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# A BILL FOR AN ACT

RELATING TO THE TAX CREDIT FOR RESEARCH ACTIVITIES.

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

1 PART I

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

4 "§235-110.91 Tax credit for research activities. (a)

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



1 section 41 of the Internal Revenue Code, shall apply only to  
2 expenses incurred for qualified research activities after  
3 December 31, 2012.

4 (b) All references to Internal Revenue Code sections  
5 within sections 41 and 280C(c) of the Internal Revenue Code  
6 shall be operative for purposes of this section; provided that  
7 references to the base amount in section 41 of the Internal  
8 Revenue Code shall not apply, and credit for all qualified  
9 research expenses may be taken without regard to the amount of  
10 expenses for previous years. In determining the allowable  
11 credit, research funded by any grant, forgivable loan, or other  
12 amounts not included in gross income for purposes of this  
13 chapter shall not be eligible research.

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



1 claim a federal tax credit for the same qualified research  
2 activities under section 41 of the Internal Revenue Code, as  
3 enacted on December 31, 2011, irrespective of any subsequent  
4 amendments to section 41 of the Internal Revenue Code. The  
5 credit shall be deductible from the taxpayer's net income tax  
6 liability, if any, imposed by this chapter for the taxable year  
7 in which the credit is properly claimed. Each taxpayer,  
8 together with all of the taxpayer's related entities, as  
9 determined under section 267(b) of the Internal Revenue Code of  
10 1986, as amended, and all business entities under common  
11 control, as determined under sections 414(b), 414(c), and  
12 1563(a) of the Internal Revenue Code of 1986, as amended, shall  
13 be eligible for not more than \$\_\_\_\_\_ in tax credits  
14 provided by this section per taxable year.

15 (d) ~~[Every]~~ To be eligible for the tax credit, every  
16 qualified high technology business, before March 31 of each  
17 calendar year in which qualified research and development  
18 activity was conducted [in the previous taxable year], shall  
19 submit [a written, certified statement] each of the following,  
20 at a minimum, to the department of business, economic  
21 development, and tourism [identifying]:



- 1 (1) Qualified expenditures, if any, expended in the  
2 previous taxable year; [~~and~~]
- 3 (2) The amount of tax credits claimed pursuant to this  
4 section, if any, in the previous taxable year[-];
- 5 (3) The industry sector or sectors in which the qualified  
6 high technology business conducts business, as set  
7 forth in paragraphs (2) to (8) of the definition of  
8 "qualified research" in section 235-7.3(c);
- 9 (4) Revenue and expense data, including a breakdown of any  
10 licensing royalty or other forms of income generated  
11 from intellectual property;
- 12 (5) Employment and wage data relating to the qualified  
13 high technology business's operations in the State,  
14 including the numbers of full-time and part-time  
15 employees retained, new positions created, temporary  
16 positions created, external services procured, and  
17 payroll taxes incurred;
- 18 (6) The number of filed intellectual property, including  
19 invention disclosures, provisional patents, and  
20 patents issued or granted;



1       (7) The number of new companies in the State that  
2       separated from, or were established by, the qualified  
3       high technology business to commercialize the  
4       intellectual property owned by the qualified high  
5       technology business; and

6       (8) A written declaration signed by an officer of the  
7       qualified high technology business certifying that the  
8       information that is submitted pursuant to this  
9       subsection is true and correct as to every material  
10       matter; provided that the certification shall be  
11       subject to the penalties provided in section 231-36,  
12       including monetary fines or imprisonment.

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

15       The department of business, economic development, and  
16 tourism shall request any specific information relating to the  
17 categories identified in paragraphs (1) to (8) sufficient to  
18 measure the effectiveness of the tax credit under this section.

19 The department of business, economic development, and tourism  
20 may request any additional information necessary to measure the



1 effectiveness of the tax credit, including additional  
2 information related to patents.

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

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

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

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

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

17 Upon each determination made under this subsection, the  
18 department of business, economic development, and tourism shall  
19 issue a certificate to the taxpayer verifying information  
20 submitted to the department of business, economic development,  
21 and tourism, including the qualifying costs or expenditure



1 amounts, the credit amount certified for each taxable year, and  
2 the cumulative amount of the tax credit during the credit  
3 period. The taxpayer shall file the certificate with the  
4 taxpayer's tax return with the department of taxation.

5 Notwithstanding the authority of the department of business,  
6 economic development, and tourism under this section, the  
7 director of taxation may audit and adjust the tax credit amount  
8 to conform to the facts.

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

12 (f) If in any [taxable] calendar year the annual amount of  
13 certified credits reaches [\$5,000,000] \$ \_\_\_\_\_ in the  
14 aggregate, the department of business, economic development, and  
15 tourism shall immediately discontinue certifying credits and  
16 notify the department of taxation. In no instance shall the  
17 department of business, economic development, and tourism  
18 certify a total amount of credits exceeding [\$5,000,000]  
19 \$ \_\_\_\_\_ per [taxable] calendar year. To comply with this  
20 restriction, the department of business, economic development,  
21 and tourism shall certify credits on a [~~first come, first~~



1 served] first-come, first-served basis[-], which shall be  
2 determined based on the date that a complete application is  
3 received by the department of business, economic development,  
4 and tourism. Complete applications received on the same date  
5 shall be certified on a pro rata 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 235-~~  
18 ~~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)]~~ (i) The department of business, economic development,  
5 and tourism shall use information collected under this section  
6 and 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)]~~ (j) The department of business, economic  
18 development, and tourism, in collaboration with the department  
19 of taxation, shall use the information collected to study the  
20 effectiveness of the tax credit under this section. The



1 department of business, economic development, and tourism shall  
2 submit a report to the 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~~] (k) The director of taxation may adopt any rules  
20 under chapter 91 and forms necessary to carry out this section.





1 PART III

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

4 SECTION 4. This Act shall take effect on June 30, 3000.



**Report Title:**

DBEDT; Tax Credit for Research Activities; Requirements; Survey;  
Certification; Cap Amounts

**Description:**

Extends the repeal date of the tax credits for research activities for an additional five years. Adds a cap amount on the tax credit for research activities that may be claimed by a taxpayer and all its business entities. Consolidates the survey and certification requirements for the tax credit for research activities. Changes to an unspecified amount the annual aggregate cap amount on the tax credit for research activities. Requires certification of the tax credit for research activities on a first-come, first-served basis to be based on the date that a complete application is received, subject to certain conditions. Requires a qualified high technology business be registered to do business in the State. Effective 6/30/3000.  
(SD1)

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