



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2024**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1788, RELATING TO THE TAX CREDIT FOR RESEARCH ACTIVITIES.

**BEFORE THE:**

HOUSE COMMITTEE ON HIGHER EDUCATION AND TECHNOLOGY

**DATE:** Wednesday, February 7, 2024      **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 309 and Videoconference

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Janine R. Udoi, Deputy Attorney General

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Chair Perruso and Members of the Committee:

The Department of the Attorney General provides the following comments:

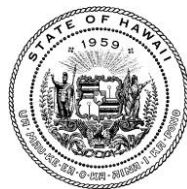
This bill amends the requirements and conditions of tax credits for research activities and extends the sunset date for tax credits for research activities.

The bill amends section 5 of Act 261, Sessions Laws of Hawaii (SLH) 2019, to extend the sunset date for tax credits for research activities made available pursuant to section 235-110.91, Hawaii Revised Statutes (HRS), from December 31, 2024, to December 31, 2029. See section 2, page 13, lines 12-19. However, section 1 of the bill, at page 13, lines 1-2, does not similarly amend subsection (m) of section 235-110.91 (HRS), which states: "(m) This section shall not apply to taxable years beginning after December 31, 2024." To avoid confusion regarding whether the tax credits will be applicable to taxable years beginning after December 31, 2024, we recommend that section 1 of the bill, at page 13, lines 1-2, be amended to read as follows: "(m) This section shall not apply to taxable years beginning after December 31, [~~2024.~~] 2029."

Thank you for the opportunity to provide comments on the bill.

JOSH GREEN M.D.  
GOVERNOR

SYLVIA LUKE  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**

Ka 'Oihana 'Auhau  
P.O. BOX 259

HONOLULU, HAWAII 96809  
PHONE NO: (808) 587-1540  
FAX NO: (808) 587-1560

GARY S. SUGANUMA  
DIRECTOR

KRISTEN M.R. SAKAMOTO  
DEPUTY DIRECTOR

**TESTIMONY OF  
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

**TESTIMONY ON THE FOLLOWING MEASURE:**

H.B. No. 1788, Relating to the Tax Credit for Research Activities.

**BEFORE THE:**

House Committee on Higher Education & Technology

**DATE:** Wednesday, February 7, 2024

**TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 309

Chair Perruso, Vice-Chair Kapela, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding H.B. 1788 for your consideration.

H.B. 1788 makes several changes to section 235-110.91, Hawaii Revised Statutes (HRS), which governs the tax credit for research activities, including:

- (1) Limiting each taxpayer, together with all their related entities, and all business entities under common control, as determined by the Internal Revenue Code, to no more than \$1,500,000 in tax credit eligibility per taxable year;
- (2) Requiring every "qualified high technology business" to be registered to do business in the state;
- (3) Adding a series of new reporting requirements that every qualified high technology business must submit to the Department of Business, Economic Development, and Tourism (DBEDT) no later than the last day of the third month immediately following the end of the taxable year in which qualified research and development activity was conducted;
- (4) Raising the annual aggregate cap on certified credits from \$5,000,000 per taxable year to \$15,000,000 per calendar year, on a first-come first-served basis based on date of completed application, with a pro-rata allocation for any applications completed on the same day;

- (5) Repealing DBEDT's previously-required annual online survey; and
- (6) Delaying the credit's sunset provision until December 31, 2029.

The bill takes effect upon its approval and applies to taxable years beginning after December 31, 2023.

The Department defers to DBEDT on its ability to continue certifying this credit with the bill's proposed changes, but notes that the Department prefers H.B. 2355, an Administration measure.

With respect to H.B. 1788, the Department notes that the measure changes the certification deadline from March 31 following the end of the calendar year in which research was conducted to the last day of the third month following the close of the taxable year in which research was conducted. Some taxpayers are fiscal-year filers, with the end of the tax year varying. Because of the aggregate cap, this change could result in some taxpayers having a substantial advantage or disadvantage in obtaining the credit, depending on when their fiscal year ends. The Department therefore suggests deleting this amendment and maintaining March 31 as the certification deadline.

Additionally, to prevent the credit from being claimed on research that has been funded by tax-exempt receipts such as a grant, the Department suggests that subsection (b) be amended to read as follows:

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

The Department also suggests amending subsection (g) on page 8 to clarify how the pro rata certification will be made, as follows:

~~[(f)]~~ (g) If in any ~~[taxable]~~ calendar year the annual amount of certified credits reaches ~~[\$5,000,000]~~ \$15,000,000 in the aggregate, the department of business, economic development, and tourism shall immediately discontinue certifying

credits and notify the department of taxation. In no instance shall the department of business, economic development, and tourism certify a total amount of credits exceeding [~~\$5,000,000~~] \$15,000,000 per [~~taxable~~] calendar year. To comply with this restriction, the department of business, economic development, and tourism shall certify credits on a [~~first come, first served~~] first-come, first-served basis[-], which shall be based on the date of submission of the written, certified statement; provided that if the total amount of credits properly claimed by two or more qualified high technology businesses on the same date would, if each certified, cause the aggregate amount of certified credits to exceed \$15,000,000, each qualified high technology business that submits a certified statement on that date shall receive a proportionate share of the remaining credit, calculated by multiplying the total amount of remaining credit by a fraction, the numerator of which is the amount of credit properly claimed by the qualified high technology business and the denominator of which is the sum of all credits properly claimed by all qualified high technology businesses on that date.

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

The Department further suggests amending subsection (m) on page 13 of the bill, which would make section 235-110.91, HRS, inapplicable for tax years beginning after December 31, 2024, by replacing "December 31, 2024" with "December 31, 2029."

Thank you for the opportunity to provide comments on this measure.

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**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**  
KA 'OIHANA HO'OMOHALA PĀ'OIHANA, 'IMI WAIWAI  
A HO'OMĀKA'IKA'I

JOSH GREEN, M.D.  
GOVERNOR

SYLVIA LUKE  
LT. GOVERNOR

JAMES KUNANE TOKIOKA  
DIRECTOR

DANE K. WICKER  
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
Web site: [dbedt.hawaii.gov](http://dbedt.hawaii.gov)

Telephone: (808) 586-2355  
Fax: (808) 586-2377

Statement of  
**JAMES KUNANE TOKIOKA**  
Director  
Department of Business, Economic Development, and Tourism  
before the  
**HOUSE COMMITTEE ON HIGHER EDUCATION & TECHNOLOGY**

Wednesday, February 7, 2024  
2:00 PM  
State Capitol, Conference Room # 309, and Videoconference

In consideration of  
**HB1788**  
**RELATING TO TAX CREDIT FOR RESEARCH ACTIVITIES.**

Chair Perruso, Vice Chair Kapela, and members of the Committee.

The Department of Business, Economic Development and Tourism (DBEDT) supports HB1788 which amends the current qualifying criteria for HRS 235-110.91, the Hawai'i Research Tax Credit, to include limiting the total amount of a claim allowable per year, additional requirements for reporting, increases the maximum amount of tax credits available per year from \$5,000,000 to \$15,000,000 and extends the sunset date of the research activities tax credit by five years to December 31, 2029.

Research activities have been shown to be effective in stimulating regional or state technology, research, and development sectors. For the past two years, the \$5,000,000 cap was reached almost as soon as the online applications were opened for submissions on March 1st each year. The cap limits the ability to accelerate this technology and biotech sector, often with companies unable to claim the credit due to the method of allocation.

In 2022, [READ reported](#) a total of 26 filers who spent \$59.4 million in the state, at a total \$11.9 million in tax credit claim exceeding the cap. The first-come, first-served methodology to allot credits in the order of date and time received, limited the credit to only 9 companies. HB1788 will provide the Hawai'i Technology Development Corporation (HTDC) expand the potential of IP and patent origination development in the state.

Thank you for the opportunity to testify.



Statement of  
**Hermann Kugeler**  
**Vice President of Business Development**  
**Makai Ocean Engineering, Inc.**  
before the  
**House Committee on Higher Education & Technology**  
Wednesday, February 7, 2024  
2:00 pm  
Videoconference  
State Capitol, Conference Room 309  
In consideration of  
**HB1788**  
**RELATING TO THE TAX CREDIT FOR RESEARCH ACTIVITIES.**

Chair Perruso, Vice Chair Kapela, and Members of the Committee

Makai Ocean Engineering, Inc. **SUPPORTS HB1788** that amends the annual aggregate cap to \$15,000,000 per year.

Makai is a locally-owned and operated technology company based in Hawai`i for 50 years. We are currently performing R&D on a variety of exciting ocean technology projects, including Machine Learning software, autonomous underwater vehicles, ocean thermal energy conversion (OTEC) and seawater air conditioning (SWAC) systems, and subsea cable systems.

Makai has been successful in bringing in tens of millions of dollars in R&D funds from federal and international sponsors to Hawai`i, helping to stem the tide of “brain drain” of talented kama`aina kids going to the mainland. Makai is not unique among Hawaii technology companies in this. There is a tech community here that has made a strong economic impact in terms of high paying jobs, and demonstrated success in commercializing R&D, which has increased taxable revenue for the state, and brought home kama`aina scientists and engineers.

This bill allows Hawaii companies like Makai to outshine mainland peers in competitive federal R&D projects, bring home R&D dollars that greatly exceed the initial investment, and create a critical mass and a truly vibrant industry of innovative R&D companies in Hawaii. It helps expand and diversify Hawaii’s economy, and enable our tech industry to support high-paying, highly-skilled professional jobs for our keiki here at home.

This is why we **SUPPORT HB1788**, that amends the annual aggregate cap to \$15,000,000 per year. Increasing the annual aggregate cap to \$15M would allow broader support of Hawaii’s Qualified High Technology Business (QHTB). Many of the QHTB were not able to receive the credits in prior years, because all of the funding was allocated in the first 23 seconds when the annual aggregate was set at \$5,000,000. HTDC reported that a total of \$13.5M in applications are received annually. This bill enables these businesses to continue spending monies on wages, materials and subcontractors IN THE STATE OF HAWAII and recognizes the importance of Hawaii’s innovation industries to our economy.

**HB-1788**

Submitted on: 2/2/2024 5:23:59 PM

Testimony for HET on 2/7/2024 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Charlie Field	PacMar Technologies	Support	Written Testimony Only

Comments:

On behalf of PacMar Technologies, we strongly support HB1788. Increasing the aggregate amount of credits available is very important as we understand there are typically around \$13.5M in total applicant requests per year and many valuable research companies apply within the first minute the application opens, but get denied because funding runs out.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** INCOME TAX; DBEDT; Tax Credit for Research Activities; Requirements; Survey; Certification; Caps

**BILL NUMBER:** HB 1788

**INTRODUCED BY:** NISHIMOTO

**EXECUTIVE SUMMARY:** Adds a cap for the amount of tax credits for research activities that an eligible taxpayer and the taxpayer's related entities may receive per taxable year. Consolidates the survey and certification requirements for tax credits for research activities. Amends the annual aggregate cap on tax credits for research activities that the Department of Business, Economic Development, and Tourism may certify. Requires certification of the tax credits 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. Extends the sunset date for tax credits from 12/31/2024 to 12/31/2029.

**SYNOPSIS:** Amends section 235-110.91(c), HRS, by adding a maximum of \$1,500,000 credits per taxable year for each taxpayer, together with all the taxpayer's related entities, as determined by IRC section 267(b) and all business entities under common control, as determined under IRC sections 414(b), 414(c), and 1563(a).

Amends section 235-110.91(d), HRS, to require every qualified high technology business to be registered to do business in the State.

Amends section 235-110.91(e), HRS, to combine the DBEDT certification and survey requirements (currently in subparagraph (i)) to be submitted by the last day of the third month immediately following the end of the taxable year in which the qualified activity was conducted. Failure to meet these requirements will waive the right to claim the tax credit. Provides DBEDT the ability to request any specific information relating to the certification and survey submissions.

Amends section 235-110.91(g), measurement period for the annual credits that DBEDT can certify to a calendar year from a taxable year and increases the cap of credits that can be certified from \$5 million to \$15 million.

Section 2 of the bill amends section 5 of Act 261, SLH 2019 to repeal section 235-110.91 on December 31, 2029.

**EFFECTIVE DATE:** Upon approval, applicable to taxable years beginning after December 31, 2023.

**STAFF COMMENTS:** The proposal tightens up the credit requirements by limiting the credits to related entities and streamlines the information collection process needed by DBEDT for certification and evaluation. However, the more substantive amendments are to increase the



annual cap on credits and extend the sunset date. The sunset date is being changed through an amendment of Act 261, SLH 2019; however, new subsection (m) must also be amended to reflect the revised sunset date.

The legislature by Act 270, SLH 2013, reestablished the income tax credit for qualified research activities that expired on 12/31/10. The prior version of that law, under Act 221, SLH 2001, offered a credit for qualified research activities that was a flat percentage of qualified research expenses in Hawaii without regard to the federal base amount (the federal credit is supposed to be an incentive to increase research activities, so the federal credit is based on incremental research expenses). When Act 270 brought the credit back, it did so as an incremental credit, like the federal credit.

Act 261, SLH 2019, amended the credit by reinserting the phrase “provided that references to the base amount shall not apply and credit for all qualified research expenses may be taken without regard to the amount of expenses for previous years.”

Substantively, over the last decade, Hawaii has adopted various tax incentives to encourage the development of high technology businesses in the state. The acts provided investment and research credits as well as income exclusions providing tax relief to high tech businesses and individuals associated with high tech businesses. While the focus on high technology in the last few years is commendable, it fails to recognize that investments are made with the prospect that the venture will yield a profit. If the prospects for making a profit are absent, no amount of tax credits will attract investment from outside Hawaii’s capital short environment. People do not invest to lose money. It should be remembered that until Hawaii’s high cost of living can be addressed, all the tax incentives in the world will not make a difference in attracting new investment to Hawaii. The only attractive aspect for resident investors to plow money into such activities is the fact that the credit provides a way to avoid paying state taxes.

At a minimum, lawmakers should carefully examine the results that have come out of this 20-year-old incentive to see if the State has gotten its money’s worth. The annual DEBT report required under subsection (k) could be the starting point for evaluation and justification for extension or increase of this incentive.

Digested: 2/5/2024



Written Statement of  
**MATTHEW SULLIVAN**  
**DIRECTOR OF PRODUCT, OCEANIT**

Before the  
**HOUSE COMMITTEE ON HIGHER EDUCATION AND TECHNOLOGY**

Thursday, February 7, 2024, 2:00 p.m.  
State Capitol, Conference Room 309 & Videoconference

In Support of  
**HB1788 RELATING TO TAX CREDIT FOR RESEARCH ACTIVITIES**

To: Representative Amy A. Perruso, Chair, Representative Jeanne Kapela, Vice Chair  
and Members of the Committee

From: Matthew Sullivan, Director of Product

Re: Testimony in Support of HB1788

Honorable Chair, Vice-Chair and Committee Members: Thank you for the opportunity to submit testimony in **Support of HB1788**. I am submitting this testimony in my capacity as Director of Project at Oceanit.

Oceanit is one of the largest local science and engineering companies in the State of Hawaii and has been around for over 39 years. We employ over 100 local scientists and engineers in specialized fields such as artificial intelligence and nanomaterials, addressing global problems such as climate change and energy transformation.

We support HB1788 as Hawaii's R&D Tax Credit is one of the few state policies to support the local tech industry.

**The Hawaii R&D tax credit is a good investment for the State; therefore, the sunset date should be extended.**

According to a 2021 UHERO report titled *The Hawaii Research Activity Tax Credit: Is It Effective and How Can It Be Improved?*, every \$1 in tax credits claimed generates an additional \$1-2 in additional spending in the State by private firms.

According to the *Report on Hawaii Tax Credit for Research Activities for Tax Year 2022* prepared by DBEDT, the average annual wage was \$88,612 for the 26 Qualified High Technology Businesses that applied for the Hawaii tax credit for research activities for the tax year 2022. In addition, 37 of the 50 states in the U.S. offer an R&D tax credit. Hawaii's R&D tax credit enables Hawaii companies to compete with other states to recruit and retain more local talent and stem Hawaii's "Brain Drain".

**To grow our local tech industry, the annual \$5 million cap should be increased.**

In 2022, 26 companies applied for the Hawaii tax credit but only 9 received it due to the \$5 million annual cap. In aggregate, the 26 QHTBs generated a total of \$262.4 million in revenue from all goods and services produced in Hawaii, \$227.9 million as operating cost, and paid a total of \$101.1 million as payroll.



Hawaii Technology Development Corporation  
521 Ala Moana Blvd, Ste 255 | 808-539-3806  
Honolulu, Hawaii 96813 | www.htdc.org

JOSH GREEN, M.D.  
GOVERNOR

SYLVIA LUKE  
LT. GOVERNOR

Written Statement of  
**Wayne Inouye**  
**Interim Director**  
Hawaii Technology Development Corporation  
before the  
**HOUSE COMMITTEE ON HIGHER EDUCATION & TECHNOLOGY**

Thursday, February 7, 2024  
2:00 PM  
State Capitol, Conference Room #309

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**HB1788**  
**RELATING TO THE TAX CREDIT FOR RESEARCH ACTIVITIES.**

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The Hawaii Technology Development Corporation (HTDC) strongly supports HB1788 that Adds a cap for the amount of tax credits for research activities that an eligible taxpayer and the taxpayer's related entities may receive per taxable year. Consolidates the survey and certification requirements for tax credits for research activities. Amends the annual aggregate cap on tax credits for research activities that the Department of Business, Economic Development, and Tourism may certify. Requires certification of the tax credits 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. Extends from 12/31/2024 to 12/31/2029, the sunset date for tax credits for research activities.

Research activities have been effective in stimulating the economy and creating quality jobs in the State. For the past two years, the \$5,000,000 cap for the income tax credit for research activities was reached almost as soon as the online applications were opened. This is expanded on in DBEDT's Report on Hawaii Tax Credit for Research Activities for 2022([https://files.hawaii.gov/dbedt/economic/data\\_reports/HawaiiResearchTaxCredit\\_TaxYear2022.pdf](https://files.hawaii.gov/dbedt/economic/data_reports/HawaiiResearchTaxCredit_TaxYear2022.pdf)). By supporting the amendments outlined in the bill HTDC hopes to see a wider distribution of tax credits to qualified companies for a longer period.

Thank you for the opportunity to testify.