon its approval;
16 provided that:

17 (1) Section 2 shall apply to taxable years beginning after
18 December 31, 2019; and

19 (2) Part II shall take effect on December 31, 2024.

APPROVED this 05 day of JUL, 2019



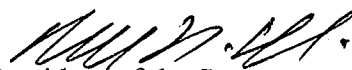
GOVERNOR OF THE STATE OF HAWAII

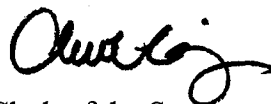
S.B. No. 1314, S.D. 1, H.D. 1, C.D. 1

THE SENATE OF THE STATE OF HAWAI'I

Date: April 30, 2019
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.


President of the Senate


Clerk of the Senate

SB No. 1314, SD 1, HD 1, CD 1

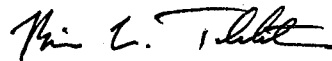
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 30, 2019
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives