

S.B. NO. 1363

JAN 22 2007

A BILL FOR AN ACT

RELATING TO TAX CREDITS.

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

1 SECTION 1. The legislature finds that the leeward coast of
2 Oahu has levels of poverty in excess of twenty percent in each
3 of the census tracts comprising this region. This condition has
4 existed for over forty years despite the efforts of federal,
5 state, and county programs to alleviate the suffering or reduce
6 the numbers of individuals and families impacted. The purpose
7 of this bill is to amend the definition of entities eligible to
8 qualify for an existing leeward region tax credit to increase
9 the number of employers in the leeward coast region who could
10 qualify for the tax credit. This would stimulate regional
11 investment in expanding existing businesses or the creation of
12 new business facilities situated in the leeward coast area,
13 which will revitalize the region and provide greater employment
14 opportunities.

15 SECTION 2. Section 235-110.46, Hawaii Revised Statutes, is
16 amended to read as follows:

17 " [~~§235~~]-110.46 Attractions and educational facilities
18 tax credit; Ko Olina Resort and Marina; Makaha Resort; leeward

1 coast revitalization incentive. (a) There shall be allowed to
2 each qualified taxpayer subject to the taxes imposed by this
3 chapter or chapter 237, 237D, 238, 239, 241, or 431, a tax
4 credit ~~{that}~~ may be claimed for taxable years beginning after
5 December 31, 2004, for qualified costs in the development of
6 facilities for attractions and educational purposes at Ko Olina
7 Resort and Marina and at Makaha Resort[-], and for leeward coast
8 revitalization efforts. The tax credit shall be deductible from
9 the taxpayer's net income tax liability, if any, imposed by this
10 chapter and, for taxpayers qualified under subsection (c)(1),
11 (2), (3), and (4) at the election of the taxpayer, from the tax
12 liability imposed by chapters 237, 237D, 238, 239, 241, and 431.

13 (b) The tax credit earned shall be equal to the qualified
14 costs incurred from June 1, 2003, through May 31, 2009, up to a
15 maximum of \$75,000,000 of credits in the aggregate for all
16 qualified taxpayers for all years; provided that notwithstanding
17 the amount of tax credits earned in any year, a maximum of
18 \$7,500,000 of tax credits in the aggregate for all qualified
19 taxpayers may be used in any one taxable year. The credits over
20 \$7,500,000 shall be used as provided in subsection (d). In the
21 case of a partnership, limited liability company, S corporation,
22 estate, trust, or association of apartment owners, the tax

1 credit allowable is for qualified costs incurred by the entity.
2 The costs upon which the tax credit is computed shall be
3 determined at the entity level.

4 (c) To qualify for the tax credit, a taxpayer shall:

5 (1) Have expended qualified costs on and be developing a
6 world-class aquarium and marine science and mammal
7 research facility at Ko Olina Resort and Marina; and

8 (2) Dedicate one-half of the net operating income of the
9 world-class aquarium to the State, beginning on the
10 first day of the seventeenth year following the year
11 in which the attractions and educational facilities
12 credit was first taken; [~~or~~]

13 (3) Acquire or own the Makaha Resort, and lease or sell a
14 portion of the Makaha Resort for use as training and
15 educational facilities for a period of not less than
16 six years to a taxpayer meeting the requirements of
17 subsection (c) (1) [~~+~~]; or

18 (4) Have expended qualified costs for infrastructure or
19 building improvements to commercial property utilized
20 by a business within the geographic boundary of the
21 leeward coast, for revitalization purposes.

1 Infrastructure or building improvements to a business
2 located within a residence are not qualified costs.

3 (d) If the tax credit under this section exceeds
4 \$7,500,000 in the aggregate for all qualified taxpayers for any
5 taxable year or exceeds the taxpayer's tax liability under this
6 chapter or chapters 237, 237D, 238, 239, 241, and 431 for any
7 year for which the credit is taken, the excess of the tax credit
8 may be used as a credit against the taxpayer's tax liability for
9 the taxes set forth in this section in subsequent years until
10 exhausted; provided that the taxpayer may continue to claim the
11 credit provided in this section if the qualified costs are
12 incurred before June 1, 2009, subject to the monetary ceilings
13 in subsection (b).

14 (e) Every claim, including amended claims, for a tax
15 credit under this section shall be filed on or before the end of
16 the twelfth month following the close of the taxable year for
17 which the credit may be claimed. Failure to comply with the
18 foregoing provision shall constitute a waiver of the right to
19 claim the credit.

20 (f) If, at any time during the six-year period in which
21 tax credits are earned under this section, the costs incurred no
22 longer meet the definition of qualified costs, the credits

1 claimed under this section shall be recaptured. The recapture
2 shall be equal to one hundred per cent of the total tax credits
3 claimed under this section for the preceding taxable year;
4 provided that the amount of the credits recaptured shall apply
5 only to those costs that no longer meet the definition of
6 qualified costs. The amount of the recaptured tax credits
7 determined under this subsection shall be added to the
8 taxpayer's tax liability for the taxable year in which the
9 recapture occurs under this subsection.

10 (g) If any credit is claimed under this section, then no
11 taxpayer shall claim a credit under any chapter identified in
12 this section for the same qualified costs for which a credit is
13 claimed under this section.

14 (h) The director of taxation shall prepare any forms that
15 may be necessary to claim a credit under this section. The
16 director may also require the taxpayer to furnish information to
17 ascertain the validity of the claims for credits made under this
18 section and may adopt rules necessary to effectuate the purposes
19 of this section pursuant to chapter 91.

20 Every qualified taxpayer, no later than March 31 of each
21 year in which qualified costs were expended in the previous
22 taxable year, shall submit a written, certified statement to the

1 director of business, economic development, and tourism, in the
2 form specified by the director of business, economic
3 development, and tourism, identifying:

- 4 (1) Qualified costs, if any, expended in the previous
5 taxable year;
- 6 (2) The amount of tax credits claimed pursuant to this
7 section, if any, in the previous taxable year; and
- 8 (3) The tax liability under this chapter and chapters 237,
9 237D, 238, 239, 241, and 431 against which the tax
10 credits are claimed.

11 Any other law to the contrary notwithstanding, a statement
12 submitted under this subsection shall be a public document.

13 (i) The department of business, economic development, and
14 tourism shall maintain records of the names of taxpayers
15 eligible for the credits and the total amount of qualified costs
16 incurred from June 1, 2003, through May 31, 2009. The
17 department of business, economic development, and tourism shall
18 verify all qualified costs and, upon each determination, shall
19 issue a certificate to the taxpayer certifying:

- 20 (1) The amount of the qualified costs; and
- 21 (2) The amount of tax credit that the taxpayer is allowed
22 to use for the taxable year.

1 The department of business, economic development, and
2 tourism shall certify no more than \$7,500,000 in credits in the
3 aggregate for all taxpayers for each taxable year; provided that
4 the department may verify qualified costs of no more than
5 \$75,000,000 from June 1, 2003, through May 31, 2009. The
6 taxpayer shall file the certificate with the taxpayer's return
7 with the department of taxation. The department of business,
8 economic development, and tourism shall certify credits in the
9 order in which claims for the credit certification are received.
10 Once the maximum aggregate amounts of credit have been
11 certified, as provided in this section, the department of
12 business, economic development, and tourism shall provide notice
13 to the public that the maximum amounts of certifiable credits
14 have been issued.

15 (j) As used in this section:

16 "Ko Olina Resort and Marina" means the six hundred forty-
17 two acres reclassified to urban district by Decision and Order
18 entered on September 12, 1985, in Docket A83-562, by the land
19 use commission.

20 "Leeward coast" means the geographic area encompassed in
21 the city and county of Honolulu's Waianae sustainable community
22 plan.

1 "Makaha Resort" means the three hundred thirty-two acre
2 property identified as tax map keys (1) 8-04-002 parcels 51, 52,
3 53, 54, 55, and 67 and (1) 8-04-029-142.

4 "Qualified costs" means any costs for plans, design, and
5 construction, costs for equipment that is permanently affixed to
6 a commercial building or structure, and acquisition of
7 facilities for educational purposes, up to a total of
8 \$75,000,000 in the aggregate, incurred after May 31, 2003, and
9 before June 1, 2009, at [~~either or both of~~]:

10 (1) Ko Olina Resort and Marina for the development of
11 facilities for attractions and educational purposes,
12 and for infrastructure within the Ko Olina Resort and
13 Marina that is directly related to those facilities,
14 including a world-class aquarium, marine science and
15 mammal research facilities, international sports
16 training complex, a travel industry management intern
17 campus, infrastructure for the transfer of ocean
18 waters to the aquarium or marine mammal facilities, or
19 both, seawater air conditioning, and other educational
20 facilities developed or operated in cooperation with
21 the University of Hawaii or other educational
22 institutions; [~~or~~]

1 (2) Makaha Resort for the development of a training and
2 educational facility within a working resort and
3 hotel; or

4 (3) A business located within the geographic boundary of
5 the Leeward coast, for revitalization purposes;
6 provided that "qualified costs" shall not include land
7 acquisition costs or any plans, design, construction or
8 equipment affixed to buildings which are located within a
9 residence.

10 "Qualified taxpayer" means a person who fulfills the
11 requirements of subsection (c). Notwithstanding any language to
12 contrary in this chapter, taxpayers qualified under the
13 requirements of subsection (c)(4) shall be eligible for a tax
14 credit for qualified costs deductible from the taxpayers net
15 income tax liability imposed by this chapter, and shall not be
16 eligible to apply such credit to any tax liability imposed by
17 chapters 237, 237D, 238, 239, 241, and 431."

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

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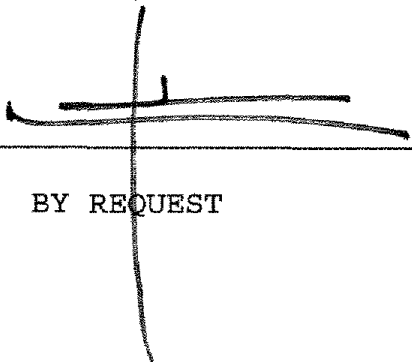
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1 SECTION 4. This Act shall take effect on July 1, 2007;
2 provided that the provisions of this Act shall apply to costs
3 incurred after July 1, 2007 and before June 1, 2009.

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INTRODUCED BY: _____

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BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT Business, Economic Development and Tourism

TITLE: A BILL FOR AN ACT RELATING TO TAX CREDITS.

PURPOSE: Expands the definition of "qualified taxpayer" in section 235-110.46, Hawaii Revised Statutes, to include businesses located on the Leeward Coast of Oahu to be eligible for an existing tax credit to incentivize capital improvements of private businesses on the Leeward Coast of Oahu.

MEANS: Amend section 235-110.46, Hawaii Revised Statutes.

JUSTIFICATION: The entire Leeward (Waianae) Coast has levels of poverty in excess of 20 percent in each of the census tracts comprising the Waianae community. This condition has existed for over 40 years despite the efforts of Federal, State and City and County programs to alleviate the suffering or reduce the numbers of individuals and families impacted. The State is expanding the entities eligible to qualify for an existing Leeward region tax credit to broaden the number of businesses making capital investments to commercial buildings in the region to assist with community-based economic development and regional revitalization.

Impact on the public: Increase the number of employers in the Leeward Coast region who are qualified for the tax credit, thereby stimulating regional investment in expanding existing businesses organizations located on the Leeward Coast and/or creating new business facilities which will revitalize the region and provide greater employment opportunities.

Impact on the department and other agencies: N/A

GENERAL FUND: None.
OTHER FUNDS: None.
PPBS PROGRAM DESIGNATION: BED-100.
OTHER AFFECTED AGENCIES: Department of Taxation.
EFFECTIVE DATE: July 1, 2007.