

# S.B. NO. 1066

JAN 27 2021

## A BILL FOR AN ACT

RELATING TO TAX CREDIT FOR RESEARCH ACTIVITIES.

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

SECTION 1. Section 235-110.91, Hawaii Revised Statutes, is amended to read as follows:

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

Section 41 (with respect to the credit for increasing research activities) and section 280C(c) (with respect to certain expenses for which the credit for increasing research activities are allowable) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section; provided that the federal tax provisions in section 41 of the Internal Revenue Code, as that section was enacted on December 31, 2011, irrespective of any subsequent changes to section 41 of the Internal Revenue Code, shall remain in effect for purposes of determining the state income tax credit under this section; provided further that the federal tax provisions in section 41 of the Internal Revenue Code, as enacted on December 31, 2011, irrespective of any subsequent amendments to section 41 of the Internal Revenue Code, shall apply only to

**S.B. NO. 1066**

1 expenses incurred for qualified research activities after  
2 December 31, 2012.

3 (b) All references to Internal Revenue Code sections  
4 within sections 41 and 280C(c) of the Internal Revenue Code  
5 shall be operative for purposes of this section; provided that  
6 references to the base amount in section 41 of the Internal  
7 Revenue Code shall not apply, and credit for all qualified  
8 research expenses may be taken without regard to the amount of  
9 expenses for previous years.

10 (c) There shall be allowed to each qualified high  
11 technology business subject to the tax imposed by this chapter  
12 an income tax credit for qualified research activities equal to  
13 the credit for research activities provided by section 41 of the  
14 Internal Revenue Code and as modified by this section; provided  
15 that, in addition to any other requirements established in this  
16 section, in order to qualify for the tax credit established in  
17 this section, the qualified high technology business shall also  
18 claim a federal tax credit for the same qualified research  
19 activities under section 41 of the Internal Revenue Code, as  
20 enacted on December 31, 2011, irrespective of any subsequent  
21 amendments to section 41 of the Internal Revenue Code. The  
22 credit shall be deductible from the taxpayer's net income tax

## S.B. NO. 1066

liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed. Each taxpayer, together with all of its related entities, shall be eligible for no more than \$1,000,000 in tax credits provided by this section per taxable year.

(d) ~~[Every]~~ To be eligible for the credit, every qualified high technology business, ~~[before March 31 of each year]~~ no later than the last day of the third month immediately following the end of each taxable year in which qualified research and development activity was conducted ~~[in the previous taxable year]~~, shall submit a written, certified statement to the department of business, economic development, and tourism, identifying~~[÷]~~ at a minimum:

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

(2) The amount of tax credits claimed pursuant to this section, if any, in the previous taxable year~~[÷]~~;

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

## S.B. NO. 1066

1       (4) Revenue and expense data, including a breakdown of any  
2           licensing royalty or other forms of income generated  
3           from intellectual property;

4       (5) 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       (6) Filed intellectual property, including invention  
9           disclosures, provisional patents, and patents issued  
10          or granted; and

11       (7) The number of new companies spun out or established to  
12          commercialize the intellectual property owned by the  
13          qualified high technology business.

14   Failure to meet the requirements of this subsection shall  
15   constitute a waiver of the right to claim the credit.

16       The department of business, economic development, and  
17   tourism shall request information in each of these categories  
18   sufficient to measure the effectiveness of the tax credit under  
19   this section. The department of business, economic development,  
20   and tourism may request any additional information necessary to  
21   measure the effectiveness of the tax credit, such as information  
22   related to patents.

**S.B. NO. 1066**

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

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

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

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

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

Upon each determination made under this subsection, the department of business, economic development, and tourism shall issue a certificate to the taxpayer verifying information submitted to the department of business, economic development, and tourism, including the qualifying costs or expenditure amounts, the credit amount certified for each taxable year, and the cumulative amount of the tax credit during the credit period. The taxpayer shall file the certificate with the

S.B. NO. 1066

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

6 The department of business, economic development, and  
7 tourism may assess and collect a fee to offset the costs of  
8 certifying tax credit claims under this section.

9 (f) If in any [~~taxable~~] calendar year the annual amount of  
10 certified credits reaches \$5,000,000 in the aggregate, the  
11 department of business, economic development, and tourism shall  
12 immediately discontinue certifying credits and notify the  
13 department of taxation. In no instance shall the department of  
14 business, economic development, and tourism certify a total  
15 amount of credits exceeding \$5,000,000 per [~~taxable~~] calendar  
16 year. To comply with this restriction, the department of  
17 business, economic development, and tourism shall certify  
18 credits on a first come, first served basis[-], which is  
19 determined based on the date a complete application is received  
20 by the department of business, economic development, and  
21 tourism; provided that a taxpayer who is unable to receive a  
22 credit certification solely because the \$5,000,000 aggregate cap

**S.B. NO. 1066**

1 has been reached shall receive certification priority in the  
2 following calendar year for the certification requested in the  
3 submitted application if the taxpayer is still eligible to claim  
4 that tax credit under subsection (h). In no event shall this  
5 subsection be interpreted to extend the deadline to claim the  
6 credit under subsection (h). The department of taxation in  
7 conjunction with the department of business, economic  
8 development, and tourism shall issue guidance or adopt  
9 administrative rules addressing the allocation of credits when  
10 the amount of credits requested in complete applications  
11 received on the same day exceeds the amount of credit available  
12 for allocation.

13       The department of taxation shall not allow the aggregate  
14 amount of credits claimed to exceed that amount per taxable  
15 year.

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

## S.B. NO. 1066

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 the~~  
7 ~~credit under this section shall complete and file with the~~  
8 ~~department of business, economic development, and tourism,~~  
9 ~~through that department's website, an annual survey on~~  
10 ~~electronic forms prepared and prescribed by the department of~~  
11 ~~business, economic development, and tourism. The annual survey~~  
12 ~~shall be filed before June 30 of each calendar year following~~  
13 ~~the calendar year in which the credit may be claimed under this~~  
14 ~~section. The department of business, economic development, and~~  
15 ~~tourism may adjust the due date of the annual survey by rules~~  
16 ~~adopted pursuant to chapter 91.~~

17           ~~[(j) The annual survey under subsection (i) shall include~~  
18 ~~the following information for the time period or periods~~  
19 ~~specified by the department of business, economic development,~~  
20 ~~and tourism:~~

21           ~~(1) Identification of the industry sector or sectors in~~  
22           ~~which the qualified high technology business conducts~~



## S.B. NO. 1066

1 ~~business, as set forth in paragraphs (2) to (8) of the~~  
2 ~~definition of "qualified research" in section~~  
3 ~~235-7.3(c);~~

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

6 ~~(3) Revenue and expense data, including a breakdown of any~~  
7 ~~licensing royalty or other forms of income generated~~  
8 ~~from intellectual property;~~

9 ~~(4) Hawaii employment and wage data, including the numbers~~  
10 ~~of full-time and part-time employees retained, new~~  
11 ~~jobs, temporary positions, external services procured~~  
12 ~~by the business, and payroll taxes;~~

13 ~~(5) Filed intellectual property, including invention~~  
14 ~~disclosures, provisional patents, and patents issued~~  
15 ~~or granted; and~~

16 ~~(6) The number of new companies spun out or established to~~  
17 ~~commercialize the intellectual property owned by the~~  
18 ~~qualified high technology business.~~

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

S.B. NO. 1066

~~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)~~ (i) The department of business, economic development,  
9 and tourism shall use information collected under this section  
10 and 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.

21       ~~(l)~~ (j) The department of business, economic  
22 development, and tourism, in collaboration with the department

# S.B. NO. 1066

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

5 (1) The amount of tax credits claimed and total taxes paid  
6 by qualified high technology businesses;

7 (2) The number of qualified high technology businesses in  
8 each industry sector;

9 (3) The numbers and types of jobs created by qualified  
10 high technology businesses;

11 (4) External services and materials procured by the  
12 businesses;

13 (5) The compensation levels of jobs provided by qualified  
14 high technology businesses;

15 (6) Qualified research activities; and

16 (7) Any other factors the department of business, economic  
17 development, and tourism deems relevant.

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

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

BED-14 (21)

# S.B. NO. 1066

**Report Title:**

Tax Credit for Research Activities

**Description:**

Consolidates the survey and the certification requirements for the research activities tax credit, requires the certification on a first come, first served basis by date subject to certain conditions, and adds a cap for the taxpayer and related entities.

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

# SB. NO. 1066

## JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO TAX CREDIT FOR RESEARCH ACTIVITIES.

PURPOSE: Consolidates the survey and the certification requirements for the research activities tax credit, requires the certification on a first come, first served basis by date subject to certain conditions, and adds a cap for the taxpayer and related entities.

MEANS: Amend section 235-110.91, Hawaii Revised Statutes.

JUSTIFICATION: The amendments consolidate the survey and the certification to ease some of the administrative burden, require the certification on a first come, first served basis by date subject to certain conditions, and add a cap to ensure that a single company does not claim the entire allotment for the tax credit.

Impact on the public: Eases submission requirements and distributes tax credits to qualified companies.

Impact on the department and other agencies: Eases administrative burden.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: BED-143.

OTHER AFFECTED AGENCIES: Department of Taxation.

EFFECTIVE DATE: Upon approval.