

Honolulu, Hawaii

MAR 23 2006

RE: H.B. No. 2863
H.D. 2
S.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committees on Media, Arts, Science, and Technology and Energy, Environment, and International Affairs and Business and Economic Development, to which was referred H.B. No. 2863, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO ESTABLISHMENT OF THE NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY INNOVATION CORPORATION,"

beg leave to report as follows:

The purpose of this measure is to establish the Natural Energy Laboratory of Hawaii Authority Innovation Corporation to assist the Natural Energy Laboratory of Hawaii Authority in its efforts to provide resources and facilities for energy and ocean-related research, education, and commercial activities.

Your Committees received testimony in support of this measure from the Natural Energy Laboratory of Hawaii Authority and the Hawaii Government Employees Association. The Department of the Attorney General submitted comments.

The purpose of the Natural Energy Laboratory of Hawaii Authority (NELHA) is to facilitate research, development, and commercialization of natural energy resources and ocean-related research, technology, and industry in Hawaii, and to engage in retail, commercial, or tourism activities that will financially support that research, development, and commercialization. Your Committees find that the purposes of NELHA will be more



efficiently served if a not-for-profit corporation is attached to the agency.

The NELHA Innovation Corporation will be an entity responsible for supporting NELHA by furnishing the means, methods, and agencies by which management, programming, training, investigation, research, and analysis may be conducted and its resulting benefits available to the public. The NELHA Innovation Corporation will also be responsible for managing its assets, resources, and funding, planning and implementing its programs, and promoting and marketing Hawaii as a location for research and commercial natural energy activity.

Your Committees have amended this measure by adopting three suggestions made by the Department of the Attorney General: First, clarifying that the NELHA Innovation Corporation is a public not-for-profit organization and not a private not-for-profit organization. The Department of the Attorney General indicated to your Committees that the term "private" created an ambiguity in assessing whether sovereign immunity and other public attributes would apply to the corporation, and whether the corporation's actions would be considered state actions subject to various constitutional provisions. Therefore, the term "private" was deleted and replaced with "public" because the provisions of this measure indicate that the corporation is a public organization.

Second, your Committees have attached the NELHA Innovation Corporation to the Department of Business, Economic Development, and Tourism instead of NELHA. The Department of the Attorney General advised that attaching the NELHA Innovation Corporation to NELHA is contrary to Article V, section 6 of the Hawaii State Constitution, which requires that all executive offices be allocated among not more than twenty principal departments. The Department of Business, Economic Development, and Tourism is a principal department, but NELHA is not; thus, this measure was amended by replacing the corporation's attachment to NELHA with Department of Business, Economic Development, and Tourism.

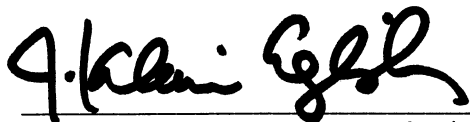
Finally, your Committees have added additional language based upon section 307-9, Hawaii Revised Statutes, to allow the corporation to hold money in its own private accounts rather than through the Department of Budget and Finance. Your Committees amended this measure by adding additional language under the section that exempts the corporation from certain state laws.



Your Committees have heard concerns regarding the appropriateness of establishing the corporation under section 501(c)(3) of the Internal Revenue Code, which will create a tax-exempt organization. Your Committees find that the issue merits further consideration and accordingly have amended this measure by inserting an effective date of July 1, 2050 to ensure ongoing discussions. Furthermore, technical, nonsubstantive amendments were made to correctly reflect the language, style, and format in the Hawaii Revised Statutes.

As affirmed by the records of votes of the members of your Committees on Media, Arts, Science, and Technology and Energy, Environment, and International Affairs and Business and Economic Development that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 2863, H.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 2863, H.D. 2, S.D. 1, and be referred to the Committee on Ways and Means.

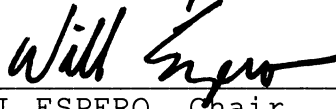
Respectfully submitted on behalf of the members of the Committees on Media, Arts, Science, and Technology and Energy, Environment, and International Affairs and Business and Economic Development,



J. KALANI ENGLISH, Chair



CAROL FUKUNAGA, Chair



WILL ESPERO, Chair



